CITY OF BILLINGS

CITY OF BILLINGS VISION STATEMENT:

"THE MAGIC CITY – A VIBRANT, WELCOMING PLACE WHERE PEOPLE FLOURISH AND BUSINESS THRIVES."

AGENDA

COUNCIL CHAMBERS **May 28, 2013** **6:30 P.M.**

CALL TO ORDER: Mayor Hanel

PLEDGE OF ALLEGIANCE: Mayor Hanel

INVOCATION: Councilmember Ronquillo

ROLL CALL: Councilmembers present on roll call were:

MINUTES: May 13, 2013

COURTESIES:

PROCLAMATIONS:

ADMINISTRATOR REPORTS - TINA VOLEK

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Item: #1 ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute. Please sign in at the cart located at the back of the council chambers or at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda.)

1. **CONSENT AGENDA** -- Separations:

   A. **Bid Awards:**

      1. **W.O. 12-18, Canyon Creek Drain, Phase 1 - King Avenue West.** (Opened 5/28/2013) Bid award recommendation to be made at the June 10, 2013, City Council meeting.

      2. **City Hall Lighting Retrofit.** (Opened 5/28/2013) Bid award recommendation to be made at the June 10, 2013, City Council meeting.

B. **Development Agreement** with SunCap Property Group outlining necessary public improvements for a proposed FedEx Facility on Tract 1, Certificate of Survey 3329, located at Hesper Road and Gabel Road.

C. **Approval** of lease renewal for office, storage, and wareyard space at the Billings International Airport to the Bureau of Land Management Fire Cache operation; 9/1/2012 - 8/31/2022; revenue first year $62,436.60; revenue subsequent years adjusted each anniversary by the Department of Labor – Bureau of Labor Statistics Consumer Price Index for Wage Earners and Clerical Workers (CPI-W).

D. **Supplemental Lease Agreement #4** with the Federal Aviation Administration (FAA) extending term of Lease #DTFANM-07-L-00039 for office and operation space in Airport Terminal Building; 4/1/2013-9/30/2017; annual revenue - $26,089.32

E. **Memoranda of Understanding** between the City of Billings and Billings Public Schools for two (2) middle school resource officers and three (3) high school resource officers (7/1/13 - 6/30/14); Billings Public Schools payment to the City of Billings - $121,366.

F. **Subordination of Housing Rehabilitation Loan** for Wesley K. Hazen and Brandi L. Hazen; $19,600.

G. **Acceptance of Donation** of a retired Boeing 727 to the Billings Logan International Airport from FedEx Express to be used for training and education purposes.

H. **Resolution** extending City Administrator's change order signing authority not to exceed $1,300,000 for the Empire Garage Project.

I. **Resolution** relating to $5,545,000 Special Improvement District No. 1385 Refunding Bonds, Series 2013; fixing the form and details and providing the execution and delivery of the bonds.

J. **Second/Final Reading Ordinance** amending Billings Montana City Code (BMCC) Article 26-600, Industrial Waste Discharge, conditioned on approval by the United States Environmental Protection Agency.

K. **Second/Final Reading Ordinance** amending the boundaries of Ward I to include recently annexed property in Annexation #13-03: a tract of land generally located at the southeast corner of Bench Boulevard and Yellowstone River Road; Ryan and Jodi Rookhuizen Family Trust, owner.

L. **Second/Final Reading Ordinance** amending the boundaries of Ward IV to include recently annexed property in Annexation #13-04: a tract of land generally located at the northwest corner of the intersection of Grand Avenue and 48th Street West; Mary Beth Gregory, owner.

M. **Second/Final Reading Ordinance** amending the Billings, Montana, City Code (BMCC), Chapter 17- Noise; Repealing Sections 17-103, 17-105, 17-109, 17-110, and 17-111; and Amending Sections 17-101, 17-102, 17-104, 17-106, 17-107, and 17-112.

N. **Second/Final Reading Ordinance** amending Billings, Montana, City Code (BMCC), Sections 18-302, 18-303, 18-306, 18-307 and 18-308; Public Nuisances.

O. **Second/Final Reading Ordinance** amending Billings, Montana, City Code (BMCC), Sections 7-300 through 7-321, Going Out of Business.

P. **Bills and Payroll:**

1. April 29, 2013

2. May 6, 2013

REGULAR AGENDA:

2. **PUBLIC HEARING AND SPECIAL REVIEW #903:** a special review amending the conditions and site plan for previously-approved Special Review #900 allowing construction of a new, private elementary school on a 3.83-acre parcel of land located at 4809 Grand Avenue. Grace Montessori Academy, owner; Eggart Engineering Company, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

3. **PUBLIC HEARING AND SPECIAL REVIEW #904:** a special review to allow multi-family dwellings in an R-60 zone on property located on the north side of Avenue E between 16th Street West and 17th Street West and legally described as Lots 1 through 9A of Block 10, Partington Park Subdivision, 8th Filing; McDonald Land Holdings, LLC, owner; AT Architecture, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

4. **PUBLIC HEARING AND SPECIAL REVIEW #905:** a special review to allow the expansion of an existing church located on a 5-acre parcel legally described as Tract 2, Certificate of Survey 1161, and addressed as 3140 Broadwater Avenue. Apostles Evangelical Lutheran Church, owner; Carl Rose and Durward Sobek, agents. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

5. **PUBLIC HEARING AND RESOLUTION** de-annexing approximately 6.64 acres of undeveloped land described as Lot 20, Block 3, Rolle Subdivision, generally located between Alkali Creek Road and Highway 3 (Airport Road). Robert Honaker, owner and petitioner. Staff recommends approval based on the criteria outlined in the City's De-annenxation Policy. (Action: approval or disapproval of staff recommendation.)

6. **PUBLIC HEARING AND RESOLUTION FOR ANNEXATION #13-06:** approximately seven acres of land described as Lot 5, Block 2, and Lot 1, Block 3, Titan Subdivision, generally located on the north and south sides of Interstate Avenue just east of the intersection of Interstate Avenue and Mullowney Lane; Origer Enterprises, Inc. and TNC Development, LLC, petitioners. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)

7. **PUBLIC HEARING FOR ZONE CHANGE #909** amending an existing Planned Development (PD) to allow an increase in the maximum density from 15 dwelling units per acre to 20 dwelling units per acre on a 25.186-acre parcel of land described as Tract 3A, C/S 2063, with underlying zoning of Planned Development-Multi-Family-Residential (PD-MF-R) in the Lenhardt Square Planned Development. Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission's recommendation.)

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign in at the cart located at the back of the council chambers or at the podium.)*

COUNCIL INITIATIVES

ADJOURN

Additional information on any of these items is available in the City Clerk's Office.

Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please notify Cari Martin, City Clerk, at 657-8210.

Consent **1. A. 1.**

Regular City Council Meeting

Meeting Date: 05/28/2013

TITLE: Delay Bid Award: W.O. 12-18 Canyon Creek Drain Phase 1 - King Avenue West

PRESENTED BY: David Mumford

Department: Public Works

Information

PROBLEM/ISSUE STATEMENT

This storm drain project will reconstruct the ditch that runs parallel to King Avenue West between the Holiday Gas Station on S. 20th Street West and the entrance to the SuperValu, which is located east of S. 18th Street West. The ditches and culverts are plugged and water has been backed up and is sitting in the storm drain along King Avenue West and S 20th. The project will remove and replace culverts, install some storm drain pipe, and will reconstruct the existing ditch to get the storm water system operational.

The project was advertised on May 9, 16, and 23, 2013, in the Billings Times and on the City's website. Bids will be opened May 28th. By law, Council must act on the bid opening at this meeting. The bids will be opened the same day as the Council meeting, so staff recommends delaying award to allow time to evaluate the bids and then make a recommendation at the first meeting in June.

ALTERNATIVES ANALYZED

The Council may:

- Delay award until June 10, 2013 and allow time for bid evaluation; or
- Reject all bids.

FINANCIAL IMPACT

Bids were received today and pending Council approval to delay bid award will be evaluated and a recommendation made on June 10, 2013.

The funding for the project is budgeted in FY2013 and the source is storm drain funds. A summary of the funding is as follows:

Project Budget	$500,000.00
Encumbered Funds	$0.00
This Contract	As Awarded on June 10, 2013
Project Budget Remaining	

RECOMMENDATION

Staff recommends that Council delay award until June 10, 2013 for W.O. 12-18, Canyon Creek Drain Phase 1 - King Avenue West.

APPROVED BY CITY ADMINISTRATOR

Consent **1. A. 2.**

Regular City Council Meeting
Meeting Date: 05/28/2013
TITLE: City Hall Lighting Retrofit Delay of Bid Award
PRESENTED BY: Tina Volek
Department: City Hall Administration

Information

PROBLEM/ISSUE STATEMENT

This project will retrofit many of the lights in City Hall. The Park 3 garage received new lighting last year and this project will complete the building and make it eligible for rebates and USB credits from the City's power provider. The project will convert existing 32 watt T-8 lamps to 25 watt lamps, change older fixtures to T-8 and add occupancy light controls. The bids will be opened on May 28, so staff will not have time to evaluate the bids before the Council meeting on the same date. Staff recommends that the City Council delay awarding a contract until June 10.

ALTERNATIVES ANALYZED

The Council may:

- Delay award until June 10, 2013 and allow time for bid evaluation; or
- Reject all bids

FINANCIAL IMPACT

The funding of this project is expected to be covered by a portion of the energy rebate from NorthWestern Energy for City Hall and Park 3 and some funding from the City's USB Credits from NorthWestern Energy. Other City funding is approved if needed.

RECOMMENDATION

Staff recommends that Council delay awarding a contract for the City Hall Lighting Retrofit until June 10, 2013.

APPROVED BY CITY ADMINISTRATOR

Consent **1. B.**

Regular City Council Meeting
Meeting Date: 05/28/2013
TITLE: Development Agreement with SunCap Property Group
PRESENTED BY: David Mumford
Department: Public Works

Information

PROBLEM/ISSUE STATEMENT

City Council approved the annexation of Tract 1 of Certificate of Survey 3329 at Hesper Road and Gabel Road at the March 25, 2013, council meeting. As a condition of approval of the annexation, the developer of the property was to enter into a development agreement with the City of Billings outlining necessary public improvements. SunCap Property Group is proposing to build a FedEx facility on this property. SunCap Property Group has submitted the attached Development Agreement, and the Council will consider whether to approve it.

ALTERNATIVES ANALYZED

The Council may:

- Approve the development agreement with SunCap Property Group; or
- Do not approve the development agreement.

FINANCIAL IMPACT

As part of the development agreement, the City will reimburse SunCap Property Group for the construction of the sanitary sewer in Hesper Road due to the fact it is larger than a 12 inch main. All other improvement costs identified within the development agreement will be borne by SunCap Property Group.

RECOMMENDATION

Staff recommends that Council approve the development agreement with SunCap Property Group.

APPROVED BY CITY ADMINISTRATOR

Attachments

Development Agreement

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made this _____ day of _____, 2013, by and between SunCap Property Group, 6101 Carnegie Blvd., No. 180, Charlotte, NC 28209 hereinafter referred to as "SunCap," and THE CITY OF BILLINGS, MONTANA, a municipal corporation, c/o City Hall, Billings, Montana, 59101, hereinafter refereed to as the "CITY."

WHEREAS, SunCap is the owner of certain real property situated in Yellowstone County, Montana, more particularly described as follows:

Tract 1 of Certificate of Survey 3329, Section 14, Township 1 South, Range 25 East PMM, hereinafter referred to as "SunCap Tract"

WHEREAS, SunCap Property Group, owner, has submitted to the City a Petition for Annexation to the City for SunCap Tract; and

WHEREAS, SunCap desires to annex SunCap Tract to the City,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

1. *Sanitary Sewer.* SunCap shall connect to the City sanitary sewer system at the intersection of Hesper and Gabel Roads. SunCap will construct a new 18-inch diameter main approximately 1,120 feet to the west fronting the SunCap Tract. Costs of extending any interior (less than 12-inch diameter) sewer mains necessary to obtain sewer service shall be paid by SunCap. The future costs of constructing sewer services to serve the property shall be paid by SunCap. The design, size and location of the sanitary sewer and appurtenances shall be in accordance with plans and specifications approved by the appropriate City departments and the State Department of Environmental Quality. The 18-inch main is considered an up-sized main and will be paid for by the City of Billings if it is competitively bid.

2. *Water.* SunCap shall connect to the City water system at the intersection of Hesper and Gabel Roads. SunCap will construct a new 12-inch diameter main approximately 1,120 feet to the west fronting the SunCap Tract. Cost of construction for water service to serve the property shall be paid by SunCap. The design, size and location of the water line and appurtenances shall be in accordance with plans and specifications submitted to and approved by the appropriate City Departments and the State Department of Environmental Quality.

3. *Storm Drain.* SunCap shall connect to the City storm drain system at the intersection of Hesper and Gabel Roads and will construct a new 24-inch diameter main approximately 1,120 feet to the west fronting the SunCap

Tract. Costs of extending any interior storm mains necessary to convey or store stormwater shall be paid by SunCap. The future costs of constructing storm services to serve the property shall be paid by SunCap. The design, size and location of the storm sewer and appurtenances shall be in accordance with plans and specifications approved by the appropriate City departments.

4. *Public Utility Fees.* SunCap Tract is subject to the appropriate Local and Interior Water and Sewer Main Construction Fees.

   SunCap has made application and received approval for extension/connection of water and sanitary sewer to the Public Works Distribution and Collection system.

5. *Curb and Gutter.* SunCap will construct approximately 1,120 feet of curb and gutter on the north side of Hesper Road fronting SunCap Tract. Costs to construct the curb and gutter will be paid by SunCap. The design and location of the curb and gutter shall be in accordance with plans and specifications approved by the appropriate City Departments.

6. *Street Widening.* SunCap will construct approximately 33 feet of road widening at Hesper Road. The widening will extend the entire length of the SunCap Tract and costs will be paid by SunCap. The design and location of the street widening shall be in accordance with plans and specifications approved by the appropriate City Departments.

7. *Sidewalks.* SunCap will construct approximately 1,120 feet of 10-foot wide sidewalk on the north side of Hesper Road fronting SunCap Tract. The design and location of the sidewalk shall be in accordance with plans and specifications approved by the appropriate City Departments.

8. *Traffic Signal.* SunCap shall construct a new traffic signal at the intersection of Hesper and Gabel Roads. Cost of construction for the traffic signal shall be paid by SunCap. The design, size, and location of the traffic signal and appurtenances shall be in accordance with plans and specifications submitted to and approved by the appropriate City Departments.

9. *Other Public Improvements.* No specific time schedule is contemplated for construction of other public improvements serving the property. The CITY shall rely on the attached Waiver filed concurrently herewith, to insure the installation of any or all remaining public improvements. Said improvements shall include, but not be limited to, street construction & paving, curb & gutter, sidewalks, driveways, storm drainage, and street lighting.
   The attached Waiver, waiving the right to protest the creation of one or more Special Improvement Districts, by this reference is expressly incorporated herein and part hereof.

5. *Compliance.* Nothing herein shall be deemed to exempt the SunCap Tract from compliance with any current or future City laws, rules, regulations, or policies that are applicable to the development, redevelopment, or use of the subject property.

6. *Runs with Land.* The covenants, agreements, and all statement in this Agreement and in the incorporated and attached Waiver shall run with the land and shall be binding on the heirs, personal representative, successors and assigns of the respective parties.

7. *Attorney's Fees.* In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs, including those fees and costs of in-house counsel.

8. *Amendments and Modifications.* Any amendments or modifications of this Agreement shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

"SunCap" SunCap TRACT

By: _____
Its: _____

STATE OF MONTANA)
:ss
County of Yellowstone)

On this _____ day of _____, 2013, before me, a Notary Public for the State of Montana, personally appeared _____, known to me to be SunCap of who executed the foregoing instrument and acknowledged to me that he executed the same.

_____
Notary Public for the State of Montana

Printed Name: _____
Residing at Billings, Yellowstone County, Montana
My commission expires _____

"CITY"
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

Approved as to Form _____
City Attorney

STATE OF MONTANA)
:ss
County of Yellowstone)

On this _____ day of _____, 2013, before me, a Notary Public for the State of Montana, personally appeared _____ and _____ _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to in the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

_____
Notary Public for the State of Montana

Printed Name: _____
Residing at Billing, Yellowstone County, Montana
My commission expires _____

WAIVER OF RIGHT TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, Owner of the hereinafter described real property, does hereby waive the right to protest the formation of one or more Special Improvement Districts (SID) for the construction, reconstruction or maintenance of streets, curbs, gutter, concrete ribbons, sidewalks, driveways, survey monuments, street name signs, street lights, street light energy and maintenance, traffic control devices on-site and off-site inclusive as determined by an overall traffic accessibility study, specific realignments or relocation of sanitary sewer lines and water lines, valley gutters, culverts, storm sewer lines, if any, either within or without the area And other incidental improvements which the City of Billings may require.

The Waiver and Agreement shall run with the land and shall be binding upon the undersigned, its successors and assigns, and shall be recorded in the office of County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follow to wit:

WAIVER signed and dated this _____day of _____ , 2013.

SunCap TRACT

By: _____ Its: _____

STATE OF MONTANA)
:ss
County of Yellowstone)

On this _____ day of _____, 2013, before me, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of SunCap, the person who signed the foregoing instrument and acknowledged to me that he executed the same. Witness my hand and seal the day and year herein above written.

_____
Notary Public for the State of Montana
Printed Name: _____
Residing at Billings, Yellowstone County, Montana
My commission expires _____

Consent **1. C.**

Regular City Council Meeting

Meeting Date: 05/28/2013

TITLE: Renewal of BLM Lease for Building and Ground Space at Billings Logan International Airport

PRESENTED BY: Tom Binford

Department: Airport

Information

PROBLEM/ISSUE STATEMENT

The Bureau of Land Management (BLM) Fire Cache operation has requested a renewal of a Lease for office, storage, and wareyard space at the Airport Business Park. The office and storage space is contained within Airport Buildings IP-6 and IP-7. The wareyard space consists of two areas, one for vehicle storage and the other for supply storage. The last lease expired on September 1, 2012. The ten-year lease includes 1,859 square feet of storage in IP-6, 3,080 square feet of office space in IP-7, 1,862 square feet of storage in IP-7, 20,155 square feet for the vehicle wareyard, and 17,000 square feet for the supply wareyard. The BLM will utilize this space for its Fire Cache offices and to warehouse its wild land fire fighting equipment and supplies. A copy of the lease in on file in the City Clerk's office.

ALTERNATIVES ANALYZED

The City Council may:

- Approve the new lease with the BLM for a ten-year term; or
- Not approve the new lease with the BLM for a ten-year term.

FINANCIAL IMPACT

The City will generate $62,436.60 in the first year of the lease. Subsequent years will be adjusted each anniversary by the Department of Labor – Bureau of Labor Statistics Consumer Price Index for Wage Earners and Clerical Workers (CPI-W).

RECOMMENDATION

Staff recommends that Council approve this ten-year Lease with the BLM for office, storage, and wareyard space in IP-6, IP-7, and the wareyards located in the Airport Business Park for a ten-year term beginning September 1, 2012, and ending August 31, 2022.

APPROVED BY CITY ADMINISTRATOR

Consent **1. D.**

Regular City Council Meeting

Meeting Date: 05/28/2013

TITLE: Extension of the Federal Aviation Administration (FAA) Office Lease at the Airport Terminal Building

PRESENTED BY: Tom Binford

Department: Airport

Information

PROBLEM/ISSUE STATEMENT

The Federal Aviation Administration (FAA) currently leases 660.49 square feet of office and operation space on the second floor of the Terminal. The most recent lease expired on March 31, 2013. The FAA desires to continue leasing the space and extend the term for four and one-half years. The one-half year term is requested to have the lease term expiration coincide with the end of a Federal fiscal year. The term of the lease extension would commence April 1, 2013 and continue through September 30, 2017 inclusive. A copy of Supplemental Lease Agreement #4 extending the term of the lease is on file in the City Clerk's Office.

ALTERNATIVES ANALYZED

The City Council may:

- Approve Supplemental Lease Agreement #4 extending the term of the FAA lease; or
- Not approve Supplemental Lease Agreement #4 extending the term of the FAA lease.

FINANCIAL IMPACT

The existing lease rate has been adjusted for inflation, is payable on a monthly basis, and will generate $26,089.32 annually.

RECOMMENDATION

Staff recommends that City Council approve Supplemental Lease Agreement #4, extending the term of Lease #DTFANM-07-L-00039 with the FAA for office and operation space in the Airport's Terminal Building for the term commencing April 1, 2013, and continuing through September 30, 2017 inclusive.

APPROVED BY CITY ADMINISTRATOR

Consent **1. E.**

Regular City Council Meeting

Meeting Date: 05/28/2013

TITLE: Memorandums of Understanding for Middle School and High School School Resource Officers (SROs)

PRESENTED BY: Rich St. John

Department: Police

Information

PROBLEM/ISSUE STATEMENT

The City of Billings and the Billings Public Schools have enjoyed a 18 year history with the School Resource Officer (SRO) Program in the middle schools and the high schools. The attached Memoranda of Understanding (MOU) make provisions for program objectives, guidelines, financial consideration and for terminating the agreements. The MOUs are for the period of July 1, 2013 to June 30, 2014. The School Board approved both MOUs at their meeting of March 25, 2013. The SRO Program is a collaborative effort by certified law enforcement officers, educators, students, parents, and the community, to offer a liaison program in both the middle and high schools to reduce crime, drug abuse, violence, and provide a safe school environment. The Program also provides networking, public relations, and relationship building among the City, Police Department, the School District and the community. City Council is being asked to approve the MOUs for the middle schools and high schools in the amount of $121,366.

ALTERNATIVES ANALYZED

Council may:

- Approve the MOUs for the SRO Program in the middle and high schools; or
- Not approve the MOUs for the SRO Program in the middle and high schools. The effect would be that the City would have to supply the $121,366 that the Billings Public Schools contributes to the program or modify/eliminate the program.

FINANCIAL IMPACT

The approximate total cost for the two officers in the middle school SRO positions and the three officers in the high school SRO positions is $357,311.08. The Billings Public Schools provide a payment of $121,366 ($55,166 for the middle schools and $66,200 for the high schools) to help defray some of the salary and benefit costs for the five officers.

RECOMMENDATION

Staff recommends Council approve the SRO Program Memorandum of Understanding with Billings Public Schools.

APPROVED BY CITY ADMINISTRATOR

Attachments

Agreement with High Schools

Agreement with Middle Schools

MEMORANDUM OF UNDERSTANDING
SCHOOL RESOURCE OFFICER PROGRAM
AT BILLINGS WEST, SENIOR AND SKYVIEW HIGH SCHOOLS

CITY OF BILLINGS POLICE DEPARTMENT
BILLINGS PUBLIC SCHOOLS

We do hereby agree that it is mutually beneficial to all parties for Billings Police Officers to be assigned as School Resource Officers to schools within the City of Billings. It is understood by all parties that officers are employees of the City of Billings Police Department.

The purpose of this document is to facilitate a clear understanding of roles, duties, and responsibilities. This Memorandum of Understanding (MOU) is being set forth on this _____ day of _____, 2013 with full recognition that the agreement and document must be a living document to allow for program evolution and provide for some City of Billings and Billings School District variances, needs, and future changes. It is recognized that the School Resource Officer Program has enjoyed an eighteen (18) year history within the City of Billings, since a limited pilot project at Billings West High School was implemented by the West End Community Oriented Policing team, and has enjoyed an excellent relationship with the schools. This MOU is being set forth to provide universal clarification of expectations, to minimize confusion, and to provide for consistency between officers, schools, principals, and directors.

The Billings Police Department recognizes and supports the need for safe schools and a safe learning environment for our youth. In furtherance of that goal, the Billings Police Department School Resource Officers shall work in partnership with school officials toward this end. The schools will provide a private office, office furnishings, telephone, and a computer to the SRO for his/her use in the school. The Police Department will provide any required police equipment, including radios and motorized and non-motorized vehicles to the SROs.

MISSION STATEMENT - BILLINGS POLICE DEPARTMENT

The Billings Police Department is committed to improving the quality of life through a customer service, problem solving partnership with the community.

MISSION STATEMENT - SCHOOL RESOURCE OFFICER PROGRAM

Through education and enforcement and by cooperative efforts with the school staff, the students, the parents, the courts, the surrounding neighborhood, and the community's social service organizations, the SRO program strives to assist the schools with providing a safe school and neighborhood environment, and strives to hold juveniles responsible for their actions and prevent individual problems from developing into patterns of delinquency.

BILLINGS POLICE DEPARTMENT
SCHOOL RESOURCE OFFICER PROGRAM
PROGRAM OBJECTIVES

1. Friendly contact between the Police Department and the City's youth.

2. Assistance and information sharing concerning problems and issues affecting the schools and students.

3. Education of children regarding the role of laws, courts, and Police in society.

4. Protection and education of children involving molestation, involvement with older law violators, and other harmful influences.

5. Investigation of cases involving juveniles and use of effective alternatives to court whenever possible.

6. Prevention of crime or delinquent behavior by juveniles within the School Resource Officers' areas of assignment.

7. Effective problem solving and liaison with neighborhoods surrounding the high schools, which are affected negatively by the conduct of students.

It should be recognized that School Resource Officers:

♦ are encouraged to be a part of Student Council /Groups and School Staff when requested, and to work as a team with other school officials for the betterment of students and the school and neighborhood environment as a whole;

♦ are encouraged to work extra curricular activities as requested by the school administrator. It is recognized by all parties that these assignments provide further opportunities for crime prevention and crime detection. Any work by the SRO in this capacity will be approved by the assigned Police Department Supervisor and will be consistent with the FLSA and Police Union Contract. The SRO will not be used as a replacement officer for off-duty/special duty assignments. It will not relieve the School District of the need to provide adequate security at special events. All after hours work shall be approved by the SRO supervisor in advance;

♦ are expected to keep the school principal or his designee informed about law enforcement action which occurs on school property and/or which may involve a student. This, of course, will not occur if the information is inappropriate for release according to the Montana Criminal Justice Information Act of 1979;

♦ are police officers assigned as Uniform Patrol Officers of the Operations Division of the Billings Police Department. As such, their primary responsibilities are to investigate criminal cases involving youth, maintain order through the enforcement of local, state and federal laws, to recover stolen property, bring perpetrators to justice, and support the enforcement policies of the Billings Public Schools;

♦ are governed by the rules, policies, shifts, schedules, procedures and practices of the Billings Police Department and the City of Billings, under the supervision of an assigned Sergeant;

♦ are expected to attend all training, meetings and appointments assigned by the Police Department. It is recognized that some of these will conflict with officer availability at the school during normal school hours. These conflicts will be minimized as much as possible but the potential exists that such requirements will take precedence over school presence. The officer shall strive to keep the school principal or his representative informed about his/her absences and/or activities as appropriate on a need to know basis;

♦ are governed and covered by the current Collective Labor Agreement between City of Billings and the Montana Public Employees Association-Billings Police Unit;

♦ are considered by the City of Billings as "non-exempt" employees covered by the Fair Labor Standards Act and subject to it and the Police Union Contract for compensation and pay; Duty assignment in the summer months, when school is not in session, will be under the direction of the Police Operations Commander. SRO's may also be required to work regular police duty assignments, at other times when school is not in session, when so directed by the Police Operations Commander;

♦ are not security guards provided to the school district by the Billings Police Department. They should not be viewed by school officials as a replacement for security, although it is recognized that police presence has a crime prevention impact. If security is needed, the school district is encouraged to employ its own or to contract with a private security provider;

♦ are police officers and not school teachers, school administrators, nor school counselors. The officers will assist teachers with classroom presentations on relative topics when requested and able. They will also work with families, individual students and other school staff members with counseling and guidance efforts when requested and appropriate. We, the undersigned, encourage team work, partnerships, cooperation and coordination between the officers, their supervisors and the school administrators and their staff, as well as with the surrounding neighborhood;

♦ should not be relied upon or scheduled to serve as bus stop monitors, hallway monitors, nor lunch room monitors. Although, time permitting, SROs should assist school officials who are regularly assigned in these capacities since they provide

excellent opportunities to achieve program objectives, including professional and friendly contact with youth, positive relationships and crime prevention.

♦ SROs, School Administration for the respective middle and/or high schools and the assigned Police Supervisor will meet at the beginning of each school year to determine the goals and objectives of the SRO for the respective school. An assessment mechanism will be developed jointly, in an effort to determine the effectiveness of the SRO program. Quarterly and year end meetings will be held to determine progress and to make adjustments as needed.

♦ are not intended to substitute for or relieve the building administrators of their primary responsibility for maintenance of discipline and good order in the school.

SELECTION AND FINANCIAL CONSIDERATION

Three (3) officers will be selected by means of a joint selection committee, comprised of three (3) representatives from the Billings School District who will be appointed by the Superintendent of Schools and three (3) representatives from the Billings Police Department who will be appointed by the Billings Chief of Police. The Selection Committee will make recommendations to the Chief of Police. While he will duly consider the Committee's recommendations, selection of each School Resource Officer is within the sole discretion of the Chief of Police. One officer will be assigned to each of the three Billings Public High Schools.

In return for services provided by the three officers, the Billings School District will pay to the City of Billings the sum of Sixty Six Thousand Two Hundred Dollars ($66,200) by July 30, 2013.

PROGRAM ASSESSMENT

The School Resource Officer Program will be assessed annually, and the evaluation will be conducted jointly between the Billings Police Department and Billings Public Schools. The following areas, at a minimum, will be used to evaluate the program:

♦ Success of established goals and objectives.
♦ An internal survey of high school administration, faculty and student council members, primarily concerning perceptions of safety and security.
♦ Traditional police-citizen contacts (citations, arrests, FIRs, etc.).
♦ Non-traditional police-citizen contacts (meetings attended, problem areas addressed, student or family interviews, etc.).
♦ Surrounding neighborhood feedback and reaction to police efforts to address issues concerning the schools and students.
♦ Accomplishment of tasks agreed upon as part of any work plan written in conjunction with the Principal.

Each officer's effectiveness in the program will be evaluated at the end of each school term. The Principal will provide input into the evaluation. This may include a recommendation to the Chief that the officer not be assigned to that school the following year. The Chief will seriously consider the evaluation and the input of the Superintendent when assigning an officer to a building, and will make a good faith effort to address any concerns raised. Ultimately, however, the final decision on which officer will be assigned as a school resource officer is within the sole discretion of the Police Chief.

EFFECTIVE DATE

This Memorandum of Understanding is effective July 1, 2013 and shall remain in effect through June 30, 2014, unless renewed by agreement of both parties or terminated as provided herein.

TERMINATION OF AGREEMENT

Either party may terminate this agreement upon sixty (60) days written notice to the other party. If this agreement is terminated by School District #2, then the full balance of the Sixty Six Thousand Two Hundred Dollars ($66,200) will be retained by the City of Billings in order to maintain the high school SRO program. If the agreement is terminated by the City of Billings, then the pro-rated balance of the Sixty Six Thousand Two Hundred Dollars ($66,200) will be refunded to School District #2. The pro-rated balance will be based on the total number of school days for the 2013/2014 school year and the number of school days remaining after the date of termination of the agreement.

NOTICES

All requests, notices, payments, demands, authorizations, directions, consents or waivers or other documents required or permitted under this Agreement shall be in writing and shall be delivered in person to, or deposited postage prepaid in the registered or certified mails of the United States, addressed to the City of Billings at:

Chief of Police, Billings Police Department, City of Billings,
P. O. Box 1554, Billings, MT 59103

or to School District #2 at:

Superintendent, School District #2, Lincoln Center, 415 North 30th Street
Billings, MT 59101

MODIFICATION; ENTIRE AGREEMENT OF PARTIES EXPRESSED

No modification of this Agreement shall be valid or binding unless the modification is in writing, duly dated and signed by both parties.

Executed this ____ day of _____, 2013.

SCHOOL DISTRICT #2

Attest:

_____
Leo Hudetz
Clerk

By:_____
Terry Nelson Bouck
Superintendent

CITY OF BILLINGS

Attest:

_____
City Clerk

By:_____
Mayor

Approved as to form:

_____
City Attorney

MEMORANDUM OF UNDERSTANDING
SCHOOL RESOURCE OFFICER PROGRAM
AT BILLINGS MIDDLE SCHOOLS

CITY OF BILLINGS POLICE DEPARTMENT
BILLINGS PUBLIC SCHOOLS

We do hereby agree that it is mutually beneficial to all parties for Billings Police Officers to be assigned as School Resource Officers to schools within the City of Billings. It is understood by all parties that officers are employees of the City of Billings Police Department.

The purpose of this document is to facilitate a clear understanding of roles, duties, and responsibilities. This Memorandum of Understanding (MOU) is being set forth on this _____ day of _____, 2013 with full recognition that the agreement and document must be a living document to allow for program evolution and provide for some City of Billings and Billings School District variances, needs, and future changes. It is recognized that the School Resource Officer Program has enjoyed an eighteen (18) year history within the City of Billings, since a limited pilot project at Billings West High School was implemented by the West End Community Oriented Policing team, and has enjoyed an excellent relationship with the schools. This MOU is being set forth to provide universal clarification of expectations, to minimize confusion, and to provide for consistency between officers, schools, principals, and directors.

The Billings Police Department recognizes and supports the need for safe schools and a safe learning environment for our youth. In furtherance of that goal, the Billings Police Department School Resource Officers shall work in partnership with school officials toward this end. The schools will provide a private office, office furnishings, telephone, and a computer to the SRO for his/her use in the school. The Police Department will provide any required police equipment, including radios and motorized and non-motorized vehicles to the SROs.

MISSION STATEMENT - BILLINGS POLICE DEPARTMENT

The Billings Police Department is committed to improving the quality of life through a customer service, problem solving partnership with the community.

MISSION STATEMENT - SCHOOL RESOURCE OFFICER PROGRAM

Through education and enforcement and by cooperative efforts with the school staff, the students, the parents, the courts, the surrounding neighborhood, and the community's social service organizations, the SRO program strives to assist the schools with providing a safe school and neighborhood environment, and strives to hold juveniles responsible for their actions and prevent individual problems from developing into patterns of delinquency.

BILLINGS POLICE DEPARTMENT
SCHOOL RESOURCE OFFICER PROGRAM
PROGRAM OBJECTIVES

1. Friendly contact between the Police Department and the City's youth.

2. Assistance and information sharing concerning problems and issues affecting the schools and students.

3. Education of children regarding the role of laws, courts, and Police in society.

4. Protection and education of children involving molestation, involvement with older law violators, and other harmful influences.

5. Investigation of cases involving juveniles and use of effective alternatives to court whenever possible.

6. Prevention of crime or delinquent behavior by juveniles within the School Resource Officers' areas of assignment.

7. Effective problem solving and liaison with neighborhoods surrounding the **middle schools**, which are affected negatively by the conduct of students.

It should be recognized that School Resource Officers:

♦ are encouraged to be a part of Student Council /Groups and School Staff when requested, and to work as a team with other school officials for the betterment of students and the school and neighborhood environment as a whole;

♦ are encouraged to work extra curricular activities as requested by the school administrator. It is recognized by all parties that these assignments provide further opportunities for crime prevention and crime detection. Any work by the SRO in this capacity will be approved by the assigned Police Department Supervisor and will be consistent with the FLSA and Police Union Contract. The SRO will not be used as a replacement officer for off-duty/special duty assignments. It will not relieve the School District of the need to provide adequate security at special events. All after hours work shall be approved by the SRO supervisor in advance;

♦ are expected to keep the school principal or his designee informed about law enforcement action which occurs on school property and/or which may involve a student. This, of course, will not occur if the information is inappropriate for release according to the Montana Criminal Justice Information Act of 1979;

♦ are police officers assigned as Uniform Patrol Officers of the Operations Division of the Billings Police Department. As such, their primary responsibilities are to

investigate criminal cases involving youth, maintain order through the enforcement of local, state and federal laws, to recover stolen property, bring perpetrators to justice, and support the enforcement policies of the Billings Public Schools;

♦ are governed by the rules, policies, shifts, schedules, procedures and practices of the Billings Police Department and the City of Billings, under the supervision of an assigned Sergeant;

♦ are expected to attend all training, meetings and appointments assigned by the Police Department. It is recognized that some of these will conflict with officer availability at the school during normal school hours. These conflicts will be minimized as much as possible but the potential exists that such requirements will take precedence over school presence. The officer shall strive to keep the school principal or his representative informed about his/her absences and/or activities as appropriate on a need to know basis;

♦ are governed and covered by the current Collective Labor Agreement between City of Billings and the Montana Public Employees Association-Billings Police Unit;

♦ are considered by the City of Billings as "non-exempt" employees covered by the Fair Labor Standards Act and subject to it and the Police Union Contract for compensation and pay; Duty assignment in the summer months, when school is not in session, will be under the direction of the Police Operations Commander. SRO's may also be required to work regular police duty assignments, at other times when school is not in session, when so directed by the Police Operations Commander;

♦ are not security guards provided to the school district by the Billings Police Department. They should not be viewed by school officials as a replacement for security, although it is recognized that police presence has a crime prevention impact. If security is needed, the school district is encouraged to employ its own or to contract with a private security provider;

♦ are police officers and not school teachers, school administrators, nor school counselors. The officers will assist teachers with classroom presentations on relative topics when requested and able. They will also work with families, individual students and other school staff members with counseling and guidance efforts when requested and appropriate. We, the undersigned, encourage team work, partnerships, cooperation and coordination between the officers, their supervisors and the school administrators and their staff, as well as with the surrounding neighborhood;

♦ should not be relied upon or scheduled to serve as bus stop monitors, hallway monitors, nor lunch room monitors. Although, time permitting, SROs should assist school officials who are regularly assigned in these capacities since they provide excellent opportunities to achieve program objectives, including professional and friendly contact with youth, positive relationships and crime prevention.

♦ SROs, School Administration for the respective middle and/or high schools and the assigned Police Supervisor will meet at the beginning of each school year to determine the goals and objectives of the SRO for the respective school. An assessment mechanism will be developed jointly, in an effort to determine the effectiveness of the SRO program. Quarterly and year end meetings will be held to determine progress and to make adjustments as needed.

♦ are not intended to substitute for or relieve the building administrators of their primary responsibility for maintenance of discipline and good order in the school.

SELECTION AND FINANCIAL CONSIDERATION

Two (2) officers will be selected by means of a joint selection committee, comprised of three (3) representatives from the Billings School District who will be appointed by the Superintendent of Schools and three (3) representatives from the Billings Police Department who will be appointed by the Billings Chief of Police. The Selection Committee will make recommendations to the Chief of Police. While he will duly consider the Committee's recommendations, selection of each School Resource Officer is within the sole discretion of the Chief of Police. Two officers will be assigned to the four Billings Public Middle Schools.

In return for services provided by the two officers, the Billings School District will pay to the City of Billings the sum of Fifty Five Thousand One Hundred Sixty Six Dollars ($55,166) by July 30, 2013.

PROGRAM ASSESSMENT

The School Resource Officer Program will be assessed annually, and the evaluation will be conducted jointly between the Billings Police Department and Billings Public Schools. The following areas, at a minimum, will be used to evaluate the program:

♦ Success of established goals and objectives.
♦ An internal survey of high school administration, faculty and student council members, primarily concerning perceptions of safety and security.
♦ Traditional police-citizen contacts (citations, arrests, FIRs, etc.).
♦ Non-traditional police-citizen contacts (meetings attended, problem areas addressed, student or family interviews, etc.).
♦ Surrounding neighborhood feedback and reaction to police efforts to address issues concerning the schools and students.
♦ Accomplishment of tasks agreed upon as part of any work plan written in conjunction with the Principal.

Each officer's effectiveness in the program will be evaluated at the end of each school term. The Principal will provide input into the evaluation. This may include a

recommendation to the Chief that the officer not be assigned to that school the following year. The Chief will seriously consider the evaluation and the input of the Superintendent when assigning an officer to a building, and will make a good faith effort to address any concerns raised. Ultimately, however, the final decision on which officer will be assigned as a school resource officer is within the sole discretion of the Police Chief.

EFFECTIVE DATE

This Memorandum of Understanding is effective July 1, 2013, and shall remain in effect through June 30, 2014 unless renewed by agreement of both parties or terminated as provided herein.

TERMINATION OF AGREEMENT

Either party may terminate this agreement upon sixty (60) days written notice to the other party. If this agreement is terminated by School District #2, then the full balance of the Fifty Five Thousand One Hundred Sixty Six Dollars ($55,166) will be retained by the City of Billings in order to maintain the middle school SRO program. If the agreement is terminated by the City of Billings, then the pro-rated balance of the Fifty Five Thousand One Hundred Sixty Six ($55,166) will be refunded to School District #2. The pro-rated balance will be based on the total number of school days for the 2013/2014 school year and the number of school days remaining after the date of termination of the agreement.

NOTICES

All requests, notices, payments, demands, authorizations, directions, consents or waivers or other documents required or permitted under this Agreement shall be in writing and shall be delivered in person to, or deposited postage prepaid in the registered or certified mails of the United States, addressed to the City of Billings at:

Chief of Police, Billings Police Department, City of Billings,
P. O. Box 1554, Billings, MT 59103

or to School District #2 at:

Superintendent, School District #2, Lincoln Center, 415 North 30th Street
Billings, MT 59101

MODIFICATION; ENTIRE AGREEMENT OF PARTIES EXPRESSED

No modification of this Agreement shall be valid or binding unless the modification is in writing, duly dated and signed by both parties.

Executed this ____ day of _____, 2013.

SCHOOL DISTRICT #2

Attest:

LEO HUDETZ
Clerk

By: _____
Terry Nelson Bouck
Superintendent

CITY OF BILLINGS

Attest:

_____
City Clerk

By: _____
Mayor

Approved as to form:

_____
City Attorney

Consent **1. F.**

Regular City Council Meeting
Meeting Date: 05/28/2013
TITLE: Subordination Request - Housing Rehab Loan - Hazen
PRESENTED BY: Candi Beaudry
Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

Wesley K. Hazen and Brandi L. Hazen, qualified for and received a Housing Rehabilitation Deferred Loan for $20,000 in June 2005. The loan was modified in March 2006 decreasing the principal balance to $19,600. The loan does not have to be repaid as long as the Hazens remain the owner/occupants of the property. The loan is to be 100% repaid when the property is sold or when the owner no longer occupies the property. The Hazens requested the City subordinate its lien to a new first mortgage with a lower current interest rate and to follow the City's subordination policy, which requires a 0% payback of the Rehabilitation Loan. The Hazens will not roll over additional debt into the first mortgage and the City's position will not be affected by this action.

ALTERNATIVES ANALYZED

The City Council may 1) Approve the request to subordinate the $19,600 lien to a new first mortgage; 2) Do not approve the subordination request which could result in the homeowner not being able to refinance and to benefit from the current low interest rates.

FINANCIAL IMPACT

A new first mortgage from Wells Fargo Bank will not exceed $78,800 and will be used to refinance existing debt on the property. A recent Comparative Market Analysis estimated a property market value of $197,000. The City will retain its $19,600 interest in the property in second position and the City is still protected by the current value of the home.

RECOMMENDATION

Staff recommends that Council subordinate the City's lien securing a $19,600 CDBG Housing Rehabilitation Deferred Loan to Wesley K. Hazen and Brandi L. Hazen, 936 Governors Blvd.

APPROVED BY CITY ADMINISTRATOR

Attachments

SubordAgrmt-Hazen

Please Return To:

City of Billings
Community Development Division
P.O. Box 1178
Billings, Montana 59103

SUBORDINATION AGREEMENT

Comes now, The City of Billings, a Municipal Corporation, organized under the laws of the State of Montana, represents that it is the secured party under the provisions of a certain Trust Indenture dated June 24, 2005 executed by Wesley K. Hazen and Brandi L. Hazen, Husband and Wife as Joint Tenants, as Grantor, and the City Attorney, Brent Brooks, as trustee, recorded June 29, 2005 under Document 3338440, which was made to secure an indebtedness of $20,000 and modified by an Agreement of Modification dated March 2, 2006 and recorder March 8, 2006 under Document 3369385 decreasing the principal balance to $19,600 in the records of the Clerk and Recorder for Yellowstone County, Montana.

DO HEREBY SUBORDINATE the lien of said Trust Indenture and Agreement of Modification to the lien and obligation of a Trust Indenture wherein Wells Fargo Bank, N.A. is named as Beneficiary, Wesley K. Hazen and Brandi L. Hazen, Husband and Wife as Joint Tenants, is Grantor, and ALLIANCE TITLE & ESCROW CORP. is Trustee, dated _____ and recorded _____ under document number _____ Yellowstone County Montana.

The intent of the undersigned is to subordinate the first above described Trust Indenture to the new lien not to exceed $78,800 ONLY as it is related to the below described real property; and to retain the priority position of the first above described Trust Indenture as to all other real property described herein; to wit:

> Lot 1, Block 23, of Plat of 5th Filing Kimberley Heights Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder f said County, under Document #1035310.

IN WITNESS WHEREOF, this instrument has been executed this _____ day of _____ 2013.

CITY OF BILLINGS

By:_____, Mayor

ATTEST:_____, City Clerk

ACKNOWLEDGEMENT

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this _____day of _____, 2013, before me, a Notary Public for the State of Montana, personally appeared THOMAS W. HANEL and CARI MARTIN, known to be to be the Mayor and City Clerk respectively of the City of Billings, and whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

_____

Consent **1. G.**

Regular City Council Meeting
Meeting Date: 05/28/2013
TITLE: Donation from FedEx Express to the Billings Logan International Airport
PRESENTED BY: Tom Binford
Department: Airport

Information

PROBLEM/ISSUE STATEMENT

The Billings Logan International Airport was recently approached by FedEx Express, the air cargo branch of FedEx Corporation, regarding the donation of a Boeing 727 to the Airport to be used for training and education purposes. FedEx has been retiring their B-727 fleet in favor of the newer and larger Boeing 757, and has donated nearly 70 of the aircraft to various airports and flight schools around the country. Billings Logan International Airport's Aircraft Rescue Fire Fighting (ARFF) Division would utilize the aircraft to fulfill a number of the Federal Aviation Administration (FAA) required annual training programs. The main benefit is the ability for the ARFF staff to train on a modern aircraft for a number of different types of drills that are currently being completed with an older Martin 404 that the Airport has used for years. The ability of the ARFF staff to utilize this aircraft for familiarization of the locations of emergency panels, battery packs, hydraulic valves, electrical panels, etc., will provide some very good hands-on training. FedEx Express only requests that the City sign a Quit Claim Deed of Gift in exchange for the donation of the aircraft. The aircraft will be placed on the north side of the Airport on the old decommissioned Runway 34.

ALTERNATIVES ANALYZED

The City Council may:

- Approve the donation to the Airport of the Boeing 727 from FedEx Express; or
- Decline the donation of the Boeing 727 from FedEx Express.

FINANCIAL IMPACT

The financial impact to the City's Airport will be very small, as FedEx Express is responsible for the removal of the engines and fuel. The Airport will need to secure the aircraft against wind and put in place the simulation equipment currently used in the old Martin 404 aircraft. Staff estimates the cost to get everything set up to be $1,000 or less.

RECOMMENDATION

Staff recommends that the City Council approve the acceptance of this donation to the Airport of a B-727 from FedEx Express and authorize the Mayor to execute a Quit Claim Deed of Gift provided by FedEx Express.

APPROVED BY CITY ADMINISTRATOR

Consent **1. H.**

Regular City Council Meeting

Meeting Date: 05/28/2013

TITLE: Resolution Extending the City Administrator's Authority to Execute Change Orders for the Empire Garage Project

PRESENTED BY: Bruce McCandless, Asst City Administrator

Department: City Hall Administration

Information

PROBLEM/ISSUE STATEMENT

City Code Section 13-500, City Contracts, outlines several requirements and limitations on contracting for equipment, services or facilities. Section 13-502 (b) limits the City Administrator's authority to execute changes and amendments to contracts. These limits are that the City Administrator may not execute changes that exceed the lowest dollar amount of 1) 10% of the project cost; 2) $500,000, or; 3) the budgeted contingency. Section 13-502 (c) provides an exception to those limits. The section acknowledges that on large and complex public infrastructure projects, many change orders may be required and responding to changing construction conditions promptly can be important for keeping a project on schedule and within its budget. Under this section, the City Council has the authority to authorize the City Administrator to exceed the limits in 502 (b) on specific projects. The Empire Parking Garage is one of the large, complex projects that 502 (c) anticipates. The original design-build contract with Sletten Construction was not to exceed $11,500,000. The City Administrator approved Change Order #1 for $410,000 and Council approved Change Order #2 for $330,000 in January, 2013. The City Administrator could not approve Change Order #2 without violating 502 (b). In those two change orders, only one element of the project was unexpected; $275,000 to line storm and sanitary sewers in the alley. Public Works reimbursed the project for $170,000 since the improvements also benefited the two utilities, resulting in net contingency usage of $105,000. Change Order #3 for $234,435.10 was presented to Council on May 13. This should be the last large change order since all of the demolition work and a lot of the site work is done. New building costs are more predictable than for the demolition and site work. However, staff believes that there will be at least one and probably more, relatively small change orders. In order to permit the City Administrator to exceed the limits in 502 (b), staff is recommending that the City Council approve the attached resolution which establishes a City Administrator Empire Garage Change Order authority of $1,300,000. This is approximately $302,000 above change orders that have already been approved and it is still within the budgeted project contingency.

ALTERNATIVES ANALYZED

The City Council may approve or disapprove the resolution. Approving it will allow the City Administrator to execute change orders in order to keep the project on schedule and to remain within the total project budget, including contingency. Not approving the resolution will force all future change orders to be approved by Council, which may cause project delays and increase costs.

FINANCIAL IMPACT

The three project change orders have added almost $973,000 to the Sletten contract, but $470,000 of that expense was anticipated and part of the project budget. Since Public Works reimbursed the project for $170,000 of sewer work, approximately $333,000 of the project contingency has been used to date. The project has a remaining contingency of over $361,000 and the resolution extends the City Administrator's authority by about $302,000.

RECOMMENDATION

Staff recommends that the City Council approve the attached Resolution that extends the City Administrator's change order signing authority to $1,300,000 for the Empire Garage project.

APPROVED BY CITY ADMINISTRATOR

Attachments

Resolution

ATTACHMENT 'A'

RESOLUTION 13-

A RESOLUTION EXTENDING CITY ADMINISTRATOR CHANGE ORDER AUTHORITY FOR THE EMPIRE PARKING GARAGE

WHEREAS, City Code Section 13-502 (b) authorizes the City Administrator to execute amendments or change orders to contracts if the increase in contract amount does not exceed the lesser of 10% of the contract price, $500,000, or the original budgeted contingency; and

WHEREAS, the original contract for the Empire Parking Garage was $11,500,000; and

WHEREAS, existing change orders total $973,000, which exceeds the City Administrator's change order signing authority; and

WHEREAS, the remaining work may require additional change orders, however none that will exceed the project contingency allowance; and

WHEREAS, the Billings City Council desires to keep this project on schedule and within budget and believes that extending the City Administrator's change order signing authority will help to accomplish those goals.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

The limit of the City Administrator's change order authority for the Empire Parking Garage will be extended to not exceed $1,300,000.

APPROVED AND PASSED by the Billings City Council this 28th day of May, 2013.

THE CITY OF BILLINGS

By: _____
Thomas W. Hanel
MAYOR

ATTEST:

By: _____
Cari Martin
CITY CLERK

Consent **1. I.**

Regular City Council Meeting

Meeting Date: 05/28/2013

TITLE: Resolution Fixing the Form and Detail of Special Improvement District 1385 Refunding Bonds

PRESENTED BY: Patrick M weber

Department: City Hall Administration

Information

PROBLEM/ISSUE STATEMENT

On April 22, 2013, the council approved the resolution to proceed with the refunding of Special Improvement District (SID) 1385 (Miller Crossing). The City has been working with DA Davidson on the sale of the bonds. A bond purchase agreement was signed on May 15.

The interest rate is 3.6% which represents a net present value savings of $669,042.

ALTERNATIVES ANALYZED

This is the final step of the bond sale. The interest rate and term of the bonds were finalized with the bond purchase agreement. This resolution provides further detail of that agreement. Once Council approves this resolution, the closing will take place.

FINANCIAL IMPACT

The refunding bonds are being issued to reduce future interest costs. These savings will be passed on to the property owners in the district.

RECOMMENDATION

Staff recommends Council approve the resolution fixing the Form and Detail of the Special District 1385 refunding bonds.

APPROVED BY CITY ADMINISTRATOR

Attachments

Resolution

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution No. _____ entitled: "RESOLUTION RELATING TO $5,545,000 SPECIAL IMPROVEMENT DISTRICT NO. 1385 REFUNDING BONDS, SERIES 2013; FIXING THE FORM AND DETAILS AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND SECURITY THEREFOR" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on May 28, 2013, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____ _____; voted against the same: _____ _____; abstained from voting thereon: _____ _____; or were absent: _____.

WITNESS my hand and seal officially this 28th day of May, 2013.

(SEAL)

_____
City Clerk

RESOLUTION NO. _____

RESOLUTION RELATING TO $5,545,000 SPECIAL IMPROVEMENT DISTRICT NO. 1385 REFUNDING BONDS, SERIES 2013; FIXING THE FORM AND DETAILS AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND SECURITY THEREFOR

BE IT RESOLVED by the City Council (the "Council") of the City of Billings, Montana (the "City"), as follows:

Section 1. Recitals. It is hereby found, determined and declared as follows:

1.01. Outstanding Bonds. The City, pursuant to Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"), has issued its Special Improvement District No. 1385 Bonds, dated, as originally issued, as of October 1, 2008, in the original aggregate principal amount of $5,360,000 (the "Series 2008 Bonds"), drawn against the funds of, and to finance the costs of certain local improvements (the "Improvements") in or for the benefit of, Special Improvement District No. 1385 of the City (the "District"). All of the Improvements have been completed and all proceeds of the Series 2008 Bonds and investment income thereon have been applied to costs of the Improvements or to the partial redemption of the Series 2008 Bonds, except for certain proceeds of the Series 2008 Bonds on deposit in the Special Improvement District Revolving Fund of the City (the "Revolving Fund"). The Series 2008 Bonds with stated maturities in the year 2013 and thereafter are presently outstanding in the aggregate principal amount of $4,945,000 (the "Refunded Bonds"). The Refunded Bonds with stated maturities in the year 2016 and thereafter may be redeemed on any interest payment date on or after July 1, 2015.

1.02. Authorization. Section 7-12-4194 of the Act authorizes the issuance of special improvement district bonds under the Act to provide money needed to pay principal of and interest on outstanding bonds if the rate of interest on the refunding bonds is not less than one-half of one percent (0.50%) a year less than the rate of interest on the bonds to be refunded.

1.03. Issuance of Bonds. By Resolution No. 13-19257 adopted on April 8, 2013 and, following a duly noticed and held public hearing, Resolution No. 13-19262 adopted April 22, 2013, this Council determined that it is in the best interests of the City and the owners of property in the District for the City to sell its special improvement district refunding bonds, pursuant to Section 7-12-4194(3)(a) of the Act, in order to provide funds to be used, with other available funds of the City, to refund the Refunded Bonds in advance of their stated maturities, to fund a deposit to the Revolving Fund and to pay costs of issuance of the bonds. Such bonds shall be denominated "Special Improvement District No. 1385 Refunding Bonds, Series 2013" (the "Bonds"), and shall be issued in the aggregate principal amount of $5,545,000.

The Bonds will be issued to achieve debt service savings for the District. The savings will benefit the District and the owners of property therein by reducing the total cost of the Improvements.

1.04. Public Hearing. Pursuant to Section 7-12-4194 of the Act, because the Bonds will be issued in a principal amount greater than the principal amount of the Refunded Bonds, a public hearing was required to establish the desirability of issuing the Bonds. The City duly noticed and held a public hearing on April 22, 2013 and subsequent thereto determined that it is in the best interests of the City to issue such Bonds.

1.05. Sale of Bonds. Pursuant to the authority recited in Sections 1.01 and 1.02 above and for the purpose of refunding the Refunded Bonds, this Council authorized the sale of the Bonds to D.A. Davidson, of Great Falls, Montana (the "Purchaser"), pursuant to Resolution No. 13-19257 adopted on April 8, 2013 and Resolution No. 13-19262 adopted April 22, 2013, subject to certain terms and conditions stated therein. The City hereby ratifies and confirms the issuance and sale of the Bonds in accordance with the provisions of this Resolution (the "Resolution"), and in accordance with a Bond Purchase Agreement, dated May 15, 2013, between the City and the Purchaser.

1.06. Debt Service Savings. The debt service savings to result from the refunding of the Refunded Bonds is estimated to be $669,042.23, calculated on a net present value basis and using a discount rate of 3.553063% (the approximate yield of the Bonds) over the remaining term of the Refunded Bonds. The average annual rate of interest on the Bonds (3.600208%) is approximately 4.286075% less than the average annual rate of interest on the Refunded Bonds (7.886283%). Thus, the City has authority under the Act to issue the Bonds to the Purchaser upon the terms and conditions set forth in this Resolution.

1.07. Official Statement. The Preliminary Official Statement relating to the Bonds, dated May 1, 2013, is hereby approved and the determination of the City Finance Director that the Preliminary Official Statement has been deemed final for purposes of SEC Rule 15c2-12(b)(1) is hereby ratified and confirmed. The Official Statement relating to the Bonds, to be dated the date hereof, and substantially in the form of the Preliminary Official Statement with such changes therein as the City Finance Director may approve, is hereby approved. The City Finance Director is hereby authorized and directed to execute such certificates as may be appropriate concerning the accuracy, completeness and sufficiency of the Official Statement.

1.08. Recitals. All acts, conditions and things required by the Constitution and laws of the State of Montana, including the Act, and the home rule charter of the City, in order to make the Bonds valid and binding special obligations in accordance with their terms and in accordance with the terms of this Resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

Section 2. The Bonds.

2.01. Principal Amount, Maturities, Denominations, Date, Interest Rates. For the purpose of providing funds sufficient, with other moneys of the City legally available therefor, to refund in advance of their stated maturities the Refunded Bonds, to fund a deposit to the Revolving Fund and to pay costs of issuance of the Bonds, and in anticipation of the collection of special assessments to be levied therefor, and in accordance with the proposal described in Section 1.05, the City shall forthwith issue and deliver to the Purchaser the Bonds, denominated "Special Improvement District No. 1385 Refunding Bonds, Series 2013," in the aggregate

principal amount of $5,545,000, payable solely from the Special Improvement District No. 1385 Fund of the City created in Section 3.01 (the "District Fund"). The Bonds shall be dated, as originally issued, and be registered as of June 5, 2013, shall be in the denomination of $5,000 each or any integral multiple thereof of single maturities, shall mature on July 1 in the years and principal amounts set forth below, and Bonds maturing in such years and principal amounts shall bear interest from the date of original registration until paid or duly called for redemption (including mandatory sinking fund redemption as to the Term Bonds maturing in 2021, 2025, and 2028) at the rates per annum set forth opposite such years and amounts, respectively:

Year	Principal Amount	Interest Rate
2014	$ 345,000	1.300%
2015	360,000	1.500%
2016	360,000	1.800%
2017	360,000	2.000%
2018	360,000	2.350%
2019	360,000	2.650%
2021*	725,000	3.050%
2022	370,000	3.450%
2023	370,000	3.700%
2025*	760,000	4.000%
2028*	1,175,000	4.250%

*Term Bonds subject to mandatory sinking fund redemption as set forth in Section 2.07 below.

Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months.

2.02. Interest Payment Dates. Interest on the Bonds shall be payable on each January 1 and July 1, commencing January 1, 2014, to the owners of record thereof as such appear on the bond register at the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day. Upon the original delivery of the Bonds to the Purchaser and upon each subsequent transfer or exchange of a Bond pursuant to Section 2.04, the Registrar shall date each Bond as of the date of its authentication.

2.03. Method of Payment. The Bonds shall be issued only in fully registered form. The interest on and, upon surrender thereof at the principal office of the Registrar (as hereinafter defined), the principal of each Bond, shall be payable by check or draft drawn on the Registrar.

2.04. Registration. The City shall appoint, and shall maintain, a bond registrar, transfer agent and paying agent for the Bonds (the "Registrar"). This Section 2.04 shall establish a system of registration for the Bonds as defined in the Model Public Obligations Registration Act of Montana.

The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

(a) Bond Register. The Registrar shall keep at its principal office a bond register in which the Registrar shall provide for the registration of ownership of the Bonds and the registration of transfers and exchanges of the Bonds entitled to be registered, transferred or exchanged.

(b) Transfer. Upon surrender to the Registrar for transfer of any Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing and guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer of any Bond or portion thereof selected or called for redemption.

(c) Exchange. Whenever any Bond is surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver one or more new Bonds of a like aggregate principal amount, interest rate and maturity, as requested by the registered owner or the owner's attorney duly authorized in writing.

(d) Cancellation. All Bonds surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When any Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The City and the Registrar may treat the person in whose name any Bond is at any time registered on the bond register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the City upon such Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer of Bonds or exchange of Bonds (except for an exchange upon the partial redemption of a Bond), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Registrar shall deliver a new Bond of like

amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any such Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to it that such Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. All Bonds so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, destroyed, stolen or lost Bond has already matured or such Bond has been called for redemption in accordance with its terms, it shall not be necessary to issue a new Bond prior to payment.

2.05. Initial Registrar. The City hereby appoints U.S. Bank National Association, of Seattle, Washington, as the initial Registrar for the Bonds. The City reserves the right to appoint a successor Registrar, and the City agrees to pay the reasonable and customary charges of the Registrar for the services performed. Upon merger or consolidation of a bank or trust company that is acting as the Registrar, if the resulting corporation is a bank or trust company authorized by law to conduct such business, such corporation shall be authorized to act as successor Registrar. The City reserves the right to remove any Registrar upon 30 days notice and upon the appointment of a successor Registrar, in which event the predecessor Registrar shall deliver all cash and Bonds in its possession as Registrar to the successor Registrar and shall deliver the bond register to the successor Registrar. On or before each principal or interest due date, without further order of this Council, the City Finance Director shall transmit to the Registrar, solely from money in the District Fund available therefor, moneys sufficient for the payment of all principal, premium, if any, and interest then due on the Bonds.

2.06. Redemption.

(a) Mandatory Redemption. If on any interest payment date there will be a balance in the District Fund after payment of the principal and interest due on all Bonds drawn against it from the prepayment of special assessments levied in the District, the City Finance Director shall call for redemption on the interest payment date outstanding Bonds, or portions thereof, in an amount which, together with the interest thereon to the interest payment date, will equal the amount of such funds on deposit in the District Fund on that date. The redemption price shall equal the amount of the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

(b) Optional Redemption. The Bonds are subject to redemption, in whole or in part, at the option of the City from sources of funds available therefor other than those described in Subsection (a) of this Section 2.06 on any interest payment date. The Bonds with stated maturities on or after July 1, 2016 will be subject to redemption on July 1, 2015, and any date thereafter, at the option of the City, in whole or in part, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium.

(c) Selection of Bonds for Redemption. If less than all of the Bonds are to be redeemed, Bonds shall be redeemed in order of the stated maturities thereof. If less than all Bonds of a stated maturity are to be redeemed, the Bonds of such maturity shall be selected for redemption in $5,000 principal amounts selected by the Registrar by lot or other manner it deems fair.

(d) Notice and Effect of Redemption. The date of redemption and the principal amount of the Bonds shall be fixed by the City Finance Director, who shall give notice thereof to the Registrar 45 days prior to the date set for redemption in order for the Registrar to give notice, by first class mail, postage prepaid, or by other means required by the securities depository, to the owner or owners of such Bonds at their addresses appearing on the bond register, of the numbers of the Bonds or portions thereof to be redeemed and the date on which payment will be made, which date shall be not less than 30 days after the date of mailing notice. On the date so fixed interest on the Bonds or portions thereof so redeemed shall cease.

2.07. Mandatory Sinking Fund Redemption. The Bonds having stated maturities in 2021, 2025, and 2028 (the "Term Bonds") are subject to mandatory sinking fund redemption on July 1 in the respective years and the respective principal amounts set forth below, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date:

2021 Term Bond

Year	Amount
2020	$360,000
2021*	365,000

*Final Maturity

2025 Term Bond

Year	Amount
2024	$375,000
2025*	385,000

*Final Maturity

2028 Term Bond

Year	Amount
2026	$385,000
2027	395,000
2028*	395,000

*Final Maturity

If the Bonds with stated maturities in 2021, 2025 and 2028 are not previously purchased by the City in the open market or prepaid, $365,000 in principal amount of such Bond would remain to mature in 2021, $385,000 in principal amount of such Bond would remain to mature in 2025, and $395,000 in principal amount of such Bond would remain to mature in 2028. The principal amounts of the Term Bonds required to be redeemed on the above mandatory sinking fund redemption dates shall be reduced by the principal amount of such Bond theretofore

redeemed at the option of the City and as to which the City has not previously applied amounts to reduce the principal amount of such bond on a mandatory sinking fund redemption date.

2.08. Form. The Bonds shall be drawn in substantially the form set forth in Exhibit A hereto, and by this reference made a part hereof, with such modifications as are permitted by the Act.

2.09. Execution, Registration and Delivery. The Bonds shall be prepared under the direction of the City Finance Director and shall be executed on behalf of the City by the signatures of the Mayor, the City Finance Director and the City Clerk and sealed with the official seal of the City; provided that the seal and all signatures may be printed, engraved or lithographed facsimiles of the originals. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until a certificate of authentication on such Bond has been duly executed by the manual signature of an authorized representative of the Registrar. The certificate of authentication on different Bonds need not be signed by the same representative. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Resolution. When the Bonds have been so executed, authenticated and registered, they shall be delivered by the Registrar to the Purchaser upon payment of the purchase price in accordance with the contract of sale heretofore made and executed.

2.10. Application of Proceeds. From the net proceeds of the Bonds ($5,472,915.00, representing the principal amount of the Bonds less underwriters discount of $72,085.00) the City Finance Director shall credit forthwith (i) $5,407,945.07 to the escrow account as set forth in Section 6.01, together with $406,672.50 of funds in the debt service account for the Series 2008 Bonds, to be used solely for the purposes described in Section 6.01, (ii) $55,719.93 to pay costs of issuance of the Bonds, and (iii) $9,250.00 to fund a deposit to the Revolving Fund. The Purchaser shall not be obligated to see to the application of the purchase price. The $9,250.00 deposit to the Revolving Fund, together with the $268,000 deposit to the Revolving Fund from the proceeds of the Series 2008 Bonds, satisfies the deposit to the Revolving Fund required by Section 7-12-4169(2) of the Act.

2.11. Securities Depository for the Bonds.

(a) For purposes of this Section 2.11, the following terms shall have the following meanings:

"Beneficial Owner" shall mean, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant, or such person's subrogee.

"Cede & Co." shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds.

"DTC" shall mean The Depository Trust Company of New York, New York.

"Participant" shall mean any broker-dealer, bank or other financial institution for which DTC holds the Bonds as securities depository.

"Representation Letter" shall mean the Blanket Issuer Letter of Representations from the City to DTC, attached to this resolution as Exhibit B (which is hereby incorporated by reference and made a part hereof.

(b) The Bonds shall be initially issued as separately authenticated fully registered Bonds, and one Bond shall be issued in the principal amount of each stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered on the bond register in the name of Cede & Co., as nominee of DTC. The Registrar and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, if any, giving any notice permitted or required to be given to registered owners of Bonds under this Resolution, registering the transfer of Bonds, and for all other purposes whatsoever; and neither the Registrar nor the City shall be affected by any notice to the contrary. Neither the Registrar nor the City shall have any responsibility or obligation to any Participant, any Person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other Person which is not shown on the bond register as being a registered owner of any Bonds, with respect to the accuracy of any records maintained by DTC or any Participant, with respect to the payment by DTC or any Participant of any amount with respect to the principal of or interest on the Bonds, with respect to any notice which is permitted or required to be given to owners of Bonds under this Resolution, with respect to the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds, or with respect to any consent given or other action taken by DTC as registered owner of the Bonds. So long as any Bond is registered in the name of Cede & Co., as nominee of DTC, the Registrar shall pay all principal of and interest on such Bond, and shall give all notices with respect to such Bond, only to Cede & Co. in accordance with the Representation Letter, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. No Person other than DTC shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the City to make payments of principal and interest. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the Bonds will be transferable to such new nominee in accordance with paragraph (e) hereof.

(c) In the event the City determines to discontinue the book entry only registration system, the City may notify DTC and the Registrar, whereupon DTC shall notify the Participants of the availability through DTC of Bonds in the form of certificates. In such event, the Bonds will be transferable in accordance with paragraph (e) hereof. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the City and the Registrar and discharging its responsibilities with respect thereto under applicable law. In such event the Bonds will be transferable in accordance with paragraph (e) hereof.

(d) The Representation Letter sets forth certain matters with respect to, among other things, notices, consents and approvals by registered owners of the Bonds and Beneficial Owners and payments on the Bonds. The Registrar shall have the same rights with respect to its actions thereunder as it has with respect to its actions under this Resolution.

(e) In the event that any transfer or exchange of Bonds is permitted under paragraph (b) or (c) hereof, such transfer or exchange shall be accomplished upon receipt by the Registrar of the Bonds to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee in accordance with the provisions of this resolution. In the event Bonds in the form of certificates are issued to owners other than Cede & Co., its successor as nominee for DTC as owner of all the Bonds, or another securities depository as owner of all the Bonds, the provisions of this Resolution shall also apply to all matters relating thereto, including, without limitation, the printing of such Bonds in the form of Bond certificates and the method of payment of principal of and interest on such Bonds in the form of Bond certificates.

Section 3. District Fund; Assessments.

3.01. District Fund. There is hereby created and established the fund designated as the "Special Improvement District No. 1385 Fund," which shall be maintained by the City Finance Director on the books and records of the City separate and apart from all other funds of the City (the "District Fund"). Within the District Fund there shall be maintained separate accounts, designated as the "Principal Account" and the "Interest Account," respectively.

3.02. Principal Account and Interest Account. Money in the Principal Account and the Interest Account shall be used only for payment of the principal of and interest on the Bonds as such payments become due or to redeem Bonds or portions thereof.

Upon collection of the installment of principal and interest due on November 30 and May 31 of each year on the special assessments to be levied with respect to the Improvements in the District, the City Finance Director shall credit to the Interest Account so much of said special assessments as is collected as interest payment and the balance thereof to the Principal Account. Any installment of any special assessment paid prior to its due date with interest accrued thereon to the next succeeding interest payment date shall be credited with respect to principal and interest payments in the same manner as other assessments are credited to the District Fund. All money in the Interest Account and the Principal Account shall be used first to pay interest due, and any remaining money shall be used to pay Bonds then due and, if money is available, to redeem Bonds or portions thereof in accordance with Section 2.06. Redemption of Bonds or portions thereof shall be in the order of their stated maturities as provided in Section 2.06, and interest shall be paid from the Interest Account as accrued on such principal amounts to the date of redemption, in accordance with the provisions of Section 7-12-4206 of the Act.

3.03. Loans from Revolving Fund. The Council shall annually or more often if necessary issue an order authorizing a loan or advance from the Revolving Fund to the District Fund in an amount sufficient to make good any deficiency then existing in the Interest Account and issue an order authorizing a loan or advance from the Revolving Fund to the District Fund in an amount sufficient to make good any deficiency then existing in the Principal Account, in each case to the extent that money is available in the Revolving Fund. A deficiency shall be deemed

to exist in the Principal Account or the Interest Account if the money on deposit therein on any December 15 or June 15 (excluding amounts in the Principal Account representing prepaid special assessments) is less than the amount necessary to pay Bonds due (other than upon redemption), and interest on all Bonds payable, on the next succeeding interest payment date.

Pursuant to Ordinance No. 1096, the City has undertaken and agreed to provide funds for the Revolving Fund by annually levying such tax or making such loan from the general fund of the City, subject to the limitation that no such tax levy or loan may in any year cause the balance in the Revolving Fund to exceed five percent of the principal amount of the City's then outstanding special improvement and sidewalk, curb, gutter and alley approach bonds and warrants secured thereby and subject to the durational limitations specified in the Act. In the event that the balance on hand in the Revolving Fund fifteen days prior to any date when interest is due on special improvement and sidewalk, curb, gutter and alley approach bonds and warrants of the City is not sufficient to make good all deficiencies then existing in the funds for which the City covenants to make loans from the Revolving Fund, the balance on hand in the Revolving Fund shall be allocated to the funds in which such deficiencies then exist in proportion to the amounts of the deficiencies on the respective dates of receipt of such money, until all interest accrued on such special improvement and sidewalk, curb, gutter and alley approach bonds and warrants of the City has been paid and to the extent of amounts available in the Revolving Fund. On any date when all accrued interest on special improvement and sidewalk, curb, gutter and alley approach bonds and warrants of the City payable from funds for which the City has covenanted to make loans from the Revolving Fund has been paid, any balance remaining in the Revolving Fund shall be loaned or advanced to the funds for payment and redemption of bonds and warrants to the extent such funds are deficient for such purpose and, if money in the Revolving Fund is insufficient therefor, pro rata, in an amount proportionate to the amount of such deficiency.

The City hereby determines, covenants and agrees to levy the property tax described in the immediately preceding paragraph to provide funds for the Revolving Fund so long as any Bonds are outstanding to the extent required under the provisions of this Resolution and the Act, even though such property tax levy may, under applicable law or provisions of the home rule charter of the City, require that property tax levies of the City for other purposes be reduced correspondingly.

Section 4. Covenants. The City covenants and agrees with the owners from time to time of each of the Bonds that until all the Bonds and interest thereon are fully paid:

4.01. Compliance with Resolution. The City will hold the District Fund and the Revolving Fund as trust funds, separate and apart from all of its other funds, and the City, its officers and agents, will comply with all covenants and agreements contained in this Resolution. The provisions hereinabove made with respect to the District Fund and the Revolving Fund are in accordance with the undertaking and agreement of the City made in connection with the public offering of the Bonds and the sale of the Bonds as set forth in Section 1.05.

4.02. Levy of Assessments. The City has validly levied special assessments, on the basis prescribed in Resolution No. 08-18742 for the District, upon all assessable property within the boundaries of the District in accordance with the Constitution and laws of the State of Montana

and the Constitution of the United States in the aggregate principal amount of $5,360,000 (the original aggregate principal amount of the Series 2008 Bonds) (the "Original Assessments"). As of the date hereof, Original Assessments are outstanding (including installments that are delinquent) in the aggregate principal amount of $4,945,000. No owners of property within the District have prepaid their Original Assessments on such properties.

In connection with the refunding of the Refunded Bonds and the issuance of the Bonds, the City will do all acts and things necessary for the final and valid re-levy of special assessments upon all assessable real property within the boundaries of the District benefited by the Improvements that have not had their Original Assessments prepaid, in accordance with the Constitution and laws of the State of Montana and the Constitution of the United States, in an aggregate principal amount not less than $5,545,000.

Such special assessments shall be levied on the basis or bases prescribed in the Resolution of Intention, and shall be payable in substantially equal semiannual installments of principal and interest over a period of 15 years, at an annual rate equal to the sum of: (i) the average annual interest rate borne by the then outstanding Bonds, plus (ii) one-half of one percent (0.50%) per annum. The assessments to be levied will be payable on the 30th day of November in each of the years 2013 through 2027, and on the 31st day of May in the years 2014 through 2028, inclusive, if not theretofore paid, and shall become delinquent on such date unless paid in full. The first partial payment of each assessment shall include interest on the entire assessment from the date of original registration of the Bonds to January 1, 2014. The assessments shall constitute a lien upon and against the property against which they are made and levied, which lien may be extinguished only by payment of the assessment with all penalties, cost and interest as provided in Section 7-12-4191 of the Act. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of the assessment thereon which is payable after the execution of such deed, and any tax deed so issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 15-18-214.

4.03. Reassessment. If at any time and for whatever reason any special assessment or tax herein agreed to be levied is held invalid, the City and this Council, its officers and employees, will take all steps necessary to correct the same and to reassess and re-levy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto, and will reassess and re-levy the same with the same force and effect as an original levy thereof, as authorized in Section 7-12-4186 of the Act. Any special assessment, or reassessment or re-levy shall, so far as is practicable, be levied and collected as it would have been if the first levy had been enforced including the levy and collection of any interest accrued on the first levy.

If proceeds of the Bonds, including investment income thereon, are applied to the redemption of such Bonds, as provided in Sections 7-12-4205 and 7-12-4206 of the Act, or if refunding bonds are issued and the principal amount of the outstanding Bonds of the District is decreased or increased, the City will reduce or increase, respectively, the assessments levied in the District and then outstanding pro rata by the principal amount of such prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. The City and this Council, its officers and employees will reassess and re-levy

such assessments, with the same effect as an original levy, in such reduced or increased amounts in accordance with the provisions of Sections 7-12-4176 through 7-12-4178 of the Act.

4.04. Absence of Litigation. There is now no litigation pending or, to the best knowledge of the City, threatened questioning the validity or regularity of the creation of the District, the contracts for construction of the Improvements or the undertaking and agreement of the City to levy special assessments therefor and to make good any deficiency in the collection thereof through the levy of taxes for and the making of advances from the Revolving Fund, or the right and power of the City to issue the Bonds or in any manner questioning the existence of any condition precedent to the exercise of the City's powers in these matters. If any such litigation should be initiated or threatened, the City will forthwith notify in writing the Purchaser, and will furnish the Purchaser a copy of all documents, including pleadings, in connection with such litigation.

4.05. Waiver of Penalty and Interest. The City covenants not to waive the payment of penalty or interest on delinquent assessments levied on property in the District for costs of the Improvements, unless the City determines, by resolution of the Council, that such waiver is in the best interest of the owners of the outstanding Bonds.

Section 5. Tax Matters.

5.01. Use of Improvements. The Improvements will be owned and operated by the City and available for use by members of the general public on a substantially equal basis. The City shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Improvements or security for the payment of the Bonds which might cause the Bonds to be considered "private activity bonds" or "private loan bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code").

5.02. General Covenant. The City covenants and agrees with the owners from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bonds to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the interest on the Bonds will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

5.03. Arbitrage Certification. The Mayor, the City Finance Director and the City Clerk, being the officers of the City charged with the responsibility for issuing the Bonds pursuant to this Resolution, are authorized and directed to execute and deliver to the Purchaser a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Bonds, it is reasonably expected that the proceeds of the Bonds will be used in a manner that would not cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.

5.04. Arbitrage Rebate. The City acknowledges that the Bonds are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such

records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes, unless the Bonds qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no "gross proceeds" of the Bonds (other than amounts constituting a "bona fide debt service fund") arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the Mayor, the City Finance Director and the City Clerk are hereby authorized and directed to execute a Rebate Certificate, substantially in the form to be prepared by Bond Counsel, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

5.05. Information Reporting. The City shall file with the Secretary of the Treasury, not later than August 15, 2013, a statement concerning the Bonds containing the information required by Section 149(e) of the Code.

Section 6. Escrow; Redemption of Refunded Bonds.

6.01. Escrow. Simultaneously with the delivery of the Bonds, the City Finance Director shall cause to be deposited in the Escrow Account established with the Escrow Agent under an Escrow Agreement hereinafter described, $5,814,617.57 (representing a sum equal to $406,672.50 of funds in the debt service account for the Series 2008 Bonds and proceeds of the Bonds in the amount of $5,407,945.07), for the purchase of securities and establishment of the beginning cash balance for the Escrow Account for the payment on the regular payments dates of all principal and interest to become due on the Refunded Bonds to and including July 1, 2015 and the redemption and prepayment on July 1, 2015 of the Refunded Bonds with stated maturities in the year 2016 and thereafter, all as set forth in the Escrow Agreement between the City-County and U.S. Bank National Association (the "Escrow Agreement"). The City Finance Director shall cause the amount so deposited to be invested in general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States and which are authorized by law to be so deposited, maturing on the dates and bearing interest at the rates required to provide funds together with the beginning cash balance sufficient to refund the Refunded Bonds. The Escrow Account and all investments thereof shall be held in safekeeping by said Escrow Agent, and said account and all income therefrom are irrevocably appropriated for the purposes stated in this Section 6.01. The Mayor, City Finance Director and City Clerk are hereby authorized to enter into an Escrow Agreement with U.S. Bank National Association, in the form which has been presented to this Council attached hereto as Exhibit C, with such additions thereto or deletions therefrom as are necessary or appropriate. Upon the establishment and funding of the escrow account pursuant to this Section 6.01, the Refunded Bonds shall no longer be considered outstanding.

6.02. Redemption. The Refunded Bonds with stated maturities in the year 2016 and thereafter are hereby called for redemption on July 1, 2015.

Section 7. Authentication of Transcript. The officers of the City are hereby authorized and directed to furnish to the Purchaser and to Bond Counsel certified copies of all proceedings relating to the issuance of the Bonds and such other certificates and affidavits as may be required

to show the right, power and authority of the City to issue the Bonds, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the City as to the truth of the statements purported to be shown thereby.

Section 8. Discharge.

8.01. General. When the liability of the City on all Bonds issued under and secured by this Resolution has been discharged as provided in this Section 8, all pledges, covenants and other rights granted by this Resolution to the owners of such obligations shall cease.

8.02. Payment. The City may discharge its liability with reference to any Bond or installment of interest thereon which is due on any date by depositing with the Registrar on or before that date funds sufficient, or, if a City officer is the Registrar, mailing to the registered owner of such Bond a check or draft in a sum sufficient and providing proceeds available, for the payment thereof in full; or if any Bond or installment of interest thereon shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by depositing with the Registrar funds sufficient, or, if a City officer is the Registrar, by mailing to the registered owner thereof a check or draft in a sum sufficient and providing proceeds available, for the payment thereof in full with interest accrued to the date of such deposit or mailing.

8.03. Prepayment. The City may also discharge its obligations with respect to any Bonds called for redemption on any date when they are prepayable according to their terms, by on or before that date depositing with the Registrar funds sufficient, or, if a City officer is the Registrar, mailing to the registered owner of such Bond a check or a draft in a sum sufficient and providing proceeds available, for the payment of the principal, interest and redemption premium, if any, which are then due; provided that notice of such redemption has been duly given as provided herein or irrevocably provided for.

8.04. Escrow. The City may also at any time discharge its liability in its entirety with reference to the Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal and interest to become due on all Bonds on or before maturity or, if any Bond has been duly called for redemption or notice of such redemption has been irrevocably provided for, on or before the designated redemption date.

8.05. Irrevocable Deposits. If an officer of the City is the Registrar, any deposit made under this Section 8 with the Registrar shall be irrevocable and held for the benefit of the owners of Bonds in respect of which such deposits have been made.

Section 9. Continuing Disclosure.

(a) Purpose and Beneficiaries. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit participating underwriters in the primary offering of the Bonds to comply with paragraph (b)(5) of Rule 15c2-

12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Rule"), the City hereby makes the following covenants and agrees, for the benefit of the Owners (as hereinafter defined) from time to time of the outstanding Bonds, to provide annual reports of specified information and notice of the occurrence of certain events to the Municipal Securities Rulemaking Board ("MSRB") through its Electronic Municipal Market Access system website ("EMMA"), as hereinafter described (the "Disclosure Covenants"). The City is the only "obligated person" in respect of the Bonds within the meaning of the Rule for purposes of identifying the entities in respect of which continuing disclosure must be made.

If the City fails to comply with any provisions of this Section 9, any person aggrieved thereby, including the Owners of any outstanding Bonds, may take whatever action at law or in equity may appear necessary or appropriate to enforce performance and observance of any agreement or covenant contained in this Section 9, including an action for a writ of mandamus or specific performance. Direct, indirect, consequential and punitive damages shall not be recoverable for any default hereunder. Notwithstanding anything to the contrary contained herein, in no event shall a default under this Section 9 constitute a default under the Bonds or under any other provision of this Resolution.

As used in this Section 9, "Owner" means, in respect of a Bond, the registered owner or owners thereof appearing in the bond register maintained by the Registrar or any Beneficial Owner (as hereinafter defined) thereof, if such Beneficial Owner provides to the Registrar evidence of such beneficial ownership in form and substance reasonably satisfactory to the Registrar. As used in this Section 9, "Beneficial Owner" means, in respect of a Bond, any person or entity that (i) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, such Bond (including persons or entities holding Bonds through nominees, depositories or other intermediaries), or (ii) is treated as the owner of the Bond for federal income tax purposes.

(b) Information To Be Disclosed. The City will provide, in the manner set forth in subsection (c) hereof, either directly or indirectly through an agent designated by the City, the following information at the following times:

(1) on or before 365 days after the end of each fiscal year of the City, commencing with the fiscal year ending June 30, 2013, the following financial information and operating data in respect of the City (the "Disclosure Information"):

(A) the audited financial statements of the City for such fiscal year, accompanied by the audit report and opinion of the accountant or government auditor relating thereto, as permitted or required by the laws of the State of Montana, containing balance sheets as of the end of such fiscal year and a statement of operations, changes in fund balances and cash flows for the fiscal year then ended, prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Montana law, as in effect from time to time, or, if and to the extent such financial

statements have not been prepared in accordance with such generally accepted accounting principles for reasons beyond the reasonable control of the City, noting the discrepancies therefrom and the effect thereof, and certified as to accuracy and completeness in all material respects by the City Finance Director; and

(B) To the extent not included in the financial statements referred to in paragraph (A) hereof, the information of the type set forth below, which information may be unaudited, but is to be certified as to accuracy and completeness in all material respects by the City Finance Director to the best of his or her knowledge, which certification may be based on the reliability of information obtained from third party sources:

(1) information, for such fiscal year, relating to Special Improvement District No. 1385 assessments, collections, investment earnings and debt service payments, amounts on hand in the Revolving Fund and transfers in and out contained in the tables under the captions "The District—Assessments," "The Revolving Fund—The Revolving Fund and Outstanding Special Improvement District Bonds and Sidewalk, Curb, Gutter and Alley Bonds," "The Revolving Fund—Statement of Changes in Fund Balance of the Revolving Fund," "The Revolving Fund—Special Assessment Billings and Collections" and "Future Financings" in the Official Statement;

(2) information, as of January 1 for the current tax year, relating to the appraised value and taxable value of taxable property in the District;

(3) information, as of the most recent date available, regarding employment in the Billings MSA, the State of Montana and the United States of the type contained in the table under the caption "City Demographic Information—Yellowstone County Annual Average Labor Force and Employment" in Appendix III to the Official Statement; and

(4) Information, as of the most recent date available, regarding the larger employers in the Billings MSA, identifying the employer and estimated number of employees of the type contained in the table under the caption "City Demographic Information—Major Employers within the Billings MSA" in Appendix III to the Official Statement; and

(5) Information, as of the end of the most recent fiscal year, regarding the direct debt of the City, including debt evidenced by special improvement district bonds, overlapping general obligation debt and debt ratios of the type contained under the caption "City Indebtedness" in Appendix III to the Official Statement.

Notwithstanding the foregoing paragraph, if the audited financial statements are not available by the date specified, the City shall provide on or before such date

unaudited financial statements in the format required for the audited financial statements as part of the Disclosure Information and, within 10 days after the receipt thereof, the City shall provide the audited financial statements.

Any or all of the Disclosure Information may be incorporated, if it is updated as required hereby, by reference from other documents, including official statements, which have been submitted to the MSRB in the manner set forth in subsection (c) hereof. The City shall clearly identify in the Disclosure Information in each document so incorporated by reference.

If any part of the Disclosure Information can no longer be generated because the operations of the City have materially changed or been discontinued, such Disclosure Information need no longer be provided if the City includes in the Disclosure Information a statement to such effect; provided, however, if such operations have been replaced by other City operations in respect of which data is not included in the Disclosure Information and the City determines that certain specified data regarding such replacement operations would be material (as hereinafter defined), then, from and after such determination, the Disclosure Information shall include such additional specified data regarding the replacement operations.

If the Disclosure Information is changed or this Section 9 is amended as permitted by this paragraph (b)(1) or subsection (d), then the City shall include in the next Disclosure Information to be delivered hereunder, to the extent necessary, an explanation of the reasons for the amendment and the effect of any change in the type of financial information or operating data provided.

(2) In a timely manner not in excess of ten business days, notice of the occurrence of any of the following events:

(A) principal and interest payment delinquencies;
(B) non-payment related defaults, if material;
(C) unscheduled draws on debt service reserves reflecting financial difficulties;
(D) unscheduled draws on credit enhancements reflecting financial difficulties;
(E) substitution of credit or liquidity providers, or their failure to perform;
(F) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Bonds or other material events affecting the tax status of the Bonds;
(G) modifications to rights of holders of the Bonds, if material;
(H) bond calls, if material, and tender offers;
(I) defeasances;
(J) release, substitution or sale of property securing repayment of the Bonds, if material;

(K) rating changes;

(L) bankruptcy, insolvency, receivership, or similar event of the obligated person;

(M) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(N) appointment of a successor or additional trustee or the change of name of a trustee, if material.

An event is "material" if it is an event as to which a substantial likelihood exists that a reasonably prudent investor would attach importance thereto in deciding to buy, hold or sell a Bond or, if not disclosed, would significantly alter the total information otherwise available to an investor from the Official Statement, information disclosed hereunder or information generally available to the public. Notwithstanding the foregoing sentence, an event is also "material" if it is an event that would be deemed material for purposes of the purchase, holding or sale of a Bond within the meaning of applicable federal securities laws, as interpreted at the time of discovery of the occurrence of the event.

(3) In a timely manner, notice of the occurrence of any of the following events or conditions:

(A) the failure of the City to provide the Disclosure Information required under paragraph (b)(1) at the time specified thereunder;

(B) the amendment or supplementing of this Section 9 pursuant to subsection (d), together with a copy of such amendment or supplement and any explanation provided by the City under subsection (d)(2);

(C) the termination of the obligations of the City under this Section 9 pursuant to subsection (d); and

(D) any change in the fiscal year of the City.

(c) Manner of Disclosure. The City agrees to make available the information described in subsection (b) hereof to the MSRB via EMMA or in a manner as may be otherwise proscribed by the MSRB consistent with the Rule. All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB.

(d) Term; Amendments; Interpretation.

(1) The covenants of the City in this Section 9 shall remain in effect so long as any Bonds are outstanding.

(2) This Section 9 (and the form and requirements of the Disclosure Information) may be amended or supplemented by the City from time to time, without notice to (except as provided in paragraph (c)(3) hereof) or the consent of the Owners of any Bonds, by a resolution of this Council filed in the office of the recording officer of the City accompanied by an opinion of Bond Counsel, who may rely on certificates of the City and others and the opinion may be subject to customary qualifications, to the effect that such amendment or supplement (A) is made in connection with a change in circumstances that arises from a change in law or regulation or a change in the identity, nature or status of the City, the District Fund and the Revolving Fund of the City or the type of operations conducted by the City or the District, or (B) is required by, or better complies with, the provisions of paragraph (b)(5) of the Rule.

If the Disclosure Information is so amended, the City agrees to provide, contemporaneously with the effectiveness of such amendment, an explanation of the reasons for the amendment and the effect, if any, of the change in the type of financial information or operating data being provided hereunder.

(3) This Section 9 is entered into as a continuing disclosure undertaking to provide continuing disclosure identical to that required by the continuing disclosure provisions of the Rule and should be construed so the undertaking would satisfy the requirements of paragraph (b)(5) of the Rule, assuming it was otherwise applicable to the Bonds.

(e) Further Limitation of Liability of City. In and to the extent the limitations of liability contained in subsection (a) are not effective, anything contained in this Section 9 to the contrary notwithstanding, in making the agreements, provisions and covenants set forth in this Section 9, the City has not obligated itself except with respect to the assessments and the Revolving Fund. None of the agreements or obligations of the City contained herein shall be construed to constitute an indebtedness of the City within the meaning of any constitutional or statutory provisions whatsoever or constitute a pledge of the general credit or taxing powers of the City.

Section 10. Repeals and Effective Date.

10.01. Repeal. All provisions of other resolutions and other actions and proceedings of the City and this Council that are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

10.02. Effective Date. This Resolution shall take effect immediately upon its passage and adoption by this Council.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 28th day of May, 2013.

_____
Mayor

Attest: _____
City Clerk

(SEAL)

EXHIBIT A

UNITED STATES OF AMERICA
STATE OF MONTANA
YELLOWSTONE COUNTY

CITY OF BILLINGS

SPECIAL IMPROVEMENT DISTRICT NO. 1385 REFUNDING BONDS, SERIES 2013

Interest at the rate per annum specified below, payable on the 1st day of January and the 1st day of July in each year, commencing January 1, 2014.

No. _____ $_____.00

Rate	Maturity	Date of Original Issue	CUSIP
%	July 1,	June 5, 2013	[_____]

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: AND NO/100 DOLLARS

FOR VALUE RECEIVED, the City of Billings, Montana (the "City"), will pay to the registered owner identified above, or registered assigns, on the maturity date specified above the principal amount specified above, solely from the revenues hereinafter specified, as authorized by Resolution No. [__], adopted May 28, 2013 (the "Resolution"), all subject to the provisions hereinafter described relating to the redemption of this Bond before maturity. This Bond bears interest at the rate per annum specified above from the date of original issue specified above, or from such later date to which interest hereon has been paid or duly provided for, until the maturity date specified above or an earlier date on which this Bond shall have been duly called for redemption by the City Finance Director. Interest on this Bond is payable semiannually on the 1st day of January and the 1st day of July in each year, commencing January 1, 2014, to the owner of record of this Bond appearing as such in the bond register as of the close of business on the fifteenth day (whether or not a business day) of the immediately preceding month. Interest on and, upon presentation and surrender hereof at the operations center of the bond registrar and paying agent hereinafter named, the principal of this Bond are payable by check or draft of U.S. Bank National Association, as Registrar, Transfer Agent and Paying Agent, at its operations center in St. Paul, Minnesota, or its successor designated under the Resolution (the "Registrar"). The principal of and interest on this Bond are payable in lawful money of the United States of America. Interest shall be calculated on the basis of a 360 day year composed of twelve 30 day months.

Notwithstanding any other provisions of this Bond, so long as this Bond is registered in the name of Cede & Co., as nominee of The Depository Trust Company, or in the name of any other nominee of The Depository Trust Company or other securities depository, the Registrar shall pay all principal of and interest on this Bond, and shall give all notices with respect to this Bond, only to Cede & Co. or other nominee in accordance with the operational arrangements of The Depository Trust Company or other securities depository as agreed to by the City.

This Bond is one of an issue in the aggregate principal amount of $5,545,000 (the "Bonds"), all of like date of original issue and tenor, except as to serial number, denomination, date, interest rate, maturity date and redemption rights. The Bonds are issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"), and ordinances and resolutions duly adopted by the governing body of the City, including the Resolution, for the purpose of providing funds to refund in advance of their maturities the City's Special Improvement District No. 1385 Bonds, Series 2008, with stated maturities in the year 2014 and thereafter, to fund a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund") and to pay costs of issuance of the Bonds. The Bonds are issuable only as fully registered bonds of single maturities in denominations of $5,000 or any integral multiple thereof.

This Bond is payable from the collection of a special tax or assessment levied upon all assessable real property within the boundaries of the City's Special Improvement District No. 1385 (the "District") benefited by the Improvements that have not had Original Assessments prepaid, in an aggregate principal amount not less than $5,545,000, except as such amount may be reduced or increased in accordance with provisions of Montana law. Such assessments constitute a lien against the property against which they are made and levied and are to be deposited into the Special Improvement District No. 1385 Fund of the City (the "District Fund"). The Bonds are not general obligations of the City.

The City has validly established the Revolving Fund to secure the payment of certain of its special improvement and sidewalk, curb, gutter and alley approach bonds and warrants, including the Bonds. The City has also agreed, to the extent permitted by the Act, to issue orders annually, or more often as necessary, authorizing loans or advances from the Revolving Fund to the District Fund, in amounts sufficient to make good any deficiency in the District Fund to pay principal of or interest on the Bonds, to the extent money is available in the Revolving Fund, and to provide funds for the Revolving Fund by annually levying such tax or making such loan from its general fund, subject to the limitation that no such tax levy or loan may in any year cause the balance in the Revolving Fund to exceed five percent of the principal amount of the City's then outstanding special improvement and sidewalk, curb, gutter and alley approach bonds and warrants secured thereby and subject to the durational limitations specified in the Act. While any property tax levy to be made by the City to provide funds for the Revolving Fund is subject to levy limits under current law, the City has agreed in the Resolution to levy property taxes to provide funds for the Revolving Fund to the extent described in this paragraph and, if necessary, to reduce other property tax levies correspondingly to meet applicable levy limits.

The Bonds are subject to mandatory redemption in order of stated maturities and within a stated maturity in $5,000 principal amounts selected by lot or other manner deemed fair by the

Registrar, on any interest payment date if, after paying all principal and interest then due on the Bonds, there are funds to the credit of the District Fund, from the prepayment of assessments levied in the District, for the redemption thereof, and in the manner provided for the redemption of the same. In addition, the Bonds with stated maturities on or after July 1, 2016 will be subject to redemption on July 1, 2015 and any date thereafter, at the option of the City, in whole or in part, on any interest payment date. The redemption price is equal to the principal amount of the Bonds to be redeemed plus interest accrued thereon to the date of redemption. The date of redemption and principal amount of Bonds to be redeemed shall be fixed by the City Finance Director, who shall give notice thereof to the Registrar 45 days prior to the date set for redemption in order for the Registrar to give notice, by first class mail, postage prepaid, or by other means required by the securities depository, to the owner or owners of such Bonds at their addresses appearing on the bond register, of the numbers of the Bonds or portions thereof to be redeemed and the date on which payment will be made, which date shall not be less than 30 days after the date of mailing of notice. On the date so fixed interest on the Bonds or portions thereof so redeemed shall cease to accrue. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount outstanding.

The Bonds having stated maturities in 2021, 2025, and 2028 (the "Term Bonds") are subject to mandatory sinking fund redemption on July 1 in the respective years and the respective principal amounts set forth below, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date:

2021 Term Bond

Year	Amount
2020	$360,000
2021*	365,000

*Final Maturity

2025 Term Bond

Year	Amount
2024	$375,000
2025*	385,000

*Final Maturity

2028 Term Bond

Year	Amount
2026	$385,000
2027	395,000
2028*	395,000

*Final Maturity

If the Bonds with stated maturities in 2021, 2025 and 2028 are not previously purchased by the City in the open market or prepaid, $365,000 in principal amount of such Bond would remain to mature in 2021, $385,000 in principal amount of such Bond would remain to mature in 2025, and $395,000 in principal amount of such Bond would remain to mature in 2028. The

principal amounts of the Term Bonds required to be redeemed on the above mandatory sinking fund redemption dates shall be reduced by the principal amount of such Bond theretofore redeemed at the option of the City and as to which the City has not previously applied amounts to reduce the principal amount of such bond on a mandatory sinking fund redemption date.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the principal office of the Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange, the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all things required to be done precedent to the issuance of this Bond have been properly done, happened and been performed in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the City of Billings, Montana, relating to the issuance hereof.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Registrar by the manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the City of Billings, Montana, by its City Council, has caused this Bond to be executed by the facsimile signatures of the Mayor, the City Finance Director and the City Clerk, and by a printed facsimile of the official seal of the City.

CITY OF BILLINGS, MONTANA

(Facsimile Signature)
MAYOR

(Facsimile Seal)

(Facsimile Signature)
CITY FINANCE DIRECTOR

(Facsimile Signature)
CITY CLERK

Dated:

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds delivered pursuant to the Resolution mentioned herein.

U.S. BANK NATIONAL ASSOCIATION,
as Registrar, Transfer Agent, and
Paying Agent

By _____
Authorized Signature

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM —	as tenants in common	UTMA.....Custodian..... (Cust)	(Minor)
TEN ENT —	as tenants by the entireties		
JT TEN —	as joint tenants with right of survivorship and not as tenants in common	under Uniform Transfers to Minors Act . . . . . (State)	

Additional abbreviations may also be used.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE:

_____

/_____/

_____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration, enlargement or any change whatsoever.

SIGNATURE GUARANTEED

_____

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

EXHIBIT B

FORM OF DTC LETTER

EXHIBIT C

FORM OF ESCROW AGREEMENT

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is made and executed between the City of Billings, Montana (the "City"), and U.S. Bank National Association, in Seattle, Washington (the "Agent"). The parties hereto recite and, in consideration of the mutual covenants and payments referred to and contained herein, covenant and agree as follows:

1. The City, in accordance with a resolution of its City Council adopted on May 28, 2013, sold its Special Improvement District No. 1385 Refunding Bonds, Series 2013, dated, as originally issued, as of the date hereof, in the aggregate principal amount of $5,545,000 (the "Series 2013 Bonds"), which Series 2013 Bonds mature on July 1 in each year from 2013 to 2028, for the purpose of providing funds for the refunding, paying and redeeming of the City's Special Improvement District No. 1385 Bonds, Series 2008, dated, as originally issued, as of October 1, 2008 (the "Series 2008 Bonds"), with stated maturities in 2014 and thereafter, and outstanding in the aggregate principal amount of $4,945,000 (the "Refunded Bonds"), funding a deposit to the Special Improvement District Revolving Fund of the City (the "Revolving Fund") and paying costs of issuance of the Series 2013 Bonds, and has directed that the net proceeds of the Series 2013 Bonds ($5,472,915.00, reflecting an underwriter's discount of $72,085.00) be applied as follows: (i) $5,407,943.50 to the payment of the purchase price of securities that are identified as restricted securities on Exhibit A hereto (the "Restricted Securities") for credit to the Escrow Account (as hereinafter defined); (ii) $1.57 to establish a beginning cash balance in the Escrow Account; (iii) $55,719.93 to the payment of costs of issuance of the Series 2013 Bonds and the refunding of the Refunded Bonds; and (iv) $9,250.00 to fund a deposit to the Revolving Fund. The City has appropriated $406,672.50 of the funds in the debt service account for the Series 2008 Bonds for payment of a portion of the purchase price of the Restricted Securities.

2. The Agent acknowledges receipt of the securities and cash described in Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and agrees that it will hold such securities and cash in a special segregated escrow account in the name of the City, that it will account separately for the Restricted Securities and the cash balance apportioned to each refunding (the "Escrow Account"), that it will collect and receive on behalf of the City all payments of principal of and interest on such securities and that it will remit from the Escrow Account to the paying agent of the Series 2008 Bonds the funds required for the payment of principal of the Refunded Bonds and interest thereon as shown on the attached Exhibit B (which is hereby incorporated herein and made a part hereof).

The Agent shall:

(i) within 10 days of the date hereof, provide notice of the defeasance of the Refunded Bonds (in the form of Exhibit C-1 hereto (which is incorporated herein and made a part hereof)) by telecopy, overnight delivery, mail or other means, as appropriate, to the Municipal Securities Rulemaking Board (the "MSRB") through its Electronic Municipal Market Access system website ("EMMA"); and

(ii) not less than 30 days prior to July 1, 2015, provide notice of the redemption of the Refunded Bonds with stated maturities in the year 2016 and thereafter

(in the form of Exhibit C-2 hereto (which is incorporated herein and made a part hereof)), by first class mail, or by other means required by The Depository Trust Company, of New York, New York ("DTC"), to the registered owners of such Bonds to be redeemed at their addresses as they appear on the Bond Register, as required by Section 2.06 of the resolution of the City Council of the City adopted October 14, 2008, authorizing the issuance of the Series 2008 Bonds (the "2008 Resolution").

After provision for payment of all Refunded Bonds with interest accrued thereon, the Agent will remit any remaining funds in the Escrow Account to the City, which will hold said sum of cash in the Debt Service Account for the Series 2013 Bonds for application toward the payment of the interest to become due on the Series 2013 Bonds on January 1, 2016.

In the opinion of Barthe & Wahrman, PA, of Minneapolis, Minnesota, (i) the Restricted Securities deposited in the Escrow Account and described in Exhibit A hereto mature at such times and bear interest at such rates that the collections of principal thereof and interest thereon, together with the beginning cash balance in the account, will be sufficient to pay on the regular payment dates all of the principal and interest to become due on the Refunded Bonds to and including July 1, 2015 and the redemption and prepayment on July 1, 2015 of the Refunded Bonds with stated maturities in 2016 and thereafter, as described in Exhibit B hereto, including all interest accrued thereon, and (ii) the Restricted Securities bear interest at a yield that is not in excess of the yield of the Series 2013 Bonds.

3. The federal securities described in Exhibit A hereto may, at the written direction of the City, be replaced, in whole or in part, with general obligations of the United States or securities the principal and interest on which are guaranteed by the United States and which are authorized by law to be so deposited, and which mature as to principal and interest in such amounts and at such times as will assure the availability of sufficient moneys to make payment when due of the principal and redemption price of the Refunded Bonds, at the stated maturities or upon the redemption thereof, plus interest on the Refunded Bonds to the respective maturity or redemption date thereof; provided, however, that concurrently with such written direction, the City shall provide the Agent with (a) a certification of an independent certified public accountant as to the sufficiency of such securities to be subject to this Agreement following such replacement and as to the yields thereof, setting forth in reasonable detail the calculations underlying such certification, and (b) an unqualified opinion of nationally recognized bond counsel to the effect that such replacement (1) will not cause any Refunded Bonds or the Series 2013 Bonds to be subjected to treatment as an "arbitrage bond," as defined in Section 148(a) of the Internal Revenue Code of 1986, as amended ("the Code"), and (2) is otherwise in compliance with this Agreement and the 2008 Resolution.

Any replacement authorized by this Section 3 shall be accomplished by sale, transfer, request for redemption or other disposition of all or a portion of the federal securities described in Exhibit A hereto with the proceeds thereof being applied to the purchase of substitute federal securities or other eligible securities, all as specified in the written direction of the City.

The City acknowledges that regulations of the Comptroller of the Currency grant the City the right to receive brokerage confirmations of the security transactions as they occur. The City

specifically waives such notification to the extent permitted by law and will receive periodic cash transaction statements from the Agent which will detail all investment transactions

4. In order to ensure continuing compliance with Section 148 of the Code and applicable Treasury Regulations, the Agent agrees that it will not reinvest any cash received in payment of the principal of and interest on the federal securities held in the Escrow Account. Said prohibition on reinvestment shall continue unless and until an opinion is received from nationally recognized bond counsel that reinvestments in general obligations of the United States or obligations the principal of and interest on which are guaranteed as to payment by the United States, as specified in said opinion, may be made in a manner consistent with said Section 148 and then existing Treasury Regulations.

5. The Agent also acknowledges receipt of a sum described in a letter agreement between the City and the Agent, as and for full compensation for all services to be performed by it as Agent under this Agreement, and the Agent expressly waives any lien upon or claim against the moneys and investments in the Escrow Account.

6. If at any time it shall appear to the Agent that the money in the Escrow Account will not be sufficient to make any payment due to the owners of any of the Refunded Bonds, the Agent shall immediately notify the City. Upon receipt of such notice, the City shall forthwith transmit to the Agent for deposit in the Escrow Account from moneys on hand and legally available therefor, such additional moneys as may be required to make any such payment.

7. On each January 1 and July 1, commencing July 1, 2013, the Agent shall submit to the City a report covering all money it shall have received and all payments it shall have made or caused to be made hereunder. Such report shall also list all obligations held in the Escrow Account and the amount of money existing in the Escrow Account, if any, on such dates.

8. It is recognized that title to the securities and moneys held in the Escrow Account from time to time shall remain vested in the City but subject always to the prior charge and lien thereon of this Agreement and the use thereof required to be made by the provisions of this Agreement. The Agent shall hold all such money and obligations in the Escrow Account as a special trust fund and account separate and wholly segregated from all other funds and securities of the Agent on deposit therein and shall never commingle such money or securities with other money or securities. It is understood and agreed that the responsibility of the Agent under this Agreement is limited to the safekeeping and segregation of the funds and securities deposited with it in the Escrow Account and the collection of and accounting for the principal and interest payable with respect thereto.

9. This Agreement is made by the City for the benefit of the owners of the Refunded Bonds and is not revocable by the City, and the investments and other funds deposited in the Escrow Account and all income therefrom have been irrevocably appropriated for the payment and redemption of the Refunded Bonds and interest thereon, in accordance with this Agreement.

10. This Agreement shall be binding upon and shall inure to the benefit of the City and the Agent and their respective successors and assigns. In addition, this Agreement shall constitute a third-party beneficiary contract for the benefit of the owners of the Refunded Bonds.

Said third-party beneficiaries shall be entitled to enforce performance and observance by the City and the Agent of the respective agreements and covenants herein contained as fully and completely as if said third-party beneficiaries were parties hereto. Any bank or trust company into which the Agent may be merged or with which it may be consolidated or any bank or trust company resulting from any merger or consolidation to which it shall be a party or any bank or trust company to which it may sell or transfer all or substantially all of its corporate trust business shall, if the City approves, be the successor agent hereunder without the execution of any additional document or the performance of any further act.

11. This Agreement may not be amended except to (i) sever any clause herein deemed to be illegal, (ii) provide for the substitution of securities as permitted by Sections 3 and 4 hereof or (iii) cure any ambiguity or correct or supplement any provision herein which may be inconsistent with any other provision; provided that the Agent shall determine that any such amendment shall not adversely affect the owners of the Refunded Bonds.

IN WITNESS WHEREOF the parties hereto have caused this Escrow Agreement to be duly executed by their duly authorized officers, as of June 5, 2013.

CITY OF BILLINGS, MONTANA

_____
Mayor

_____
Finance Director

_____
City Clerk

U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent

By_____
Its Vice President

(Signature page to Escrow Agreement, dated June 5, 2013,
with the City of Billings, Montana)

EXHIBIT A

$5,545,000
Special Improvement District No. 1385 Refunding Bonds, Series 2013
City of Billings, Montana

Cash: $1.57

Restricted Securities:

U.S. Treasury Obligations
—State and Local Government Series (SLGS)

Type	Maturity Date	Principal Amount	Interest Rate
Certificate	07/01/2013	$ 406,672	
Certificate	01/01/2014	173,417	0.080%
Note	07/01/2014	399,323	0.120
Note	01/01/2015	167,531	0.170
Note	07/01/2015	4,667,673	0.230

EXHIBIT B

$5,545,000
Special Improvement District No. 1385 Refunding Bonds, Series 2013
City of Billings, Montana

DEBT SERVICE SCHEDULE FOR REFUNDED BONDS

Date	Principal	Interest	Principal Redeemed	Total
07/01/2013	$220,000.00	$186,672.50		$ 406,672.50
01/01/2014	0.00	180,072.50		180,072.50
07/01/2014	225,000.00	180,072.50		405,072.50
01/01/2015	0.00	173,041.25		173,041.25
07/01/2015	235,000.00	173,041.25	$4,265,000.00	4,673,041.25

EXHIBIT C-1

NOTICE OF DEFEASANCE

Special Improvement District No. 1385 Bonds, Series 2008
City of Billings, Montana

NOTICE IS HEREBY GIVEN that pursuant to and under the authority of the resolution of the City of Billings, Montana, authorizing the issuance thereof, all of the outstanding Special Improvement District No. 1385 Bonds, Series 2008, dated, as originally issued, as of October 1, 2008, which mature on July 1 in the years and amounts and bear interest and CUSIP numbers as set forth below (the "Defeased Bonds"), are now payable from an escrow account established with U.S. Bank National Association, as escrow agent:

Maturity (July 1)	Principal Amount	Interest Rate	CUSIP Number
2013	$220,000	6.00%	090095 4U1
2014	225,000	6.25	090095 4V9
2015	235,000	6.50	090095 4W7
2016	245,000	6.75	090095 4X5
2017	255,000	7.00	090095 4Y3
2018	265,000	7.20	090095 4Z0
2019	280,000	7.40	090095 5A4
2020	290,000	7.60	090095 5B2
2021	305,000	7.70	090095 5C0
2022	320,000	7.80	090095 5D8
2023	335,000	7.90	090095 5E6
2024	355,000	8.00	090095 5F3
2025	375,000	8.05	090095 5G1
2026	390,000	8.10	090095 5H9
2027	415,000	8.15	090095 5J5
2028	435,000	8.20	090095 5K2

The escrow account, comprising general obligations of the United States and cash, has been established with the escrow agent, to pay principal of and interest on all Defeased Bonds as such become due through July 1, 2015, on which date the remaining outstanding Defeased Bonds will be paid in full or will be prepaid and redeemed at a redemption price equal to 100% of the principal amount thereof plus interest accrued to the date of redemption, without premium. The Defeased Bonds are deemed to have been paid in accordance with the resolution authorizing their issuance, and are secured by and payable from the escrow account. A further notice of redemption with respect to Defeased Bonds with maturities in the year 2016 and thereafter will be given in accordance with the requirements of the resolution authorizing the Defeased Bonds. As of the date hereof, the continuing disclosure requirements set forth in the resolution authorizing the Defeased Bonds shall terminate.

Dated: June 5, 2013.

CITY OF BILLINGS, MONTANA
By /s/Patrick M. Weber
City Finance Director

U.S. BANK NATIONAL ASSOCIATION

By _____
Its _____

EXHIBIT C-2

NOTICE OF REDEMPTION

Special Improvement District No. 1385 Bonds, Series 2008
City of Billings, Montana

NOTICE IS HEREBY GIVEN that the City of Billings, Montana (the "City"), has called for redemption all of its Special Improvement District No. 1385 Bonds, Series 2008, dated, as originally issued, as of October 1, 2008, maturing on July 1 in the years and amounts and bearing interest and CUSIP numbers as set forth below:

Maturity (July 1)	Principal Amount	Interest Rate	CUSIP Number
2016	245,000	6.75	090095 4X5
2017	255,000	7.00	090095 4Y3
2018	265,000	7.20	090095 4Z0
2019	280,000	7.40	090095 5A4
2020	290,000	7.60	090095 5B2
2021	305,000	7.70	090095 5C0
2022	320,000	7.80	090095 5D8
2023	335,000	7.90	090095 5E6
2024	355,000	8.00	090095 5F3
2025	375,000	8.05	090095 5G1
2026	390,000	8.10	090095 5H9
2027	415,000	8.15	090095 5J5
2028	435,000	8.20	090095 5K2

Such bonds have been called for redemption on July 1, 2015, and interest thereon will cease to accrue from and after said date. The redemption price is equal to 100% of the principal amount of the bonds plus interest accrued to the date of redemption, without premium.

Holders of such bonds maturing in said years should surrender their bonds for payment to U.S. Bank National Association, of Seattle, Washington, as paying agent, for payment on July 1, 2014 at its operations center at 60 Livingston Avenue - Bond Drop Window, St. Paul, Minnesota 55107 or if by mail to P.O. Box 64111, St. Paul, Minnesota 55164-0111.

Important Notice:

We are required by law to withhold an applicable portion of the principal amount of your holdings redeemed unless we are provided with your social security number or federal employer identification number, properly certified. Accordingly, you are instructed to submit at the time of surrender of your bonds a W-9 Form which may be obtained at a bank or other financial institution.

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, federal backup withholding tax will be withheld at the applicable backup withholding rate in effect at the time the payment is made if the tax identification number is not properly certified.

The paying agent shall not be held responsible for the selection or use of the CUSIP number, nor is any representation made as to its correctness indicated in the Redemption Notice. It is included solely for the convenience of the holders.

Interest on the bonds shall cease to accrue on July 1, 2015 and the holders thereof shall have no further rights with respect thereto except to receive the redemption price so deposited.

Dated: May 25, 2015.

BY ORDER OF THE CITY COUNCIL
OF THE CITY OF BILLINGS, MONTANA
/s/Patrick M. Weber_____
City Finance Director

U.S. BANK NATIONAL ASSOCIATION
By _____
Its _____

Consent **1. J.**

Regular City Council Meeting

Meeting Date: 05/28/2013

TITLE: Second Reading of Ordinance Amending Billings Montana City Code (BMCC) Article 26-600, Industrial Waste Discharge

PRESENTED BY: David Mumford

Department: Public Works

Information

PROBLEM/ISSUE STATEMENT

City Council held a public hearing and passed this ordinance on first reading on May 13, 2013. The City's industrial pretreatment program is published in the City Code (BMCC), Article 26-600 and was first adopted by the City Council in 1985. Since that initial adoption it has been modified several times. The last significant modification was approved in 1992. This program controls substances discharged into the City's sanitary sewer system by the City's commercial and industrial customers. The proposed modifications are necessary for the City's program to continue to meet USEPA standards. In addition to City Council approval, the ordinance must also be approved by the USEPA prior to enacting it. Some of the modifications to the ordinance include:

• Modification of the local limits for pollutants. These are limits which are more inclusive or restrictive than the national pretreatment standards and are calculated based on the City's collection and treatment system.

• Updating and modifying the ordinance in keeping with the USEPA streamlining rule for pretreatment. This rule was designed to reduce the regulatory burden on both the pretreatment users of the sanitary system and the City of Billings.

• Updating and modifying the definitions section of the ordinance. This includes addressing the effect of one discharge in conjunction with other discharges (interference). The definitions also address biochemical oxygen demand (BOD) and cooling water.

• Expands and more clearly defines generally prohibited pollutants.

• Adopts best management practices as enforceable treatment standards.

• Clearly defines the City as the control authority authorized to implement the pretreatment regulations in the service area.

• Expands and updates the Industrial Discharge permits, permit revocation, enforcement and the record keeping sections of the ordinance.

• Modifies, updates, and more clearly defines significant non-compliance to the pretreatment program.

• Adds language to allow the City to modify Industrial Discharge permits.

• Addresses sludge discharges and/or accidental discharges that could violate the City's regulations and permit conditions or otherwise interfere or be incompatible with the City's system. It also addresses the subsequent notification and reporting of those discharges. Staff provided a copy of the proposed changes to Article 26-600 to Council on April 17, 2013. Since that draft the local limits table in Section 26-604 (c) has been updated. No other modifications have been made to the document.

ALTERNATIVES ANALYZED

City Council may approve or not approve the ordinance amending BMCC Article 26-600, Industrial Waste Discharge on first reading.

• Approving the ordinance will modify and update Article 26-600 of the BMCC to be in compliance with current USEPA standards and requirements for pretreatment.

• Not approving the ordinance won't update the pretreatment program to current USEPA standards and will not allow certain Significant Industrial Users (SIUs) to discharge into the City's wastewater collection system in the future.

FINANCIAL IMPACT

There is no direct budget/financial impact from this action.

RECOMMENDATION

Staff recommends that Council approve this ordinance on second reading which amends City Code Article 26-600, Industrial Waste Discharge, conditioned on approval by the USEPA.

APPROVED BY CITY ADMINISTRATOR

Attachments

Ordinance

Attachment A

ORDINANCE NO. 13 - _____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE ARTICLE 26, INDUSTRIAL WASTE DISCHARGE. PROVIDING FOR CERTIFICATION AND AMENDING ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. AMENDMENT. Pursuant to Billings Municipal Code, Article 26, Industrial Waste Discharge is herby amended as shown in Attachment "A".

Section 2. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

PASSED by the City Council on first reading this 13th day of May, 2013.

PASSED, ADOPTED and APPROVED on second reading this 28th day of May, 2013.

CITY OF BILLINGS

By _____
Thomas W. Hanel, Mayor

ATTEST:

By _____
Cari Martin, City Clerk

ARTICLE 26-600. - INDUSTRIAL WASTE DISCHARGE Attachment "A"

Sec. 26-601. – Purpose,; Ppolicy,; Aapplicability and Authority of the City.
Sec. 26-602. - Definitions.
Sec. 26-603. - Abbreviations.
Sec. 26-604. – Prohibited Discharges and LimitationsGeneral discharge prohibitions.
Sec. 26-605. – Pretreatment and Monitoring Facilities.Accidental discharges; protection; notice.
Sec. 26-606. – Industrial Discharge PermitsSpecific pollutant limitations.
Sec. 26-607. - –Recordkeeping. Pretreatment program administration.
Sec. 26-608. – Confidential InformationFees.
Sec. 26-609. – Confidential information Reserved.
Sec. 26-610. – Sample Collection and Analytical MethodsActions for violation; enforcement.
Sec. 26-611. – Reporting and Notification RequirementsPretreatment authority outside of city.
Sec. 26-612. – Right of EntrySeverability; repealer; effective date.
Sec. 26-613. – Fees.
Sec. 26-614. – Compliance and Enforcement.
Sec. 26-615. – Pretreatment Authority Outside of City.
Sec. 26-616. – Affirmative Defenses to Discharge Violations.
Sec. 26-617. – Severability; Repealer; Effective Date.

Sec. 26-601. – Purpose,; Ppolicy, ; Aapplicability and Authority of the City.

(a) *Purpose.* This article Article sets forth uniform requirements for Industrial Uusers of the city City's Ppublicly Oowned Treatment Works (POTW) wastewater systems (WWS) and enables the city City to comply with applicable Sstate and federal laws, including the Clean Water Act (33 U.S.C. Section 1251 et seq.) of 1977, and the federal General Pretreatment Regulations (, 40 CFR, Part 403), all as amended and the City's Montana Pollutant Discharge Elimination System (MTPDES) permit. The objectives of this article Article are to:

(1) Prevent the introduction of pollutants into the POTW municipal wastewater system which will interfere with or upset the operation of the POTWwastewater system treatment plant, or interfere with sludge use or disposalcontaminate treatment plant sludge with toxic or hazardous materials.

(2) Prevent the introduction of incompatible pollutants into the POTWmunicipal wastewater system and the wastewater system treatment plant which may pass through the system without adequate treatment and into receiving waters or the atmosphere or otherwise be incompatible with the system.

(3) Prevent water quality violations resulting from direct discharges into waters of the Sstate, or violations of the MTontana Pollution Discharge Elimination System permit for the wastewater system treatment plant.

(4) Improve the opportunity to recycle and reclaim wastewaters and sludges from the system.

(5) Provide for equitable distribution of the costs of the program.

(6) To provide for and promote the general health, safety and welfare of the citizens residing within the City and connecting jurisdictions.Establish and maintain a data

~~base and inspection program sufficient to determine compliance with pretreatment requirements.~~

(7) Enhance the efficiency and cost-effective operation of the POTW~~wastewater system~~.

(8) Protect the health and safety of ~~city~~ City ~~residents and~~ wastewater system workers and the general public.

(9) Protect the municipal wastewater system and wastewater treatment plant from physical damage.

(b) *Policy.* This ~~article~~ Article provides for the regulation of industrial users ~~contributors or users~~ of the ~~city~~ City's wastewater system through implementation and enforcement ~~the development~~ of the~~an~~ I~~-~~industrial P~~p~~retreatment ~~p~~Program. The City is authorized to ~~,~~ ~~including~~ issu~~e~~ance ~~of~~ industrial discharge permits to ~~significant~~ industrial users~~, and through~~ enforce~~ment of~~ Pretreatment Standards and Requirements, ~~general requirements for the significant industrial users. This article authorizes~~ monitor discharges to the POTW, require industrial user monitoring and reporting and take other actions to meet the objectives of this Article.~~ing and enforcement activities, requires user reporting,~~ The Industrial Pretreatment Program protects the wastewater system treatment and hydraulic capacity, improves the ability to serve existing and new customers within the service area of the wastewater system, outlines fees and charges for the equitable distribution of costs resulting from the program established herein~~,~~ and establishes~~ed~~ penalties and remedies for violations of P~~p~~retreatment Standards and R~~r~~equirements.

(c) *Applicability.* ~~This article,~~ Any Industrial User, the discharge from which directly or indirectly enters the City's POTW from areas within or without the boundaries of the City, shall be bound by this Article as amended. This Article may be enforced against any Industrial User. ~~the Act (as defined in section 26-602), and all adopted supplemental rules and regulations apply within the City of Billings and to persons outside the city who are, by contract or agreement with the city, users of the city's wastewater system.~~ It shall be unlawful for any Industrial User to discharge any domestic or non-domestic wastewater into any natural waterway, any surface drainage, or storm drain in any area under the jurisdiction of the City. No industrial wastewater shall be discharged to the POTW unless done so in compliance with the provisions of this Article. Where an owner of property leases premises to a person as a tenant under any rental or lease agreement, if either the owner or the tenant is an Industrial User, either or both may be held responsible for compliance with the provisions of this Article. Except as otherwise provided herein, the A~~a~~dministrator ~~or their~~his designee, shall implement, administer and enforce the provisions of this ~~article~~ Article.

(d) Authority of the City.

(1) Except as otherwise specified, the City Administrator shall administer, implement, and enforce the provisions of this Article. Any powers granted to or duties imposed upon the City Administrator may be delegated by the City Administrator to other City personnel.

(2) The City shall attempt to notify in writing any Industrial User whom they have cause to believe is subject to a Categorical Pretreatment Standard or Requirement, or other applicable requirements promulgated by the EPA under the provisions of Section 204(b) or 405 of the Act, or under the provisions of sections 3001, 3004, or 4004 of the Solid Waste Disposal Act. Failure of the City to so notify industrial users shall not relieve said industrial users from the responsibility of complying with applicable requirements. It is the responsibility of Significant Industrial Users to apply for and receive a permit prior to discharge, whether or not the Industrial User has been identified and formally requested to do so.

(3) If wastewaters containing any pollutant, including excess flow, or as otherwise defined in this Article, are discharged or proposed to be discharged to the POTW, the City may take any action necessary to:

(i) Prohibit the discharge of such wastewater;

(ii) Require an Industrial User to demonstrate that in-plant facility modifications will reduce or eliminate the discharge of such substances in conformity with this Article;

(iii) Require treatment, including but not limited to storage facilities or flow equalization necessary to reduce or eliminate the potential for a discharge to violate this Article;

(iv) Require the Industrial User making, causing or allowing the discharge to pay any additional cost or expense incurred by the City for handling, treating, disposing or remediation costs as a result of wastes discharged to the wastewater treatment system;

(v) Require the Industrial User to apply for and obtain a permit;

(vi) Require timely and factual reports from the Industrial User responsible for such discharge; or

(vii) Take such other action as may be necessary to meet the objectives of this Article.

~~(Ord. No. 85-4663, § 1, 9-9-85; Ord. No. 91-4886, § 1, 9-9-91)~~

Sec. 26-602. - Definitions.

Unless the context specifically indicates otherwise, the words and terms used herein are defined and shall be interpreted for purposes of this ~~article~~ Article ~~and the rules and regulations~~ as follows:

~~*Accidental discharge* means the unintentional and temporary discharge to the wastewater system of the prohibited waters or wastes, including those described in sections 26-604 and 26-606 or Chapter 22 of the rules and regulations.~~

Act ~~or T*the A*act~~ means the Federal Water Pollution Control Act, Public Law 92-500, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.~~nd including amendments thereto by the Clean Water Act of 1977, Public Law 95-217, 33. U.S.C. section 466, et. seq., and as subsequently amended.~~

Administrator means the ~~city~~ City of Billings A~~a~~dministrator ~~of the City of Billings~~ or ~~their~~his designee.

Approval A~~a~~uthority is the R~~r~~egional A~~a~~dministrator for Region 8, ~~of the~~ Environmental Protection Agency.

Authorized R~~r~~epresentative of the ~~a significant I~~industrial U~~u~~ser is~~includes~~:

(a) If the Industrial User is a corporation:

(1) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or

(2) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including any person having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for Industrial Discharge Permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(c) If the user is a federal, state, or local government facility: A city or district or highest official appointed or designated to oversee the operation and performance of the activities of the governmental facility, or their designee.

(d) The individuals described in paragraphs a. through c, above, may designate another authorized representative if the authorization is made in writing, the authorization specifies the individual or a position responsible for the overall operation of the

facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

~~(1) A principal executive officer of at least the level of vice-president having full actual authority to act on behalf of the corporation, if the significant industrial user is a corporation.~~

~~(2) A general partner or proprietor if the significant industrial user is a partnership or proprietorship, respectively.~~

~~(3) A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of facilities from which any discharge originates.~~

Best Management Practices (BMPs) are schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the General and Specific Prohibitions listed in Section 26-604 of this Article. BMPs may also include, but are not limited to, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs shall be considered L~~l~~ocal L~~l~~imits and Pretreatment Standards for the purposes of this Article and Section 307(d) of the Act (40 CFR Section 403.5(c)(4)).

Biochemical Oxygen Demand (BOD_5) is the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure over a period of five (5) days at twenty degrees (20°) Celsius and expressed in terms of milligrams per liter (mg/L).

Categorical Industrial User is an Industrial User subject to a Categorical Pretreatment Standard.

Categorical Pretreatment Standard or *Categorical Standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. Section 1317) that apply to a specific category of industrial users and that appear in 40 CFR chapter I, subchapter N, Parts 405-471.

~~*Categorical standards* means national categorical pretreatment standards or pretreatment standard.~~

City means the City of Billings, Montana.

Code means ~~the Code of Ordinances of~~ the City of Billings, Montana City Code.

Composite sample is a representative flow-proportioned sample generally collected within a twenty-four (24) hour period and combined according to flow. Time-proportional sampling may be approved or used by the District where time-proportional samples are believed representative of the discharge.

Control Authority means the City of Billings.

Cooling water means:

(a) Contact. Water used for cooling purposes which comes in contact with any raw material, intermediate product, waste product or finished product.

(b) Noncontact. Water used for cooling purposes which does not comes in contact with any raw material, intermediate product, waste product or finished product and the only pollutant added is heat.

~~*Cooling water* means the water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.~~

Council means the ~~city~~ City C~~c~~ouncil of the City of Billings, Montana.

Daily Maximum Discharge Limit is the maximum allowable concentration of a pollutant(s) that may be discharged during a twenty-four (24) hour period or as specified in an industrial user discharge permit. Where daily maximum limitations are expressed in units of mass, the discharge is the total mass discharged over the sampling period.

Department means the P~~p~~ublic W~~w~~orks D~~d~~epartment of the City of Billings.

Director is the City of Billings Director of Public Works or designee that supervises the operation of the Publicly Owned Treatment Works and who is charged with certain duties and responsibilities under this Article, or their duly authorized representative.

~~*Discharge* is the direct or indirect introduction of treated or untreated wastewater into the waters of the State of Montana, either through the municipal wastewater system and wastewater system treatment plan, or through a point source into state waters.~~

Domestic Sewage is domestic (sanitary) wastewater from residential sources including, but not limited to wastewater from kitchen, bath, and laundry facilities; or wastewater from the personal sanitary conveniences (toilets, showers, bathtubs, fountains, noncommercial sinks and similar structures) of commercial, industrial or institutional buildings, provided that the wastewater exhibits characteristics that are similar to those of wastewater from normal residential activities.

~~*Domestic wastes or sanitary wastes* means liquid wastes:~~

~~(1) From the noncommercial preparation, cooking and handling of food; or~~
~~(2) Containing human excrement and similar matter from the sanitary conveniences of dwellings, commercial buildings, industrial facilities and institutions.~~

Environmental P~~p~~rotection A~~a~~gency or *EPA* means the United States Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the A~~a~~dministrator or other duly authorized official of said A~~a~~gency.

Existing Source is a source of discharge by an Industrial User, the construction of which commenced prior to the publication of the proposed Categorical Pretreatment Standard which is subsequently promulgated in accordance with Section 307 of the Clean Water Act, or as otherwise specified in the applicable Categorical Pretreatment Standard.

Grab sample means a sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes~~without consideration of time~~.

Gravity Grease Interceptor is a plumbing appurtenance or appliance that is installed in a sanitary drainage system to intercept FOG (fats, oil and grease) from a wastewater discharge and is designed for gravity separation considering calculated retention times and volumes for each facility. This is an in-ground interceptor that is located outside the facility.

Grease Trap is a device designed to retain grease from one to a maximum of four fixtures per International Plumbing Code. A Grease Trap is not appropriate for use on heated water (e.g. dishwasher) or in-line to a waste disposal unit (e.g., garbage disposal and garbage grinders). A Grease Trap is a small, indoor device. Grease Traps are not approved for installation in food service establishments that prepare food on site, or serve catered food and have a dishwasher or a garbage disposal.

~~*Harmful contribution* means an actual or threatened discharge or introduction of industrial wastes to the wastewater system which presents or may present an imminent or substantial endangerment to the health and welfare of persons, or to the environment; or which inhibits or interferes with the physical or lawful operation of the wastewater system; or which causes the city or the wastewater treatment plant to violate any condition of its Montana Pollutant Discharge Elimination System permit; or which causes the city to expend effort and resources beyond that normally required.~~

Holding tank waste means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, recreational vehicles, septic tanks or septage haulers.

Indirect Discharge or *Discharge* is the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act (including holding tank waste discharged into the system).

Industrial means of or pertaining to industry, manufacturing, agriculture, commerce, trade, or business, as distinguished from domestic or residential.

Industrial D~~d~~ischarge P~~p~~ermit is a permit issued to an Industrial User that limits and/or prohibits the discharge of pollutants or flow to the POTW and establishes other Pretreatment Standards and Requirements ~~document~~ as set forth in S~~s~~ections 26-606 ~~26-607~~ and 26-609 ~~and~~ of this ~~article~~ Article ~~and the applicable adopted rules and regulations which licenses and conditions the nature and amount of contribution of industrial wastes into the wastewater system~~.

Industrial Uuser is a source of Indirect Discharge. ~~means any person or source that introduces or discharges wastewater from industrial processes into the wastewater system, or any nondomestic user or source regulated under Section 307(b), (c), or (d) of the Clean Water Act.~~

Industrial (non-domestic) waste is the liquid or solid wastes from industrial manufacturing processes, trade or business activities producing non-domestic or non-residential sewage as distinct from domestic wastewater.

~~*Industrial wastes or wastewater* means all liquid or water-carried wastes other than domestic or sanitary wastes. The term includes, by way of example and not by limitation, the trade wastes produced by food processing and bottling plants, food manufacturing plant, slaughtering plants, tallow works, plating works, disposal services, industrial cleaning plants, fertilizer plants, car and truck washing operations, vehicle repair facilities, commercial laundries and cleaning establishments, cooling plants, industrial plants, factories, feedlots, and chemical treatment installations.~~

Instantaneous limit is the maximum or minimum concentration or measurement of a pollutant property allowed to be discharged at any time for any length of time. For pollutants, compliance is typically determined by use of a grab sample.

Interference is a discharge, which alone or in conjunction with a discharge or discharges from other sources, both:

(a) Inhibits or disrupts the POTW treatment processes, or operations or its sludge processes, use or disposal; and

(b) Therefore, is a cause of violation of any requirement of the City's MPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued hereunder, or any more stringent state or local regulations: Section 405 of the Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resources Conservation and Recovery Act (RCRA); any State regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the Solids Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

~~*Interference* means the inhibition or disruption of the wastewater system treatment processes or operations which causes a violation of any requirement of the wastewater system's Montana Pollutant Discharge Elimination System Permit, or of the requirements of any agency with jurisdiction over discharges by the wastewater treatment plant into the receiving waters. The term also includes contamination of treatment plant sludge byproducts.~~

Local Limits mean any regulation containing pollution discharge limits promulgated by the City in accordance with 40 CFR Section 403.5(c) and (d), which are deemed to be Pretreatment Standards and contained in Section 26-604(c) of this Article.

~~*Local limits* means discharge limitations as established by the city.~~

Montana Ppollutant Ddischarge Eelimination Ssystem (MPDES) permit is a permit issued pursuant to Section 402 of the Act (33 U.S.C. Section 1342), allowing discharge of pollutants from point sources into navigable waters of the United States or waters of the State ~~of Montana~~.

~~*National categorical pretreatment standards* or *pretreatment standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Clean Water Act (33 U.S.C. Section 1317) which applies to a specific category of primary industrial users.~~

~~*National prohibitive discharge standard* or *prohibitive discharge standard* means any federal regulation developed under the authority of Section 307(b) of the Clean Water Act, including the General Pretreatment Regulations (40 CFR Section 403.5).~~

New Ssource means

(a) Aany building, structure, facility or installation from which there is or may be a Ddischarge of pollutants, the construction of which commenced after the publication of proposed Ppretreatment Sstandards under Section 307(c) of the Act which will be applicable to such source if such Sstandards are thereafter promulgated in accordance with that section, provided that:

(1a) The building, structure, facility or installation is constructed at a site at which no other source is located; or

(2b) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(3c) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

(b) Construction on a site at which an existing source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (a)(2) or (a)(3) of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

(c) Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:

(1) Begun, or caused to begin as part of a continuous onsite construction program:

(i) Any placement, assembly, or installation of facilities or equipment; or

(ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

Pass T~~t~~hrough means a discharge which exits the WWTP into water of the United States ~~the receiving stream~~ in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the ~~city~~ City's MPDES permit, including an increase in the magnitude or duration of a violation.

Person means any individual, partnership, co-partnership, firm, company, corporation, group, association, trust, estate, governmental entity, political subdivision, or any other legal entity, or their legal representatives, agents, or assigns. ~~The masculine gender shall include the feminine, and the singular shall include the plural where indicated by the context.~~

pH is the intensity of acid or base condition of the solution expressed as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in moles per liter of solution and reported as Standard Units (SU).

~~*Pollution* means the alteration of the chemical, physical, biological, or radiological integrity of water by human activity.~~

Pollutant means any dredged soil, solid waste, incinerator residue, filter backwash, sewage, garbage, septic waste, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discardedharged equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD_5, COD, toxicity, or odor) discharged into or with water.

Pollution means the alteration of the chemical, physical, biological, or radiological integrity of water by human activity.

Pretreatment ~~*or treatment*~~ means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR Section 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR Section 403.6(e).
~~the alteration of the rate of their introduction into the wastewater system, or the alteration of the nature of pollutant properties in wastewater to a less harmful state, prior to or in lieu of discharging or otherwise introducing such pollutants into a wastewater system. The reduction or alteration can be achieved by physical, chemical or biological processes, process changes, or by other means, except as prohibited by 40 CFR Section 403.6(d).~~

Pretreatment R~~r~~equirement means any substantive or procedural requirement related to Ppretreatment, other than a ~~including national~~ Cc~~c~~ategorical Pp~~p~~retreatment Ss~~s~~tandard~~s~~, imposed on an I~~i~~industrial U~~u~~ser.

Pretreatment Standard, *National Pretreatment Standard*, or *Standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to Industrial Users. The term includes prohibitive discharge limits, local limits, and Best Management Practices that are or may be established by the City. In cases of differing standards or regulations, the most stringent standard shall apply.

Publicly Owned Treatment Works (POTW) means a treatment works as defined by Section 212 of the Act (33 U.S.C 1292), which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature and any sewers, pipes or other conveyances which convey wastewater to the treatment plant. The term also means the municipality having jurisdiction over the Indirect Discharges to and the discharges from the treatment works.

Rules and R~~r~~egulations means all rules and regulations promulgated by the A~~a~~dministrator for administration and operation of the municipal water and wastewater utilities as provided for in S~~s~~ection 26-101 of the Billings, Montana City Code.

Septage means the mixed liquid and solid contents pumped from septic tanks used for receiving primarily segregated domestic wastes or wastes from sanitary conveniences.

Significant Industrial User (SIU): Except as provided in paragraphs (c) and (d) of this definition, a Significant Industrial User is:

(a) An Industrial User subject to Categorical Pretreatment Standards; or

(b) An Industrial User that:

(1) Discharges an average of twenty-five thousand gallons per day (25,000 gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);

(2) Contributes a process wastestream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(3) Is designated as such by the City on the basis that the Industrial User has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement.

(c) The City may determine that an Industrial User subject to Categorical Pretreatment Standards is a Non-Significant Categorical Industrial User rather than a Significant Industrial User upon a finding that the Industrial User never discharges more than one hundred gallons per day (100 gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met;

(1) The Industrial User, prior to the City's finding, has consistently complied with all applicable Categorical Pretreatment Standards and Requirements;

(2) The Industrial User annually submits the certification statement as found in 40 CFR 403.12(g) together with any additional information necessary to support the certification statement; and

(3) The Industrial User never discharges any untreated concentrated wastewater.

(d) Upon finding by the City that an Industrial User meeting the criteria in Section B of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or Requirement, the City may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with 40 CFR 403.8(f)(2), determine that such Industrial User is not a Significant Industrial User.

~~*Significant industrial user* is any user of the city's wastewater collection, treatment and disposal system who:~~

~~(a) Is subject to categorical standards as defined herein; or~~
~~(b) Discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the WWS, excluding sanitary, noncontact cooling and boiler blowdown wastewater; or~~
~~(c) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the WWTP; or~~

~~(d) Is designated as such by the city on the basis that the industrial user has a potential for adversely affecting the WWS or for violating any pretreatment standard or requirement.~~

~~*Significant violator* means an industrial user who is in significant noncompliance by violating one or more of the following criteria:~~

~~(a) Chronic violations of wastewater discharge limits, defined as those in which sixty-six (66) percent or more of all of the measurements taken during a six-month period exceed, by any magnitude, the daily maximum limit or the average limit for the same pollutant parameter;~~
~~(b) Technical review criteria (TRC) violations, defined as those in which thirty-three (33) percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit times the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease and 1.2 for all other pollutants except pH);~~
~~(c) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the administrator determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of city personnel or the general public;~~
~~(d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or the environment or has resulted in the city's exercise of its emergency authority specified herein to halt or prevent such a discharge;~~
~~(e) Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction or attaining final compliance;~~
~~(f) Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports and reports on compliance with compliance schedules;~~
~~(g) Failure to accurately report noncompliance; or~~
~~(h) Any other violation or group of violations which the administrator determines will adversely affect the operation or implementation of the local pretreatment program.~~

Slug D~~d~~ischarge means any discharge at a flow rate or concentration, which could cause a violation of the Specific Prohibitions in Section 26-604(b). A Slug Discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, or a discharge which exceeds the hydraulic or design of an Industrial Users treatment system or any part of the treatment unit including a discharge which has a reasonable potential to cause Interference or Pass Through or in any other way violate an applicable Pretreatment Standard or Requirement or an Industrial Discharge Permit issued by the City. ~~pollutant, including oxygen demanding pollutants (BOD, etc.), released in a discharge of such volume or strength as to cause interference in the WWS.~~

~~*Source* means any building, structure, facility, or installation from which there may be a discharge of pollutants.~~

Standard Industrial Classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, as amended.

State means the State of Montana.

Total Suspended Solids is the total suspended matter, expressed in milligrams per liter, that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering in accordance with procedures approved in 40 CFR Part 136, as amended.

Toxic pollutant includes, but is not limited to, any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Aadministrator of the EPA under the provisions of Section 307(a) of the Act or as otherwise listed in 40 CFR Part 122, Appendix Dother applicable laws.

User means any person who discharges, causes, or permits the discharge or introduction of wastewater into the wastewater system.

Wastewater or *sewage* means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions together with any groundwater, surface water and storm water that may be present, whether treated or untreated, which are is discharged into or permitted to enter the POTWwastewater system.

Wastewater treatment plant (WWTP) is that portion of the waste water system designed to provide treatment to wastewater.

Wastewater system (WWS) means wastewater treatment works as defined by Section 212 of the Act (33 U.S.C. Section 1292) which are owned by the city, or which are managed and operated by the city; includes any sewers that convey wastewater to the WWTP from within the WWTP service area, but excludes pipes, sewers, or other conveyances not directly or indirectly connected to the treatment facility. For the purposes of this article, WWS shall also include any sewers that convey wastewaters to the WWS from persons or sources outside the city who are, by contract or agreement with the city or connecting sanitation districts, users of the city's WWS.

Waters of the Sstate means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.
(Ord. No. 85-4663, § 2, 9-9-85; Ord. No. 06-5356, § 14, 1-9-06)

Sec. 26-603. - Abbreviations.

The following abbreviations shall have the designated meanings for the purposes of this article Article and the supplemental Rrules and Rregulations:

BMCC: Billings, Montana City Code.

BMP: Best Management Practice.
BOD_5: Biochemical Oxygen Demand.
CFR: Code of Federal Regulations.
~~*COD:* Chemical oxygen demand.~~
EPA: Environmental Protection Agency.
LEL: Lower Explosive Limit
mg/L: Milligrams per Liter.
MPDES: Montana Pollutant Discharge Elimination System.
POTW: Publicly Owned Treatment Works
SIC: Standard Industrial Classification.
SIU: Significant Industrial User
SNC: Significant Noncompliance
TSS: Total Suspended Solids
~~*WWS:* Wastewater system.~~
WWTP: Wastewater Treatment Plant.
U.S.C.: United States Code.
~~*TSS:* Total suspended solids.~~
(Ord. No. 85-4663, § 3, 9-9-85)

Sec. 26-604. ~~–~~ Prohibited Discharges and Limitations~~General discharge prohibitions~~.

~~(a) *Unlawful discharge.* It shall be unlawful to discharge any industrial wastewater or polluted waters into any natural outlet within the City of Billings, or within any area under the jurisdiction of the city, except where suitable treatment has been provided, and except as authorized by the administrator in accordance with the provisions of this article.~~

~~(b) *Harmful contributions.* No person or user shall introduce, discharge, or cause to be discharged into the municipal wastewater system or WWTP, any pollutant or wastewater which may cause interference with the operation or performance of the WWS, or which constitutes a harmful contribution to the WWS, or which may pass through the WWS so as to cause the WWS to violate terms of its MPDES permit or other applicable laws and regulations. These general prohibitions apply to all users of the WWS, whether or not the user is subject to national categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements, including specific pollutant limitations developed pursuant to section 26-606 of this article.~~

(a) General Prohibitions

An Industrial User may not introduce into a POTW any pollutant(s) which cause Pass Through or Interference. These General Prohibitions and the Specific Prohibitions in paragraph (b) of this Section apply to each Industrial User introducing pollutants into a POTW whether or not the Industrial User is subject to other Pretreatment Standards or Requirements.

(b) The following Specific Prohibitions apply to the discharge of wastewater to the POTW from all industrial users:

(1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Celsius using the test methods specified in 40 CFR Section 261.21. The Administrator may require industrial users with the potential to discharge flammable, combustible or explosive substances to install and maintain an approved combustible gas detection meter or explosion hazard meter. No two successive readings on an explosion hazard meter at the point of discharge shall be more than five percent (5%), nor any one reading more than ten percent (10%), of the Lower Explosive Limit (LEL) of the meter.

(2) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.5 or greater than 12.5.

(3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in the Interference.

(4) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.

(5) Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40 degrees Celsius (104°F) unless the EPA, upon request of the POTW, approves alternate temperature limits.

(6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause Interference or Pass Through.

(7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

Any discharge containing a toxic, poisonous or infectious substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause worker health and safety problems or create any hazard in the receiving waters of the POTW.

(8) Any trucked or hauled pollutants, except as approved by the City in writing and discharged at the WWTP septage receiving station.

(9) Any water or waste containing free or floating oil and grease, or any discharge containing animal fat or grease by-product in excess of one hundred milligrams per liter (100 mg/L) except:

(i) A food service establishment that has installed and is properly operating and maintaining a grease interceptor and implementing required BMPs; or

(ii) An Industrial User that is permitted as for trucked and hauled waste and discharges its waste at a discharge point specified by the City and in full compliance with its permit.

(10) Removing wastes collected in a grease trap, grease/sand interceptor, waste collection tank or other treatment device and reintroducing any portion of the wastes back into the wastewater collection system either directly or indirectly.

(11) Stormwater drainage from ground resulting in Infiltration and Inflow (I&I) through the Industrial User's service line(s) or surface, roof drains, catch basins, unroofed area drains (e.g. commercial car washing facilities) or any other source unless otherwise approved by the Administrator. Specifically prohibited is the connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or ground water to a building sewer or building drain which in turn is connected directly or indirectly to the City's wastewater collection system. No person shall connect or discharge water from underground drains, sump pump discharges, natural springs and seeps, water accumulated in excavation or grading or any other water associated with construction activities unless specifically authorized by the Administrator.

(12) Any substance which may cause the POTW's effluent, sludge, or residue to be unsuitable for, or interfere with, the reclamation or reuse process.

(13) A Slug Discharge as defined in Section 26-602.

(14) Any substance which will cause the POTW to violate the MPDES permit or the receiving water quality standards.

(15) Any pollutant discharged directly into a manhole or other opening in the POTW unless specifically authorized by the City or as otherwise permitted under this Article. Prohibited is the opening of a manhole or discharging into any opening in violation of this Article.

(16) Liquid wastes from chemical toilets, and trailers, campers or other recreational vehicles which have been collected and/or held in tanks or other containers shall not be discharged into the POTW except at locations authorized by the City to collect such wastes.

(17) No chemicals, materials, or substances, including but not limited to, paints, solvents, boiler or water treatment chemicals, sludges, chemicals, or wastes shall be stored in proximity to a floor drain or other sewer openings. Containers shall be clearly labeled and stored in a place where the chemicals, materials, substances or wastes, in case of leakage or rupture of the container, cannot enter the wastewater collection

system. The storage of any chemicals, materials, substances or wastes that leak or have potential to leak or discharge into the wastewater collection system which may create an explosion hazard or in any way have a deleterious effect to the POTW or constitute a nuisance or a hazard to POTW personnel, the general public, the environment, or the receiving stream shall be prohibited.

(18) Any water contaminated as a result of discharge from aboveground and/or underground gasoline, diesel fuels, fuel oil, kerosene, and jet fuel tanks, tank accessories, and/or pipelines without applying for and obtaining a permit prior to discharge.

(19) Any wastes containing detergents, surface-active agents, or other substances in concentrations which cause excessive foaming in the POTW or cause or contribute to Interference or Pass Through.

(20) Wastes that have been collected and/or held in a tank or other container and where such wastes fail to comply with any Pretreatment Standard.

(21) Any radioactive substance, the discharge of which, does not comply with limits established by the District or other regulations set forth by the Montana Department of Environmental Quality or that violates any applicable federal standards.

(22) Any water or waste which contains grease or oil or any other substances that will solidify or become discernibly viscous at temperatures between thirty-two degrees (32°) Fahrenheit (0° Celsius) and one hundred fifty degrees (150°) Fahrenheit (65.5° Celsius).

(23) Any garbage that has not been properly shredded.

(24) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substance capable of causing obstruction to the flow in sewers, or other Interference with the proper operation of the POTW.

(25) Any discharge containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the WWTP.

(26) Any noxious or malodorous gas or substance capable of creating a public nuisance.

~~(c) *Prohibited discharges.* In addition to the prohibited waters or wastes described above, a user shall not introduce or discharge the following substances into the WWS:~~

~~(1) Any wastewater containing toxic pollutants in sufficient quantity to exceed the limitation set forth in a national categorical pretreatment standard.~~

(2) Any substance which may cause the WWS's treatment plant effluent or any other products such as residues, sludges, or scums to be unsuitable for reclamation or reuse.

(d) *Discharge relative to sludge use* or *use disposal*. No person or user shall discharge a pollutant into the WWS which may cause the WWS or its management agency to be in noncompliance with any sludge use or disposal laws, or regulations, including Section 405 of the Clean Water Act, the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or any state criteria applicable to sludge management.

(e) *Excessive discharge*. Except where expressly authorized to do so by an applicable categorical pretreatment standard, no significant industrial user shall increase the use of process water or dilute industrial wastewater with tap water, unpolluted water, sanitary sewage, or any other liquid dilutants as a partial or complete substitute for adequate pretreatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, or with any other pollutant-specific limitation developed by the city or state.

(Ord. No. 85-4663, § 4, 9-9-85)

Sec. 26-605. - Accidental discharges; protection; notice.

(a) *Protection facilities and plan*. Each significant industrial user shall provide adequate protection against sludge discharges, accidental discharge or slug discharge of the prohibited waters or wastes described in section 26-604 of this article, or other substances regulated by this article. Facilities to prevent accidental discharge and slug discharge of prohibited waters or wastes shall be provided and maintained at the user's own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection, unless already provided, shall be submitted to the city for review and shall be approved by the city before construction of the accidental discharge or slug discharge prevention facility. All significant industrial users shall submit such a plan within ninety (90) days after passage of this article [Ordinance Number 85-4663, adopted September 9, 1985] or after being permitted as a significant industrial user, whichever is later. No significant industrial user who commences contribution to the WWS after the effective date of this article [Ordinance Number 85-4663, adopted September 9, 1985] and applicable adopted rules and regulations shall be permitted to introduce pollutants into the system until accidental discharge and slug discharge procedures and facilities have been approved by the city. Review and approval of such plans and operating procedures shall not relieve the significant industrial user from any responsibility to pretreat as necessary to meet the industrial pretreatment requirements of this article. The city may periodically review and evaluate the adequacy of and need for improvements to existing facilities and procedures.

(b) *Notice of accidental or slug discharge*. In the case of an accidental discharge or slug discharge, it is the responsibility of any industrial user to immediately telephone and notify the city of the incident. The notification shall include the location of discharge, type of waste or wastes, concentration, volume, duration, time of episode, and corrective actions undertaken.

(1) Within five (5) days following an accidental discharge or slug discharge, the industrial user shall submit to the city a detailed written report describing the

cause of the discharge and the measures taken or planned by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the WWS, fish kills, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, civil penalties, or other liability which may be imposed by this article or other applicable law.

(2) A sign shall be permanently posted on the industrial user's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge or slug discharge. The industrial user shall insure that all employees who may cause such an accidental discharge or slug discharge to occur are advised of the emergency notification procedure.

(Ord. No. 85-4663, § 5, 9-9-85; Ord. No. 91-4886, § 3, 9-9-91)

Sec. 26-606. - Specific pollutant limitations.

(a) No person shall discharge into the WWS any wastewater containing pollutants generally prohibited by section 26-604 of this article and specifically prohibited herein, pollutants in excess of specific pollutant limitations as contained in any industrial discharge permit, or limitations imposed by national categorical pretreatment standards or local limits.

(b) No user shall discharge or cause to be discharged any of the following described pollutants into the WWS:

(1) Any liquid or vapor having a temperature higher than the lesser of (a) one hundred forty (140) degrees Fahrenheit or (b) that which, alone or in combination with other discharges, causes the influent at the WWTP to exceed one hundred four (104) degrees Fahrenheit;

(2) Any discharge containing more than one hundred parts per million, by weight, of fat, oil or grease;

(3) Any gasoline, benzene, naphtha, fuel oil or other pollutants which create a fire or explosion hazard in the WWS, including, but not limited to, wastestreams with a closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit or sixty (60) degrees Centigrade using the test methods specified in 40 CFR 261.21.

(4) Any garbage that has not been properly shredded;

(5) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substance capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the WWS;

(6) Any discharge having a pH lower than 5.5 or higher than 9.0, or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the WWS;

(7) Any discharge containing a toxic, poisonous or infectious substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, pollutants which result in the presence of toxic gases, vapors, or fumes within the WWS in a quantity that may cause worker health and safety problems or create any hazard in the receiving waters of the WWS;

~~(8) Any discharge containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the WWTP;~~

~~(9) Any noxious or malodorous gas or substance capable of creating a public nuisance;~~

~~(10) Any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a discharge of such volume or strength as to cause interference in the WWS;~~

~~(11) Any petroleum oil, solvents, nonbiodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through;~~

~~(12) Any trucked or hauled pollutants, except for septage or trucked waste specifically approved by the city, both of which are to be discharged at the septage receiving station at the WWTP.~~

(c) It shall be unlawful for any Significant Industrial User to discharge, deposit, cause, or allow to be discharged any waste or wastewater which ~~No user shall discharge or cause to be discharged any of the following pollutants into the WWS~~ exceeds the following limits~~at levels in excess of those noted~~:

Pollutant	Daily Maximum Discharge Limit (1)	Units
Arsenic	~~2.5~~1.33	#/day
Cadmium	~~13.9~~0.03	mg/l
Chromium	~~35.3~~27.25	mg/l
Chromium VI	3.39	mg/l
Copper	~~2.0~~5.18	mg/l
Cyanide	~~2.6~~0.66	mg/l
Lead	~~2.2~~1.04	mg/l
Mercury	~~0.15~~0.0057	mg/l
Nickel	~~26.8~~8.87	mg/l
Selenium	~~0.0~~3.87	#/day
Silver	~~1.1~~1.80	mg/l
Zinc	~~1.1~~24.87	mg/l
BTEX	0.75	mg/l
Methylene Chloride	0.80	mg/l
Tetrachloroethene	1.6	mg/l

~~Arsenic ..... 2.5 mg/l~~	~~Mercury ..... 0.15 mg/l~~
~~Cadmium .....13.9 mg/l~~	~~Nickel .....26.8 mg/l~~
~~Chromium .....35.3 mg/l~~	~~Selenium ..... 0.0 mg/l~~
~~Copper ..... 2.0 mg/l~~	~~Silver ..... 1.1 mg/l~~
~~Cyanide ..... 2.6 mg/l~~	~~Zinc ..... 1.1 mg/l~~
~~Lead ..... 2.2 mg/l~~	

(1) All pollutants shown in the Table are total.

(d) Dilution is prohibited as a substitute for treatment and shall be a violation of this Article. Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, no Industrial User shall ever increase the use of process water, or in any other way attempt to dilute a Discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Standard or Requirement. The City may impose mass limitations on industrial users which are using dilution to meet applicable Pretreatment Standards or Requirements or in other cases where the imposition of mass limitations is appropriate.

(e) All industrial users subject to a Categorical Pretreatment Standard shall comply with all requirements of such Standard, and shall also comply with any limitations contained in this Article. Where the same pollutant is limited by more than one Pretreatment Standard, the limitations which are more stringent shall prevail. Compliance with Categorical Pretreatment Standards shall be the timeframe specified in the applicable Categorical Pretreatment Standard.

(f) The City may establish more stringent pollutant limits, additional site-specific pollutant limits, Best Management Practices, or additional Pretreatment Requirements when, in the judgment of the City, such limitations are necessary to implement the provisions of this Article.

(g) Promulgation of Standards.

(1) Upon the promulgation of the federal Categorical Pretreatment Standard for a particular industrial subcategory, the federal Standard, if more stringent than limitations imposed by this Article for sources in that subcategory, shall immediately supersede the limitations imposed by this Article as required by the applicable Categorical Pretreatment Standard.

(2) State requirements and limitations on discharges shall apply in any case where they are more stringent than federal Pretreatment Standards and Requirements or those in this Article.

~~(Ord. No. 85-4663, § 6, 9-9-85; Ord. No. 91-4886, § 4, 9-9-91; Ord. No. 92-4906, § 2, 7-27-92; Ord. No. 97-5022, § 7, 5-27-97)~~

Sec. 26-605. – Pretreatment and Monitoring Facilities

(a) Treatment Required: An Industrial User shall provide necessary wastewater treatment at the Industrial User's expense as required to comply with this Article and shall achieve compliance with all Pretreatment Standards and Requirements within the time limitations specified by the EPA, the State, or the City, whichever is more stringent. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the

Administrator for review and shall be acceptable before discharge from the facility. The review of such plans and operating procedures will in no way relieve the Industrial User from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the City under the provisions of this Article.

(b) Wastewater Discharge Control: The City may require an Industrial User to restrict discharge during peak flow periods, designate that certain wastewater be discharged only into specified sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and demonstrate the Industrial User's compliance with the requirements of this Article.

(c) Flow Equalization: The City may require any Industrial User discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An Industrial Discharge Permit may be issued solely for flow equalization.

(d) Monitoring Facilities: The City may require an Industrial User to install at the Industrial User's expense, suitable monitoring facilities, instrumentation or equipment that allows for the representative sampling and accurate observation of wastewater discharges. Whether constructed on public or private property, the monitoring facilities shall be constructed in accordance with the City's requirements and all applicable construction standards and specifications. Monitoring equipment and structures shall be maintained in proper working order and kept safe and accessible at all times to City personnel. The monitoring equipment shall be located and maintained on the Industrial User's premises outside of the building unless otherwise approved by the City. When such a location would be impractical, the City may allow such facility to be constructed in the public street or easement area, with the approval of the agency having jurisdiction over such street or easement, and located so that it will not be obstructed by public utilities, landscaping or parked vehicles.

(e) Multitenant Buildings: When more than one Industrial User is able to discharge into a common service line, the City may require installation of separate monitoring equipment for each Industrial User.

(f) Flow, pH, LEL and other appropriate meters and instrumentation: If the City determines that an Industrial User needs to measure and report wastewater flow, discharge process wastewaters necessitating continuous pH measurement or discharge wastewater that may contain flammable substances may be required to install and maintain, at the Industrial User's expense, approved meters, structures and equipment.

(g) Unless approved by the Administrator in writing, no Industrial User shall cover any manhole, sewer cleanout, or other openings in the wastewater collection system with earth, paving, or otherwise render it inaccessible.

Sec. 26-606. – Industrial Discharge Permits

(a) Permits Required.

All Significant Industrial Users proposing to connect to, or discharge into, any part of the wastewater system shall apply for and obtain an Industrial Discharge Permit prior and remit payment for all fees required by Rule 24.7 of the Rules and Regulations to commencing discharge to the POTW. A separate permit may be required for each Industrial User, building or complex of buildings. Such Significant Industrial Users shall immediately contact the City and obtain an Industrial Discharge Permit.

(b) New Industrial Users: Applying for an Industrial Discharge Permit.

Any Industrial User required to obtain an Industrial Discharge Permit who proposes to begin or recommence discharging into the POTW must apply for and obtain such permit prior to the beginning or recommencing of such discharge. The Industrial User shall file a permit application on forms provided by the City containing the information specified in Section 26-606(f) below. The completed application for the Industrial Discharge Permit must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

(c) Existing Industrial Users: Applying for an Industrial Discharge Permit Re-issuance.

An Industrial User with an expiring Industrial Discharge Permit shall apply for a new permit by submitting a complete permit application at least ninety (90) days prior to the expiration of the Industrial User's existing permit. The Industrial User shall file a permit application on forms provided by the City containing the information specified in Section 26-606(f) below. An Industrial User with an existing permit that has filed a complete and timely application may continue to discharge as approved in writing by the City through an administrative extension of the existing permit if the delay in permit issuance is not due to any act or failure to act on the Industrial User's part.

(d) Other Industrial Users.

The City may require other Non-Significant Industrial Users to apply for and obtain wastewater discharge permits or similar control mechanisms necessary to carry out the purposes of this Article. The City may issue a zero discharge permit to prohibit the discharge of some or all non-domestic process wastewater from an Industrial User.

(e) Enforceability.

Any violation of the terms and conditions of an Industrial Discharge Permit, failure to apply for a permit as required, or discharging without a required permit shall be deemed a violation of this Article and subjects the Industrial User to enforcement by the City. Obtaining an Industrial Discharge Permit does not relieve a permittee of its obligation to comply with all State and federal Pretreatment Standards or Requirements.

(f) Permit Application Contents.

In support of the application, the Industrial User shall submit, in units and terms appropriate for evaluation, the following information:

(1) Name of business, address of the facility, location of the discharge if different from facility address, and contact information of the Authorized Representative of the Industrial User.

(2) Environmental Permits. A list of any environmental control permits held by or for the facility.

(3) Description of Operations.

(i) A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production);

(ii) The Standard Industrial Classification(s) of the operation(s) carried out by such Industrial User;

(iii) A schematic process diagram, which indicates all process tanks, process lines, treatment systems, drains, and points of discharge to the POTW from the regulated process;

(iv) Types of wastes generated;

(v) A list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;

(vi) A list of hazardous waste(s) generated and a description of the storage area and procedures for the wastes;

(vii) Number of employees; and

(viii) Hours of operation, and proposed or actual hours of operation.

(4) Time and duration of discharges including the date the industrial user first began discharge or plans to discharge to the POTW.

(5) The location for sampling the wastewater discharges from the Industrial User.

(6) Flow measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process

streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR Section 403.6(e). For New Sources and new permittees not currently discharging, an estimate of flows may be used for meeting the requirements of the Baseline Monitoring Report required in Section 26-611(a).

(7) Measurement of Pollutants.

(i) The Pretreatment Standards applicable to each regulated process;

(ii) The results of sampling and analysis identifying the nature and concentration, and/or mass of regulated pollutants in the discharge from each regulated process where required by the Standard or by the City;

(iii) Instantaneous, daily maximum and long-term average concentrations, or mass, where required, shall be reported;

(iv) The sample shall be representative of daily operations and shall be collected in accordance with procedures set out in Section 26-610. Where the Standard requires compliance with a BMP or pollution prevention alternative, the Industrial User shall submit documentation as required by the City or the applicable Standards to determine compliance with the Standard; and

(v) Analyses must be performed in accordance with procedures set out in Section 26-610(c).

(8) A list of hazardous waste(s) generated and a description of the storage area and procedures for the wastes.

(9) Slug Discharge Control Plan for Significant Industrial Users and other industrial users as described in Section 26-602 shall be submitted as required by the City.

(10) Compliance Schedule. If additional pretreatment and/or Operation and Maintenance (O&M) will be required to meet the Pretreatment Standards, the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard.

The following conditions shall apply to this schedule:

(i) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable Pretreatment Standards (e.g. hiring an engineer, completing preliminary plans, completing final plans,

executing contract for major components, commencing construction, completing construction, etc.). No such increment shall exceed nine (9) months.

(ii) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the Administrator including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the Industrial User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the Administrator.

(11) Certification. A statement, reviewed by an Authorized Representative of the Industrial User and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional Pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements.

(12) Signatory Certification. All Industrial Discharge Permit applications and certification statements must be signed by an Authorized Representative of the Industrial User and contain the applicable certification statement(s) in Section 26-611(h).

(13) Any other information as may be deemed by the Administrator to be necessary to evaluate the permit application.

(g) Industrial Discharge Permit Issuance.

(1) Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period of less than five (5) years at the City's discretion or may be stated to expire on a specific date.

(2) Where the City is establishing enforceable permit specific Pretreatment Standards or Requirements, the permit shall be noticed for public comment for thirty (30) days in a newspaper of general circulation that provides meaningful public notice. The City shall consider all comments that are received prior to issuing the permit.

(3) The City shall issue an Industrial Discharge Permit to the applicant if the City finds that all of the following conditions are met:

(i) The applicant has provided a timely and complete permit application to the City;

(ii) The proposed discharge by the applicant is in compliance with the limitations established in this Article;

(iii) The proposed operation and discharge of the applicant would permit the normal and efficient operation of the POTW; and

(iv) The proposed discharge by the applicant would not result in a violation by the City of the terms and conditions of its MPDES Permit or cause Pass Through or Interference.

(4) If the City finds that the condition set out in Subsection (3)(ii) of this Section is not met, the City may, at their discretion, issue an Industrial Discharge Permit to the applicant if the conditions set out in subsections (3)(i), (3)(iii) and (3)(iv) of this Section have been met and if the applicant submits, and the City approves, a compliance schedule setting out the measures to be taken by the applicant and the dates that such measures will be implemented to assure compliance with applicable Pretreatment Standards. At no time shall a discharge be allowed to cause a violation of any General or Specific Prohibition established in Section 26-604 nor shall the final compliance date for a Categorical Pretreatment Standard be extended.

(5) Any person, including the Industrial User, may petition the City to reconsider the terms of an Industrial Discharge Permit within thirty (30) days of the permit issuance. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal. In its petition, the appealing party must indicate the permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit. The effectiveness of the Industrial Discharge Permit shall not be stayed pending the appeal. If the City does not act on such appeal within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider, not to issue an Industrial Discharge Permit, or not to modify a permit, shall be considered final administrative action for purposes of judicial review.

(h) Transferability. Industrial Discharge Permits are issued to a specific Industrial User for a specific operation. An Industrial Discharge Permit shall not be reassigned or transferred or sold to a new owner, new Industrial User, different premises, or a new or changed operation without the prior written approval of the City. Any succeeding owner shall comply with the terms and conditions of the existing permit until a new permit is issued. The Permittee shall notify the City at least fourteen (14) days prior to any change of ownership.

(i) Industrial Discharge Permit Conditions

Industrial Discharge Permits shall be expressly subject to all provisions of this Article and all other applicable regulations, user charges and fees established by the City. Permits may contain the following:

(1) A statement that indicates the permit's issuance date, expiration date and effective date;

(2) A statement on permit transferability;

(3) The unit charge or schedule of user charges and fees for the wastewater to be discharged into a public sewer;

(4) Limits on the average and/or maximum wastewater constituents and characteristics including, but not limited to, effluent limits, including Best Management Practices, based upon applicable Pretreatment Standards;

(5) Limits on average and maximum rate and time of discharge or requirements for flow;

(6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;

(7) Self-monitoring, sampling, reporting, notification and record-keeping requirements including, but not limited to, identification of the pollutants to be monitored, sampling location, sampling frequency and sample type, based on federal, state and local law;

(8) Best Management Practices (BMPs) to control specific pollutants as necessary to meet the objectives of this Article;

(9) Compliance Schedules;

(10) Requirements for notification of the City of any new introduction of wastewater constituents or any significant change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system;

(11) Requirements to control and report any slug discharges and notify the City immediately of any changes at its facility affecting potential for a Spill or Slug Discharge and to notify the POTW immediately in the event of a slug, spill or accidental discharge to the POTW;

(12) Statements of applicable administrative, civil and criminal penalties for the violation of Pretreatment Standards and Requirements, the permit, this Article, and any applicable compliance schedule;

(13) Requirements to reapply for a new permit prior to expiration of the existing permit;

(14) Additional monitoring to be reported;

(15) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

(16) Closure requirements for permitted facilities undergoing partial or complete closure activities to ensure closure activities are completed and wastes have been properly disposed and remaining access to sanitary and storm sewers are protected;

(17) Other conditions as deemed appropriate by the City to ensure compliance with all applicable Pretreatment Standards and Requirements.

(j) Industrial Discharge Permit Modification

The City may modify an Industrial Discharge Permit for good cause, including, but not limited to, the following reasons:

(1) To incorporate any new or revised federal, state, or local Pretreatment Standards or Requirements;

(2) To address significant alterations or additions to the Industrial User's operation, processes, or wastewater volume or character since the time of the Industrial Discharge Permit issuance;

(3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(4) Information indicating that the permitted discharge poses a threat to the POTW, City personnel or the receiving waters;

(5) Violation of any terms or conditions of the Industrial Discharge Permit;

(6) Misrepresentations or failure to fully disclose all relevant facts in the Industrial Discharge Permit application or in any required reporting;

(7) To reflect a transfer of the facility ownership and/or operation to a new owner/operator;

(8) To correct typographical or other errors in the Industrial Discharge Permit; or

(9) Upon request of the Permittee, provided such request does not result in a violation of any applicable Pretreatment Standards or Requirements or this Article. The filing of a request by the Permittee for a permit modification does not stay any permit condition.

(k) Industrial Discharge Permit Revocation

A violation of the conditions of a permit, this Article or of applicable State and federal regulations may be reason for revocation of such permit by the City. Upon revocation of the permit, any wastewater discharge from the affected Industrial User shall be considered prohibited and in violation of this Article. Grounds for revocation of a permit include, but are not limited to, the following:

(1) Failure of an Industrial User to accurately disclose or report the wastewater constituents and characteristics of any discharge;

(2) Failure of the Industrial User to report significant changes in operations or wastewater constituents and characteristics as required;

(3) Denial of access to the Industrial User's premises for the purpose of inspection or monitoring;

(4) Falsification of records, reports or monitoring results;

(5) Tampering with monitoring equipment;

(6) Misrepresentation or failure to fully disclose all relevant facts in the Industrial Discharge Permit application;

(7) Failure to pay fines or penalties;

(8) Failure to pay sewer charges, surcharges, or pretreatment programs fees;

(9) Failure to meet compliance schedules;

(10) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or

(11) Failure to provide required reports, including but not limited to, a wastewater survey, baseline monitoring report, 90-day compliance report, permit application, self-monitoring report or other permit required reports or notifications within the timeframe required by the City.

Sec. 26-607. Recordkeeping

(a) All Industrial Users shall retain, and make available for inspection and copying, all records, reports, monitoring or other data, applications, permits and all other information and documentation required by this Article including documentation associated with Best Management Practices.

(b) Industrial users shall retain such records and shall keep such records available for inspection for at least three (3) years. This recordkeeping period shall be extended

automatically for the duration of any litigation concerning the Industrial User's compliance with any provision of this Article, or when the Industrial User has been specifically and expressly notified of a longer records retention period by the Administrator.

(c) Written reports will be deemed to have been submitted on the date postmarked. For reports which are hand delivered, the date of receipt of the report shall govern.

Sec. 26-608. Confidential Information.

(a) All records, reports, data or other information supplied by any person or Industrial User as a result of any disclosure required by this Article or information and data from inspections shall be available for public inspection except as otherwise provided in this Section, 40 CFR Section 403.14 and the laws of the State of Montana.

(b) These provisions shall not be applicable to any information designated as a trade secret by the person supplying such information. Materials designated as a trade secret may include, but shall not be limited to, processes, operations, style of work or apparatus or confidential commercial or statistical data. Any information and data submitted by the Industrial User which is desired to be considered a trade secret shall have the words, "Confidential Business Information," stamped on each page containing such information. The Industrial User must demonstrate to the satisfaction of the City that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the Industrial User.

Information designated as a trade secret pursuant to this Section shall remain confidential and shall not be subject to public inspection except as ordered by a district court judge or Supreme Court of the State of Montana. Such information shall be available only to officers, employees or authorized representatives of the City charged with implementing and enforcing the provisions of this Article and properly identified representatives of the U.S. Environmental Protection Agency and the Montana Department of Environmental Quality.

Effluent data from any Industrial User whether obtained by self-monitoring, monitoring by the City or monitoring by any state or federal agency, shall not be considered a trade secret or otherwise confidential. All such effluent data shall be available for public inspection.

Sec. 26-609 Reserved.

Sec. 26-610 Sample Collection and Analytical Methods

(a) Sample Collection.

Compliance determinations with respect to prohibitions and limitations in this Article may be made on the basis of either grab or composite samples of wastewater as specified by the

City. Such samples shall be taken at a point or points which the City determines to be suitable for obtaining a representative sample of the discharge. Composite samples may be taken over a twenty-four (24) hour period, or over a longer or shorter time span, as determined by the City to meet specific circumstances.

(b) Sample Type.

Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, and based on data that is representative of conditions occurring during the reporting period.

(1) Except as indicated in subparagraphs (2) and (3) below, the Industrial User must collect representative wastewater samples using twenty-four (24) hour flow proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is required by the City. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the permitted discharge.

(2) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a twenty-four (24) hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composited samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with instantaneous local limits, including pH.

(3) For sampling required in support of Baseline Monitoring and 90-day Compliance reports required in Section 26-611, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds for facilities for which historical representative sampling data do not exist. Where historical data are available, the City may authorize a lower minimum. For the reports required by Section 26-611(a), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements.

(c) Analytical Requirements.

All pollutant analysis, including sampling techniques, to be submitted as part of an Industrial Discharge Permit application, report, permit or other analyses required under this Article shall be performed in accordance with the techniques prescribed in 40 CFR

Part 136 and amendments thereto, unless otherwise specified in an applicable Categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the City or other parties approved by the EPA.

(d) Records shall include for all samples:

1. The date, exact place, method, and time of sampling and the name of the person(s) taking the samples;

2. The date(s) analyses were performed;

3. Who performed each analysis;

4. The analytical techniques/methods used, including method detection limits and QA/QC sample results;

5. Calibration and maintenance records;

6. All chain-of-custody records; and

7. The results of each analysis.

Sec. 26-611. Reporting and Notification Requirements.

(a) Periodic Compliance Reports – All Significant Industrial Users.

(1) Any Significant Industrial User or other Industrial User required by the City, subject to a federal, state, or City Pretreatment Standard or Requirement must submit reports, at a frequency determined by the City but no less than once per six (6) months, indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practices (BMPs) or pollution prevention alternatives, the Industrial User must submit documentation required by the City or the Pretreatment Standard necessary to determine compliance status of the Industrial User. All periodic compliance reports must be signed and certified in accordance with Section 26-611(h).

(2) All wastewater samples must be representative of the Industrial User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The

failure of an Industrial User to keep its monitoring facility in good working order shall not be grounds for the Industrial User to claim that the sample results are unrepresentative of its discharge.

(3) If an Industrial User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the City, using the methods and procedures prescribed in Section 26-610, the results of this monitoring shall be included in the report.

(4) The sampling and analyses required for the reporting outlined above may be performed by the City in lieu of the permittee. Where the City itself makes arrangements with the Industrial User to collect all the information required for the report, the Industrial User will not be required to submit the report.

(b) Baseline Monitoring Reports (BMR) – Categorical Industrial Users.

(1) Within either one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard, or the final administrative decision on a category determination under 40 CFR Section 403.6(a)(4), whichever is later, existing industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the City a report which contains the information listed in paragraph (2) below. At least ninety (90) days prior to commencement of their discharge, New Sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable Categorical Pretreatment Standard, shall submit to the City a report which contains the information listed in paragraph (2) below. A New Source shall report the method of pretreatment it intends to use to meet applicable Pretreatment Standards. A New Source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged from regulated process streams and other non-process streams.

(2) Industrial users described above shall submit the information set forth below.

(i) All information required in Section 26-606(f).

(ii) Measurement of pollutants.

(A) The Industrial User shall take a minimum of one (1) representative sample to compile the data necessary to comply with the requirements of this paragraph.

(B) Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the Industrial User should measure the flows and concentrations necessary to allow use of the combined wastestream

formula in 40 Section CFR 403.6(e) in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR Section 403.6(e) this adjusted limit along with supporting data shall be submitted to the City.

(C) Sampling and analysis shall be performed in accordance with Section 26-610.

(D) The City may allow the submission of a BMR which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

(E) The BMR shall indicate the time, date, and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(F) Signature and Report Certification. All baseline monitoring reports must be signed in accordance with Section 26-611(h) and signed by an Authorized Representative as defined in Section 26-602.

(c) 90-Day Compliance Reports – Categorical Industrial Users.

(1) New Sources: All New Sources subject to existing Categorical Pretreatment Standards shall submit a report to the City within ninety (90) days from the date of first discharge to the POTW demonstrating actual and continuing compliance with those Standards.

(2) Existing Sources: All Existing Sources required to comply with newly promulgated Categorical Pretreatment Standards shall submit a report to the City within ninety (90) days of the date on which compliance is required with those Standards demonstrating that actual and continuing compliance with such Standards has been achieved.

(3) Such 90-day Compliance Report shall contain at a minimum the information required in Section 26-606(f) subparagraphs (6), (7), (10), (11), (12), and (13).

(d) 24 Hour Notice and 30 Day Re-sampling.

If sampling performed by an Industrial User indicates a violation of this Article, the Industrial User shall notify the City within twenty-four (24) hours of becoming aware of the violation. The Industrial User shall also repeat the sampling and analysis and submit the

results of the repeat analysis to the City within thirty (30) days after becoming aware of the violation. The Industrial User is not required to resample if the following occurs:

(1) The City performs sampling at the Industrial User's facility at a frequency of at least once per month.

(2) The City performs sampling at the Industrial User's facility between the time when the Industrial User performs its initial sampling and the time when the Industrial User receives the results of this sampling. It is the sole responsibility of the Industrial User to verify if the City has performed this sampling.

(e) Slug Discharge Control Plan.

(1) Each Industrial User shall provide protection from accidental and slug discharges of pollutants regulated under this Article. Facilities to prevent the discharge of spills or slug loads shall be provided and maintained at the Industrial User's expense.

(2) The City shall evaluate whether each Significant Industrial User needs a Slug Discharge Control Plan or other action to control spills and slug discharges. The City may require an Industrial User to develop, submit for approval, and implement a Slug Discharge Control Plan or take such other action that may be necessary to control spills and slug discharges.

(3) A Slug Discharge Control Plan shall address, at a minimum, the following:

(i) Detailed plans (schematics) showing facility layout and plumbing representative of operating procedures;

(ii) Description of contents and volumes of any process tanks;

(iii) Description of discharge practices, including non-routine batch discharges;

(iv) Listing of stored chemicals, including location and volumes;

(v) Procedures for immediately notifying the City of any spill or Slug Discharge. It is the responsibility of the Industrial User to comply with the reporting requirements in Section 26-611(f);

(vi) Procedures to prevent adverse impact from any accidental or Slug Discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response; and

(vii) Any other information as required by the City.

(4) Notice to employees. A notice shall be permanently posted on the Industrial User's bulletin board or other prominent place advising employees who to call in the event of an accidental or slug discharge. Employers shall ensure that all employees who work in any area where an accidental or slug discharge may occur or originate are advised of the emergency notification procedures.

(f) Reports of Potential Problems – Slug and Spills.

(1) In the case of any changes at its facility affecting potential for a Slug Discharge as defined in Section 26-602 or any actual discharge, including, but not limited to, spills, accidental discharges, discharges of a nonroutine, episodic nature, a non-customary batch discharge, or a discharge that may cause potential problems for the POTW, the Industrial User shall immediately telephone and notify the City of the incident. This notification shall include:

(i) Name of the facility
(ii) Location of the facility
(iii) Name of the caller
(iv) Date and time of discharge
(v) Date and time discharge was halted
(vi) Location of the discharge
(vii) Estimated volume of discharge
(viii) Estimated concentration of pollutants in discharge
(ix) Corrective actions taken to halt the discharge
(x) Method of disposal if applicable

(2) Within five (5) working days following such discharge, the Industrial User shall, unless waived by the City, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the Industrial User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the Industrial User of any fines, penalties, or other liability which may be imposed pursuant to this Article.

(g) Reports for Non-Significant Industrial Users.

If the City deems it necessary to assure compliance with provisions of this Article, any Industrial User of the POTW may be required to submit an Industrial Discharge Permit Application, questionnaire or other reports and notifications in a format and timeframe as specified by the City.

(h) Signatory Certification.

All reports and other submittals required to be submitted to the City shall include the following statement and signatory requirements.

1. The Authorized Representative of the Industrial User signing any application, questionnaire, any report or other information required to be submitted to the City must sign and attach the following certification statement with each such report or information submitted to the City.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or the persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."

2. If the Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this Section and meeting the definition in Section 26-602 must be submitted to the City prior to or together with any reports to be signed by an Authorized Representative.

(i). Compliance Schedules.

Should any schedule of compliance be established in accordance with the requirements of this Article, the following conditions shall apply to such schedule:

(1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable Categorical Pretreatment Standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.);

(2) No increment referred to above shall exceed nine (9) months;

(3) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the City including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the

Industrial User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the City.

(j) Change in Discharge or Operations.

(1) Every permitted Industrial User shall file a notification with the City a minimum of fourteen (14) days prior to any planned significant change in operations or wastewater characteristics. A significant change shall be a change equal to or greater than twenty percent (20%) in the mass of a pollutant or volume of flow discharged to the POTW. In addition, this notification shall include changes to:

(i) Adding or removing processing, manufacturing or other production operations.

(ii) New pollutants used which may be discharged.

(iii) Changes in the listed or characteristic hazardous waste for which the Industrial User has submitted or is required to submit information to the City under this Article and Section 26-611(k).

(2) Known or anticipated facility closure. The Industrial User is required to notify the City at least thirty (30) days prior to facility shutdown or closure which might alter the character, nature, quality, or volume of its wastewater.

(k) Notification of the Discharge of Hazardous Waste

1. Any Industrial User shall notify the City, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR Part 261. Such notification to the City shall be made within the appropriate time frames specified in Section 26-611, paragraphs (d), (f) and (j) within twenty-four (24) hours of becoming aware of the discharge, whichever is shorter.

Such notification must include:

a. The name of the hazardous waste as set forth at 40 CFR Part 261;

b. The EPA hazardous waste number;

c. The type of discharge (continuous, batch, or other);

d. An identification of the hazardous constituents contained in the wastes;

e. An estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month;

f. An estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months;

g. Certification that the Industrial User has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical; and

h. Signatory certification as required by Section 26-611(h).

2. Any Industrial User shall notify the EPA Regional Waste Management Division Manager, and state hazardous waste authorities, in writing, of the discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR Part 261 and meets the reporting criteria specified at 40 CFR 403.12(p). Notification to the State and EPA is the responsibility of the Industrial User and shall be made as required under 40 CFR Section 403.12(p). The Industrial User shall copy the City on all notifications made to the State and EPA.

3. In the case of any new regulation under Section 3001 of the Resource Conservation and Recovery Act (RCRA) identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the Industrial User must notify the City, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

4. This provision does not create a right to discharge any substance not otherwise allowed to be discharged by this Chapter, a permit issued hereunder, or any applicable federal or state law.

(l) Requests for Information

(1) A permittee shall furnish to the City, within the timeframe set by the Administrator, any information which the City may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating an industrial discharge permit, or to determine compliance with the Industrial discharge permit or this Article. A permittee shall also, upon request, provide to the City, within the timeframe required by the Administrator, copies of any records that are required by the Industrial discharge permit or this Article.

(2) When requested by the City, any Industrial User shall submit information to the Administrator regarding industrial processes, nature and characteristics of wastes and wastewaters generated at the industrial facility, method of disposal of wastes, or other information required by the Administrator to meet the responsibilities under this Article, State law, and 40 CFR Part 403. Failure to provide information within the timeframe specified shall be a violation of this Article.

Sec. 26-612. Right of Entry.

(a) Whenever it shall be necessary for the purposes of this Article, the City may enter upon any Industrial User's facility, property, or premises subject to this Article for the purposes of:

(1) Performing all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable Pretreatment Standards and Requirements by an Industrial User. Compliance monitoring and inspection shall be conducted at a frequency as determined by the City and may be announced or unannounced;

(2) Examining and copying any records required to be kept under the provisions of this Article or of any other local, state or federal regulation;

(3) The City may use a camera to photograph any areas of the facility as deemed necessary for carrying out the duties of the industrial pretreatment program including, but not limited to, documentation of the industrial user's compliance status and for reinforcement of required written reports. The industrial user shall be allowed to review copies of photographs for confidentiality claims.

(4) Inspecting any monitoring equipment or method, pretreatment system equipment and/or operation;

(5) Sampling any discharge of wastewater into POTW; and/or

(6) Inspecting any production, manufacturing, fabricating or storage area where pollutants, regulated under this Article, could originate, be stored, or be discharged to the POTW.

(b) The occupant of such property or premises shall render all proper assistance in such activities. Where an Industrial User has security measures in place which require proper identification and clearance before entry into its premises, the Industrial User shall make necessary arrangements with its security personnel so that authorized representatives of the City will be permitted to enter without delay to perform their specified functions.

(c) The Administrator is entitled to enter all private properties through which the City or any connecting jurisdiction holds an easement.

(d) Failure to allow entry or unreasonable delays: In the event the Administrator is refused admission or unreasonably delayed is a violation and may result in enforcement action as allowed for under this Article including revocation of the Industrial Discharge Permit.

(e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the Industrial User at the written

or verbal request of the Administrator and shall not be replaced. The costs of clearing such access shall be borne by the User.

(f) If the Administrator has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this Article or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the Administrator may seek issuance of a search warrant from a Court of competent jurisdiction.

~~Sec. 26-607. - Pretreatment program administration.~~

~~A. *Industrial discharge permits.* No significant industrial user shall discharge wastewater to the WWS without having a valid industrial discharge permit issued by the city and without having paid all fees required by Rule 24.7 of the rules and regulations. No users' discharge shall violate any pretreatment requirements or conditions contained therein. Significant industrial users shall apply for permit renewal at least ninety (90) days prior to the permit expiration date specified therein.~~

~~B. *Compliance reports.*~~

~~(1) Within ninety (90) days following the date for final compliance with applicable pretreatment standards or requirements, or in the case of a new source, following commencement of the introduction of wastewater into the WWS, any significant industrial user subject to federal, state or city pretreatment standards and requirements shall submit to the city a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by such standards and requirements and all other information required by the administrator and the rules and regulations as adopted by the department.~~

~~(2) All significant industrial users shall submit to the city at least once every six (6) months, on dates specified by the city, a description of the nature, concentration, and flow of the pollutants as well as any other information required to be reported by the city.~~

~~C. *Categorical pretreatment standards.* Within six (6) months after the promulgation of a national categorical pretreatment standard the industrial discharge permit of users subject to such standards shall be revised to require compliance by the prescribed compliance date. In addition, any significant industrial user with an existing industrial discharge permit shall submit to the city within one hundred eighty (180) days after promulgation of an applicable national categorical pretreatment standard a baseline report and any information required by 40 CFR Section 403.12 of the Federal General Pretreatment Regulations as amended. New sources shall submit a baseline report and required information ninety (90) days prior to commencement of discharge. New sources shall comply with all applicable categorical pretreatment standards in the shortest feasible time, but in no case more than ninety (90) days, following commencement of discharge.~~

~~D. *Self-monitoring.*~~

(1) All industrial discharge permit holders shall monitor, sample, maintain records and submit reports in conformance with the permit. Reports shall include all permit conditions specified therein and as required in this section. Sampling techniques shall be in conformance with applicable portions of 40 CFR 403.12. The reports required in this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. If any pollutant is monitored more frequently than required by the permit conditions, the results of this monitoring shall be included in the report. If sampling indicates a violation, the significant industrial user shall notify the city within twenty-four (24) hours of becoming aware of the violation. The significant industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the city within thirty (30) days after becoming aware of the violation.

(2) The reports required herein shall include the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The reports shall be signed:

(a) By a responsible corporate officer if the significant industrial user submitting the reports is a corporation. For the purpose of this section, a responsible corporate officer means (1) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-or decision-making functions for the corporation, or (2) the manager of one or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars ($25,000,000.00) (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(b) By a general partner or proprietor if the significant industrial user submitting the reports is a partnership or sole proprietorship respectively;

(c) By a duly authorized representative of the individual designated in paragraphs (a) and (b) of this section if (1) the authorization is made in writing by the individual described in paragraphs (a) and (b); (2) the

authorization specifies either an individual or a position have responsibility for the overall operation of the facility from which the discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and (3) the written authorization is submitted to the administrator.

The reports submitted under this section shall be subject to:

(a) The provisions of 18 U.S.C. Section 1001 relating to fraud and false statements; and

(b) The provisions of Sections 309(c)(4) of the Act, as amended, governing false statements, representation or certification.

E. *Notification of changed discharge.* All industrial users shall promptly notify the city (1) of all discharges that could cause problems, including slug discharges; and (2) in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under paragraph F. of this section.

F. *Notification of hazardous materials.*

(1) Industrial users shall notify the city, the EPA Regional Waste Management Division director, and State hazardous waste authorities in writing of any discharge into the WWS of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch or other). If the industrial user discharges more than one hundred (100) kilograms of such waste per calendar month to the WWS, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place by February 19, 1991 or in the case of users who commence discharging after August 23, 1990, within one hundred eighty (180) days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of paragraph D. above.

(2) Dischargers are exempt from the requirements of paragraph (1) of this section during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30 and 261.33. Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or any quantity of acute hazardous wastes,

requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the city, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

(4) In the case of any notification made under this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

G. *Monitoring facilities.*

(1) Each significant industrial user shall provide, calibrate, and operate at its expense sufficient monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and internal drainage systems. Records shall be maintained documenting the calibration of all monitoring instruments. The monitoring facilities, including control manholes and continuous flow recorders, shall normally be situated on the user's premises. If such a location would be impractical or cause undue hardship on the significant industrial user as determined by the city, the administrator may allow the facility to be constructed in a public right-of-way provided all other applicable city ordinances and regulations governing such a construction have been met.

(2) A sampling manhole or facility shall have sufficient room for accurate sampling and preparation of samples for analysis. The facility shall be maintained at all times in a safe and proper operating condition at the expense of the significant industrial user.

(3) Whether constructed on public or private property, any sampling and monitoring facilities shall be built in accordance with city requirements and all applicable local construction standards and specification. Construction shall be completed within ninety (90) days following receipt of a written order by the administrator to install the facility.

H. *Inspection and sampling.* The city may inspect the facilities of any industrial user to determine whether the purpose of this article, the applicable rules and regulations, and all applicable requirements are being met. Owners, employees or occupants of premises where wastewater is discharged shall allow city representatives or agents ready access at all reasonable times to all parts of the premises where wastewater is created or discharged, including industrial process area, for the purposes of inspection, sampling, records examination and copying, or performance evaluation. Industrial users shall supply all information requested by the city during inspections or otherwise. The city may set up on the industrial user's property such devices as are necessary to conduct sampling inspection, compliance monitoring and/or metering operations. Where an industrial user has security measures in force which require proper identification and clearance before entry into the industrial user's premises, the industrial user shall make necessary arrangements with the security guards so that upon presentation of suitable identification, personnel authorized by the city or from the state or EPA will be permitted

~~to enter without delay for the purpose of performing their specific responsibilities under this article.~~

~~I. *Pretreatment.* Significant industrial users shall provide whatever wastewater pretreatment is required, in the opinion of the administrator, to comply with this article and shall comply with all national categorical pretreatment standards within the time limitations as specified by the Federal Pretreatment Regulations, this article and applicable rules and regulations. Any facilities required to pretreat wastewater to a level of quality acceptable to the city shall be provided, operated, and maintained at the significant industrial user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review, and must be approved by the city before construction of the facilities. The review or approval of such plans and operating procedures shall in no way relieve a significant industrial user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this article. Any subsequent change in the pretreatment facilities or method of operation shall be reported to and approved by the city prior to such change. Pretreatment facilities shall be satisfactorily and effectively maintained and continuously operated whenever wastewater is discharged to the WWS.~~

~~J. *Compliance schedules.* All industrial users shall comply with compliance schedules contained in any permits, notices or orders issued by the city.~~

~~(Ord. No. 85-4663, § 7, 9-9-85; Ord. No. 91-4886, § 5, 9-9-91; Ord. No. 92-4906, § 4, 7-27-92)~~

Sec. 26-61308. - Fees.

(a) *Purpose.* The purpose of this section is to provide for the payment to the ~~city~~ City by ~~significant~~ industrial users of the ~~WWS~~ POTW of all costs incurred in the implementation and administration of the industrial pretreatment program. The applicable charges and fees shall be set forth in a schedule adopted by the City C~~c~~ouncil.

(b) *Charges and fees.* The Administrator ~~C~~council may adopt additional charges and fees relating to the matters covered by this ~~article~~ Article, including fees for:

(1) Processing Industrial discharge permit applications.
(2) Reimbursement of costs of ~~setting up and~~ operating the industrial pretreatment program.
(3) Measuring, monitoring, inspection and surveillance procedures, sampling, testing, and analyzing ~~significant~~ industrial user wastewater.
(4) Reviewing and approving accidental discharge procedures and facilities.
(5) Fees as the ~~city~~ City may deem necessary to carry out the requirements contained herein.
(6) Fees to cover the added cost of handling or treating any wastes not covered by existing or regular monthly sewer service charges.

(Ord. No. 85-4663, § 8, 9-9-85)

~~Sec. 26-609. – Confidential information.~~

~~(a) Information and data regarding a significant industrial user obtained from reports, questionnaires, permit application, permits and monitoring programs and from inspections shall be available to the public or governmental agencies without restriction, unless the significant user specifically requests and is able to demonstrate to the satisfaction of the administrator that the release of such information would divulge information entitled to protection as a trade secret of the significant industrial user. In such case restricted information shall not be made available to the public, but shall nevertheless be made available to other governmental agencies for purposes related to water pollution control, including judicial review of enforcement of the provisions of this article.~~

~~(b) Wastewater constituents and characteristics will not be recognized as confidential information.~~

~~(c) Information accepted by the administrator as confidential shall not be transmitted to the general public by the city unless, upon application by an interested party, a District Court orders that the information be released.~~

~~(Ord. No. 85-4663, § 9, 9-9-85; Ord. No. 91-4886, § 7, 9-9-91)~~

Sec. 26-61~~410~~. ~~–~~ Compliance and enforcement~~Actions for violation; enforcement.~~

(a) Enforcement Response Plan.

The City may adopt policies and procedures as set forth in the City's Enforcement Response Plan for carrying out the provisions of this Article, provided that such policies and procedures are not in conflict with this Article or any applicable state or federal law or regulation.

(b) Publication of Industrial Users in Significant Noncompliance.

The City shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Significant Industrial Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. In addition, any Industrial User found to be in Significant Noncompliance with (3), (4) or (8) shall also be published in the newspaper. The following criteria shall be used to define Significant Noncompliance:

(1) Chronic violations of wastewater discharge limits, defined as those in which sixty-six (66) percent or more of all of the measurements taken during a six-month period exceed, by any magnitude, a numeric Pretreatment Standard or Requirement, including instantaneous limits.;

(2) Technical Review Criteria (TRC) violations, defined as those in which thirty-three (33) percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric

Pretreatment Standard or Requirement including instantaneous limits multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease and 1.2 for all other pollutants except pH);

(3) Any other violation of a Pretreatment Standard or Requirement (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the Administrator determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of City personnel or the general public;

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or the environment or has resulted in the City's exercise of its emergency authority to halt or prevent such a discharge;

(5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction or attaining final compliance;

(6) Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation or group of violations which may include a violation of Best Management Practices, which the Administrator determines may adversely affect the operation or implementation of the local pretreatment program.

~~(a) *Notice to violators.* Any person found to be violating the provisions of this article shall be served by the city with written notice stating the nature of the violation and action needed for its satisfactory correction. The offender shall immediately take action to permanently cease all violations as directed by the city. The issuance of a correction notice does not constitute a defense to a criminal charge which is concurrently or subsequently filed for the same violation.~~

(c) Administrative Enforcement Actions.

(1) Notice of Violation (NOV).

When the City finds that an Industrial User has violated, or continues to violate, any provision of this Article, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may serve upon the Industrial User a written Notice of Violation. Within five (5) working days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction of prevention thereof, to include specific required actions, shall be submitted by the Industrial User to the City. Submission of such a plan in no way relieves the Industrial User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this Section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

(2) Suspension of Service.

Endangerment to Health or Welfare of the Community: The City, through other than a formal notice to the affected Industrial User, may immediately and effectively halt or prevent any discharge of pollutants into any natural waterway, surface drainage within the City, any area under jurisdiction of the City, the POTW of the City or any wastewater system tributary thereto, by any means available to them, including physical disconnection from the wastewater system, whenever it reasonably appears that such discharge presents an imminent endangerment to the health or welfare of the community.

Endangerment to Environment or Treatment Works: The City, after written notice to the industrial user may halt or prevent any discharge of pollutants into any natural waterway, surface drainage within the City, any area under jurisdiction of the City, the POTW, wastewater system tributary thereto, by any means available to them, including physical disconnection from the wastewater system, whenever such discharge presents or may present an endangerment to the environment or threatens to interfere with the operation of the POTW.

Any person notified of a suspension of the wastewater treatment service and/or the Industrial Discharge Permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the City shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to individuals or the environment. The City may reinstate the Industrial Discharge Permit and/or the wastewater treatment service upon proof of the elimination of the non-complying discharge.

A detailed written statement submitted by the Industrial User describing the causes of the harmful contribution and the measure taken to prevent any future occurrence shall be provided to the City within five (5) days of the date of occurrence. Suspension of Service shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User.

~~(b) *Harmful contributions or interference with the wastewater system.*~~

~~(1) The administrator may cancel a significant industrial user's permission to discharge wastewaters into the WWS, reject such wastewater, may cease wastewater treatment service, and/or suspend a significant industrial user's industrial discharge permit when such suspension is necessary, in the opinion of the administrator, to stop or preclude a harmful contribution to the WWS or a discharge which interferes with or has a deleterious effect upon the WWS.~~

~~(2) Any significant industrial user notified of a suspension or cancellation of wastewater treatment service and/or the industrial discharge permit shall immediately stop or eliminate the contribution or discharge. In the event of a failure by such significant industrial user to comply voluntarily with the suspension order, the administrator shall take such steps as are deemed necessary,~~

~~including immediate severance of the sewer connection, to prevent or minimize damage to the WWS system, danger to individuals or harm to the receiving water. The administrator may reinstate the industrial discharge permit and/or the wastewater treatment service only upon proof of compliance with the suspension order, including payment of any fees or penalties. A detailed written statement submitted by the significant industrial user describing the causes of the harmful contribution and the measures actually taken to prevent any future occurrence shall be submitted to the city within five (5) business days from the date of occurrence.~~

(3) Administrative Compliance Order.

When the City finds that an Industrial User has violated, or continues to violate, any provision of this Article, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may issue an order to the Industrial User responsible for the discharge directing that the Industrial User come into compliance within a specific time. If the Industrial User does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the POTW. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the Industrial User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User.

(4) Consent Order.

The City may enter into a Consent Order, assurances of compliance, or other similar documents establishing an agreement with any Industrial User responsible for noncompliance. Such documents shall include specific actions to be taken by the Industrial User to correct the noncompliance within a time period specified by the document. A consent order may include penalties, supplemental environmental projects, or other conditions and requirements as agreed to by the City and the Industrial User.

(5) Show Cause Hearing.

(i) The City may order any Industrial User who causes or allows an unauthorized discharge to enter the POTW to show cause before the Administrator why the proposed enforcement action should not be taken. A notice shall be served on the Industrial User specifying the time and place of a hearing to be held by the Administrator regarding the violation,

the reasons why the proposed action is to be taken, and directing the Industrial User to show cause before the Administrator why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or be sent by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.

(ii) The Administrator may conduct the hearing and take the evidence, or may designate one or more persons to conduct the hearing and to take the following actions:

(A) Issue subpoenas requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings, The Administrator or the Industrial User may petition the Municipal Court to enforce any subpoena issued pursuant to this Section through the Court's contempt powers.

(B) Receive evidence from both the Industrial User and the Administrator on any relevant issue involved in such hearings, provided however, that the Montana Rules of Evidence shall not apply strictly to such evidence.

(C) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the administrator for final action thereon.

(iii) At any hearing held pursuant to this Article, testimony taken must be under oath and recorded. The transcript of testimony will be made available to any member of the public and any party to the hearing upon payment of reasonable charges for the preparation thereof. The hearing may be suspended or continued from time to time in the discretion of the presiding officer, provided that all evidence is received and the hearing is closed within sixty (60) days after it is commenced.

(iv) After the Administrator has reviewed the evidence, they may issue an order of findings and take an action or no action as necessary and appropriate.

(6) Cease and Desist Order

(i) When the Administrator finds that an industrial user is violating this Article, an Industrial Discharge Permit, any order issued hereunder, or any other Pretreatment Standard or Requirement, or that the industrial user's past compliance history indicates that violations are likely to recur, the

Administrator may issue an order to the user directing it to cease and desist all such violations and directing the industrial user to:

(A) Immediately comply with all requirements;

(B) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

(ii) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

(7) Administrative Fines.

(i) When the City finds that an Industrial User has violated, or continues to violate, any provision of this Article, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may fine such Industrial User in an amount not to exceed one thousand dollar ($1,000) per day per violation. Such fines shall be assessed on a per-violation, per day basis. In the case of monthly or other long-term average discharge limits, fines may be assessed for each day during the period of violation. Issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the Industrial User.

~~(c) *Revocation of permit/termination of service.* Any significant industrial user who violates the following conditions of this article, the city's rules or regulations or applicable state and federal laws is subject to permit revocation or service termination, or both, in accordance with the procedures set forth in said rules and regulations or this section:~~

~~(1) Failure to factually report wastewater constituents and characteristics or permit violations.~~

~~(2) Failure to report significant changes in operations or wastewater constituents and characteristics.~~

~~(3) Refusal or physical obstruction of reasonable access to the user's premises for the purposes of inspection, monitoring, review of records concerning wastewater or any purpose listed under section 26-607(G).~~

~~(4) Violation of conditions of the industrial discharge permit.~~

~~(5) Failure to obtain or maintain a valid industrial discharge permit.~~

~~(6) Failure to file required reports or give notices.~~

~~(7) Failure to comply with a city order or compliance schedule.~~

~~(8) Failure to provide for protection against spills, slug discharges or accidental discharges.~~

~~(9) Use of excessive discharge per section 26-604(e).~~

~~(10) Failure to properly sample discharge with intent to deceive.~~

~~(11) Failure to pay the applicable charges and fees.~~

(d) Judicial Enforcement Remedies.

(1) Injunctive Relief.

When the City finds that an Industrial User has violated, or continues to violate, any provision of this Article, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may petition the Billings Municipal Court for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the Industrial Discharge Permit, order, or other requirement imposed by this Article on activities of an Industrial User. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the Industrial User to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against an Industrial User.

(2) Civil Penalties.

(i) An Industrial User who has violated, or continues to violate, any provision of this Article, an Industrial Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement shall be liable to the City for a maximum civil penalty not to exceed one thousand dollars ($1,000) per day per violation. In the case of a monthly or other long-term average discharge limit, penalties may accrue for each day during the period of violation.

(ii) The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.

(iii) In determining the amount of civil liability, the City shall take into account all relevant circumstances including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the Industrial User's violation, corrective actions by the Industrial User, the compliance history of the Industrial User, and any other factor as justice requires.

(iv) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against an Industrial User.

(3) Civil/Administrative Fine Pass Through.

In the event that an Industrial User discharges such pollutants which cause the City to violate any condition of its MPDES permit and the City is fined by the

EPA or the State for such violation, then such Industrial User shall be fully liable for the total amount of the fine assessed against the City by the EPA and/or the State.

(4) Criminal prosecution

(i) Any Industrial User who violates or fails to comply with any provision of this Article or with any orders, rules, regulations, permits and permit conditions issued hereunder, shall, upon conviction, be guilty of a misdemeanor. The penalty for such misdemeanor shall be a fine not to exceed five hundred dollars ($500.00) or by imprisonment not to exceed six (6) months, or both.

(ii) Any Industrial User who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan or other document filed or required to be maintained pursuant to this Article, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under this Article, shall, upon conviction, be guilty of a misdemeanor, punishable by a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six (6) months, or both.

(iii) The City may refer violations that warrant criminal prosecution to the U.S. Attorney General's Office, State Attorney General or USEPA Criminal Investigation Division or other appropriate agency. Such referral shall not preclude the City from taking a parallel administrative or civil enforcement action.

(e) Cost Recovery

In any judicial action, the City may recover reasonable attorney fees, court costs, deposition and delivery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation if the City prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this Article or the Rules and Regulations shall become liable to the City for any expense, loss, or damage to the City or to the POTW occasioned by such violation including, but not limited to, investigative/monitoring expenses, fines, penalties, cleaning, repair or replacement work caused by and in connection with the violation. In addition, upon proof of willful or intentional meter bypassing, meter tampering, or unauthorized metering, the City shall be entitled to recover as damages three (3) times the amount of actual damages.

(~~d~~f) Remedies Nonexclusive. The remedies provided for in this Article are not exclusive of any other remedies that the City may have under the provisions of Montana law. ~~If any person violates any order of the administrator or otherwise fails to comply with any~~

provisions of this article or rules and regulations or the orders, rules, regulations and permits issued hereunder, or discharges sewage, industrial wastes or other wastes, into the WWS or into state waters contrary to the provisions of this article, federal or state pretreatment requirements, or contrary to any order of the city, or to the extent that the discharge constitutes a harmful contribution, the city may commence an action in a court of record for appropriate legal and equitable relief. In such action, the city may recover from the defendant reasonable attorney fees, court costs, deposition and delivery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation if the city prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this article or rules and regulations shall become liable to the city for any expense, loss, or damage to the city or to the WWS occasioned by such violation including, but not limited to, investigative/monitoring expenses, fines, penalties, cleaning, repair or replacement work caused by and in connection with the violation. In addition, upon proof of willful or intentional meter bypassing, meter tampering, or unauthorized metering, the city shall be entitled to recover as damages three (3) times the amount of actual damages.

(e) *Misdemeanor*. Any person who violates or fails to comply with any provision of this article or with any orders, rules, regulations, permits and permit conditions issued hereunder, shall be guilty of a misdemeanor. The penalty for such misdemeanor shall be a fine not to exceed five hundred dollars ($500.00) or by imprisonment not to exceed six (6) months, or both. Each day in which any such violation occurs or persists shall be deemed a separate and distinct offense.

(f) *Penalty for false statement and tampering*. Any person who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan or other document filed or required to be maintained pursuant to this article, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under this article, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six (6) months, or both.

(g) *Civil penalty*. Any person who violates or fails to comply with any provision of this article or with any orders, rules, regulations, permits or permit conditions issued hereunder shall forfeit and pay to the city a civil penalty of one thousand dollars ($1,000.00) per violation. Each day in which any violation occurs or persists shall be deemed a separate and distinct violation. Said civil penalty, if not immediately paid, is enforceable by petition to a court of competent jurisdiction. In addition to the civil penalty contained herein, violators shall be liable to the city for any expense, loss or damage to the city or to the WWS including, but not limited to, investigative/monitoring expenses, fines, penalties, loss or damage, cleaning, repair or replacement work caused by and in connection with the violation. The city shall bill the violator for such expenses. Refusal to pay the assessed costs shall constitute a separate and distinct violation.

(h) *Remedies cumulative*. The remedies provided for in state and federal law, this section and this article, including but not limited to, criminal prosecution, recovery of costs, administrative fines, and treble damages, shall be cumulative. One or all of the penalties, sanctions, fines and remedies may be imposed at the discretion of the city.

~~(Ord. No. 85-4663, § 10, 9-9-85; Ord. No. 91-4886, § 6, 9-9-91; Ord. No. 92-4906, § 5, 7-27-92; Ord. No. 97-5022, § 8, 5-27-97; Ord. No. 06-5356, § 15, 1-9-06)~~

Sec. 26-61511~~11~~. - Pretreatment authority outside of ~~city~~ City.

In order to achieve and maintain compliance with the Clean Water Act, federal pretreatment requirements, S~~s~~tate regulations, sewage grant conditions and MPDES~~WWTP~~ discharge permit requirements, the City of Billings, as manager/operator shall have the authority to implement and enforce the pretreatment program ~~of the WWS, must possess and demonstrate a clear legal right to require compliance with pretreatment requirements by any significant industrial user of the WWS~~ against any industrial user within and ~~located~~ outside of the ~~city~~ City's territorial jurisdiction who discharges directly or indirectly to the POTW or any collection system connected to the City POTW.

To that end, all governmental sewage connectors, municipalities and~~including~~ sanitation districts, shall be required to ~~legally~~ adopt a regulatory pretreatment program either

(a) ~~-~~Is consistent with and as stringent with this Articles and the Rules and Regulations;~~parallel to this article and rules and regulations,~~ or

(b) ~~-~~ I~~i~~ncorporates by reference~~ing~~ the provisions of this ~~article~~ Article and the R~~r~~ules and R~~r~~egulations and specifically delegates authority to implement and enforce the pretreatment program to the City~~and requiring significant industrial users to comply with the city pretreatment program~~.

~~The c~~Connectors, municipalities, sanitation ~~including~~ districts, shall also be required to approve necessary revisions to existing sewer service agreements or joint agreements granting the ~~city~~ City the right to administer and physically enforce the connector's pretreatment program on behalf of and as agent for the connector district. ~~Such supplemental or indirect regulatory authority accorded to the city shall only be used where direct contractual relationships with significant industrial users through the industrial discharge permit program prove insufficient to ensure compliance with the pretreatment program.~~

(Ord. No. 85-4663, § 11, 9-9-85)

Sec. 26-616. Affirmative Defenses to Discharge Violations.

(a) Upset.

(1) For the purposes of this Article, upset means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

(2) An upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of paragraph (3) below are met.

(3) An Industrial User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and the Industrial User can identify the cause(s) of the upset;

(ii) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and

(iii) The Industrial User has submitted the following information to the City within twenty-four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):

(A) A description of the Indirect Discharge and cause of noncompliance;

(B) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

(C) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(4) In any enforcement proceeding, the Industrial User seeking to establish the occurrence of an upset shall have burden of proof.

(5) Industrial users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with Categorical Pretreatment Standards.

(6) Industrial users shall control (decrease) production of all discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

(b) Prohibited Discharge Standards.

An Industrial User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the specific prohibitions in any action brought against it alleging a violation of the Specific Prohibitions in Section 26-604(b) paragraphs (3), (4), (5), (6) or (7) where the user demonstrates that:

(1) It did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause Pass Through or Interference; and

(2) The Industrial User had accurately disclosed the concentration of the pollutant(s) causing the Pass Through or Interference in applications, reports, or other required documents as required; and either:

(i) A local limit designed to prevent Pass Through and/or Interference, as the case may be was developed for each pollutant in the Industrial User's discharge that caused Pass Through or Interference, and the Industrial User was in compliance with each such local limit directly prior to and during the Pass Through or Interference; or

(ii) If a local limit designed to prevent Pass Through and/or Interference, as the case may be, has not been developed for the pollutant(s) that caused the Pass Through or Interference, the Industrial User's discharge directly prior to and during the Pass Through or Interference did not change substantially in nature or constituents from the User's prior discharge activity when the POTW was regularly in compliance with the POTW's MPDES permit requirements and, in the case of Interference, applicable requirements for sewage sludge use or disposal.

(c) Bypass

(1) For purposes of this Subsection:

(i) Bypass means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.

(ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not violating applicable Pretreatment Standards or Requirements. An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential

maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (3) and (4) of this Section but are reportable under Section 26-611(a), (d), (f), (j) and (k), as appropriate.

(3) Notice.

(i) If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Director, if possible, at least ten (10) days before the date of the bypass.

(ii) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Administrator within twenty four (24) hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Administrator may waive the written report on a case-by-case basis if the oral report has been received within twenty four (24) hours.

(4) Prohibition of Bypass.

(i) Bypass is prohibited, and the Administrator may take enforcement action against an Industrial User for a bypass, unless;

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(C) The Industrial User submitted notices as required under paragraph (3) of this Section.

(ii) The Administrator may approve an anticipated bypass, after considering its adverse effects, if the Administrator determines that it will meet the three (3) conditions listed in paragraph (4)(i) of this Section.

Sec. 26-61~~2~~7. - Severability; R~~r~~epealer; E~~e~~ffective D~~d~~ate.

(a) *Severability*. If any part or parts of this ~~article~~ Article are held by any court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of said ~~article~~ Article.

(b) *Repealer*. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

(c) *Effective date*. That this ~~article~~ Article [Ordinance Number 85-4663] shall be effective from and after final passage and as provided by law.

(Ord. No. 85-4663, § 12, 9-9-85)

Consent **1. K.**

Regular City Council Meeting

Meeting Date: 05/28/2013

TITLE: Second Reading of Ordinance Amending Ward I Boundary: Annexation 13-03

PRESENTED BY: Candi Beaudry

Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

City election ward boundaries must be adjusted to conform to city limit amendments resulting from annexation of property into the City. The City Council approved the annexation of property at the southeast corner of Bench Boulevard and Yellowstone River Road (Annexation #13-03) on April 22, 2013. This requires a change in the boundaries of Ward I. Two readings are required for this action. The first reading of the ordinance was approved May 13, 2013, and a public hearing was conducted. The second reading is scheduled for this meeting.

ALTERNATIVES ANALYZED

City Council may approve or not approve the ordinance to amend the boundaries of Ward I on second reading.

- Approving the ordinance will modify the boundaries of Ward I to include the property at the southeast corner of Bench Boulevard and Yellowstone River Road.
- Denying the ordinance will not modify the boundaries of Ward I and create a problem where property inside the City Limits is not within one of the City Ward Boundaries.

FINANCIAL IMPACT

There is no budget/financial impact from this action.

RECOMMENDATION

Staff recommends that Council approve this ordinance on second reading adding recently annexed property to Ward I.

APPROVED BY CITY ADMINISTRATOR

Attachments

Ward Ordinance

ORDINANCE NO. 13-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD I PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. AMENDMENT. Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to Ward I the following described real property:

   A tract of land situated in the NW1/4 of Section 26, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

   Tract 1, Certificate of Survey No. 1706, Recorded October 18, 1977, under Document No. 1067544. Including all adjacent Right-Of-Way of Yellowstone River Road and Bench Boulevard. Containing 1.962 gross and 1.445 net acres more or less. (# 13-03) See Exhibit "A" Attached

2. CERTIFICATION. Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.

3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 13th day of May 2013.

PASSED by the City Council on the second reading this 28th day of May, 2013.

THE CITY OF BILLINGS:

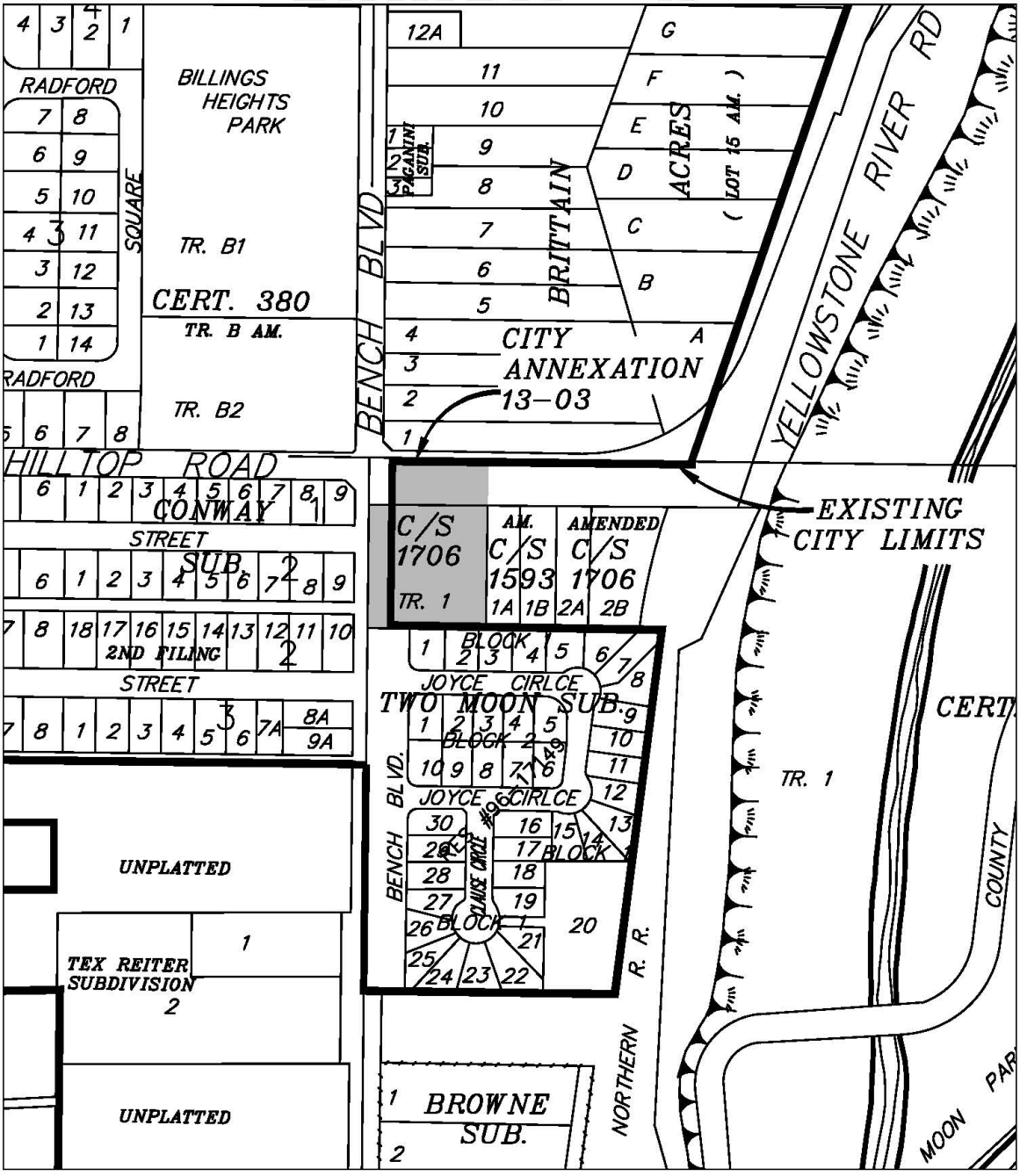
_____
Thomas W. Hanel, MAYOR

ATTEST:

BY:_____
Cari Martin, CITY CLERK

(AN 13-03)

EXHIBIT "A"


BILLINGS HEIGHTS PARK
TR. B1
CERT. 380
TR. B AM.
TR. B2
RADFORD
SQUARE
BENCH BLVD
BRITTAIN ACRES
PAGANINI SUB.
CITY ANNEXATION 13-03
YELLOWSTONE RIVER RD
HILLTOP ROAD
CONWAY STREET SUB. 2
2ND FILING
STREET
C/S 1706
TR. 1
AM. C/S 1593
AMENDED C/S 1706
1A 1B 2A 2B
EXISTING CITY LIMITS
TWO MOON SUB.
JOYCE CIRLCE
BLOCK 1
BLOCK 2
CLAUSE CIRCLE
BLOCK 1
BENCH BLVD.
UNPLATTED
TEX REITER SUBDIVISION 2
UNPLATTED
BROWNE SUB.
NORTHERN R. R.
TR. 1
COUNTY
MOON

Consent **1. L.**

Regular City Council Meeting

Meeting Date: 05/28/2013

TITLE: Second Reading of Ordinance Amending Ward IV Boundary: Annexation 13-04

PRESENTED BY: Candi Beaudry

Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

City election ward boundaries must be adjusted to conform to city limit amendments resulting from annexation of property into the City. The City Council approved the annexation of property at the northwest corner of the intersection of Grand Avenue and 48th Street West (Annexation #13-04) on April 22, 2013. This requires a change in the boundaries of Ward IV. Two readings are required for this action. The first reading of the ordinance was approved on May 13 and a public hearing was conducted. The second reading is scheduled for this meeting.

ALTERNATIVES ANALYZED

City Council may approve or not approve the ordinance to amend the boundaries of Ward IV on second reading.

- Approving the ordinance will modify the boundaries of Ward IV to include the property at the northwest corner of the intersection of Grand Avenue and 48th Street West.
- Denying the ordinance will not modify the boundaries of Ward IV and create a problem where property inside the City Limits is not within one of the City Ward Boundaries.

FINANCIAL IMPACT

There is no budget/financial impact from this action.

RECOMMENDATION

Staff recommends that Council approve this ordinance on second reading adding recently annexed property to Ward IV.

APPROVED BY CITY ADMINISTRATOR

Attachments

Ward Ordinance

ORDINANCE NO. 13-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD IV PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. AMENDMENT. Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to Ward IV the following described real property:

   A tract of land situated in the SE1/4 of Section 32, T.1N., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as:

   Being a portion of the Tract 2 Remainder, Certificate of Survey No. 3295, Recorded November 22, 2006, under Document No. 3401405, Records of Yellowstone County, basis of bearing being the N-S Center Section line of said Section 32, per Document No 3401405,
   Beginning at the northwest corner of the Plat Of Zimmerman Acreage Tracts, Recorded May 27, 1958, under Document No. 601982, Records of Yellowstone County; thence N 00°04'17" W for a distance of 57.04 feet; thence N 89°55'43" E for a distance of 429.60 feet to a point on the east line of said Tract 2 Remainder; thence S 00°36'44" E along said east line for a distance of 417.06 feet to the south line of said Tract 2 Remainder also being the centerline of Grand Avenue; thence S 89°50'53" W along the said centerline for a distance of 2.41 feet to the Northwest Section Corner of Section 3, T.1S., R.25E., thence S 89°55'43" W and continuing along said centerline for a distance of 189.12 feet; thence leaving said centerline N 00°04'17" W for a distance of 30.00 feet to a point on the north right-of-way line of Grand Avenue said point also being on the east line of said Zimmerman Acreage Tracts; thence N 00°04'17" W

along said east line for a distance of 330.00 feet to the north east corner of said Zimmerman Acreage Tracts; thence S 89°55'43" W along the north line of said Zimmerman Acreage Tracts for a distance of 242.00 feet to the Point of Beginning. Including all adjacent right-of-way of Grand Avenue.

Containing 2.132 gross acres and 2.000 net acres more or less.

(# 13-04) See Exhibit "A" Attached

2. CERTIFICATION. Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.

3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 13th day of May 2013.

PASSED by the City Council on the second reading this 28th day of May, 2013.

THE CITY OF BILLINGS:

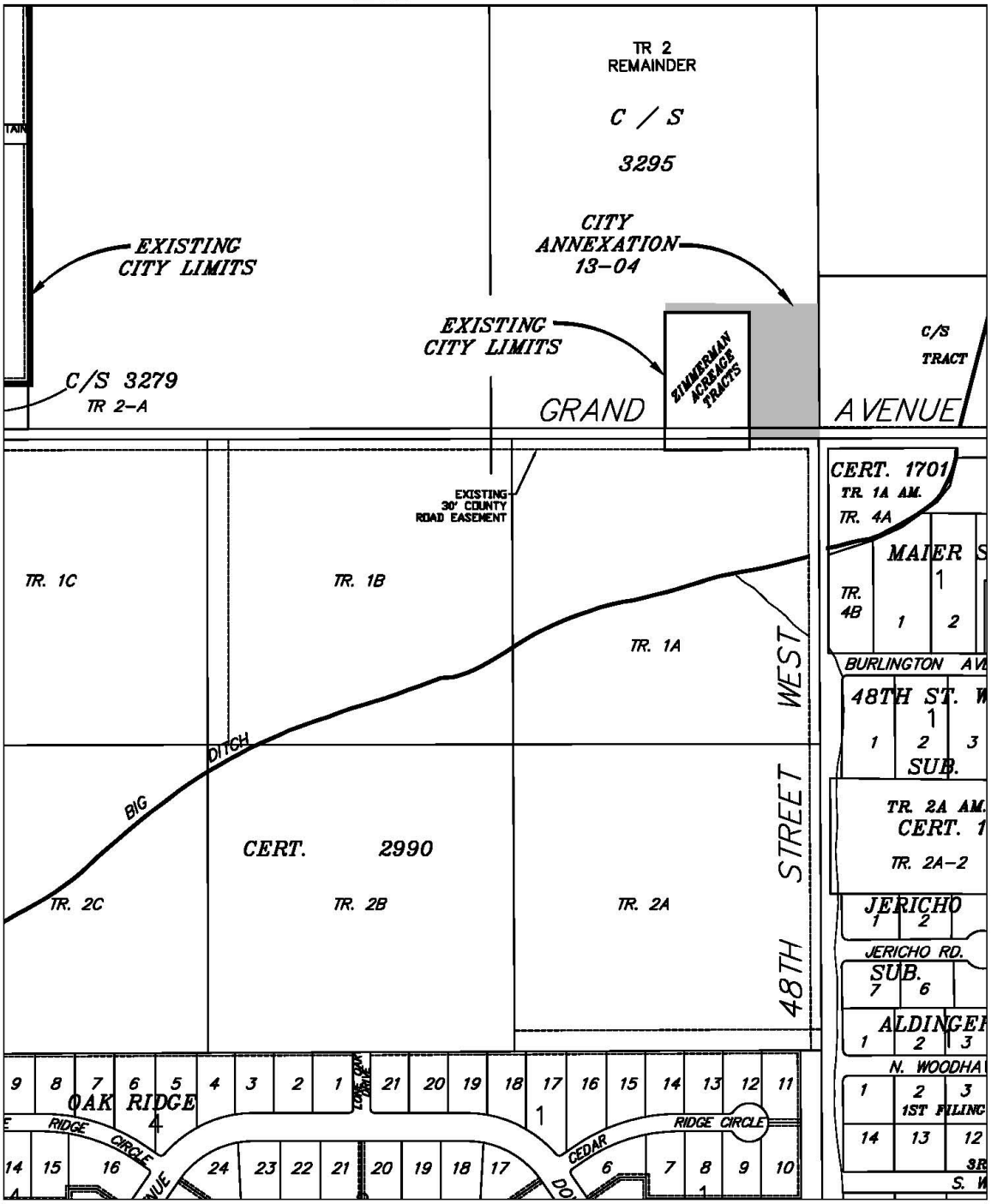
_____
Thomas W. Hanel, MAYOR

ATTEST:

BY:_____
Cari Martin, CITY CLERK

(AN 13-04)

EXHIBIT "A"


TR 2
REMAINDER
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3295
CITY
ANNEXATION
13-04
EXISTING
CITY LIMITS
EXISTING
CITY LIMITS
C/S 3279
TR 2-A
ZIMMERMAN
ACREAGE
TRACTS
GRAND
AVENUE
C/S
TRACT
EXISTING
30' COUNTY
ROAD EASEMENT
TR. 1C
TR. 1B
TR. 1A
WEST
48TH STREET
BIG
DITCH
CERT. 2990
TR. 2C
TR. 2B
TR. 2A
CERT. 1701
TR. 1A AM.
TR. 4A
MAIER
TR.
4B
BURLINGTON
48TH ST.
SUB.
TR. 2A AM.
CERT. 1
TR. 2A-2
JERICHO
JERICHO RD.
SUB.
ALDINGER
N. WOODHA
1ST FILING
OAK RIDGE
RIDGE CIRCLE
CEDAR
RIDGE CIRCLE

Consent **1. M.**

Regular City Council Meeting
Meeting Date: 05/28/2013
TITLE: Noise Ordinance Amendments - 2nd Reading
PRESENTED BY: Craig Hensel
Department: Legal

Information

PROBLEM/ISSUE STATEMENT

The Noise provisions in the Billings Municipal Code are codified in Chapter 17, and most of the provisions, including the sound level dB(A) limits, were enacted in 1967. The sound level limitations have proven outdated and unworkable, as typical ambient noise often violates the existing levels in various zoning classifications at both daytime and nighttime limits. The attached ordinance amends sound level limits to more workable levels, clarifies and specifies criteria for noise violations, omits unnecessary language and sections, and provides for noise waiver procedures. Some code sections deemed unnecessary or duplicative of other code sections are stricken entirely. The time periods for increased sound levels in different zoning classifications have been expanded to begin one hour earlier starting at 7:00 a.m. to accommodate the wishes of the construction industry. This item was presented and discussed at the April 15 Council Work Session, at which time the Council directed Staff to proceed to 1st Reading. At 1st reading on May 13th, the Council approved the attached ordinance by unanimous vote.

ALTERNATIVES ANALYZED

Approve the ordinance as amended or disapprove the proposed ordinance amendment.

FINANCIAL IMPACT

There is no anticipated cost to the City to enact this ordinance.

RECOMMENDATION

Staff recommends the Council approve the attached ordinance on Second Reading.

APPROVED BY CITY ADMINISTRATOR

Attachments

Noise Ordinance Amendments

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA MUNICIPAL CODE BE AMENDED BY GENERALLY REVISING CHAPTER 17, REPEALING SECTIONS 17-103, 17-105, 17-109, 17-110, 17-111, AMENDING SECTIONS 17-101, 17-102, 17-104, 17-106, 17-107, 17-112 AND RENUMBERING ACCORDINGLY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That the Billings, Montana, City Code be amended by amending certain sections of Chapter 17 - NOISE, as follows:

Chapter 17 - NOISE

Sec. 17-101. - Definitions.

As used in this chapter, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

Ambient noise is the noise which exists at a point of measurement in the absence of the sound emitted by the source being measured, being the total effect of all other sounds coming from near and far.

~~*DBA*~~ dB(A) means sound levels in decibels measured on an "A" scale of a standard sound level meter having characteristics defined by the American National Standards Institute, Publication S.4-1970.

Decibel. Sound pressure level in decibels is a logarithmic unit used to express the magnitude of sound pressure with respect to a reference sound pressure. It is defined as twenty (20) times the logarithm to the base ten (10) of the ratio of the sound pressure to the reference sound pressure. By international standards, the reference sound pressure is 2×10^5 newtons/meter squared. By example, a doubling of sound pressure, at any magnitude, will result in a six (6) decibel increase in sound pressure level; a ~~tentold~~ tenfold increase will result in a twenty (20) decibel increase in sound pressure level.

Emergency work ~~is work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from exposure to danger or potential danger.~~

is unanticipated work, maintenance, or construction required to restore property to a safe condition following a public calamity, meteorological event, accident, or any other event which interrupts essential services or utilities, endangers persons or property, or adversely affects infrastructure.

~~*Health* means an optimal state of physical, mental and emotional well being and not merely the absence of disease.~~

Residential area includes:

Residential-rural,

Residential-suburban,

Residential-suburban-trailer,

Residential-one family,

Residential-one family, restricted,

Residential-two family,

Residential-multiple family,

Residential-professional.

"Light commercial" includes:

Commercial-limited.

"Heavy commercial" includes:

Commercial-highway,

Commercial-general,

Commercial-central.

"Industrial" includes:

Industrial light,

Industrial heavy.

(Code 1967, § 10.94.010)

Cross reference— Definitions and rules of construction generally, § 1-102.

Sec. 17-102. - Prohibitions generally.

~~It is unlawful for any person to make or cause to be made any excessive or unusually loud noise or any noise measured or unmeasured which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of any reasonable person of normal sensitivity within the city.~~

It is unlawful for any person willfully to make or continue to make, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal

sensitivity residing in the area. The standards which shall be considered in determining whether a violation of the provisions of this section exists shall include the following:

(A) The volume of noise;

(B) The intensity of the noise;

(C) Whether the nature of the noise is usual or unusual;

(D) Whether the noise is produced by a commercial or noncommercial activity;

(E) The volume and intensity of the background noise, if any;

(F) The proximity of the noise to residential sleeping facilities;

(G) The nature and zoning of the area within which the noise emanates;

(H) The density of the inhabitation of the area within which the noise emanates;

(I) The time of the day or night the noise occurs;

(J) The duration of the noise;

(K) Whether the noise is recurrent, intermittent or constant; and

(L) The public benefit derived from the source of the noise.

(Code 1967, § 10.94.020)

~~Sec. 17-103. - Prohibited acts.~~

~~It is unlawful to perform any of the following acts within the city:~~

~~(1) *Horns, signaling devices.* Sounding any horn or signaling device on any truck, automobile, motorcycle or other vehicle on any street or public place of the city except as a warning signal;~~

~~(2) *Sound amplifying equipment.* Using, operating or permitting the use of any radio receiving set, musical instrument, television, phonograph or other machine or device for the production or reproduction of sound in such a manner as to disturb the quiet, comfort or repose of any normally sensitive and reasonable person. The operation of any such sets, instruments, television, phonographs, machine or device in such a manner as to be in violation of section 17-104 shall be prima facie evidence of a violation of this chapter;~~

~~(3) *Loudspeakers, amplifiers for commercial purposes.* Installing, using or operating within the city a loudspeaker or sound amplifying equipment at levels in excess of those specified in~~

~~section 17-104 in a fixed or movable position or mounted upon any sound truck for the purpose of giving instructions, directions, talks, addresses, lectures or transmitting music to any persons or assemblages of persons in or upon any street, alley, sidewalk, park, place or public property without first obtaining a permit;~~

~~(4) *Yelling, shouting.* Yelling, shouting, hooting, whistling or singing on the public streets, alleys or parks at any time so as to annoy or disturb the quiet, comfort or repose of any normally sensitive and reasonable person;~~

~~(5) *Exhausts.* Discharging into the open air the exhaust of any steam engine, stationary internal combustion engine, motorboat or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom. Modifying any noise abatement device on any motor vehicle or engine in a manner so that the noise emitted by such vehicle or engine is increased above that emitted by such vehicle or engine as originally manufactured is a violation of this section;~~

~~(6) *Defect in vehicle or load.* Operating any truck, trailer, automobile, motorcycle or vehicle so out of repair or so loaded in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise;~~

~~(7) *Loading, unloading, opening containers.* Loading, unloading, opening or otherwise handling boxes, crates, containers, garbage containers or other objects in such a manner as to disturb the quiet, comfort or repose of any normally sensitive and reasonable person;~~

~~(8) *Construction projects or repair of buildings.* Operating equipment or performing any construction or repair work on buildings, structures or projects or operating any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other construction type device in such a manner as to disturb the quiet, comfort or repose of any normally sensitive and reasonable person;~~

~~(9) *Fireworks and explosives.* The use of fireworks and/or other explosives so as to disturb the quiet, comfort and repose of any normally sensitive and reasonable person;~~

~~(10) *Exemption clause.* Any of the above acts performed for emergency work for the safety, welfare and public health of the citizens of the city will not be construed to be in violation of this chapter.~~

(Code 1967, § 10.94.030)

Sec. 17-~~104~~.103 - Noise limitations.

(a) The maximum permissible decibel limits on noise emitting from sources ~~not on public right-of-way~~ in residential, commercial and industrial districts are as follows.

(b) Noise will be measured at a distance of twenty-five (25) feet from the source or at the boundary of the lot, whichever is the greater distance. Noise radiating from properties or buildings in excess of the dB(A) established for the districts and times in Table I herewith constitutes prima facie evidence that such noise is a public nuisance. This includes noise from such activities as production, processing, cleaning, servicing, testing and repair of vehicles, materials, goods or products. Noises caused by home or building repair, construction, or grounds maintenance are

excluded as provided in section 17-~~106~~ 104.

Table I—Limitations

Districts	~~*8 a.m. 8 p.m.*~~ 7 a.m. – 8 p.m.	~~*8 p.m. 8 a.m.*~~ 8 p.m. – 7 a.m.
Residential	~~55~~ 65dB(A)	~~50~~ 55dB(A)
Light commercial	~~60~~ 80dB(A)	~~55~~ 60dB(A)
Heavy commercial	~~70~~ 85dB(A)	~~65~~ 70dB(A)
Industrial	~~80~~ 90dB(A)	~~75~~ 80dB(A)

~~(1)~~ (c) At boundaries between zones, the lower of the dB(A) level shall be applicable.

~~(2) To be in violation, the source of noise must be identifiable and the levels without regard to the ambient must exceed the above limitations.~~

~~(3) Periodic or impulsive noises shall be in violation when such noises are at a noise level of five dB(A) less than those listed in this section.~~

~~(4) Construction projects shall be subject to the maximum permissible noise levels specified for industrial districts for the period within which construction is to be completed pursuant to any applicable construction permit issued by the city, or if no time limitation is imposed, then for a reasonable period of time for completion of the project.~~

~~(5) All railroad rights-of-way shall be considered as industrial districts for the purpose of this chapter, and the operation of trains shall be subject to the maximum noise levels specified for such district.~~

(Code 1967, § 10.94.040)

~~Sec. 17-105. - Motorized vehicles.~~

~~(a) It is unlawful to operate a motorized vehicle within the city which emits noise in excess of the limits specified in Table II below.~~

~~(b) Noise from a noise source within a public right-of-way, other than a sound amplification system in a motor vehicle, shall be measured at a distance of at least twenty-five (25) feet from the center of the nearest traffic lane on a sound level meter of standard design and operated on the "A" weight scale.~~

~~*Table II Maximum Permissible Noise Levels for Motor Vehicles*~~

~~(1) *Trucks and buses:*~~

~~Over 10,000 pounds~~

~~82 dB(A) measured at 50 feet~~

~~88 dB(A) measured at 25 feet~~

~~Under 10,000 pounds~~

~~74 dB(A) measured at 50 feet~~

~~80 dB(A) measured at 25 feet~~

~~(2) *Passenger cars:*~~

~~74 dB(A) measured at 50 feet~~

~~80 dB(A) measured at 25 feet~~

~~(3) *Motorcycles, snowmobiles, minibikes and other self-propelled vehicles:*~~

~~74 dB(A) measured at 50 feet~~

~~80 dB(A) measured at 25 feet.~~

~~(Code 1967, § 10.94.050; Ord. No. 93-4940, § 5, 10-18-93)~~

Cross reference— Operation of loud sound amplification systems in motor vehicles, § 24-351 et seq.

Sec. 17-~~106.~~ 104. - Exemptions.

The following uses and activities shall be exempt from noise level regulations:

(1) Noise ~~of~~ from safety signals and warning devices;

(2) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency;

(3) Noise resulting from emergency work ~~or noise for which a special permit has been granted, as hereafter provided for~~;

(4) Noise resulting from the operating of motorized lawnmowers fitted with equipment-type mufflers between the hours of 7~~8~~:00 a.m. and 8:00 p.m.;

(5) Noise caused by home or building repair, construction, or grounds maintenance between the hours of 7~~8~~:00 a.m. and 8:00 p.m.;

(6) ~~Athletic~~ Permitted events held in stadiums or parks for which a waiver has been granted;

(7) Noise from public parks, schools, and recreational facilities between the hours of 7:00 a.m. and 8:00 p.m.;

(8) Special events for which a waiver has been granted;

(9) Noise from construction or maintenance activities performed by the City of Billings, or at the direction of the City of Billings, including but not limited to solid waste retrieval, street

sweeping, road maintenance, and snow removal;.

(10) Noise from construction or maintenance activities performed in the Public Right Of Way for which a waiver has been granted;

(11) Noise from construction or maintenance activities for which a waiver has been granted.

(12) Other activities for which a waiver is granted pursuant to Sec. 17-106.

(Code 1967, § 10.94.060)

Sec. 17-~~107.~~105. - Measurement of noise.

For the purpose of determining and classifying any noise as excessive or unusually loud as prohibited by this chapter, the following test measurements and requirements shall be applied. ~~may be applied, but a violation of section 17-103 may occur without the following measurements:~~

(1) The noise shall be measured on a sound level meter meeting current American National Standards Institute standards, operated on the "A" weighted scale~~;~~, or other noise measuring instrument proven sufficiently reliable by commonly accepted scientific standards and admissible in a Court of Law.

(2) ~~In all noise level measurements, the ambient noise shall be at least ten (10) dB(A) below the specific noise source being measured; or~~ No noise source shall constitute a violation of this chapter unless the noise source is at least ten (10) dB(A) above the ambient noise at the time of measurement.

(3) In all sound level measurements, consideration shall be given to the effect of the ambient noise level created by the encompassing noise of the environment from all sources at the time of the sound level measurement.

(Code 1967, § 10.94.070)

Sec. 17-~~108~~106. - ~~Permit for relief.~~ Waiver

~~Applications for a permit for relief from the noise level designated in this chapter on the basis of undue hardship may be made to the city. Any permit granted by the city shall contain all conditions upon which the permit has been granted and shall specify a reasonable time that the permit shall be effective. The city may grant the permit applied for if it finds:~~

~~(1) That additional time is necessary for the applicant to alter or modify his or her activity or operation to comply with this chapter;~~

~~(2) The activity, operation or noise source will be of temporary duration, and cannot be performed in the manner that would comply with other subsections of this section;~~

~~(3) That no other reasonable alternative is available to the applicant;~~

~~(4) The city may prescribe any conditions or requirements it deems necessary to minimize adverse effects upon the community or surrounding neighborhood.~~

(1) Any person may apply to the City Administrator or designee for a waiver from the provisions of this chapter. Such application shall be submitted to the office of City Administrator along with a non-refundable application fee. The City Administrator shall designate waiver application and review procedures and application fees by Administrative Order. The City Administrator may designate representatives from Police, Parks, Building, and Engineering to review and grant waivers under this section by Administrative Order.

(2) Waiver review procedures established by the City shall include but not be limited to consideration of the following criteria:

(a) Whether the noise would endanger the public health, safety, or welfare;

(b) That compliance with the provisions of this chapter from which a waiver is sought would cause serious hardship without producing equal or greater benefit to the public.

(c) The time of day the noise will occur;

(d) The duration of the noise;

(e) The loudness of the noise relative to the maximum permissible sound levels as set forth in this chapter;

(f) Whether the noise is continuous or intermittent;

(g) The distance of proposed activity from residential housing or other noise-sensitive properties;

(h) Whether the proposed activity is within the Central Business District, and whether the proposed activity encourages the promotion of entertainment and nightlife in an area where residential housing is sparse.

(i) Any other factor that is reasonably related to the impact of the noise on the health, safety and welfare of the community, the degree of hardship that may result from the enforcement of the provisions of this article, and the benefit to the public of granting such a waiver.

(3) Any waiver application may be granted or denied by the City of Billings. Any applicant denied a waiver by the City of Billings may appeal the denial to the City Council.

(Code 1967, § 10.94.060)

~~Sec. 17-109. - Violations from moving noise source.~~

~~Violations of this chapter in which the noise source is a truck, bus, passenger car, motorcycle, snowmobile, minibike or other self-propelled vehicle shall be cause for summons and warrant to issue. Machines or devices not customarily used or designed for transportation are excluded herein.~~

(Code 1967, § 10.94.110)

~~Sec. 17-110. - Violations from noise source not on public right-of-way.~~

~~Violation of this chapter in which the noise source is not self-propelled or is self-propelled but not customarily used or designed for transportation upon public right-of-way shall be cause for issuance of a twenty-four (24) hour notice in writing or other reasonable amounts of time not to exceed five (5) days, directed to the owner, occupant, or person in charge of or in control of the machine, device, building or other premises to abate the violation of this chapter. Failure to comply with the order so issued constitutes a violation and summons and warrant shall be issued.~~

(Code 1967, § 10.94.120)

~~Sec. 17-111. - Enforcement personnel.~~

~~The city administrator shall assign duties of enforcement to personnel trained in noise control techniques and procedures and equipped with sound level meters of a standard design.~~

(Code 1967, § 10.94.130)

Sec. ~~17-112~~ 17-107. - Violations; remedies.

(a) ~~Whenever in any section of this chapter or rule or regulation promulgated hereunder, the doing of any act is required, prohibited or declared to be unlawful and no definite fine or penalty is provided for a violation thereof, any~~ Any person who is convicted of a violation of any such section shall, for each offense, ~~be punished~~ be subject to criminal penalties as provided in section 1-110. Each day such violation is committed or permitted to continue constitutes a separate offense.

(b) As an additional remedy, the operation or maintenance of any noise source in violation of any provision of this chapter and which causes discomfort and annoyance to any reasonable person of normal sensitivity or which endangers the comfort, repose, health or peace of residents in the area is a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

(Code 1967, §§ 10.94.090, 10.94.100)

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of _____, 2013.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2013.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk

Consent **1. N.**

Regular City Council Meeting
Meeting Date: 05/28/2013
TITLE: Nuisance Ordinance Amendments - 2nd Reading
PRESENTED BY: Craig Hensel
Department: Legal

Information

PROBLEM/ISSUE STATEMENT

The City's current Nuisance Code, codified at BMCC Article 18-300, was enacted in 2004. As cited in the "Purpose" section, this article was intended to "control conditions in the city that constitute public nuisances, are injurious to public health, safety and welfare, obstruct the free use of property or interfere with the comfortable enjoyment of life or property and to provide for the abatement of such nuisances, to protect the public health, safety and welfare and to promote the economic development of the city…." The Nuisance Code prohibits specific offenses and provides for criminal penalties for violations thereof, and also provides a civil procedure by which the City could seek a Court Order authorizing abatement of a nuisance property when the property owners fail to act or cannot be located. The attached ordinance clarifies the criminal penalties and civil remedies provided for in this article, cleans up some ambiguous and inconsistent language, provides a more specific definition of Nuisance, and fortifies the ability of the City to act in emergency abatement situations where the property owner is unwilling to act or cannot be located. The ordinance also provides alternative methods of service for the 10-day notice which is a pre-requisite to commencing a civil action against a property owner who violates this article. This item was presented and discussed at a Council Work Session on April 15, 2013, at which time the Council directed staff to proceed to 1st Reading. At 1st reading on May 13th, the Council approved the attached ordinance by unanimous vote.

ALTERNATIVES ANALYZED

Approve the ordinance as amended or disapprove the ordinance amendments.

FINANCIAL IMPACT

There is no anticipated cost to the City to enact this ordinance. There may be some cost savings to Code Enforcement for certified mailings and staff time expended trying to serve citations on violators.

RECOMMENDATION

Staff recommends that the City Council approve the attached ordinance on Second Reading.

APPROVED BY CITY ADMINISTRATOR

Attachments

Nuisance Ordinance Amendments

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA MUNICIPAL CODE BE AMENDED BY REVISING ARTICLE 18-300, AND AMENDING SECTIONS 18-302, 18-303, 18-306, 18-307, AND 18-308.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That the Billings, Montana, City Code be amended by amending certain sections of Article 18-300 relating to public nuisances, as follows:

Sec. 18-301. - Purpose.

The purpose of this article is to control conditions in the city that constitute public nuisances, are injurious to public health, safety and welfare, obstruct the free use of property or interfere with the comfortable enjoyment of life or property and to provide for the abatement of such nuisances, to protect the public health, safety and welfare and to promote the economic development of the city. It is also the purpose of this article to prevent and prohibit those conditions which reduce the value of private property, interfere with the enjoyment of public and private property, create and constitute public nuisances and contribute to the degradation of the character of neighborhoods and the depreciation of property values.

(Ord. No. 04-5280, § 1, 5-10-04)

Sec. 18-302. - Definitions.

For the purposes of this article the following definitions shall apply:

Abate means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means, in such a manner and to such an extent that is determined necessary in the interest of the health, safety and general welfare of the effected community.

Attractive hazard means the open storage on property of any container that may attract children and having a compartment of more than one and one-half (1½) cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot be easily opened from the inside.

Dangerous structure means any dangerous, decaying, unkempt, falling or damaged residential dwelling or other structure suitable for human occupancy excluding any structure related to an agricultural or farming operation.

Enforcement officer means ~~any city employee so~~ code enforcement officer, police officer, or other city employee designated by the city council or the city administrator.

Junk includes the open storage of old appliances, equipment, or parts thereof, old iron or other scrap metal, automobile or truck tires, cardboard, old lumber or scrap wood, rags, rope, paper, debris, rubble, batteries, rubber debris, mattresses or any worn out, cast off or discarded article or material which is ready for destruction or has been collected or stored as salvage, for conversion to some other use or for reduction into components and is not part of a commercial or public salvaging or recycling operation.

Junk vehicle means any discarded, ruined, wrecked, or dismantled motor vehicle or motor vehicle parts or components. Any vehicle not capable of immediate and legal operation on public

roads shall be considered a junk vehicle for purposes of this section. ~~, including any component parts and which is not lawfully and validly licensed. For purposes of this article, any vehicle that is operable but unlicensed is considered a junk vehicle.~~

~~*Nuisance* means a public nuisance created by allowing rubble, debris, junk, junk vehicle(s), dangerous structure(s) or refuse to accumulate so that it:~~

~~(1) Endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property, or~~

~~(2) A condition which renders any public right-of-way dangerous for passage.~~

Nuisance means a situation created or allowed to continue by the owner or occupant of real property which endangers public safety or health, is offensive to the senses, renders any public right of way dangerous for passage, adversely affects the property values of adjacent properties, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property. A Nuisance may include, but is not limited to:

(1) Allowing rubble, debris, salvage, junk, junk vehicle(s) or refuse to accumulate.
(2) Allowing a structure to remain unsecured from unauthorized entry.
(3) Allowing a structure to become an eyesore or blight on a neighborhood by neglect or failure to make necessary repairs.
(4) Allowing a residential structure to become unsuitable for human habitation, by failure to maintain the structure in compliance with applicable building, technical, and model codes.
(5) Allowing a condition to continue which materially and adversely affects property values on multiple adjacent and nearby properties.

Obstruction to the public right-of-way means the placement of any debris, refuse, rubble, dirt, gravel, soil, fence, junk, junk vehicle or other personal property so as to obstruct traffic, drainage, pedestrians or otherwise safe and open access to such right-of-way.

Open storage means exposed to the elements or not stored inside an enclosed structure which includes walls on all sides and a roof.

Person means any individual, firm, association, partnership, corporation or any entity, public or private.

Premises means any lot, parcel of land, building, parcel, real estate, land or portion of land whether improved or unimproved including any portion of any street, right-of-way or alley lying between such lot or parcel of land and the center of such street, right-of-way or alley.

Responsible person means any agent, lessee, owner or other person occupying or having charge or control of any premises.

(Ord. No. 04-5280, § 2, 5-10-04)

Sec. 18-303. - Prohibitions.

It is unlawful for any person to create or maintain on any premises or adjacent to a public right-of-way within the incorporated area of the city any condition that contributes to the creation of a public nuisance and is injurious to health or safety, is offensive to the senses, or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, or obstructs a public right-of-way. Such condition shall be deemed a nuisance if it affects an entire community or neighborhood or any considerable number of persons. Public nuisances include but are not limited to the following:

(1) Maintaining an attractive hazard on any premises for more than twenty-four (24) hours without removing the door, lid, or locking or fastening device from such container;

(2) Maintaining a junk vehicle or vehicles on any premises for more than five (5) consecutive days without removing such vehicle(s) to a legal disposal site or placing said junk vehicle(s) inside a storage building or garage;

(3) Maintaining a collection of junk (see definition) on any premises for more than five (5) consecutive days without removing such material to a legal disposal site or placing such collection inside a storage building or garage;

(4) Creating or maintaining an obstruction to a public right-of-way;

(5) Creating or maintaining on any premises an amount of decaying matter, animal or vegetable, that is not part of an agricultural or farming operation, so as to contaminate the atmosphere and be offensive to the senses and obstruct the free enjoyment of life and property; or

(6) Maintaining a dangerous structure (see definition) for more than thirty (30) days without securing such property against entry, or abating the dangerous condition of such structure.

(7) Nothing that is done or maintained pursuant to a permit issued by the city or the state shall be deemed a public nuisance.

(8) Violations of this section shall be cited into Municipal Court as criminal citations, subject to penalties as provided in BMCC Sec. 1-110. Violations of this section may also be grounds for a civil abatement action as provided in this article.

(Ord. No. 04-5280, § 3, 5-10-04)

Sec. 18-304. - Enforcement.

Upon written or oral complaint of any citizen so affected by an alleged public nuisance, or if an enforcement officer becomes aware of a condition or situation that may constitute a public nuisance, the enforcement officer shall investigate the condition or situation within a reasonable period of time. The enforcement officer shall determine whether such condition or situation constitutes a public nuisance. If the officer finds that there exists a public nuisance as defined herein, such officer shall give written notice to the owner of the premises and the responsible person who is maintaining or creating such public nuisance of the specific nature of the violation.

(Ord. No. 04-5280, § 4, 5-10-04)

Sec. 18-305. - Right of entry.

(a) A person may make a complaint of the existence of a public nuisance to a code enforcement officer, a fire marshal, the city administrator or his designee, or the community development program administrator. Such complaint shall include, whenever possible, the nature of the public nuisance, the location, including the address, the name of the owner, occupant, or manager of the property, the duration of the nuisance and the name and address of the complainant. Complaints shall be referred to the appropriate code enforcement officer.

(b) The enforcement officer will contact the owner of the premises and the responsible person, either in writing or by telephone, prior to entry upon an individual's property. The purpose of this initial contact is to request consent to be on the property. If the owner or responsible person does not consent to entry onto the property, the officer will obtain a search warrant prior to any entry onto private property, unless exigent circumstances exist so that entry is necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, or some other consequence improperly frustrating legitimate law enforcement efforts.

(Ord. No. 04-5280, § 5, 5-10-04)

Sec. 18-306. - Emergency abatement.

(a) Whenever an enforcement officer has reason to believe that a public nuisance exists, and that such public nuisance constitutes an emergency presenting imminent danger of serious injury to persons or property, the ~~administrative~~ enforcement officer, his authorized representative, a fire marshal, or a police officer may immediately enter into any building or upon any premises within the jurisdiction of the city for purposes of inspection or abatement.

(b) Whenever a public nuisance exists which constitutes an emergency presenting imminent danger of serious injury to persons or property, an enforcement officer may order, without notice or judicial action, that the public nuisance be immediately ~~summarily~~ abated by removal, destruction or mitigation. If the owner or responsible person fails to comply with a such an order immediately, or cannot be located, ~~within the time prescribed~~, the ~~code~~ enforcement officer shall cause the structure to be demolished and removed, or the nuisance otherwise abated or mitigated, either through an available public agency or by contract or arrangement with private persons., ~~and the~~ The cost of such abatement shall be paid by the owner of the property upon which the nuisance existed, pursuant to the procedures established in section 13-308.

(Ord. No. 04-5280, § 6, 5-10-04)

Sec. 18-307. - Voluntary abatement.

Unless a public nuisance constitutes an emergency presenting imminent danger of serious injury to persons or property, the ~~code~~ enforcement officer shall afford the owner of the premises or the responsible person ten (10) days to voluntarily abate the public nuisance. The enforcement officer must give written notice ~~in person or by certified mail~~ of the specific condition or conditions to be abated and the specific abatement required to the owner of the premises and the responsible person. Such 10-day notice shall be served by personal service or certified mail, return receipt requested, to the owner or responsible person. If the enforcement officer, after good faith efforts, is unable to serve the 10-day notice by personal service or certified mail, the 10-day notice may be served by mailing the notice to the owner and responsible person's last known address via standard U.S. Mail and posting the notice conspicuously on the premises where the violation exists.

Such written notice shall include a voluntary abatement agreement for the owner of the premises' signature and the responsible person's (if different than the owner) signature. Such signed agreement shall be returned to the enforcement officer and will be placed in the public record of the complaint. If the responsible person is different than the owner of the premises, both parties must sign the voluntary abatement agreement.

(Ord. No. 04-5280, § 7, 5-10-04)

Sec. 18-308. - Abatement and collection of costs.

The remedies specified in this section shall be in addition to all other remedies provided by law. When a public nuisance has not been voluntarily abated within the time specified in the notice to abate, the following procedure shall apply.

(1) The city may bring ~~an~~ a civil action in the municipal court to have the nuisance declared as such by the court and for an order enjoining the public nuisance or authorizing its restraint, removal, termination or abatement. ~~by the owner or the person who caused the nuisance or the person who allowed the nuisance to be caused or to continue or an administrative officer, his authorized representative, a police officer, a code enforcement officer, a community service officer or any person under contract with the city to perform such services.~~

(2) The action to declare and abate a public nuisance shall be brought by the city in the name of the people of the city, by the filing of a complaint, which shall be verified or supported by an affidavit. Summons shall be issued and served as provided by state law for civil cases. If the owner or responsible person cannot be personally served after good faith efforts, service may be made by publication as provided in state law for matters concerning real property.

(3) A notice of appearance shall be served with the summons and complaint. The appearance date shall be not less than twenty-one (21) days from the date of service of the summons and complaint. The trial shall be held upon the appearance date, unless the court grants a continuance for good cause shown.

(4) The respondent shall file a response on or before the appearance date set forth in the notice of appearance.

(5) Upon the date and at the time set for appearance and trial, if the respondent has filed no response and fails to appear and if the city proves that proper service was made on the respondent at least twenty-one (21) days prior to the appearance date, the court may grant such orders as are requested by the city; except that, the court shall order that enforcement by the city be stayed for ten (10) days and that a copy of the court's order be mailed to the respondent at his last known address. Failure to appear on any other date set for trial shall be grounds for entering a default and judgment thereon against a non-appearing party. For good cause shown, and prior to enforcement, the court may set aside an entry of default and the judgment entered thereon.

(6) The judgment of the municipal court may be appealed to the district court.

(7) The procedure for determining the cost of abatement of a public nuisance will be as follows:

a. Code enforcement staff will secure a contract for removal of the nuisance by following the usual city procurement process. Code Enforcement may utilize City resources, including staff and equipment, to complete some or all components of a court ordered abatement, and the fair market value of utilization of staff and equipment shall be assessed in accordance with this section.

b. Code enforcement staff will coordinate the abatement project ~~with the contractor~~, and oversee the work as it is being performed.

c. After the planning director and the code enforcement staff have approved the final bill it will be forwarded to the city finance department for payment.

d. A copy of approved bill(s) and proof of disbursement is placed in the code enforcement file maintained by code enforcement staff. These documents, along with the itemized abatement expense report are used to determine the total cost of abatement for the property. Costs that may be included on the abatement expense report are shown in subsection (7)(h) below. The abatement expense report is then certified and transmitted to the finance department for approval of assessment on the real property being abated.

e. The property owner will then be sent an abatement expense report for the subject property and be given notice that any assessment that is not paid shall become a lien upon the property and is enforceable in the same manner as the nonpayment of property taxes. The interest fee will be waived for any payments made within thirty (30) days of notice.

f. A summary listing of the assessments, tax codes, and property owners will be kept by the clerk and recorder through August 31 of each year, and the list shall be presented to the department of revenue for billing on the next real property tax statement.

g. A special abatement fund will be established to account for costs, collections, and transactions necessary to the efficient operation of the program. Assessment funds collected are returned to the designated abatement account for future use on other involuntary property abatements or for transfer back to the city general fund.

h. The city shall determine the actual costs of cleanup and involuntary abatement actions and document such costs. The following expenses will be assessed as the actual costs of abatement of a nuisance condition:

1. Planning staff time/mileage/other costs.
2. Police department staff time/mileage.
3. Other involved city staff time/mileage/other costs.
4. Postage/mailing costs.
5. Other direct costs associated with abatement.
6. An interest fee of six (6) percent per annum computed on above costs which will be waived if the total cost of abatement is paid by the property owner within thirty (30) days of notice.

i. The code enforcement staff has the discretion to coordinate and incur reasonable costs and services necessary for the safe, effective, and efficient cleanup of designated involuntary abatement properties. The code enforcement staff will notify the city administrator before any additional contracted costs in excess of ~~one thousand dollars ($1,000.00)~~ ten thousand dollars ($10,000) are incurred.

(Ord. No. 04-5280, § 8, 5-10-04)

Sec. 18-309. - Public urination and defecation prohibited.

It is unlawful for any person to urinate or defecate in any street, alley or public place except in a facility provided for that purpose.

(Ord. No. 86-4714, § 1, 9-8-86)

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of _____, 2013.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2013.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk

Consent **1. O.**

Regular City Council Meeting
Meeting Date: 05/28/2013
TITLE: Amendments to Going Out of Business Ordinance-Second Reading
PRESENTED BY: Brent Brooks
Department: Legal

Information

PROBLEM/ISSUE STATEMENT

The Mayor and City Council appointed an ad hoc committee to study and provide recommendations concerning amendments to the Going Out of Business Ordinances found at BMCC Sections 7-300 through 7-321. The Committee included Council Members Mark Astle and Denis Pitman and former Council Member Dick Clark. The Committee met several times and developed suggested amendments to these ordinances. During the March 18, 2013, work session, the ad hoc committee and staff made a presentation to the Council, including a marked-up version of the City Code. A revised and edited version of these proposed ordinance amendments was presented to the Council during the May 13, 2013, Regular City Council meeting, which was then approved on first reading. Some of the suggested amendments from the ad hoc committee include expanding the definition of Going Out of Business to include "loss of lease" and "retirement" sales; eliminate the requirement of a "detailed inventory" from the business desiring to conduct such a sale; limiting the time period for the Going Out of Business sale to a maximum of ninety (90) days with no extensions; and providing a new section prohibiting false advertising. Violations of the ordinance have been and will continue to be Municipal Infractions.

ALTERNATIVES ANALYZED

1. Retain current ordinances and make no revisions.
2. Repeal entire set of current ordinances and do not regulate Going Out of Business sales.
3. Adopt some or all of the suggested amendments from the ad hoc committee.

FINANCIAL IMPACT

There is a nominal fee of thirty ($30) dollars to obtain a Going Out of Business license however there is no other financial impact.

RECOMMENDATION

Staff recommends that the City Council adopt and approve the attached ordinance amendments at Second Reading.

APPROVED BY CITY ADMINISTRATOR

Attachments

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 7-301, 7-302, 7-311, 7-313, 7-314, 7-315, 7-316, 7-319, AND 7-320, ADDING NEW SECTIONS TO BE NUMBERED 7-319 AND 7-320, AND REPEALING SECTIONS 7-317 AND 7-318 OF SAID CODE; UPDATING THE GOING OUT OF BUSINESS SALE REGULATIONS; SETTING A 90-DAY DURATION; ELIMINATING RENEWALS AND STOCK LISTS; PROHIBITING FALSE ADVERTISING; AND SETTING A MUNICIPAL INFRACTION PENALTY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That the Article 7-300 Title and Section 7-301 of the Billings, Montana, City Code be amended so that they shall read as follows:

ARTICLE 7-300. GOING OUT OF BUSINESS, RELOCATION, FIRE OR RETIREMENT ~~BANKRUPT, FIRE OR CLOSING OUT~~ SALE*

DIVISION 1. GENERALLY

Sec. 7-301. Definitions.

For the purposes of this article the following terms, phrases, words and their derivations shall have the meaning given herein:

City Administrator means the City Administrator or his/her designee.

Fire and other altered goods sale means a sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged or altered by fire, smoke, water, or other means.

Going-out-of-business sale means a sale held out in such a manner as to ~~reasonably~~ cause the public to reasonably believe that upon the disposal of the stock of goods on hand the business will cease and be discontinued, including but not limited to the following sales: adjuster's adjustment; ~~alteration~~; assignee's; bankrupt; benefit of administrator's; benefit of creditor's; benefit of trustees; building coming down; closing creditor's committee; creditor's end; executor's; ~~final days~~; ~~forced out~~ loss of lease; force out of business; insolvents'; ~~last days~~; lease expires; ~~liquidation;~~ ~~loss of lease~~, mortgage sale; receiver's; trustee's; quitting business; retirement.

Goods means any goods, wares, merchandise or other property capable of being the object of a sale regulated hereunder.

Relocation of business sale is a sale held out in such a manner as to cause the public to reasonably believe that the person conducting the sale will cease and discontinue business at

the place of sale at the end of the sale, and will then move to and resume business at a new location in the city or will then continue business from other existing locations in the city. There shall be no renewal of any license issued under this subsection.

Section 2. That Section 7-311 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Sec. 7-311. Required.
A license issued by the city administrator shall be obtained by any person before offering to sell any goods at a sale to be advertised or held out by any means to be one of the following kinds:
(1) Going-out-of-business sale;
(2) Relocation of business sale;
(3) Fire and other altered stock sale; and
(4) Retirement sale.

In addition, the licensee shall also possess or obtain a current City of Billings Article 13-400 business tax receipt prior to the issuance of a license under this Article.

Section 3. That Section 7-313 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Sec. 7-313. Application requirements.
A person desiring to conduct a sale regulated by this article shall make a written application at least two (2) weeks before the date of beginning of such sale to the city administrator setting forth and containing the following information. Such two (2) week period may be waived by the city administrator following proper application of such person showing that a hardship exists justifying the shortened time. ~~such dispensation~~.The following information shall be provided in the application:

(1) The true name and address of the owner of the goods to be sold. ~~to be the object of the sale;~~
(2) A description of the place where the sale is to be held;
(3) The nature of the occupancy, whether by lease or sublease and the effective date of termination of the occupancy;
(4) The dates of the period of time in which the sale is to be conducted;
(5) A full and complete statement of the facts in regard to the sale, including the reason for the urgent and expeditious disposal of goods thereby and the manner in which the sale will be conducted;

a. ~~*Bona fide orders.*~~ All goods for sale shall have been purchased by the applicant for resale on bona fide orders without cancellation privileges and shall not comprise goods purchased on consignment.
b. *Good purchased for sale hereunder.* Sale items shall not include goods ordered in contemplation of conducting a sale regulated hereunder. Any unusual purchase, or additions to

the stock of goods of the business hereby effected within ninety (90) days before the filing of an application hereunder shall be deemed to be of such character.

Section 4. That Section 7-302 of the Billings, Montana, City Code be amended and renumbered so that such section shall read as follows:

Sec. 7-314. Duties of licensee.

A licensee under this article shall:

(1

~~(2) Advertise properly, refrain from employing any untrue, deceptive or misleading advertising and shall in no manner or form whatsoever, either directly or indirectly, indicate that the sale is held with the approval of the city;~~

~~(3)~~(1) Adhere to advertisings~~,~~ and conduct the licensed sale in strict conformity with any such advertising. ~~or holding out incident thereto;~~

(2) Conspicuously display the license at or near the entrance to the location of the sale and include the license number in all written or electronic advertisements of the sale.

(3) Close the doors of any store location from which a going-out-of-business or relocation-of-business-sale has been held at the termination of the ~~thirty (30)~~ ninety (90) day period allowed for such a sale, and shall not engage in any further mercantile activity in or from such location.

(4) At the termination of the time period allowed for such sale by ~~Article~~ Section 7-316~~00~~, immediately cease and discontinue the business for which a going-out-of-business or relocation of business sale license was issued.

Section 5. That Section 7-304 is amended so that such section shall read as follows:

Sec. 7-304 Sale of Remaining Inventory

(a) No going-out-of-business or relocation-of-business sale licensee shall sell or offer for sale any goods or inventory which have been inventoried or offered for sale at any other going-out-of-business or relocation-of-business sale.

(b) It is unlawful for a going-out-of-business or relocation-of-business licensee or any employees, employers, partners, owners or stockholders of the closing business to again personally sell any of the remaining goods or inventory at retail.

Section 6. That Section 7-314 of the Billings, Montana, City Code be amended and renumbered so that such section shall read as follows:

Sec. 7-315. Fee.

Any applicant for a license under this ~~division~~ Article shall submit to the city administrator with the application for a license a fee as prescribed by council resolution. ~~There shall not be an additional license charge for any renewal granted under the provisions of section 7-315.~~

Section 7. That Section 7-315 of the Billings, Montana, City Code be amended and renumbered so that such section shall read as follows:

Sec. 7-316. Issuance.
(a) A license shall be issued under this ~~division~~ Article on the following terms:
(1) When the city administrator shall find that all of the application requirements of section 7-313 have been met;
(2) When recommended and passed by the council, but only after an appeal shall have been made to the council following denial of a license by the city administrator;
(3) When ordered by a court of competent jurisdiction following the denial of a license by the council.
(b) The license shall authorize only the one type of sale described in the application at the location named therein.
(c) The license shall authorize only the sale of goods described in the inventory. ~~attached to the application.~~

Section 8. That Section 7-316 of the Billings, Montana, City Code be amended and renumbered so that such section shall read as follows:

Sec. 7-317. ~~Term~~. Duration of Sale
The license issued under this ~~division~~ Article shall authorize the sale described in the application for a period of not more than ~~thirty (30)~~ ninety (90) consecutive calendar days. ~~or one (1) calendar month.~~ The start of the ninety (90) period shall begin on the date of the first publicized advertisement for the sale described in the application. No renewal or extension of the ninety (90) day duration shall be granted.

Section 9. That Section 7-317 of the Billings, Montana, City Code is hereby repealed and declared null and void and of no effect.

~~Sec. 7-317. Display; stock list; examination.~~
~~On commencement of any sale as licensed under this division, the license issued by the city administrator shall be prominently displayed near the entrance to the premises. A duplicate original of the application and stock list pursuant to which the license was issued shall at all times be on the premises and available to the city administrator, and the licensee shall permit the city administrator to examine all merchandise on the premises at any time during the period of the sale for comparison with the stock list.~~

Section 10. That Section 7-318 of the Billings, Montana, City Code is hereby repealed and declared null and void and of no effect.

~~Sec. 7-318. Renewal.~~
~~(a) Except for a relocation of business sale, the city administrator shall renew a license for two (2) additional thirty (30) day periods only, so that the maximum sale time allowed hereunder shall not exceed ninety (90) consecutive days, Sundays and holidays included; provided, however, that the same procedure shall govern all renewal licenses that apply to the original licenses, and the following criteria shall be considered:~~
~~(1) That facts exist justifying the license renewal;~~

~~(2) That the licensee has filed an application for renewal;~~
~~(3) That the licensee has submitted with the application for renewal a revised inventory showing the items listed on the original inventory remaining unsold and not listing any goods not included in the original application and inventory.~~
~~(b) For the purposes of this section, any application for a license under the provisions of this division covering any goods previously inventoried as required hereunder, shall be deemed to be an application for renewal, whether presented by the original applicant, or by any other person.~~

Section 11. That Section 7-319 of the Billings, Montana, City Code be amended and renumbered so that such section shall read as follows:

Sec. 7-~~319~~318. Transfer.
Any license issued under this ~~division~~ Article shall not be assignable or transferable.

Section 12. That the Billings, Montana, City Code be amended by adding a new section to be numbered 7-320, to read as follows:

Sec. 7-320 False advertising.

Any person advertising by newspaper, radio, television, posters or otherwise, representing any sale defined in this Article which is fake, false, misleading or deceptive, shall be guilty of a municipal infraction as provided in Section 7-322.

Section 13. That the Billings, Montana, City Code Section 7-320 be amended and renumbered so that such section shall read as follows::

Sec. 7-321. Appeal to city council.
An applicant who has been denied a license ~~or whose license has been revoked~~ may appeal the denial ~~or revocation~~ to the city council by written notice ~~in writing~~ filed with the city clerk within ten (10) days of the date of denial or revocation. The notice shall state any reasons supporting the issuance of a license, the applicant's correct mailing address and shall be signed by the applicant. The city clerk shall cause the matter to be placed on the next available regular council agenda ~~not less than ten (10) days~~ after receipt of notice of appeal. The applicant shall be notified in writing by certified mail, return receipt requested, of the date and time the matter will be considered on the agenda. The applicant may appear at the time and place and be heard.

Section 14. That the Billings, Montana, City Code be amended by adding a new section to be numbered 7-322, to read as follows:

Sec. 7-322. Penalty

Any violation of this Article shall be punishable as a municipal infraction with civil penalties as provided in Section 18-304 of this Code.

Section 15. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 16. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 17. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of _____, 2010.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2010.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk

Consent **1. P. 1.**

Regular City Council Meeting
Meeting Date: 05/28/2013
TITLE: Payment of Claims April 29, 2013.
PRESENTED BY: Pat M. Weber, Financial Director
Department: City Hall Administration

Information

PROBLEM/ISSUE STATEMENT

Claims in the amount of $1,382,847.02 have been audited and are presented for your approval for payment. A complete listing of the claims dated April 29, 2013 is available in the Finance Department.

ALTERNATIVES ANALYZED

No other alternatives were analyzed.

FINANCIAL IMPACT

Claims have a varying impact on department budgets, but are submitted by the departments and reviewed by Finance staff before being sent to the Council.

RECOMMENDATION

Staff recommends that Council approve the Payment of Claims.

APPROVED BY CITY ADMINISTRATOR

Attachments

List of claims greater than $2500.

AP Report >$2,500 for 04/29/2013

Check Date	Check	Name	Amount	Account	Item Desc
04/29/2013	765398	Public Utilities	37.92	4280-65900-409180	Account #97315-10146900 4/11/13 Bill for 502 S 33rd - Water/Sewer/Garbage
04/29/2013	765438	Van Arsdale Construction	1,000.00	2660-67730-409200	Van Arsdale Construction for Appliance Allowance - 648 Conway Ave
04/29/2013	765375	Montana Dakota Utilities Co	67.81	2660-67730-409200	Montana-Dakota Utilities - Conway House
04/29/2013	765398	Public Utilities	24.80	2660-67730-409200	Public Works Utilities - Conway House
04/29/2013	765386	NorthWestern Energy	27.61	2660-67730-409200	2092009-7 648 Conway Energy Bill
04/29/2013	765386	NorthWestern Energy	27.61	2660-67730-409200	2092009-7 648 Conway Energy Bill
04/29/2013	765430	Tetra Tech, Inc.	4,221.95	5410-31230-403590	year 2 of contract for landfill monitoring
04/29/2013	765430	Tetra Tech, Inc.	510.00	5410-31230-403590	year 2 of contract for landfill monitoring
04/29/2013	765335	Homeword, Inc.	4,267.72	2890-65810-407224	Homeword Grant Reimbursement Request #4
04/29/2013	765335	Homeword, Inc.	1,250.00	2980-66800-407275	Homeword Reimbursement for 10 first time homebuyers
04/29/2013	765432	Town & Country Supply Association	12,134.00	6010-00000-141000	106887 PO NUM 292419
04/29/2013	765301	Cummins Rocky Mountain Llc	8,172.48	5710-71440-402320	AUTO &TRUCK MAINT.ITEMS
04/29/2013	765349	Interstate Power Systems, Inc.	2,662.80	5410-31220-402320	R007023735.01
04/29/2013	765301	Cummins Rocky Mountain Llc	184.50	5410-31220-402320	004-61699
04/29/2013	765301	Cummins Rocky Mountain Llc	274.66	5410-31220-402320	004-62072
04/29/2013	765285	Billings Depot Inc	5,295.87	6600-31100-405311	Rent
04/29/2013	765285	Billings Depot Inc	7,943.80	6700-31410-405311	Rent
04/29/2013	765264	A & E Architects, PC	8,376.40	4980-55360-409390	New Library Building - Construction Management Services
04/29/2013	765375	Montana Dakota Utilities Co	409.57	5610-71130-403440	068 823 1000 3
04/29/2013	765375	Montana Dakota Utilities Co	10.42	5610-71130-403440	168 823 1000 2
04/29/2013	765405	Riverstone Health	11,250.00	0100-14110-403931	Air Pollution Control Progaram April - June 2013
04/29/2013	765449	Williams Brother Construction Llc	3,795.00	5120-84000-402450	Regrad yard at WWTP
04/29/2013	765332	HDR, Inc.	1,504.41	5020-72110-403540	DRINKING WATER SOURCE STU DY
04/29/2013	765332	HDR, Inc.	14,512.98	5030-74910-409390	WO 12-45 3 MG Staples Reservoir Liner
04/29/2013	765454	Yellowstone Valley Elec	5,400.00	4210-84930-409340	WO 13-06 Rehberg Ranch Center Pivot Electric
04/29/2013	765409	Rutherford & Assoc	6,000.00	5030-75910-409340	WO 08-25 Zone 3 Reservoir
04/29/2013	765447	Western Municipal Construction Inc	508,720.00	4210-85930-409340	WO 12-05 Five Mile Lift Station

04/29/2013	765293	Business Tax Section	5,138.59	4210-85930-409340	WO 12-05 Five Mile Lift Station
04/29/2013	765364	Langlas & Associates Inc	8,259.35	2100-31100-409311	WO 12-34 N. Broadway Sidewalks
04/29/2013	765291	Brewer & Associates	2,700.00	2980-65550-407275	REHAB-STRUCTURAL INSPECTION-ARNET 3912 3RD AVE S
04/29/2013	765293	Business Tax Section	83.43	2100-31100-409311	WO 12-34 N. Broadway Sidewalks
04/29/2013	765421	Spencer Industries	537.16	5020-74000-402320	NONSTOCKING ITEMS-P.U.D.
04/29/2013	765398	Public Utilities	151,694.15	8050-15700-405350	6712510003200
04/29/2013	765398	Public Utilities	209.68	5120-85000-403420	671274846
04/29/2013	765398	Public Utilities	126.14	2110-31320-403420	671294847
04/29/2013	765332	HDR, Inc.	64,340.46	5120-82110-403540	WO 12-15 IWPI WWTF Plan
04/29/2013	765384	NorMont Equipment Company	1,436.85	2110-31320-402320	broom sections and gutter wire for sweepers
04/29/2013	765440	Verizon Wireless	200.21	1500-21700-403450	Animal Shelter MDT
04/29/2013	765440	Verizon Wireless	495.34	7170-21660-403450	CCSIU Cell/PTT
04/29/2013	765440	Verizon Wireless	40.01	7170-21660-403450	CCSIU Air Card
04/29/2013	765440	Verizon Wireless	80.02	7170-21660-403450	CCSIU RAVEN
04/29/2013	765440	Verizon Wireless	40.01	1500-22210-403450	Fire MIFI
04/29/2013	765440	Verizon Wireless	600.41	1500-22210-403450	Fire MDT
04/29/2013	765440	Verizon Wireless	80.02	6200-19110-403450	ITD Air Card & MIFI
04/29/2013	765440	Verizon Wireless	120.03	2600-55170-403450	Library Outreach Air Cards
04/29/2013	765440	Verizon Wireless	3,881.48	1500-21110-403450	Police MDT Toughbook
04/29/2013	765440	Verizon Wireless	40.01	1500-21110-403450	Police ICAC
04/29/2013	765440	Verizon Wireless	154.69	1500-21110-403450	Police US Marshall MDT
04/29/2013	765440	Verizon Wireless	40.01	0100-51120-403450	Parks PMD Air Card
04/29/2013	765440	Verizon Wireless	240.06	2090-44510-403450	Building Air Cards
04/29/2013	765440	Verizon Wireless	100.05	6700-31410-403450	Engineering Air Card
04/29/2013	765440	Verizon Wireless	18.02	5020-75000-403450	PUD Air Card 60% 5020 75000 403450 PUD Air Card 40% 5120 85000 403450
04/29/2013	765440	Verizon Wireless	12.00	5120-85000-403450	PUD Air Card 60% 5020 75000 403450 PUD Air Card 40% 5120 85000 403450
04/29/2013	765440	Verizon Wireless	80.02	0100-43210-403450	Code Enforcement Air Cards
04/29/2013	765440	Verizon Wireless	40.01	0100-13130-403450	City Administration 406-839-4295 Bruce McCandless
04/29/2013	765440	Verizon Wireless	450.30	5710-71470-403160	Met Transit Tablets Monthly Charges
04/29/2013	765440	Verizon Wireless	40.01	2200-22330-402410	Fire HAZMAT MDT
04/29/2013	765440	Verizon Wireless	30.29	2110-31320-403450	Streets iPad 406-647-1377

04/29/2013	765440	Verizon Wireless	3,023.96	5020-75000-402925	Distribution & Collection 60% 5020-75000-403450 Distribution & Collection 40% 5120-85000-403450
04/29/2013	765440	Verizon Wireless	328.37	5020-75000-403450	Distribution & Collection 60% 5020-75000-403450 Distribution & Collection 40% 5120-85000-403450
04/29/2013	765440	Verizon Wireless	2,015.96	5120-85000-402925	Distribution & Collection 60% 5020-75000-403450 Distribution & Collection 40% 5120-85000-403450
04/29/2013	765440	Verizon Wireless	218.91	5120-85000-403450	Distribution & Collection 60% 5020-75000-403450 Distribution & Collection 40% 5120-85000-403450
04/29/2013	765440	Verizon Wireless	249.99	6500-15660-403450	Network Extender Saree BOC 6500-15660-403450
04/29/2013	765384	NorMont Equipment Company	1,055.75	2110-31320-402420	telspar 11' x 2" for sign posts
04/29/2013	765384	NorMont Equipment Company	231.75	2110-31320-402290	red/green/orange paint for line locates
04/29/2013	765384	NorMont Equipment Company	159.65	2110-31320-402320	sweeper gutter wire
04/29/2013	765432	Town & Country Supply Association	453.64	1500-22260-402310	104499: FIRE 6 - DYED DIESEL DELIVERED ON 4/18/2013
04/29/2013	765432	Town & Country Supply Association	304.45	1500-22260-402310	104500: FIRE 1 - UNLEADED DELIVERED 4/18/2013
04/29/2013	765432	Town & Country Supply Association	608.84	1500-22260-402310	104501: FIRE 1 - DYED DIESEL DELIVERED 4/18/2013
04/29/2013	765432	Town & Country Supply Association	728.22	1500-22260-402310	104502: FIRE 5 - DYED DIESEL DELIVERED 4/18/2013
04/29/2013	765438	Van Arsdale Construction	1,985.17	2660-67730-409200	Van Arsdale Construction for Appliance Allowance April 2013
04/29/2013	765454	Yellowstone Valley Elec	1,023.77	5410-31230-403410	electric at landfill april 2013
04/29/2013	765386	NorthWestern Energy	371.23	5610-71170-403410	0712792-1. April 2013 IP-7
04/29/2013	765386	NorthWestern Energy	13.53	5610-71170-403410	0712799-6. April 2013 IP-8
04/29/2013	765386	NorthWestern Energy	1,202.42	5610-71170-403410	0712800-2. April 2013 IP-9
04/29/2013	765386	NorthWestern Energy	136.65	5610-71170-403410	0712817-6. April 2013 IP-House
04/29/2013	765386	NorthWestern Energy	59.10	5610-71130-403410	0719616-5. April 2013 ARFF Facility Lights
04/29/2013	765266	Acuity Brands Lighting Inc	5,540.00	2110-00000-141318	STREET LIGHTS PO NUM 292458

04/29/2013	765266	Acuity Brands Lighting Inc	2,715.00	2110-00000-141318	STREET LIGHTS PO NUM 292458
04/29/2013	765375	Montana Dakota Utilities Co	86.96	5610-71170-403440	295 580 1000 4. April 2013 Aero Interiors
04/29/2013	765375	Montana Dakota Utilities Co	234.62	5610-71170-403440	185 580 1000 7. April 2013 TSA Building
04/29/2013	765375	Montana Dakota Utilities Co	1,094.18	5610-71190-403440	889 373 1000 6. April 2013 QTA Car Wash
04/29/2013	765375	Montana Dakota Utilities Co	609.66	5610-71190-403440	129 573 1000 1. April 2013 QTA Mud Wash
04/29/2013	765375	Montana Dakota Utilities Co	62.86	5610-71190-403440	229 573 1000 0. April 2013 Detail Bay 1 Hertz
04/29/2013	765375	Montana Dakota Utilities Co	120.72	5610-71190-403440	629 573 1000 6. April 2013 Detail Bay 2 National/Alamo
04/29/2013	765375	Montana Dakota Utilities Co	59.84	5610-71190-403440	329 573 1000 9. April 2013 Detail Bay 3 Enterprise
04/29/2013	765375	Montana Dakota Utilities Co	94.79	5610-71190-403440	429 573 1000 8. April 2013 Detail Bay 4 Avis/Budget
04/29/2013	765375	Montana Dakota Utilities Co	44.19	5610-71190-403440	529 573 1000 7. April 2013 Detail Bay 5 Thrifty/Dollar
04/29/2013	765375	Montana Dakota Utilities Co	1,118.67	1500-21710-403440	1692331000 3
04/29/2013	765375	Montana Dakota Utilities Co	16.97	5020-74000-403440	3735801000 9
04/29/2013	765375	Montana Dakota Utilities Co	16.97	5020-74000-403440	3735801000 9
04/29/2013	765375	Montana Dakota Utilities Co	279.42	0100-51270-403440	4377801000 9
04/29/2013	765375	Montana Dakota Utilities Co	758.50	2600-55120-403440	5797801000 7
04/29/2013	765375	Montana Dakota Utilities Co	97.86	6600-31100-403440	5953731000 1
04/29/2013	765375	Montana Dakota Utilities Co	146.80	6700-31410-403440	5953731000 1
04/29/2013	765375	Montana Dakota Utilities Co	6,660.75	5610-71120-403440	5955801000 1
04/29/2013	765375	Montana Dakota Utilities Co	22.75	5120-85000-403440	5967331000 5
04/29/2013	765375	Montana Dakota Utilities Co	13.47	5210-15920-403440	7173531000 6
04/29/2013	765375	Montana Dakota Utilities Co	740.08	1500-22210-403440	8858801000 4
04/29/2013	765375	Montana Dakota Utilities Co	2,231.48	6500-15670-403440	9297801000 4
04/29/2013	765375	Montana Dakota Utilities Co	23.89	5120-85000-403440	9550431000 4
04/29/2013	765375	Montana Dakota Utilities Co	1,188.00	5710-71430-403440	9628801000 0
04/29/2013	765294	Community Seven	64,590.00	0100-00000-229150	capital improvements for Community Seven, Cablevision/Bresnan - see attached
04/29/2013	765442	Water Research Foundation	17,502.00	5020-72110-403350	Water Research Foundation subscription
04/29/2013	765386	NorthWestern Energy	6,077.87	6500-15670-403410	01005073
04/29/2013	765386	NorthWestern Energy	3,200.49	5210-15920-403410	07208341
04/29/2013	765386	NorthWestern Energy	149.88	6070-22350-403410	07215809
04/29/2013	765386	NorthWestern Energy	10.92	0100-51120-403410	07222375
04/29/2013	765386	NorthWestern Energy	7.40	0100-51120-403410	07222474
04/29/2013	765386	NorthWestern Energy	92.16	0100-51120-403410	07222557
04/29/2013	765386	NorthWestern Energy	287.60	0100-51120-403410	07222573

04/29/2013	765386	NorthWestern Energy	15.61	0100-51120-403410	07222664
04/29/2013	765386	NorthWestern Energy	8.38	0100-51120-403410	07222698
04/29/2013	765386	NorthWestern Energy	11.82	0100-51120-403410	07222920
04/29/2013	765386	NorthWestern Energy	32.38	0100-51120-403410	07222938
04/29/2013	765386	NorthWestern Energy	7.40	0100-51120-403410	07229057
04/29/2013	765386	NorthWestern Energy	101.57	0100-51120-403410	07230352
04/29/2013	765386	NorthWestern Energy	8.61	0100-51120-403410	07230360
04/29/2013	765386	NorthWestern Energy	176.70	0100-51120-403410	07230378
04/29/2013	765386	NorthWestern Energy	18.24	0100-51120-403410	07230428
04/29/2013	765386	NorthWestern Energy	0.70	0100-51120-403410	07230519
04/29/2013	765386	NorthWestern Energy	19.55	0100-51120-403410	07230543
04/29/2013	765386	NorthWestern Energy	7.40	0100-51120-403410	07230550
04/29/2013	765386	NorthWestern Energy	12.44	0100-51120-403410	07230568
04/29/2013	765386	NorthWestern Energy	10.92	0100-51120-403410	07230576
04/29/2013	765386	NorthWestern Energy	8.71	0100-51120-403410	07230584
04/29/2013	765386	NorthWestern Energy	71.58	0100-51120-403410	07229339
04/29/2013	765307	Dorsey & Whitney Llp	70,000.00	2030-15130-405510	for legal services rendered May 18, 2011 - April 1, 2013. see attachment for detail.
04/29/2013	765307	Dorsey & Whitney Llp	10,000.00	4210-85930-409340	legal services through March 18, 2013 - sewer system revenue bonds, series 2013
04/29/2013	765423	Springsted	46,820.06	2030-15130-405510	services preliminary to issuance of taxable urban renewal district tax increment revenue bonds, series 2013
04/29/2013	765387	OAC Services Inc	11,573.46	2030-15130-409224	Empire Parking Garage Project Management Services
04/29/2013	765386	NorthWestern Energy	341.60	6600-31100-403410	Electricity
04/29/2013	765386	NorthWestern Energy	512.40	6700-31410-403410	Electricity
04/29/2013	765343	Industrial Communications & Electonics, Inc.	3,555.00	5610-71150-402440	Invoice #14955. Spare parts for paging system
04/29/2013	765300	CTA Architects	6,747.12	2030-15130-409224	Empire Garage utility relocation design and engineering services
04/29/2013	765432	Town & Country Supply Association	25,834.46	5610-71180-402313	Invoice #102310. QTA car rental fuel
04/29/2013	765338	House Of Clean	3,090.00	5610-71120-402240	Invoice #093317. Tile floor scrubber
04/29/2013	765386	NorthWestern Energy	9.25	0100-51120-403410	07230907
04/29/2013	765386	NorthWestern Energy	7.40	0100-51120-403410	07231624
04/29/2013	765386	NorthWestern Energy	7.40	0100-51120-403410	07236441
04/29/2013	765386	NorthWestern Energy	7.82	0100-51120-403410	07236458
04/29/2013	765386	NorthWestern Energy	12.55	0100-51120-403410	07894371

04/29/2013	765332	HDR, Inc.	3,722.70	5030-74910-409390	WO 11-08 WTP High Service Pump Station 2011
04/29/2013	765386	NorthWestern Energy	116.98	8720-51980-403410	10590933
04/29/2013	765386	NorthWestern Energy	1,152.83	5210-15910-403410	15942824
04/29/2013	765332	HDR, Inc.	2,964.81	5030-74910-409390	WO 12-44 WTP High Srvc Pump H2-3
04/29/2013	765332	HDR, Inc.	617.33	5130-84910-409390	WO1029 WWTP West Mechanical MCC;
04/29/2013	765386	NorthWestern Energy	250.51	5710-71480-403410	17847567
04/29/2013	765440	Verizon Wireless	499.46	5610-71100-403450	Airport
04/29/2013	765440	Verizon Wireless	150.35	1500-21700-403450	Animal Shelter
04/29/2013	765440	Verizon Wireless	85.92	7170-21660-403450	CCSIU
04/29/2013	765440	Verizon Wireless	49.06	0100-16110-403450	Legal
04/29/2013	765440	Verizon Wireless	52.30	1500-22250-403450	Comm Center 911
04/29/2013	765440	Verizon Wireless	65.75	6500-15650-403450	Facilites BOC Plus 70% of 406-672-3027
04/29/2013	765440	Verizon Wireless	84.48	6500-15670-403450	Facilities City Hall Plus 30% of 406-672-3027
04/29/2013	765440	Verizon Wireless	93.68	0100-15120-403450	Finance Pat Weber
04/29/2013	765440	Verizon Wireless	751.10	1500-22210-403450	Fire Department
04/29/2013	765440	Verizon Wireless	73.78	0100-17500-403450	Human Resources
04/29/2013	765440	Verizon Wireless	13.07	6200-19130-403450	ITD GIS
04/29/2013	765440	Verizon Wireless	26.14	6200-19110-403450	ITD
04/29/2013	765440	Verizon Wireless	26.28	2600-55170-403450	Library Outreach
04/29/2013	765440	Verizon Wireless	167.68	2600-55120-403450	Library
04/29/2013	765440	Verizon Wireless	42.73	0100-11000-403450	Mayor
04/29/2013	765440	Verizon Wireless	55.87	6010-15500-403450	Motor Pool
04/29/2013	765440	Verizon Wireless	213.73	0100-12200-403450	Drug Court
04/29/2013	765440	Verizon Wireless	138.54	0100-12120-403450	Municipal Court Judge
04/29/2013	765440	Verizon Wireless	13.07	2400-43010-403450	Planning
04/29/2013	765440	Verizon Wireless	2,927.30	1500-21110-403450	Police
04/29/2013	765440	Verizon Wireless	90.39	2510-21870-403450	Police Forensic 406-794-6880 406-698-7323
04/29/2013	765440	Verizon Wireless	371.24	1500-21110-403450	Police Resource Officers
04/29/2013	765440	Verizon Wireless	41.75	2490-21960-403450	Police DV 406-698-1391
04/29/2013	765440	Verizon Wireless	69.95	5210-15210-403450	Parking
04/29/2013	765440	Verizon Wireless	95.32	0100-51100-403450	PRPL Admin
04/29/2013	765440	Verizon Wireless	126.77	0100-51210-403450	PRPL Recreation
04/29/2013	765440	Verizon Wireless	57.23	0100-51400-403450	Cemetery
04/29/2013	765440	Verizon Wireless	43.77	0100-51120-403450	Parks PMD

04/29/2013	765440	Verizon Wireless	905.75	0100-51120-403450	Parks
04/29/2013	765440	Verizon Wireless	106.55	6600-31100-403450	Public Works Admin
04/29/2013	765440	Verizon Wireless	189.32	2090-44510-403450	Building
04/29/2013	765440	Verizon Wireless	379.40	6700-31410-403450	Engineering
04/29/2013	765440	Verizon Wireless	68.53	5410-31210-403450	Solid Waste
04/29/2013	765440	Verizon Wireless	310.40	2110-31320-403450	Streets
04/29/2013	765440	Verizon Wireless	159.32	5410-31230-403450	Solid Waste On Call
04/29/2013	765440	Verizon Wireless	467.08	5020-75000-403450	Distribution & Collection 60% 5020-75000-403450 Distribution & Collection 40$ 5120-85000-403450
04/29/2013	765440	Verizon Wireless	311.38	5120-85000-403450	Distribution & Collection 60% 5020-75000-403450 Distribution & Collection 40$ 5120-85000-403450
04/29/2013	765440	Verizon Wireless	997.62	5020-74000-403450	Water Treatment PWBelknap-WT
04/29/2013	765440	Verizon Wireless	440.21	5020-73120-403450	PWBLKNP MTRSHOP
04/29/2013	765440	Verizon Wireless	69.45	5020-73110-403450	Belknap Office 60% 5020-73110-403450 Belknap Office 40$ 5120-83110-403450
04/29/2013	765440	Verizon Wireless	46.29	5120-83110-403450	Belknap Office 60% 5020-73110-403450 Belknap Office 40$ 5120-83110-403450
04/29/2013	765440	Verizon Wireless	86.81	5020-73140-403450	PWBLKNP STORES 75% 5020-73140-403450 PWBLKNP STORES 25% 5120-83140-403450
04/29/2013	765440	Verizon Wireless	28.93	5120-83140-403450	PWBLKNP STORES 75% 5020-73140-403450 PWBLKNP STORES 25% 5120-83140-403450
04/29/2013	765440	Verizon Wireless	1,058.95	5120-84000-403450	Wastewater Treatment Plant
04/29/2013	765440	Verizon Wireless	25.56	6060-19310-403450	TeleComm Manager
04/29/2013	765440	Verizon Wireless	92.22	5710-71420-403160	On Call MET
04/29/2013	765440	Verizon Wireless	37.12	5710-71410-403450	MET Transit
04/29/2013	765440	Verizon Wireless	91.36	0100-43210-403450	Code Enforcement
04/29/2013	765440	Verizon Wireless	164.49	5710-71470-403160	MET Transit AVL Account 770599076-00001
04/29/2013	765375	Montana Dakota Utilities Co	37.57	1500-21150-403410	51411704789
04/29/2013	765375	Montana Dakota Utilities Co	34.55	1500-21150-403410	06290794947
04/29/2013	765309	Dvorak Randi	967.50	1500-22250-403810	COM-331 VISUAL MEDIA & STORYTELLING (BOOK FEE INCLUDED) 4/15/2013

04/29/2013	765309	Dvorak Randi	967.50	1500-22250-403810	COM-445 COMMUNICATION ISSUES & CRITICAL THINKING 06/10/2013 (BOOK FEE INCLUDED)
04/29/2013	765309	Dvorak Randi	930.00	1500-22250-403810	UNV-150 ORIGINS OF WESTERN CONSCIOUSNESS & COMMUNITY 8/5/2013(BOOK FEE INCLUDED)
04/29/2013	765386	NorthWestern Energy	443.85	5210-15950-403410	07208291
04/29/2013	765386	NorthWestern Energy	1,664.89	5210-15910-403410	15696362
04/29/2013	765386	NorthWestern Energy	7.40	2110-31320-403410	20470191
04/29/2013	765386	NorthWestern Energy	153.83	5210-15950-403410	2128319-7
04/29/2013	765375	Montana Dakota Utilities Co	5,105.76	5120-84000-403440	2937801000 2
04/29/2013	765375	Montana Dakota Utilities Co	10,211.55	5120-84000-403440	2937801000 2
04/29/2013	765375	Montana Dakota Utilities Co	5,105.76	5120-84000-403440	2937801000 2
04/29/2013	765375	Montana Dakota Utilities Co	321.90	1500-22210-403440	5336531000 1
04/29/2013	765375	Montana Dakota Utilities Co	23.99	5120-85000-403440	7354531000 2
04/29/2013	765275	Athena Enterprises USA Inc	1,571.54	1500-21400-403822	Travel Expenses for Tania Pendarakis who came in from Florida to conduct training from 4/15 - 4/18/2013
04/29/2013	765312	Elreg Distributors LTD	3,332.54	6010-00000-141714	87871 PO NUM 292460
04/29/2013	765432	Town & Country Supply Association	21,755.61	6010-00000-141714	102282 PO NUM 292470
04/29/2013	765432	Town & Country Supply Association	6,249.28	6010-00000-141714	102971 PO NUM 292470
04/29/2013	765275	Athena Enterprises USA Inc	2,475.00	1500-21400-403822	Invoice BPD-MT-2013 - BPD Registrations for The Accountable Leader Training and Detecting Deception Training held at the Billings PD Training Facility
04/29/2013	765321	Gcr Cobre Billings Tire Center	19,950.00	5410-31230-402390	Landfill Scraper unit number 0243
04/29/2013	765305	Destiny Software Inc	3,200.00	0100-13140-403660	Yearly Software License Maintenance for AgendaQuick
04/29/2013	765435	Unemployment Ins Contributions Bureau	39,385.31	9000-00000-209996	Quarterly Wage Report March - April 2013
04/29/2013	765272	American Title & Escrow	11,580.00	2660-67730-409200	NSP-648 CONWAY-ADDITIONAL ESCROW-CHANGE ORDERS
04/29/2013	765388	Octane Addictions Inc	2,817.50	2600-55170-403690	Design of and vinyl wrap for new bookmobile
04/29/2013	765421	Spencer Industries	2,136.15	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 292453
04/29/2013	765301	Cummins Rocky Mountain Llc	7.81	5410-31220-402320	004-62052
04/29/2013	765301	Cummins Rocky Mountain Llc	4.59	1500-22260-402320	004-62312
04/29/2013	765301	Cummins Rocky Mountain Llc	4.59	5410-31220-402320	004-62312
04/29/2013	765301	Cummins Rocky Mountain Llc	31.02	5410-31220-402320	004-62562

04/29/2013	765399	Qwest Communications	88.84	5610-71100-403450	Qwest 406-252-9412 Airport
04/29/2013	765399	Qwest Communications	44.42	0100-51400-403450	Qwest 406-652-0269 Cemetery FAX Line
04/29/2013	765399	Qwest Communications	44.82	0100-51120-403450	Qwest 406-652-5507 Parks
04/29/2013	765399	Qwest Communications	30.63	2110-31320-403450	Qwest 406-652-8104 PW Traffice Signal 24 Central
04/29/2013	765399	Qwest Communications	33.89	0100-51210-403450	Qwest 406-652-8403 Stewart Park Batting Cages
04/29/2013	765399	Qwest Communications	29.80	0100-51120-403450	Qwest 406-657-3014 Parks 3890 Stillwater
04/29/2013	765399	Qwest Communications	3,309.86	6060-19310-403450	Qwest 406-657-8377 Main System Centrex
04/29/2013	765399	Qwest Communications	92.40	6060-19310-403450	Qwest 406-657-3009 PUD Measured Lines 406-657-3009 406-247-8579
04/29/2013	765399	Qwest Communications	29.84	6060-19310-403450	Qwest 406-657-3054 Park 1 Elevator Phone
04/29/2013	765399	Qwest Communications	62.60	6060-19310-403450	Qwest BOC Measured Lines 406-252-3774 406-252-3789
04/29/2013	765375	Montana Dakota Utilities Co	22.18	0100-51260-403440	0619431000 6
04/29/2013	765375	Montana Dakota Utilities Co	286.15	6500-15660-403440	1307331000 8
04/29/2013	765375	Montana Dakota Utilities Co	364.84	1500-22210-403440	4421901000 4
04/29/2013	765375	Montana Dakota Utilities Co	35.81	5020-74000-403440	5270331000 4
04/29/2013	765375	Montana Dakota Utilities Co	1,669.08	6500-15660-403440	7576331000 2
04/29/2013	765375	Montana Dakota Utilities Co	582.37	5410-31230-403440	7703901000 2
04/29/2013	765375	Montana Dakota Utilities Co	23.99	5120-85000-403440	8685631000 7
04/29/2013	765375	Montana Dakota Utilities Co	545.21	6500-15660-403440	9937331000 4
04/29/2013	765386	NorthWestern Energy	214.01	1500-21150-403410	19841501
04/29/2013	765386	NorthWestern Energy	246.58	1500-21150-403410	19841550
04/29/2013	765283	Big Sky Senior Services, Inc	2,578.21	2960-65260-407275	Big Sky Senior Services, Inc., Senior Helping Hands January - March Reimbursement
04/29/2013	765386	NorthWestern Energy	612.90	1500-22210-403410	07125370
04/29/2013	765386	NorthWestern Energy	94.81	0100-51220-403410	07126832
04/29/2013	765386	NorthWestern Energy	23.72	5710-71480-403410	07127640
04/29/2013	765386	NorthWestern Energy	306.26	1500-22210-403410	07208408
04/29/2013	765386	NorthWestern Energy	107.16	5020-74000-403410	07222524
04/29/2013	765386	NorthWestern Energy	2,133.39	5020-74000-403410	07230436
04/29/2013	765301	Cummins Rocky Mountain Llc	692.70	5710-71440-402320	004-62618
04/29/2013	765349	Interstate Power Systems, Inc.	20.16	1500-22310-402320	C007026340.01
04/29/2013	765301	Cummins Rocky Mountain Llc	1.49	5710-71440-402320	004-62645
04/29/2013	765386	NorthWestern Energy	7.40	0100-51120-403410	08317026
04/29/2013	765375	Montana Dakota Utilities Co	134.79	5020-74000-403440	0104901000 0
04/29/2013	765375	Montana Dakota Utilities Co	20.15	5020-74000-403440	1104901000 9

04/29/2013	765375	Montana Dakota Utilities Co	162.56	5020-74000-403440	2104901000	8
04/29/2013	765375	Montana Dakota Utilities Co	693.29	5020-73140-403440	3104901000	7
04/29/2013	765375	Montana Dakota Utilities Co	231.10	5120-83140-403440	3104901000	7
04/29/2013	765375	Montana Dakota Utilities Co	421.29	5020-73140-403440	4104901000	6
04/29/2013	765375	Montana Dakota Utilities Co	140.43	5120-83140-403440	4104901000	6
04/29/2013	765375	Montana Dakota Utilities Co	1,965.37	5020-74000-403440	5004901000	7
04/29/2013	765375	Montana Dakota Utilities Co	37.64	5020-74000-403440	5104901000	5
04/29/2013	765375	Montana Dakota Utilities Co	68.39	5020-74000-403440	5669231000	8
04/29/2013	765375	Montana Dakota Utilities Co	17.61	5020-74000-403440	6004901000	6
04/29/2013	765375	Montana Dakota Utilities Co	17.62	5020-74000-403440	6004901000	6
04/29/2013	765375	Montana Dakota Utilities Co	10.48	5020-74000-403440	6104901000	4
04/29/2013	765375	Montana Dakota Utilities Co	60.56	5020-74000-403440	6669231000	7
04/29/2013	765375	Montana Dakota Utilities Co	141.44	5020-74000-403440	7004901000	5
04/29/2013	765375	Montana Dakota Utilities Co	22.22	5020-74000-403440	8004901000	4
04/29/2013	765375	Montana Dakota Utilities Co	714.99	5020-74000-403440	9004901000	3
04/29/2013	765375	Montana Dakota Utilities Co	2,476.26	6500-15660-403440	9897331000	0

Consent **1. P. 2.**

Regular City Council Meeting
Meeting Date: 05/28/2013
TITLE: Payment of Claims May 06, 2013.
PRESENTED BY: Pat M. Weber, Vinancial Director
Department: City Hall Administration

Information

PROBLEM/ISSUE STATEMENT

Claims in the amount of $2,512,189.25 have been audited and are presented for your approval for payment. A complete listing of the claims dated May 06, 2013 is available in the Finance Department.

ALTERNATIVES ANALYZED

No other alternatives were analyzed.

FINANCIAL IMPACT

Claims have a varying impact on department budgets, but are submitted by the departments and reviewed by Finance staff before being sent to the Council.

RECOMMENDATION

Staff recommends that Council approve the Payment of Claims.

APPROVED BY CITY ADMINISTRATOR

Attachments

List of claims greater than $2500.

AP Report >$2,500 for 05/06/2013

Check Date	Check	Name	Amount	Account	Item Desc
05/06/2013	765457	A & E Architects, PC	23,375.00	5030-74910-409390	WO 12-42 WTP Laboratory Renovation
05/06/2013	765460	Active Transportation Alternatives	5,667.00	2400-43010-403560	Final Invoice April 2013
05/06/2013	765467	Alpine Plumbing, Heating & Cooling	2,675.00	6500-15670-403690	Replacement of bad shut off valves at City Hall
05/06/2013	765467	Alpine Plumbing, Heating & Cooling	5,486.39	6500-15670-403690	Inv. #63910 City water line broke. Plumbers had to return to bring line up to city code. After hours work.
05/06/2013	765467	Alpine Plumbing, Heating & Cooling	1,182.50	6500-15670-403690	Inv. #63911 City Hall 2nd Floor Restroom
05/06/2013	765467	Alpine Plumbing, Heating & Cooling	414.00	6500-15670-403690	Inv. #63912 City Hall 1st Floor Police
05/06/2013	765477	Big Sky Linen & Uniform	284.69	5020-73120-402260	Uniforms
05/06/2013	765477	Big Sky Linen & Uniform	44.59	5020-73140-402260	Uniforms
05/06/2013	765477	Big Sky Linen & Uniform	13.72	5120-83140-402260	Uniforms
05/06/2013	765477	Big Sky Linen & Uniform	390.60	5020-75000-402260	Uniforms
05/06/2013	765477	Big Sky Linen & Uniform	260.40	5120-85000-402260	Uniforms
05/06/2013	765477	Big Sky Linen & Uniform	427.20	5020-74000-402260	Uniforms
05/06/2013	765477	Big Sky Linen & Uniform	381.60	5120-84000-402260	Uniforms
05/06/2013	765477	Big Sky Linen & Uniform	442.48	5020-74000-402260	Uniforms
05/06/2013	765477	Big Sky Linen & Uniform	442.48	5120-84000-402260	Uniforms
05/06/2013	765482	Billings Police Protective Assoc	2,661.00	6500-15660-403660	Cleaning of Billings Police Training Facility January - March 2013
05/06/2013	765485	Bison Motor Company	20,969.56	5030-73910-409440	One (1) New 2013 Current Model Mid-Size Cargo Van Schedule V. Exterior color - dark blue/Interior color - gray cloth. Replaces Unit #7171.
05/06/2013	765485	Bison Motor Company	-1,000.00	5030-73910-409440	Trade In Unit 7171 - 1994 GMC Sonoma Pickup
05/06/2013	765487	Boxelder Tree Farms LLC	4,640.00	7720-51660-407249	Trees for Parks.
05/06/2013	765491	Business Tax Section	23.70	8730-51990-409370	Business tax for High Tech-Rose Slides Payment 2.
05/06/2013	765491	Business Tax Section	100.01	4060-00000-201100	Invoice #12-000634-FINAL. Retainage Release
05/06/2013	765491	Business Tax Section	32.02	4160-74930-409220	WO 04-26 ZONE 4 RESERVOIR PHASE 2
05/06/2013	765491	Business Tax Section	327.12	4160-74930-409220	WO 04-26 Zone 4 Reservoir Phase 2
05/06/2013	765491	Business Tax Section	78.83	1990-15050-409310	WO 12-39 Newman Lane Improvements
05/06/2013	765491	Business Tax Section	6.17	2050-31310-409310	WO 12-39 Newman Lane Improvements

05/06/2013	765491	Business Tax Section	20.00	8400-31840-409310	WO 12-39 Newman Lane Improvements
05/06/2013	765491	Business Tax Section	555.40	5030-75910-409340	WO 12-01 Water & Sewer Replacement Schedule 1:
05/06/2013	765491	Business Tax Section	41.28	5030-75910-409340	WO 12-01 Water & Sewer Replacement Schedule 1: CO#3 04/22/13
05/06/2013	765491	Business Tax Section	468.00	5030-75910-409340	WO 12-01 Water & Sewer Replacement Schedule 1: CO Adding portion of Liquidated Damages 04/25/13
05/06/2013	765491	Business Tax Section	16,668.42	4980-55110-409220	Construction of new Library, demolition of existing building & site development features
05/06/2013	765491	Business Tax Section	91.69	2050-31310-409390	WO 12-03 #3 City Crack Seal
05/06/2013	765491	Business Tax Section	55.41	6500-15670-403690	Upgrade meter in city hall to code requirements
05/06/2013	765496	Cmg Construction, Inc.	7,804.17	1990-15050-409310	WO 12-39 Newman Lane Improvements
05/06/2013	765496	Cmg Construction, Inc.	610.83	2050-31310-409310	WO 12-39 Newman Lane Improvements
05/06/2013	765496	Cmg Construction, Inc.	1,980.00	8400-31840-409310	WO 12-39 Newman Lane Improvements
05/06/2013	765497	Community Seven	22,708.00	0100-00000-229150	PEG Fees 1st Quarter 2013.
05/06/2013	765500	Cop Construction Co	54,984.76	5030-75910-409340	WO 12-01 Water & Sewer Replacement Schedule 1;
05/06/2013	765500	Cop Construction Co	4,086.72	5030-75910-409340	WO 12-01 Water & Sewer Replacement Schedule 1; CO#3 04/22/13
05/06/2013	765500	Cop Construction Co	46,332.00	5030-75910-409340	WO 12-01 Water & Sewer Replacement Schedule 1; CO Adding back portion of Previously liquidated Damages 04/25/13
05/06/2013	765505	Dell Computer L P	2,513.72	5710-71470-402925	(2) Dell OptiPlex 3010 pcs
05/06/2013	765506	Denny Menholt Frontier Chevrolet	31,337.56	2110-31320-409420	1 ton reg cab 4x4 pickup with plow
05/06/2013	765506	Denny Menholt Frontier Chevrolet	131.95	5020-73120-402320	NONSTOCKING ITEMS-P.U.D.
05/06/2013	765506	Denny Menholt Frontier Chevrolet	325.50	0100-51120-402320	678253
05/06/2013	765506	Denny Menholt Frontier Chevrolet	600.00	1500-21120-402320	797360
05/06/2013	765507	Destiny Software Inc	4,800.00	0100-14120-402925	Public Records Request Software
05/06/2013	765508	Dixie Petro-Chem	2,752.00	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 292477
05/06/2013	765517	Fehr & Peers	10,559.30	2400-43010-407214	inv 86278
05/06/2013	765523	Fremont Motor Powell LLC	23,602.12	6010-15500-409440	Ford Escape model 2013
05/06/2013	765523	Fremont Motor Powell LLC	-1,400.00	6010-15500-409440	Trade in-Unit #1037, 1997 Ford Ranger Pickup
05/06/2013	765524	Gillig Corporation	3,761.15	6010-00000-141714	4903156 PO NUM 292522
05/06/2013	765524	Gillig Corporation	160.06	5710-71440-402320	4904866

05/06/2013	765524	Gillig Corporation	378.51	5710-71440-402320	4905336
05/06/2013	765527	Hardrives Construction Inc	9,076.65	2050-31310-409390	WO 12-03 #3 City Crack Seal
05/06/2013	765530	HDR, Inc.	15,843.01	5020-74000-403540	WO 12-21 WTP Chemical Bldg/Disinfection Improvements
05/06/2013	765530	HDR, Inc.	2,283.57	5030-74910-409390	WO 11-11 WTF Rapid Mixer
05/06/2013	765530	HDR, Inc.	14,292.41	4160-74930-409340	WO 09-19 Zone 3 East Fox Reservoir
05/06/2013	765531	High Point Networks LLC	3,595.00	6200-19110-405315	vCenter upgrade
05/06/2013	765531	High Point Networks LLC	1,240.00	6200-19110-405315	vCenter upgrade 1 year maintenance
05/06/2013	765531	High Point Networks LLC	710.00	6200-19110-405315	One year maintenance on vSphere 5.1 Ent (1 Processor) VMWare
05/06/2013	765534	House Of Clean	9,918.08	5620-71200-409490	Invoice #93871. Windsor Voyager Duo carpet extractor with standard batteries and charger.
05/06/2013	765538	Iaff	4,361.90	9000-00000-209920	Payroll Summary
05/06/2013	765542	Ingram Library Services Inc.	10.08	2600-55190-403333	Inv 71079639
05/06/2013	765542	Ingram Library Services Inc.	5.99	2600-55190-403226	Inv 71079640
05/06/2013	765542	Ingram Library Services Inc.	14.72	2600-55190-403226	Inv 71079641
05/06/2013	765542	Ingram Library Services Inc.	10.02	2600-55190-403333	Inv 71079642
05/06/2013	765542	Ingram Library Services Inc.	173.57	2600-55190-403226	Inv 71079643
05/06/2013	765542	Ingram Library Services Inc.	4.79	2600-55190-403227	Inv 71079644
05/06/2013	765542	Ingram Library Services Inc.	10.00	2600-55190-403227	Inv 71079645
05/06/2013	765542	Ingram Library Services Inc.	22.96	2600-55190-403333	Inv 71079645
05/06/2013	765542	Ingram Library Services Inc.	32.74	2600-55190-403226	iNV 71079646
05/06/2013	765542	Ingram Library Services Inc.	29.47	2600-55190-403227	iNV 71079646
05/06/2013	765542	Ingram Library Services Inc.	20.34	2600-55190-403222	INV 71079647
05/06/2013	765542	Ingram Library Services Inc.	494.06	2600-55190-403226	INV 71079647
05/06/2013	765542	Ingram Library Services Inc.	446.60	2600-55190-403227	INV 71079647
05/06/2013	765542	Ingram Library Services Inc.	4.19	2600-55190-403333	iNV 71079648
05/06/2013	765542	Ingram Library Services Inc.	42.89	2600-55190-403242	INV 71079649
05/06/2013	765542	Ingram Library Services Inc.	51.81	2600-55190-403333	INV 71079650
05/06/2013	765542	Ingram Library Services Inc.	27.71	2600-55190-403226	INV 71079651
05/06/2013	765542	Ingram Library Services Inc.	26.96	2600-55190-403227	INV 71115193
05/06/2013	765542	Ingram Library Services Inc.	9.00	2600-55190-403227	INV 71115194
05/06/2013	765542	Ingram Library Services Inc.	11.97	2600-55190-403227	INV 71115195
05/06/2013	765542	Ingram Library Services Inc.	63.66	2600-55110-407930	INV 71115196
05/06/2013	765542	Ingram Library Services Inc.	27.24	2600-55190-403333	INV 71177118
05/06/2013	765542	Ingram Library Services Inc.	20.99	2600-55190-403227	INV 71177119
05/06/2013	765542	Ingram Library Services Inc.	15.92	2600-55190-403226	INV 71177120

05/06/2013	765542	Ingram Library Services Inc.	12.00	2600-55190-403227	INV 71177121
05/06/2013	765542	Ingram Library Services Inc.	41.25	2600-55190-403333	INV 71177122
05/06/2013	765542	Ingram Library Services Inc.	53.20	2600-55190-403226	INV 71177123
05/06/2013	765542	Ingram Library Services Inc.	15.90	2600-55190-403227	INV 71177123
05/06/2013	765542	Ingram Library Services Inc.	26.68	2600-55190-403226	INV 71177124
05/06/2013	765542	Ingram Library Services Inc.	46.59	2600-55190-403226	INV 71177125
05/06/2013	765542	Ingram Library Services Inc.	118.75	2600-55190-403226	INV 71177126
05/06/2013	765542	Ingram Library Services Inc.	227.20	2600-55190-403227	INV 71177126
05/06/2013	765542	Ingram Library Services Inc.	95.57	2600-55190-403255	INV 71177126
05/06/2013	765542	Ingram Library Services Inc.	9.59	2600-55190-403241	INV 71177127
05/06/2013	765542	Ingram Library Services Inc.	44.00	2600-55190-403242	INV 71177128
05/06/2013	765542	Ingram Library Services Inc.	6.58	2600-55190-403333	INV 71177129
05/06/2013	765542	Ingram Library Services Inc.	47.17	2600-55190-403226	INV 71177130
05/06/2013	765542	Ingram Library Services Inc.	15.34	2600-55190-403226	INV 71177131
05/06/2013	765542	Ingram Library Services Inc.	19.20	2600-55190-403226	INV 71177132
05/06/2013	765542	Ingram Library Services Inc.	136.85	2600-55190-403333	INV 71190251
05/06/2013	765542	Ingram Library Services Inc.	7.99	2600-55190-403333	INV 71190252
05/06/2013	765542	Ingram Library Services Inc.	9.34	2600-55190-403222	INV 71190253
05/06/2013	765542	Ingram Library Services Inc.	15.26	2600-55190-403226	INV 71190253
05/06/2013	765542	Ingram Library Services Inc.	15.98	2600-55190-403226	INV 71190254
05/06/2013	765542	Ingram Library Services Inc.	8.25	2600-55190-403333	INV 71190254
05/06/2013	765542	Ingram Library Services Inc.	17.99	2600-55190-403222	INV 71190255
05/06/2013	765542	Ingram Library Services Inc.	87.01	2600-55190-403226	INV 71190255
05/06/2013	765542	Ingram Library Services Inc.	119.45	2600-55190-403227	INV 71190255
05/06/2013	765542	Ingram Library Services Inc.	18.99	2600-55190-403255	INV 71190255
05/06/2013	765542	Ingram Library Services Inc.	134.28	2600-55190-403333	INV 71190255
05/06/2013	765542	Ingram Library Services Inc.	24.72	2600-55190-403222	INV 71190256
05/06/2013	765542	Ingram Library Services Inc.	154.54	2600-55190-403226	INV 71190256
05/06/2013	765542	Ingram Library Services Inc.	90.99	2600-55190-403227	INV 71190256
05/06/2013	765542	Ingram Library Services Inc.	65.95	2600-55190-403242	INV 71190257
05/06/2013	765542	Ingram Library Services Inc.	10.00	2600-55190-403333	INV 71190258
05/06/2013	765542	Ingram Library Services Inc.	18.27	2600-55190-403333	INV 71273500
05/06/2013	765542	Ingram Library Services Inc.	7.17	2600-55190-403227	INV 71273501
05/06/2013	765542	Ingram Library Services Inc.	11.82	2600-55190-403333	INV 71273502
05/06/2013	765542	Ingram Library Services Inc.	21.99	2600-55190-403222	INV 71273503
05/06/2013	765542	Ingram Library Services Inc.	63.11	2600-55190-403226	INV 71273503
05/06/2013	765542	Ingram Library Services Inc.	101.12	2600-55190-403226	INV 71273504

05/06/2013	765542	Ingram Library Services Inc.	13.46	2600-55190-403227	INV 71273504
05/06/2013	765542	Ingram Library Services Inc.	15.33	2600-55190-403227	INV 71273505
05/06/2013	765542	Ingram Library Services Inc.	16.49	2600-55190-403222	INV 71273506
05/06/2013	765542	Ingram Library Services Inc.	210.64	2600-55190-403226	INV 71273506
05/06/2013	765542	Ingram Library Services Inc.	544.82	2600-55190-403227	INV 71273506
05/06/2013	765542	Ingram Library Services Inc.	232.84	2600-55190-403255	INV 71273506
05/06/2013	765542	Ingram Library Services Inc.	366.80	2600-55190-403333	INV 71273506
05/06/2013	765542	Ingram Library Services Inc.	11.79	2600-55190-403241	INV 71273507
05/06/2013	765542	Ingram Library Services Inc.	131.95	2600-55190-403242	INV 71273508
05/06/2013	765542	Ingram Library Services Inc.	14.72	2600-55190-403226	INV 71273509
05/06/2013	765542	Ingram Library Services Inc.	16.49	2600-55190-403222	INV 71273510
05/06/2013	765542	Ingram Library Services Inc.	30.67	2600-55190-403226	INV 71273510
05/06/2013	765542	Ingram Library Services Inc.	15.31	2600-55190-403226	INV 71273511
05/06/2013	765542	Ingram Library Services Inc.	24.00	2600-55190-403333	INV 71273511
05/06/2013	765544	Interstate Engineering Inc.	4,004.30	8730-51990-409370	Payment 2 for construction documents on Rose Park Pool slides.
05/06/2013	765546	Jackson Contractor Group Inc	9,900.00	4060-00000-201100	Invoice #12-000633-FINAL. Retainage Release
05/06/2013	765546	Jackson Contractor Group Inc	1,650,173.58	4980-55110-409220	Construction of new Library, demolition of existing building & site development features.
05/06/2013	765556	L P Anderson Tire Co. Inc.	1,277.50	1500-22260-402320	1-134661
05/06/2013	765556	L P Anderson Tire Co. Inc.	940.70	1500-22260-402320	1-135232
05/06/2013	765556	L P Anderson Tire Co. Inc.	972.96	5020-73120-402390	NONSTOCKING ITEMS-P.U.D.
05/06/2013	765556	L P Anderson Tire Co. Inc.	15.00	5020-74000-402390	NONSTOCKING ITEMS-P.U.D.
05/06/2013	765556	L P Anderson Tire Co. Inc.	15.00	5020-75000-402390	NONSTOCKING ITEMS-P.U.D.
05/06/2013	765556	L P Anderson Tire Co. Inc.	18.00	5120-84000-402390	NONSTOCKING ITEMS-P.U.D.
05/06/2013	765556	L P Anderson Tire Co. Inc.	35.00	5120-85000-402390	NONSTOCKING ITEMS-P.U.D.
05/06/2013	765571	Midland Implement Co Inc	2,850.00	8730-51990-402920	Spreader for weed control in parks.
05/06/2013	765574	Montana CSED	4,188.56	9000-00000-209926	Payroll Summary
05/06/2013	765577	Montana State Fireman's Assoc	3,220.89	9000-00000-209924	Payroll Summary
05/06/2013	765581	Moulton Bellingham PC	17,808.24	0100-16110-403560	Invoice Nos. 103274; 103513; 103512; Billings Gazette Employees; Unit Determination; Watters; Total: 17808.24
05/06/2013	765581	Moulton Bellingham PC	10,125.17	0100-16110-403560	Invoice Nos. 102883; 103139; 103140; Gazette/Employee matters; Watters Lawsuit; Unit Determination - $10125.17
05/06/2013	765586	MT Waterworks	7,981.72	5030-75910-409340	Parts for pipe bursting project
05/06/2013	765587	Musol Limited	1,757.84	5120-84000-402220	MPOX40

05/06/2013	765587	Musol Limited	1,757.84	5120-84000-402220	MPOX40
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05/06/2013	765592	NorthWestern Energy	494.51	5020-74000-403410	1699 High Sierra Blvd
05/06/2013	765592	NorthWestern Energy	2,377.77	1500-22210-403410	FIRE1: 0100476-1 - ELECTRICAL SERVICE CHARGES - FY2013 - 2305 8TH AVENUE NORTH
05/06/2013	765592	NorthWestern Energy	350.84	1500-22210-403410	FIRE 6: ELECTRICAL SERVICE - 1601 SAINT ANDREWS - ACCOUNT #0100477-9
05/06/2013	765592	NorthWestern Energy	7,754.63	2600-55120-403410	Electric Usage
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05/06/2013	765592	NorthWestern Energy	64.79	0100-51120-403410	11607801
05/06/2013	765592	NorthWestern Energy	14.09	0100-51410-403410	16352890
05/06/2013	765592	NorthWestern Energy	1,343.66	0100-51270-403410	Monthly electric charges for office and BCC.
05/06/2013	765592	NorthWestern Energy	25,529.81	5610-71120-403410	0100482-9. April 2013 Airport Vault
05/06/2013	765592	NorthWestern Energy	13,108.70	5020-74000-403410	2251 Belknap
05/06/2013	765592	NorthWestern Energy	49,157.61	5020-74000-403410	2251 Belknap
05/06/2013	765592	NorthWestern Energy	2,457.88	5020-73140-403410	2251 Belknap
05/06/2013	765592	NorthWestern Energy	819.29	5120-83140-403410	2251 Belknap
05/06/2013	765592	NorthWestern Energy	57,024.83	5120-84000-403410	725 Hwy 87 East
05/06/2013	765592	NorthWestern Energy	1,814.14	5020-74000-403410	3116 17th St West
05/06/2013	765592	NorthWestern Energy	1,814.15	5020-74000-403410	3116 17th St West
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05/06/2013	765592	NorthWestern Energy	9.08	8720-51980-403410	07233877
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05/06/2013	765592	NorthWestern Energy	3.35	8720-51980-403410	07233919
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05/06/2013	765592	NorthWestern Energy	7.40	8720-51980-403410	07233943
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05/06/2013	765592	NorthWestern Energy	7.40	8720-51980-403410	07233976
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05/06/2013	765592	NorthWestern Energy	259.30	5120-85000-403410	07238785
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05/06/2013	765592	NorthWestern Energy	26.10	8720-51980-403410	15138001
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05/06/2013	765602	Public Utilities	4,065.85	5610-71100-403420	68407759
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05/06/2013	765603	Qwest Communications	29.80	5610-71100-403450	Qwest 406-245-1044 Airport Terminal Power M
05/06/2013	765603	Qwest Communications	45.67	5710-71470-403450	Qwest 406-245-1789 Transit STS
05/06/2013	765603	Qwest Communications	54.42	5410-31230-403450	Qwest 406-245-7193 Solid Waste Landfill
05/06/2013	765603	Qwest Communications	94.43	5410-31230-403450	Qwest 406-245-9820 Solid Waste Landfil
05/06/2013	765603	Qwest Communications	29.82	2110-31320-403450	Qwest 406-245-9906 PW Traffic Signal 4th 27
05/06/2013	765603	Qwest Communications	44.42	5610-71100-403450	Qwest 406-248-3068 Airport Ind Park Gate 9
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05/06/2013	765603	Qwest Communications	44.42	1500-22250-403450	Qwest 406-655-0728 Fire Maintenance Shop
05/06/2013	765603	Qwest Communications	64.37	6060-19310-403450	Qwest 406-248-9124 Met Measured Lines 406-248-9124 406-248-9179
05/06/2013	765603	Qwest Communications	61.26	6060-19310-403450	Qwest 406-248-3329 Airport Measured Lines 406-248-3329 406-248-9989
05/06/2013	765603	Qwest Communications	29.82	1500-21110-403450	Qwest 406-245-6600 Crime Prevention Alarm
05/06/2013	765612	Rocky Mountain College	19,084.04	5120-82110-403590	Evaluate Wetlands Treatment of Wastewater
05/06/2013	765614	RootX	24,104.67	5120-85000-402220	RootX degreaser
05/06/2013	765621	Simply Family Magazine Inc	9,466.00	0100-51210-403210	Printing, insertion and distribution of Parks and Rec. brochures.
05/06/2013	765631	Star Service Inc	3,167.98	4160-74930-409220	WO 04-26 ZONE 4 RESERVOIR PHASE 2
05/06/2013	765631	Star Service Inc	32,384.74	4160-74930-409220	WO 04-26 Zone 4 Reservoir Phase 2
05/06/2013	765636	Tel Net Systems	27,000.00	9000-00000-229000	BD1209 BID deposit refund or WO 13-05 IT Conduit to 911 Center Bid
05/06/2013	765637	Teledyne Leeman Labs	9,599.40	5020-74000-402220	Spectrophotometer service
05/06/2013	765643	Town & Country Supply Association	17,655.00	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 292490

05/06/2013	765643	Town & Country Supply Association	18,545.40	5020-00000-141000	WATER PARTS AND SUPPLIES PO NUM 292491
05/06/2013	765643	Town & Country Supply Association	11,767.06	6010-00000-141000	104571 PO NUM 292527
05/06/2013	765643	Town & Country Supply Association	20,894.69	6010-00000-141000	102328 PO NUM 292528
05/06/2013	765643	Town & Country Supply Association	14,227.41	6010-00000-141000	102329 PO NUM 292528
05/06/2013	765643	Town & Country Supply Association	20,737.50	6010-00000-141714	102331 PO NUM 292529
05/06/2013	765644	Tractor & Equipment Co.	682.00	5410-31230-402320	hydr tank was cracked on unit#238 at landfill
05/06/2013	765644	Tractor & Equipment Co.	1,935.40	5410-31230-402320	BLW00138524
05/06/2013	765648	Tumbleweed Runaway Program Inc	3,148.21	2970-66802-407275	Tumbleweed Runaway Program January - March Reimbursement
05/06/2013	765661	Yellowstone Valley Animal Shelter	20,666.67	1500-21700-403990	contract 3-22-13\4-21-13
05/06/2013	765662	Yellowstone Valley Elec	59.00	5120-84000-403410	Brairwood/O'Shea Cir
05/06/2013	765662	Yellowstone Valley Elec	1,802.20	5020-74000-403410	2085 Santiago Blvd
05/06/2013	765662	Yellowstone Valley Elec	19.00	5120-84000-403410	Rehberg Ranch North Ponds
05/06/2013	765662	Yellowstone Valley Elec	184.20	5120-85000-403410	4523 Iron Horse Trl
05/06/2013	765662	Yellowstone Valley Elec	1,180.67	5120-84000-403410	Rehberg Aeration Ponds
05/06/2013	765662	Yellowstone Valley Elec	161.97	5120-85000-403410	54th St West/Dovetail Ave
05/06/2013	765662	Yellowstone Valley Elec	19.00	5120-85000-403410	WInchester Trl/Rod & Gun Club
05/06/2013	765662	Yellowstone Valley Elec	269.75	5120-85000-403410	2229 Blue Creek

Regular City Council Meeting
Meeting Date: 05/28/2013
TITLE: Special Review 903 - 4809 Grand Avenue - Grace Montessori Academy
PRESENTED BY: Candi Beaudry
Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

This is a request to amend the conditions and site plan for a special review previously approved (Special Review #900) to allow the construction of a new private elementary school. The school is proposed to be 20,058 square feet with 7 classrooms, 49 parking spaces, a fenced playground, landscaping and area for future expansion of classrooms, a gymnasium, and additional parking in a Residential 9,600 (R-96) zoning district on Zimmerman Acreage Tracts. The property is a 3.83-acre parcel of land located at 4809 Grand Avenue. The property is owned by Grace Montessori Academy and Eggart Engineering Company is the agent. The applicant submitted and received approval at the City Council meeting on April 22 for annexation into the City for the additional area. The Zoning Commission continued the public hearing from April 2, 2013 to May 7, 2013. The Zoning Commission conducted the public hearing on May 7, 2013 and is forwarding a recommendation of conditional approval on a 5 to 0 vote.

ALTERNATIVES ANALYZED

The Planning Division reviewed the application and recommended conditional approval and the Zoning Commission has concurred with that recommendation. Before a recommendation of approval or conditional approval may be made, each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2008 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria, in that it is in a district that allows schools by special review. The proposed school is further back from Grand Avenue to allow for a parking area. The proposed building appears to meet all required setbacks and lot coverage limitations. There is a proposed fence for the playground that meets the requirements of the zoning code. Landscaping is proposed for the remainder of the site. The application is conforming to the purposes of the regulations and the 2008 Growth Policy and the West Billings Neighborhood Plan (2001). The application also conforms to the third criteria and conditions of approval are recommended to mitigate any potential impacts to surrounding property. The proposed building is setback from all surrounding existing structures, has a single story and should have little impact on adjacent properties. The building does not exceed lot coverage and meets the required front, side, and rear setbacks. It appears the school will meet the required off-street parking requirements and 2 new access driveways are proposed for the school. The proposal is compatible and conditions are recommended to mitigate any potential adverse effects on the surrounding area. The proposal is consistent with goals of the 2008 Growth Policy and the West Billings Neighborhood Plan, specifically the recommendation to encourage non-commercial uses of land along arterial streets between major intersections. Planning staff is recommending conditions for this special review based on the approval criteria for special review uses.

PROPOSED CONDITIONS

1. The special review approval shall be limited to Zimmerman Acreage Tracts as amended and generally located at 4809 Grand Avenue.
2. The special review approval is for the construction of a new school building of 20,058 gross square feet and no other use is intended or implied by this approval.
3. Any expansion of the proposed building or off-street parking including the future expansion area greater than 10 percent of what is shown on the submitted site plan will require an additional special review approval.
4. All exterior lighting shall have full cut-off shields so no part of the fixture or lens projects below the cut-off shield. The maximum height of any light pole in the parking or outdoor play areas shall be 20 feet above grade.
5. The proposed new drive approaches shall be reviewed and approved by the City Traffic Engineer.
6. No outdoor announcement system is allowed on a permanent or temporary basis.
7. No construction or demolition activity will occur before 8 am or after 8 pm daily.
8. Any new sign will require sign permit approval from the Planning Division. The school will be allowed one (1) monument sign not larger than 32 square feet and may have external illumination.
9. The site will be developed in substantial conformance with the submitted site plan including landscaping, parking and building locations.
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. 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.

FINANCIAL IMPACT

When the property is developed, additional city fees will be realized. If the property is considered exempt from property taxes, then additional tax revenue will not be paid to the City. Fee assessments for arterial streets, storm water control and street maintenance will be paid to the city.

BACKGROUND

This is a request to amend the conditions of approval for Special Review #900 granted to allow the demolition of an existing residence and construction of a new Grace Montessori School at 4809 Grand Avenue. The City Council approved this location under a special review on August 27, 2012 with several conditions. Since that approval, the school has modified its building plans to include more building area, a larger parking lot, and plans for future expansion to the east and north. These changes require additional special review approval by the City Council. The owner has annexed an additional 1.8 acres to the east and north of the original subject property (Approved by City Council on April 22, 2013).

Private schools are allowed only be special review approval in residential zones. The proposed school will be 20,058 square feet and contain 7 classroom spaces. The site plan shows a parking lot with 49 spaces and a fenced playground. The new site plan also shows a future expansion of 4 classrooms, a future gymnasium and 43 future parking spaces. This is in an area between the coterminous city limits and other annexed property to the west including Grand Peaks Subdivision, Cottonwood Grove Subdivision, and the Bishop Fox Subdivision at 54th Street West and Grand Avenue.

The immediate neighborhood surrounding the parcel is zoned A-1 and is used for agricultural purposes including irrigated cropland, grazing, hay and other crops. The proposed building will be a single story and approximately 25 feet in height. A 10-foot side setback is shown for the side property lines. The proposed parking will be approximately 40 feet from the Grand Avenue property line and the main school building will be 130 feet north of the Grand Avenue property line. There is a fenced playground north of the proposed school building.

Grand Avenue is a principal arterial street with higher speed traffic at this location. According to 2012 traffic counts, Grand Avenue in this area carries about 4,000 vehicle trips per day. The posted speed limit at this location is 60 mph. All students will likely arrive and depart the school by car or bus until sidewalks/pedestrian trails are installed in this area of Grand Avenue. Careful alignment of the new drive approach will be necessary to ensure adequate sight distances and safe turning movements.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on May 7, 2013, and received the staff recommendation and testimony from the agent, Quentin Eggart of EEC. There was no other testimony. The Zoning Commission is forwarding a recommendation of conditional approval on a 5 to 0 vote.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consistency with Adopted Policies and Plans is discussed in the Alternatives Analyzed section above.

RECOMMENDATION

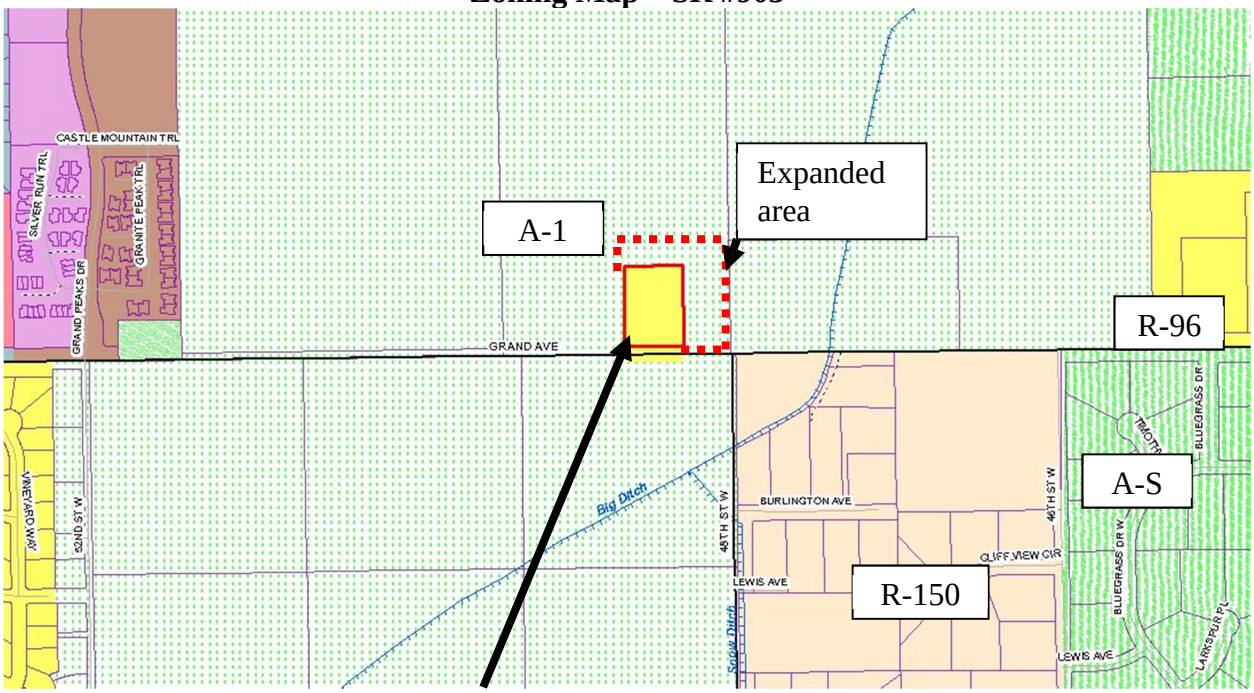
The Zoning Commission is recommending conditional approval of Special Review 903 on a 5 to 0 vote.

APPROVED BY CITY ADMINISTRATOR

Attachments

Zoning Map
Site photos
Site Plans
Applicant Letter

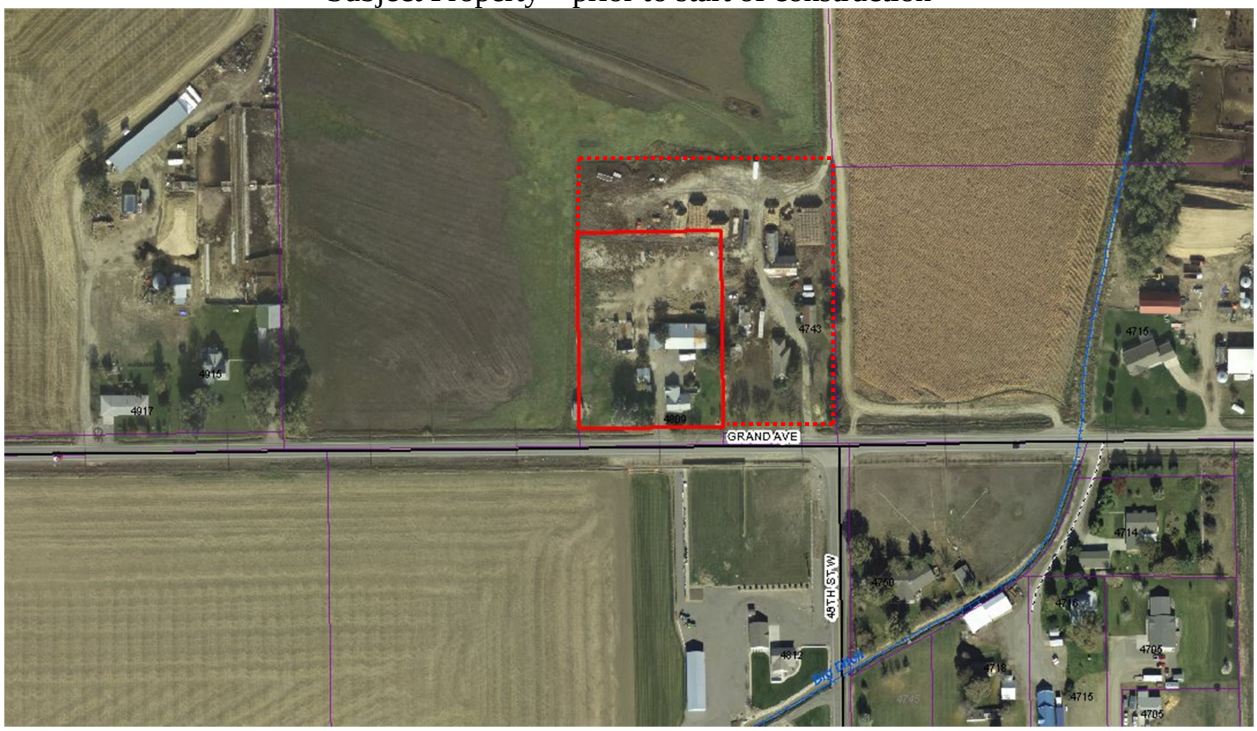
Attachment A
Zoning Map – SR #903



Subject Property at 4809 Grand Avenue

Attachment B
Site photos – SR #903

Subject Property – prior to start of construction



Subject Property

Attachment B, continued
Site photos – SR #903

View north and east

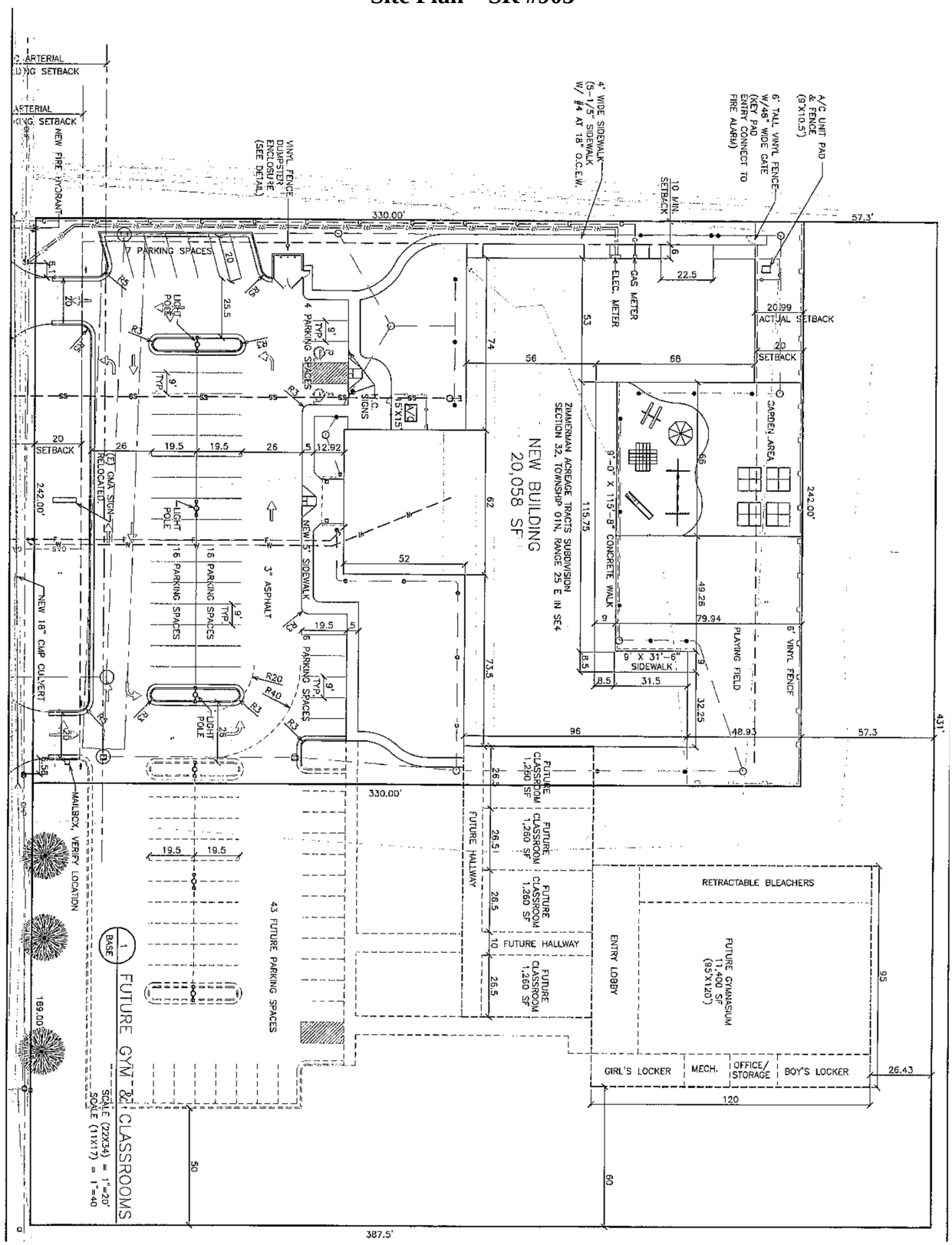
View north and west

Attachment B, continued
Site photos – SR #903

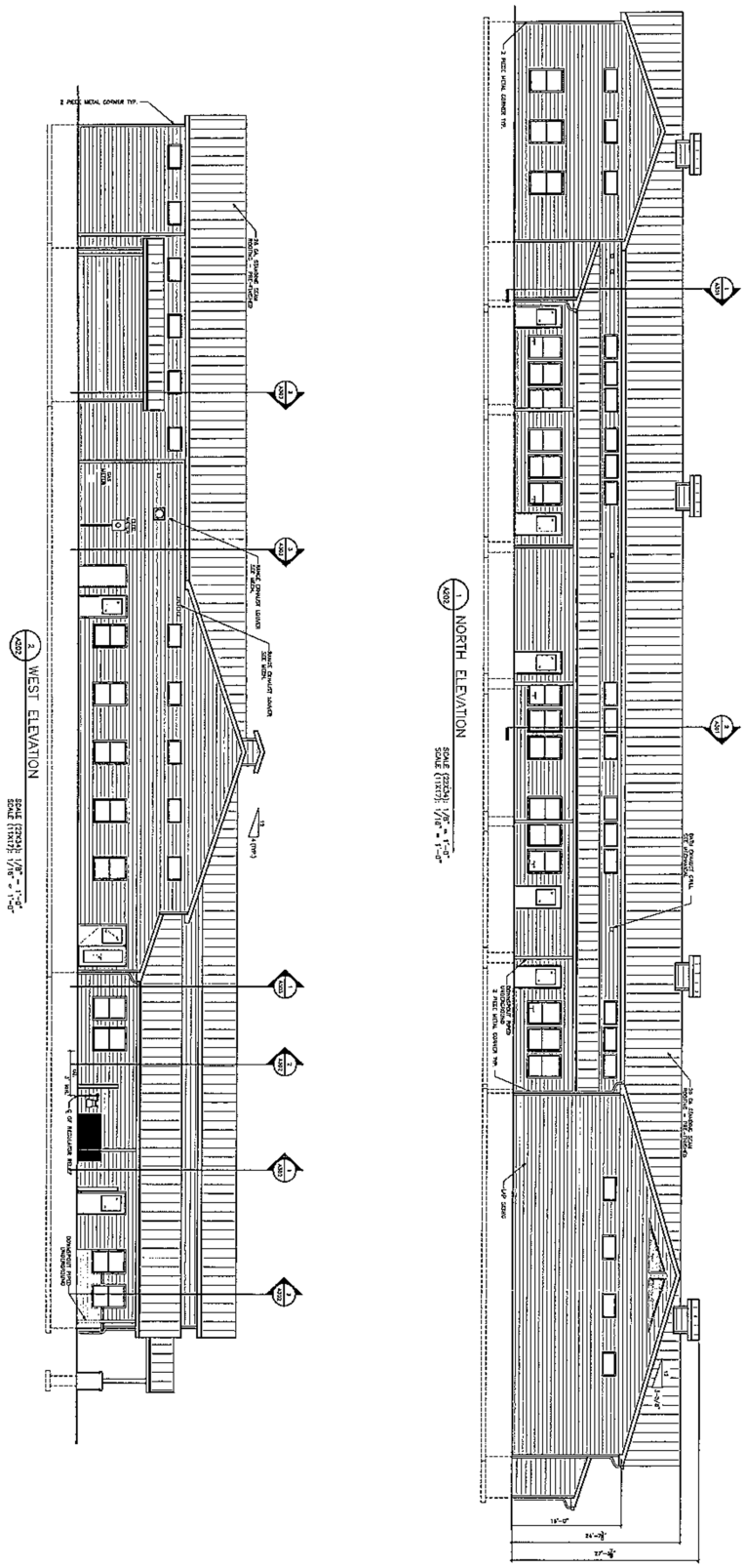
View east along Grand Avenue

View west along Grand Avenue

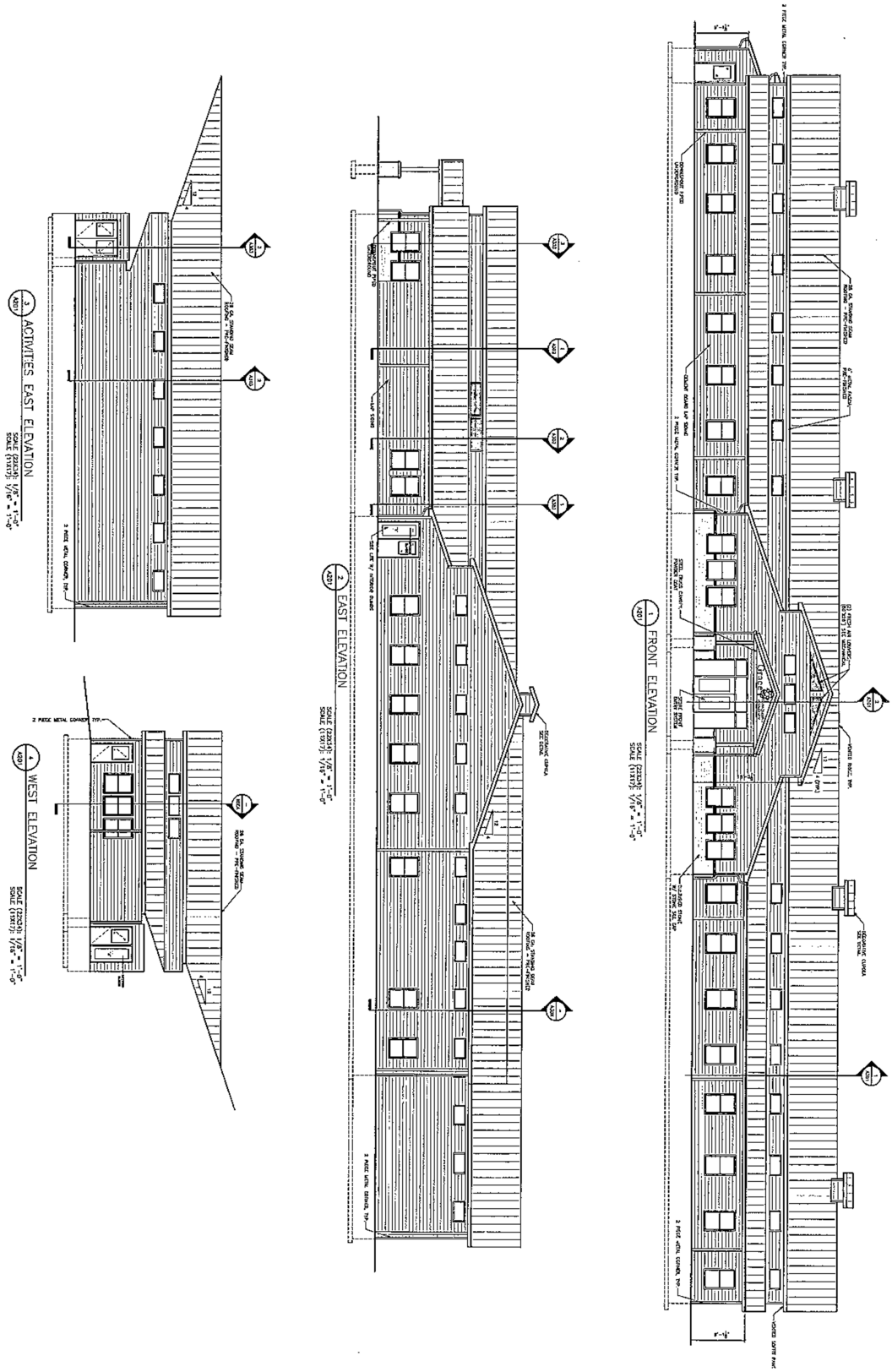
Attachment C
Site Plan – SR #903



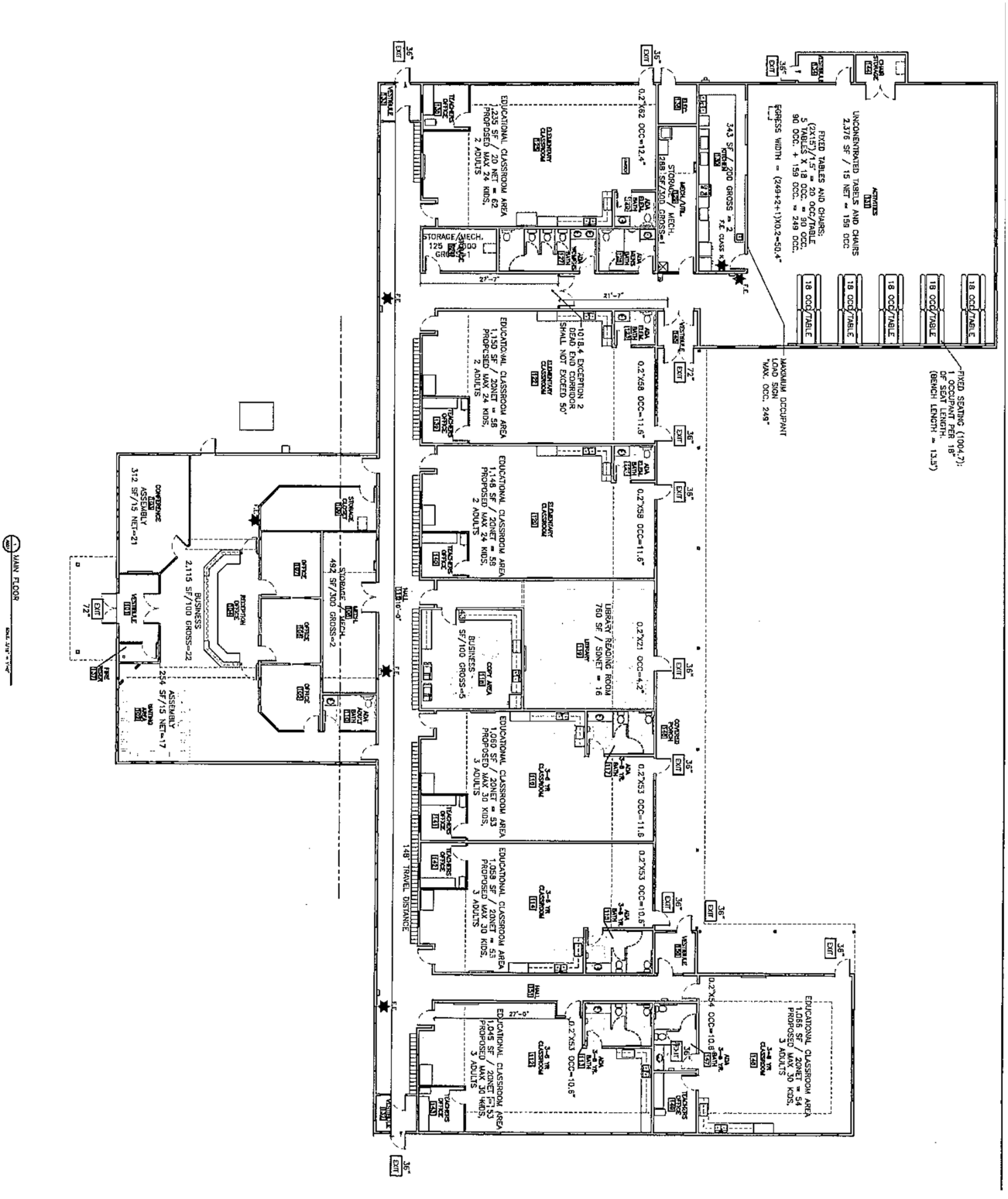
Attachment C, continued
Site Plan – SR #903



Attachment C, continued
Site Plan – SR #903



Attachment C, continued
Site Plan – SR #903



Attachment D
Applicant Letter – SR #903

D. *Written statement addressing what is to be intended to be done with the property, including new construction or change in the use of the property, and why the special review is being sought.*

The proposed Grace Montessori School will consist of an approximately 20,058 square foot educational building, an associated parking lot, a fenced play ground area and plenty of landscaping and green space for a total of 79,860 square feet.

The proposed Grace Montessori School will consist of 7 classrooms, each approximately 1,100 square feet in size. There will be library in the middle of the building approximately 760 square feet in size. The activities room will be located in the back of the building and will be approximately 2,400 square feet in size. Next to the activities room is the planned location for the kitchen. The front entrance of the school building will consist of the staff offices and reception desk. There will be a fenced playground located behind the building consisting of playground equipment and concrete activities pads. Present land use is approved for school in R 9600 zone per Special Review #900. There are currently no existing structures on the property.

There is a future expansion planned for this school which will expand 57.3 feet to the North and 189.12 feet to the east. An 11,400 square foot gym is planned for this expanded area as well as 6,496 square feet of additional classroom area and 43 future parking spaces.

This Special Review is being sought to assure that the proposed use of the property, a private school facility, will be compatible with its location and the surrounding land uses. Per Yellowstone County Unified Zoning Regulations, a Special Review is required to approve the location of a School to be placed on Residential 9600. Special Review #900 has been submitted for this school on this lot and was approved on August 30th, 2012. Since that time, the plan for the school has grown in size beyond 10% and therefore requires another Special Review.

Regular City Council Meeting
Meeting Date: 05/28/2013
TITLE: Special Review 904 - Public Hearing - 1802 16th St West
PRESENTED BY: Candi Beaudry
Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

This is a Special Review request to allow multi-family dwellings in an R-60 zone on property located on the north side of Avenue E between 16th Street West and 17th Street West. The property is legally described as Lots 1 through 9A of Block 10, Partington Park Subdivision, 8th Filing and is a 2-acre parcel of land. The property is owned by McDonald Land Holdings, LLC and the agent is AT Architecture. The applicant proposes to construct two 4-plexes and four 6-plex multi-family buildings (32 dwelling units). The former Plaza Pool Apartments consisted of 10 duplexes (20 dwelling units). The Zoning Commission conducted a public hearing May 7, 2013, and is forwarding a recommendation of conditional approval on a 4 to 1 vote.

ALTERNATIVES ANALYZED

The Planning Division reviewed the application and recommended conditional approval to the Zoning Commission. The Zoning Commission concurred with this recommendation and modified 2 of the proposed conditions and added 1 condition. Before a recommendation of approval or conditional approval can be made, each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2008 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria, in so far, that it is in a district that allows multi-family dwellings by special review. The proposed dwellings meet the required setbacks, building separations, lot coverage maximum and building height. The building exterior and roof style can be found in neighborhoods throughout the city. The most recent example of this building style is in the 800 block of Avenue E, the Executive Townhomes. The applicant is proposing to use the alley as a primary access for 18 of the dwelling units. The buildings will be the same construction style with the garage entrances on the alley and the front doorways facing the alley. The applicant is proposing to pave the alley. Landscaping is proposed for the remainder of the site. The application is conforming to the purposes of the regulations, the 2008 Growth Policy and the Billings Infill Policy (December 2011).

The application also conforms to the third criteria and conditions of approval are recommended to mitigate any potential impacts to surrounding property. The proposed buildings are set back from all surrounding existing structures but are 2-story structures compared to the single-story homes to the north. Staff is recommending a condition to help mitigate the bulk and mass of the structures as seen from the single story homes to the north. The buildings do not exceed lot coverage and meet the required front, side, and rear setbacks. The surrounding owners have expressed concern with the maintenance and appearance of the new development based on their experience with the previous development, the Plaza Pool Apartments. Staff is recommending several conditions intended to address these concerns.

The proposal is consistent with goals of the 2008 Growth Policy and the Billings Infill Policy, specifically the recommendation to encourage re-development of under-utilized property, encouraging compatible uses and avoiding leapfrogging development beyond city services. Planning staff recommended conditions for this special review based on the approval criteria for special review uses. The Zoning Commission modified 2 of these proposed conditions and added 1 condition. The modified conditions are #6 and #7 and the added condition is #12.

PROPOSED CONDITIONS

1. Lots 1 through 9A of Block 10, Partington Park Subdivision, 8th Filing generally located at 1802 16th Street West.
2. The special review approval is for the construction four 6-plex dwellings and two 4-plex dwellings for a total of 32 dwelling units and no other use or development configuration is intended or implied by this approval.
3. Any expansion of the proposed buildings or off-street parking greater than 10 percent of what is shown on the submitted site plan will require an additional special review approval.
4. All exterior lighting, including security lighting above garage doors, shall have full cut- off shields so no part of the fixture or lens projects below the cut-off shield. The maximum height of any light pole in the outdoor areas shall be 15 feet above grade. Exceptions to this requirement are allowed for porch or entry doorway lighting.
5. The proposed new drive approaches shall be reviewed and approved by the City Traffic Engineer.
6. The applicant shall consult with adjacent property owners north of the alley to coordinate the timing of the alley improvements. The applicant/owner will replace any or all fencing on the north side of the alley that may be damaged during construction activities. The adjacent property owner may choose not to have fencing replaced or repaired by the applicant. If the adjacent owner agrees to allow the fencing to be repaired or replaced by the applicant/owner, the adjacent owner may choose any style or type of fencing material allowed by the zoning regulations for the new or repaired fencing.
7. Construction or demolition activity will occur in conformance with City Code Chapter 17 - Noise.
8. Any new sign will require sign permit approval from the Planning Division. The property will be allowed one (1) monument style sign not larger than 12 square feet in sign area not including the support structure and may have external illumination. No banner signs will be allowed on the exterior of any of the buildings or on the property.
9. The applicant/owner will install 24 trees of at least 8 feet in height and 1.5 inch caliper at the time of planting. The trees will be installed in substantial conformance with the submitted site plan. The trees shall not be any of the following species: Carolina poplar, Canadian poplar, other populus subspecies including any variety of aspens, elms, lombardy poplar, silver leaf poplar, weeping willow, or box elder. The trees will be continuously maintained and replaced as necessary by the owner.
10. Any centralized solid waste storage shall be enclosed by a wall on 3 sides and a closing gate or gates. The wall and gates for the solid waste storage shall be similar or complimentary in color to the adjacent buildings and shall be sight-obscuring. The wall and gates shall be tall enough that no part of the interior dumpster(s) are visible from the outside.
11. The site will be developed in substantial conformance with the submitted site plan including landscaping, parking and building locations.
12. The applicant will place pedestrian crossing signs in the alley where it intersects with 16th St West and 17th St West so traffic is aware of pedestrians on the adjacent sidewalks.
13. 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.
14. 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.

FINANCIAL IMPACT

If the special review use is approved, additional property value will be realized for this parcel of land. This will expand the tax base in the City of Billings. The applicant will install at their expanse replacement of city infrastructure including new curbwalk on Avenue E, accessible ramps at intersections, new sewer line in the alley and full pavement of the alley between 16th St West and 17th Street West. The re-development of the property will reduce the need for the city to extend city services to undeveloped land for similar residential housing.

BACKGROUND

This is a request to allow the development of multi-family dwellings in an R-60 zone. The city requires a special review for this use in the R-60 zoning district. The applicant is proposing to develop four 6-plexes and two 4-plexes for a total of 32 dwelling units on the 2 acre property. The Plaza Pool Apartments, the previous development, consisted of 10 duplex dwellings (20 units) but is in the process of being demolished. The duplexes were originally constructed in 1965 and were rental apartments. The Sheraton Arms Condominiums are on the south side of Avenue E across from the subject property. These condominiums consist of 60 dwelling units in 8 buildings on a 2.8-acre parcel constructed in 1968. The neighborhood to the north across the alley is primarily single family dwellings constructed in 1961. These homes are single story homes on lots between 7,900 and 11,200 square feet. The proposed multi-family dwellings will be 2-story attached units with building divisions centered on the garage spaces. The dwelling units will be 2-bedroom dwellings with 2 off-street parking spaces (64 total off-street parking spaces) for each dwelling. The ground floor will consist of a living room, kitchen, laundry, half-bath and utility spaces. The upper story will be 2 bedrooms and a full bathroom. The ground floor will have an entrance from the garage into the living space and a front door facing either Avenue E or the alley. The applicant proposes to pave the existing alley. Solid waste service is proposed to be on-site enclosed dumpsters with collection from the alley. The applicant is exploring other solid waste collection options including curb side collection for the buildings facing Avenue E and alley collection for the units facing the alley.

The zoning surrounding the site is mixed with R-70 to the north, R60 to the east, CC and RMF-R to the south and RP to the west. The area also is a mixture of development including McFiny's convenience store, a hair salon and Carmel Cookie Waffle at 17th St West and Avenue E, a professional office building on the west side of 17th Street West, single family homes to the north, the Sheraton Arms Condos to the south, and multiple duplexes to the east. The development pattern has not changed in the past 50 years in this neighborhood. The West Park Plaza 1 block to the south, has undergone recent re-development and a plan is moving forward to develop multi-family dwellings on the northwest corner of the property. Avenue E is a neighborhood street and provides on street parking for the residents and visitors. Seventeenth Street West is a minor arterial street. According to 2013 traffic counts, 17th Street West carries about 9,000 vehicle trips per day. The posted speed limit on 17th Street West is 35 mph and the intersection with Avenue E is a two-way stop controlled intersection. During peak traffic times, turning movements from Avenue E can be delayed. The proposed increase in the number of dwelling units – 12 additional units – may add up to 96 additional vehicle trips per day to the area traffic. The added traffic should not decrease the level of service at the adjacent intersections.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on May 7, 2013 and received the staff recommendation and testimony from the applicant, Greg McDonald of McDonald Land Holdings, LC, and the agent, Travis McDowell of AT Architecture. The Zoning Commission also heard testimony in favor of the application from Jerry Jones, of Jones Construction, Jane Lukas Penney, liaison for the owner, Tom Mutchler of Rainbow Property Management, and Lance Egan of Prudential Floberg Realty. The Zoning Commission received testimony in opposition to the application from Lester Pust of 1817 17th St West, Terry Padgett of 1632 Avenue F, Susan Barrow of 1546 Avenue F, Brenda Binstock of 1636 Avenue F, Len Richards of 1801 16th St West, Carla Johnson of 5315 Rustic Ave (unit owner in Sheraton Arms Condos), and Michelle Cormier Lee of 1616 Avenue F. The Zoning Commission also received 6 letters of support from surrounding business owners.

The applicant and agent testified the project was intended to be less dense than permissible with a special review and the buildings less than the maximum height of 34 feet. The proposed 6-plexes and 4-plexes will have a maximum roof height of 24 feet and the total number of units is proposed at 32 instead of the maximum possible of 40 units. The agent, Travis McDowell, stated he has met with the surrounding neighbors and heard their concerns with the proposed development. He is discussing alternative trash removal and collection with the City's Solid Waste Division. He stated each unit will have 2 off-street parking spaces and there is on-street parking on Avenue E and 16th St West. Mr. McDowell stated the applicant is comfortable with the conditions of approval except Condition #6 concerning the fencing for the property on the north side of the alley. He stated the owner is willing to replace all fence that may be damaged during construction but not undamaged fences. Mr. McDonald stated the intent is to build a higher-end apartment complex that will attract long term tenants. He stated this would be a benefit to the surrounding neighborhood and add value to other property.

Jane Kukas Penney stated she canvassed the neighborhood for the owner at the beginning of April to let everyone know about the pending re-development. She stated she handed out fliers with the elevation plans and an explanation of the proposed development. She stated many people were very supportive of the demolition and she presented the business owner letters of support to the Zoning Commission.

Tom Mutchler of Rainbow Property Management stated his firm is the management company for the apartments and will continue to handle the rentals in the future. He stated the new units will rent for $900 to $1,200 per month where the old units rented for about $650 per month. He stated the old units were becoming a hazard. He stated demand for rentals in centrally located areas such as this property were in high demand and he expected the vacancy rate to be very low for the new units.

Lance Egan of Prudential Floberg Real Estate stated he was asked to give his professional opinion on the property value impact of the new multi-family development on the existing neighborhood. He stated it was his opinion the adjacent values will increase with the new development. He stated the new multi-family units should not negatively effect the marketability of the single family homes on Avenue F. He stated there are several 4-plex town homes in the area that have sold individual units from $160,000 to $225,000 so there should not be a negative effect on home values in the area. He stated the design and site development will be compatible with the surrounding neighborhood.

Lester Pust of 1817 17th Street West testified in opposition of the request. He stated he was opposed to the alley access for 16 units behind his house. He stated his house is the lot on the corner of 17th St West and Avenue E and is right on the alley where the new units will have access. He stated the current management and response to complaints has been very poor and he does not believe this will change with the new units. He stated he was a retired Billings Police Officer so he understands property management issues. Mr. Pust stated he has lived at 1817 17th St West since 1979. He stated there was a complaint with an overgrown bush on the apartment property near the alley intersection with 17th St West. He stated the management never responded so the city had to trim the bush and send the owner a bill for the work. He stated the owner never told them there would be alley access for 16 of the 32 units. He stated the previous tenants always used the residential barrels on the north side of the alley instead of their own dumpsters on the south side of the alley. He stated the City's Solid Waste Division had to send letters to all the tenants to get them to stop. Mr. Pust stated there used to be a school crossing at Avenue F and 17th St West but this was taken out when the city signalized Parkhill Drive and 17th St West. He stated lots of school kids still cross at Avenue F and Avenue E to get to Rose Park School. Rose Park School entrance is at the dead end of Avenue E and most kids will not walk 2 blocks north to the traffic signal. Mr. Pust stated the owner should have all the units access off Avenue E and not off the alley. He stated 20 units on this 2 acres is enough and he saw no reason why 32 units are needed. He stated the current activity starts way before 8 am, sometimes as early as 6:15 am. He stated the owners have never complied with any city rules and regulations.

Terry Padgett of 1632 Avenue F testified against the application. He stated he has lived at 1632 Avenue F for 17 years but moved here from Sioux Falls, SD. He stated he investigated what other similar cities might do to review such a proposal. He stated he talked with an engineer in the Planning Department of Sioux Falls, SD who stated the alley access issues were a concern for public safety. He stated the engineer would have concerns about proper addressing and emergency services finding one of the units off the alley. He stated the engineer would recommend the Fire Department be involved in the review. Mr. Padgett stated the demolition and site work taking place already is violating the city noise ordinances so the owner clearly has a disregard for the neighbors to the north. He stated there have always been problems with the tenants such as loud parties and criminal activity. He stated if the project is approved it should only have access from Avenue E and not the alley.

Susan Barrow of 1546 Avenue F testified against the project. She stated she has lived in the neighborhood since 1971 and has witnessed almost the entire life cycle of these apartments. She stated the apartments have had problem tenants almost from the beginning. She stated the proposed buildings will only have 15 feet between them for the residents to have outdoor activity. She stated this is much too close. She stated the open area on the lots would be much smaller than similar development in the area. She stated there is concern with keeping the clear vision areas at the intersections and the alleys open so people will be safe walking on the sidewalks. She stated there is no need for the additional density when the West Park Plaza will be putting up 96 dwelling units just 2 blocks south of this location. She stated her biggest concern was the alley access for 16 of the 32 units.

Brenda Binstock of 1636 Avenue F testified against the project. She stated she has lived here for 13 years and has concerns with the proposed alley access. She stated she did not want to have to pay the additional cost to dig up pavement in the alley if she needs to replace a sewer line in the future. She is concerned with pedestrian safety in the area since 2 children have been struck by cars while in the crosswalk at 17th St West and Parkhill Drive in the last 2 years. She stated the additional 96 vehicle trips per day estimated by the city will add to the traffic danger in the area. She stated the reason she lives at 1636 Avenue F is because of her large back yard and the privacy it affords her family. She stated that granting alley access for these new units will destroy the value of her backyard since it will no longer have the same privacy. She stated the owners never consulted the neighbors before they submitted their application.

Len Richards of 1801 16th Street West testified in opposition to the application. Mr. Richards stated he has lived here since 1981 and he was opposed to paving the alley. He stated this will turn the alley into a street. He stated people already speed through the alley and he witnessed 2 school kids almost get hit by a car coming out of the alley on to 16th St West. He stated if the alley is paved, it should be widened out and the clear vision areas kept open.

Carla Johnson of 5315 Rustic Lane testified in opposition to the application. She stated she was a unit owner in the Sheraton Arms Condos across the street and was very concerned because of the poor management and maintenance of the property. She stated this will likely continue. She stated the site plan did not appear to have enough off-street parking for the tenants and their guests. She stated that while the owner expects to get young professional tenants, units could be rented to college students who would then take up all the the on-street parking. She stated she was concerned with the lack of open area on the site. She stated the owners should re-design the property to provide more off-street parking and more open space.

Michelle Cormier Lee of 1616 Avenue F testified in opposition to the application. She stated she was the resident who wrote the letter to the Zoning Commission. She stated all the neighbors on avenue F signed the letter. She stated the owner did tell everyone the number of units would be 32 and the old apartments would be torn down. She stated the owner did not let the neighbors know the alley would be providing access for 16 of the 32 units. She stated providing alley access would turn this alley into a city street and would eliminate the quiet enjoyment of their back yards. She stated she agreed with all of the previous concerns stated by her neighbors. She stated the alley will become the private property of the apartments and any rights they used to have to alley will be pushed out. She stated many times she has used the alley to get materials in an out of her back yard for home repairs. She stated if the alley is paved and access for 16 units is provided, using the alley for home repairs will become impossible. She stated it is depressing to lose the privacy of their back yards. She stated if the site needed a second access then the owner should put in their own carriage way and leave the alley alone.

Travis McDowell provided rebuttal testimony. He stated the owner could build duplexes on the property with alley access and this would not require special review. The alley access requires the alley to be paved even for single family or duplex dwellings. He stated the owner considered many different site plans before settling on the one presented. He stated if the owner re-designed to only have Avenue E access, the buildings would have to be much taller. He stated he has consulted with the Fire Department about the addressing and access for the new units. He stated Bill Tatum, Deputy Fire Marshal, will be in charge of the addressing and has no concerns with the access or the addressing. Mr. McDowell stated the city requires every multi-family dwelling with 2 bedrooms to have 1.5 off-street parking spaces. The owner is providing 2 off-street parking spaces for each 2-bedroom dwelling - 33% more than is required. He stated no parking in the alley will be allowed but each unit will have a full-depth parking space off the alley in addition to the 1-car garage for each unit. He stated the owner has already had a master plan review meeting with the city and many issues have been resolved. He stated the paving in the alley will not hinder or make sewer repairs more expensive. He stated most of the city does have paved alleys so tearing up pavement to replace sewer lines is not an issue. He stated the owner is also concerned with the safety of children in the area. He stated the owner will work the city staff to ensure all driveways, alleys and intersections are clear for pedestrian safety.

The Zoning Commission closed the public hearing. Member Bill Ryan made a motion to recommend conditional approval to the City Council with an added condition the owner place pedestrian crossing signage at the alley and street intersections. The motion was seconded by member Dan Wagner. Member Barbara Hawkins made a motion to amend Condition #6 concerning fences on the north side of the alley. The motion was to remove language allowing all residents to have fencing replaced by their choice. The motion was seconded by Bill Ryan. The motion to amend condition #6 was approved 5-0. Mike Boyett made a motion to amend Condition #7 to change the wording to allow the owner to follow city adopted code at Chapter 17. The motion was seconded by member Bill Ryan and approved on a 5-0 vote. Chairman Leonard Dailey, Jr. called the question on the main motion with amended conditions. The Commission voted 4 in favor a 1 opposed (Mike Boyett) to recommend conditional approval.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The consistency with adopted policies and plans is discussed in the alternatives analyzed section above.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of conditional approval on a 4 to 1 vote.

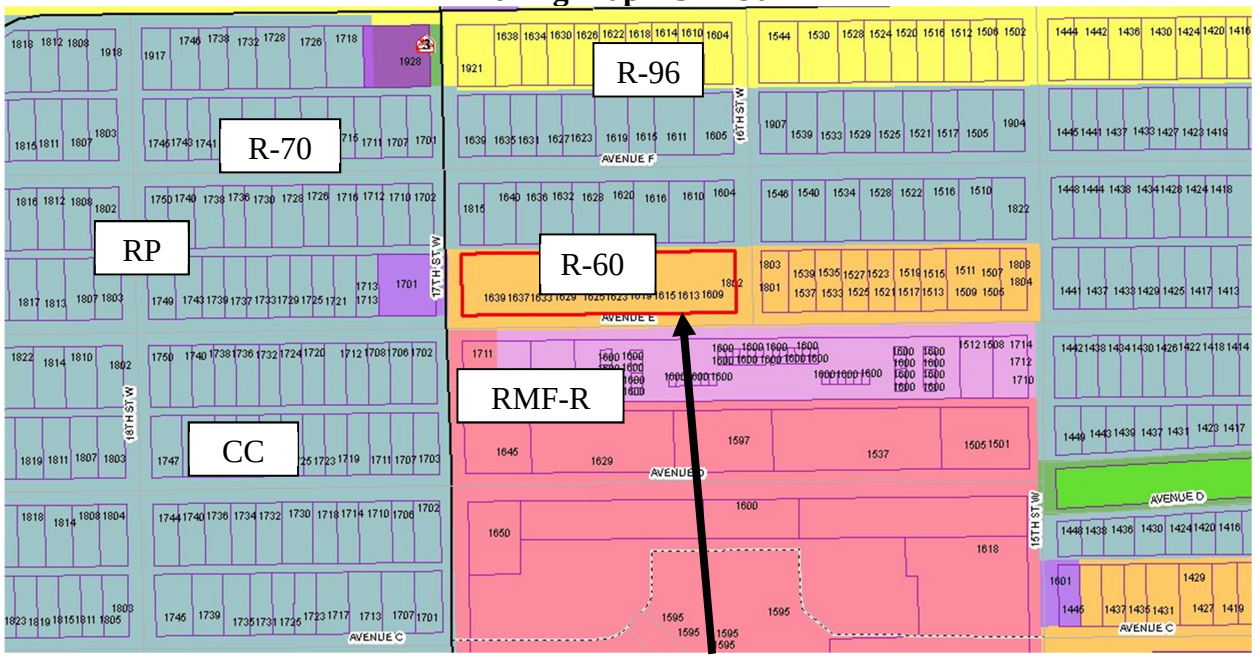
APPROVED BY CITY ADMINISTRATOR

Attachments

Zoning Map
Site Photos
Site Plans
Owner's Letter
Surrounding Owner Letter

Attachment A

Zoning Map – SR #904



Subject Property

Attachment B
Site photos – SR #904

Subject Property – southwest corner at 17th St W and Avenue E

Subject Property – view on Avenue E

Attachment B, continued
Site photos – SR #904

View south on 17th St West

View west from 16th St West

Attachment B, continued
Site photos – SR #904

View west along alley from 16th Street West

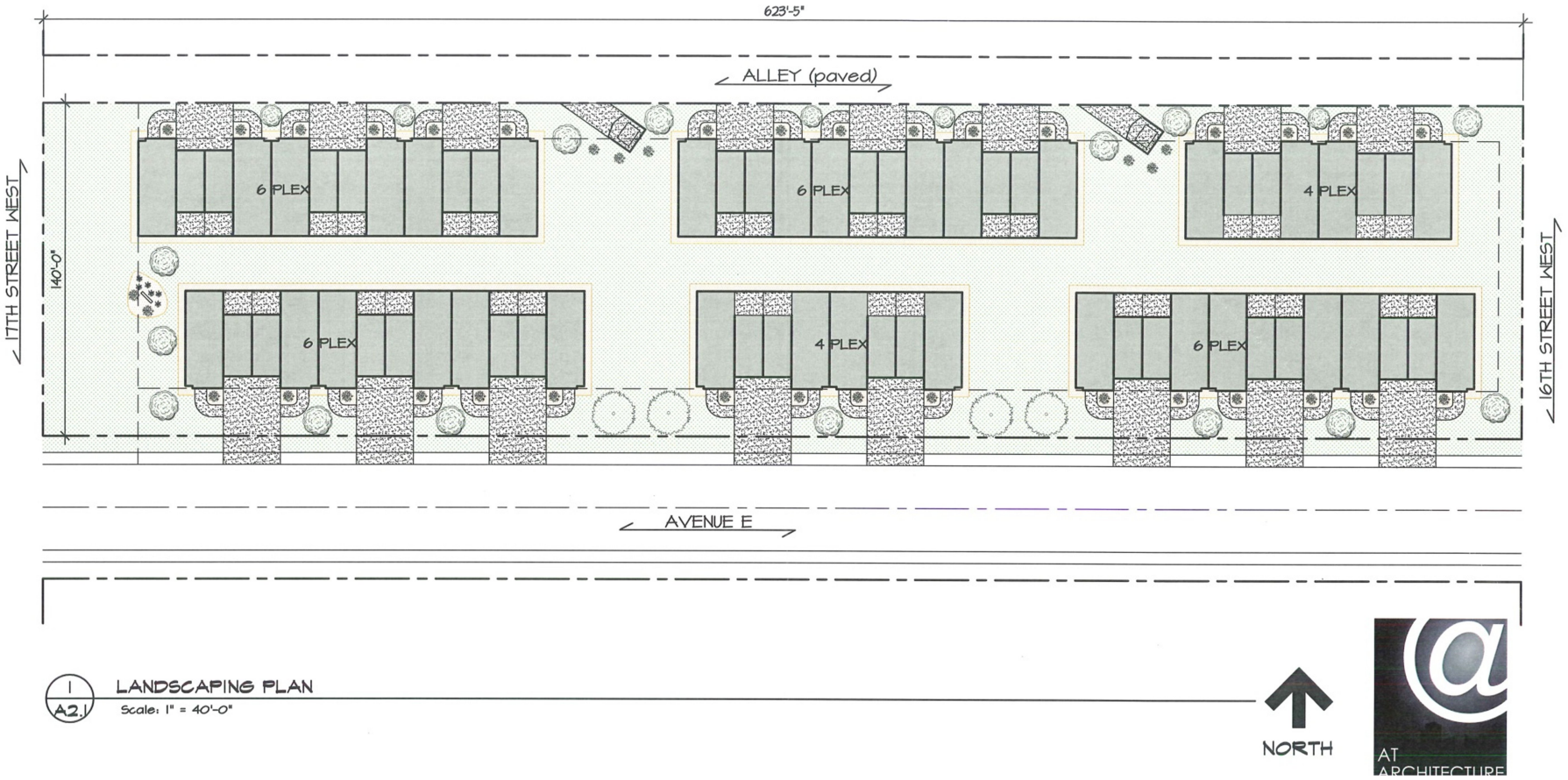
View south and west from alley

Attachment B, continued
Site photos – SR #904

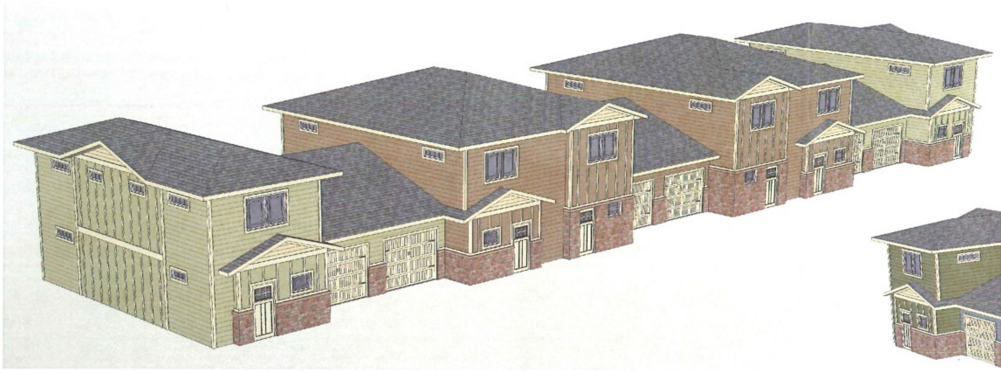
Aerial

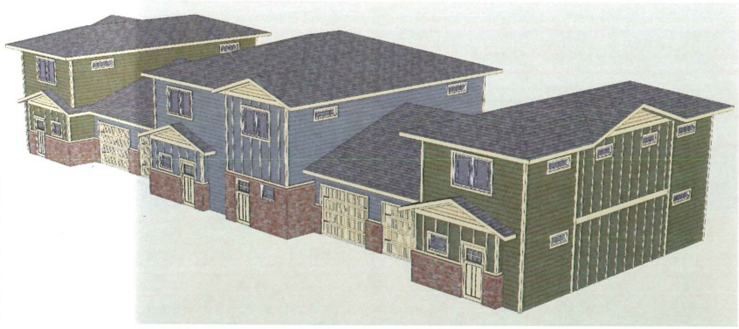
Similar building architecture at 802 Avenue E

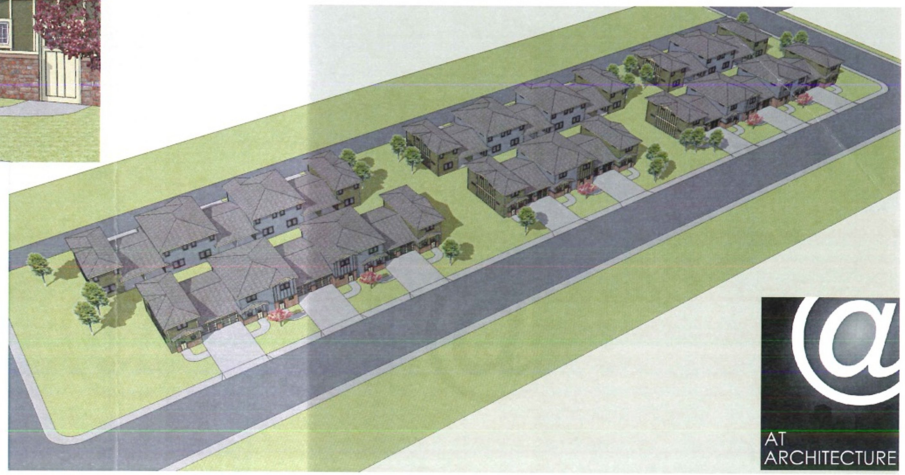
Attachment C
Site Plan – SR #904



<u>Attachment C, continued</u>
Site Plan – SR #904





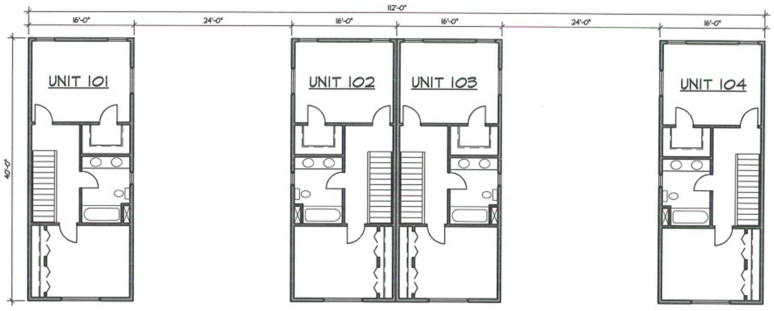


<u>Attachment C, continued</u>
Site Plan – SR #904

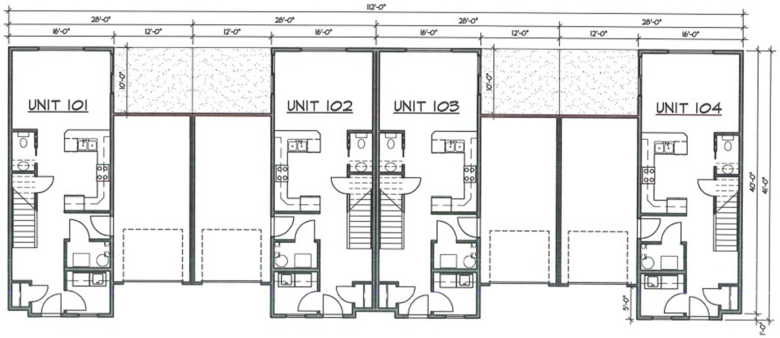
AT ARCHITECTURE

Attachment C, continued
Site Plan – SR #904

3 / A5.1 FRONT ELEVATION – 4plex
Scale: 1/16" = 1'-0"



2 / A5.1 UPPER FLOOR PLAN – 4plex
Scale: 1/16" = 1'-0"

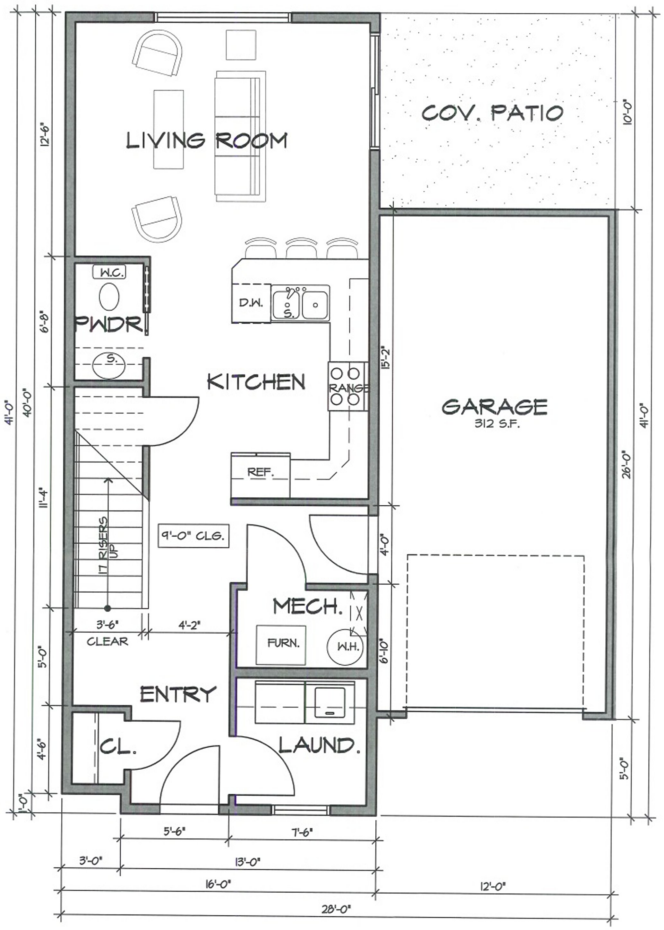


1 / A5.1 MAIN FLOOR PLAN – 4plex
Scale: 1/16" = 1'-0"

AT ARCHITECTURE

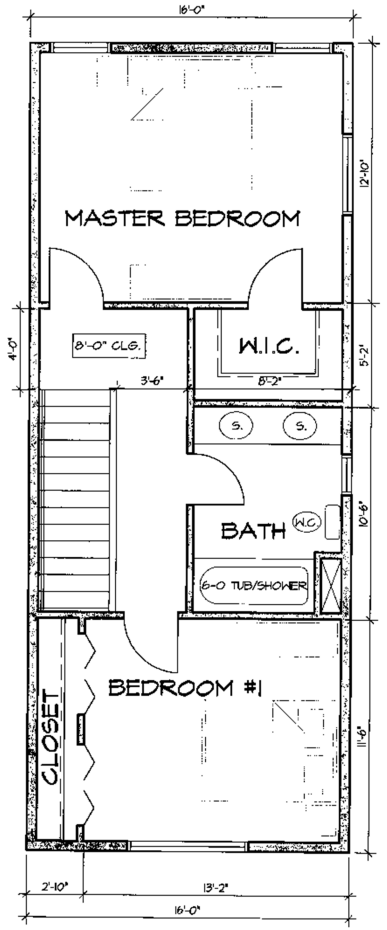
Attachment C, continued

Site Plan – SR #904



1/A3.1 ENLARGED LOWER UNIT PLAN 653 S.F.
Scale: 1/4" = 1'-0"

AT ARCHITECTURE



1/A3.1 ENLARGED UPPER UNIT PLAN 640 S.F.
Scale: 1/4" = 1'-0"

AT ARCHITECTURE

Attachment D
Applicant Letter – SR #904

AT ARCHITECTURE

3/28/13

Planning & Community Services Department
4th Floor, Parmly Library
510 North Broadway
Billings, Mt. 59102

RE: Request for Special Review For
Plaza Pool Apartments
1802 16th St. West
Billings, MT 59102

1.

A. *In what ways is your proposal consistent with the goals and policies of the adopted Growth Policy?*

Land Use Element 1
- Issue: Neighborhoods are experiencing pressures from new development and land use changes.

- Goal: Predictable land use decisions that are consistent with neighborhood character and preferred land use patterns identified in neighborhood plans.

The proposed 32 unit development is consistent with the surrounding neighborhood. The proposed project will increase the density from 20 units to 32 units and create additional housing in an area of town that greatly needs it. The new buildings will be a tremendous improvement from the existing units & will create a better quality of life for the entire neighborhood.

Land Use Element 11
- Issue: Neighborhoods provide the character and strength of the community and the quality of neighborhoods should be preserved.

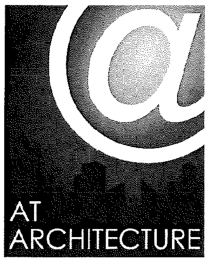
- Goal: Preserve neighborhood character and quality of life.

The proposed development will be a positive addition to the neighborhood. The new buildings will provide an aesthetic improvement to the existing structures and the landscaping will provide a greater quality of life for the surrounding neighborhood.

Aesthetic Element 1
- Issue: There are areas in the City and County that are unattractive and present a poor image of the community.

- Goal: Visually appealing communities.

The proposed development will be aesthetically appealing and will improve the image of the community. This property fronts 17th Street West, which is a heavily traveled street. By rebuilding this project, the quality of life is improved for all.



Tranportation Element 9

- Issue: The sidewalk system in the City needs upgrading; many sidewalks are cracked and broken, several critical sections are missing, and important sidewalk routes are not adequately maintained.

- Goal: Well maintained network of safe and interconnected sidewalks

As part of this project, all of the sidewalks on this portion of 16th Street West, 17th Street West and Avenue E will be required to be repaired and maintained to the current city standards. In doing this, public safety will be improved and a healthy lifestyle will be promoted.

B. *Why is there a need for the intended use of the property on this location.*

There is a need for this special review in order to create more housing in this neighborhood and to create a project that improves the surrounding neighborhood.

C. *How will the public interest be served if this application is approved?*

The public interest will be served by replacing a blemished existing property with an updated development that will be visually appealing and preserve the existing neighborhood character.

D. *Prepare a written statement addressing what is intended to be done with the property, and why the special review is being sought.*

The existing Plaza Pool Apartments were built in 1965 and are in poor condition. There are currently 10 duplex units on site, each with a single car attached garage. There is also an existing storage building at the rear of the property. The owner is proposing to demolish all of the existing buildings and develop a new 32 unit project in its place. The proposed new development will consist of 6 new buildings, two four-plexes and four six-plexes. Each unit will be two stories tall and consist of approximately 1,293 s.f. of living space and an attached garage with 312 s.f. The exteriors of the project will be virtually maintenance fee, consisting of fibercement siding & thin-cut stone veneer. Landscaped green space & open areas will also be provided on the site. The units will be townhome style, with secure entries & improved site lighting. All of these features combined will greatly enhance the quality of life for the tenants and add value to the neighboring properties. This project will be aesthetically pleasing and a will be a great addition to this neighborhood.

The special review is being sought because development of four plexes and six plexes is not allowed in R-6000 zoning without an approved special review.

Attachment E
Letter from Surrounding Owners – SR #904

RECEIVED
APR 23 2013
PLANNING & COMMUNITY
SERVICES DEPARTMENT

To: City of Billings Zoning Commission 4/22/2013

From: Michelle (Cormier) & Rodney Lee 1616 Avenue F; Owen Vogel & Kourtney Kienbaum 1610 Avenue F; Gayle Zickuhr 1620 Avenue F; Terry Padgett & Jean Shelp 1632 Avenue f; David & Brenda Binstock 1636 Avenue F Ryan Hammen, 1640 Ave F, Ben Irion 1628 Ave. F

We are writing on behalf of the homeowners on the 1600 block of Avenue F to express our concerns about: Project Number 13-081: City Special Review #904.

When we were initially approached at our door by the developer to gauge our reaction to the project, they showed us a flyer (enclosed) and told us they were also going to pave the alley. They said nothing about nearly doubling the number of apartments, and certainly neglected to mention that the driveways to the larger buildings will start a mere 20 feet from our backyards. This was not disclosed to us until the Planning & Community Services Department mailed out the letter dated April 12, 2013. Upon receiving this letter, we immediately changed our reaction to the project. When we purchased our home, the selling points for us were our large, private backyard, and a quiet and desirable neighborhood. This project will essentially turn our backyard into a second front yard and the increased traffic and noise will nullify the desired neighborhood status. Our house will be sandwiched between two city streets. This in no way reflects the property we initially purchased and will drastically affect the sale price and our ability to sell the home should we choose to do so.

We understood when we purchased that we were bordered by rental units. The large backyard of the Plaza Pool Apartments and the line of mature trees at the end of the property line really minimized the consequences of being so near to the rental units. It is my understanding that this project will require that all those mature trees be removed and we will completely lose all separation from the rental units.

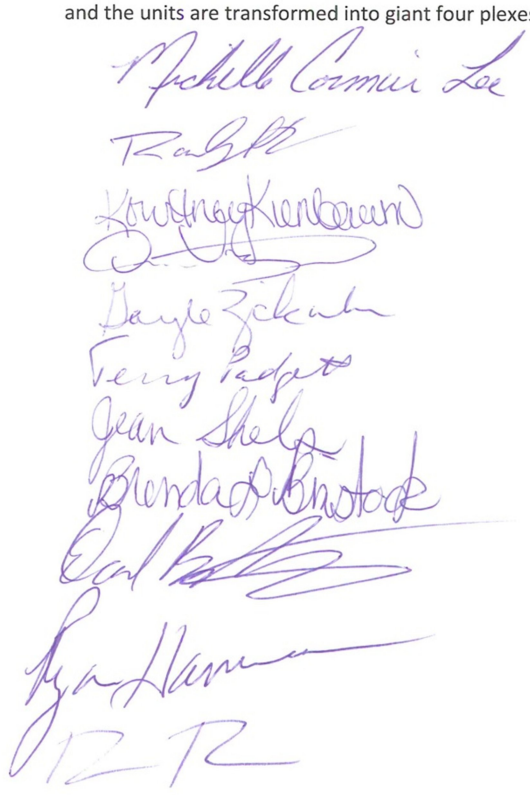
We are also concerned with what happens in the future when maintenance issues occur at any of the properties that are losing their alleys. Our underground sprinkler wells are very sandy, and require pumping out every couple of years. Where do we do that now if not in the alley? What if one of the very old clay sewer pipes ruptures and needs to be replaced? We will then need to pay for digging up and then replacing a city street instead of a dirt alley. All our services end in the alley, which will now essentially become a city street. How can that be done without our permission?

One of the biggest problems with the rental units has been the garbage. I have called the City of Billings many times over the last several years to complain about the trash strewn throughout the alley. The renters fill up all available cans and then just dump garbage next to the dumpsters. My husband makes regular trips to the city dump to clear large items such as couches, ovens, metal pieces, and bed frames that don't fit in the dumpster and then sit for weeks. Twelve additional units will only exacerbate this problem. We have heard nothing about how the additional garbage will be dealt with. Will our alley (new street) be filled with numerous cars and dumpsters, or will we be forced to haul our garbage out to our curb every Tuesday? How many more garbage collection days will need to be added?

We also take issue with the statement that "The new buildings will create additional housing in an area of town that greatly needs it." There is currently a project underway at West Park Plaza that will add 96 new rental units. Any additional housing needs in this area will be met by those units. Increasing the size of the Plaza Pool Apartments by allowing huge four plexes & six plexes in the backyards of 9 established houses on Avenue F is unnecessary, damaging of property values, and destructive of our way of life.

We do agree that this project will be "replacing a blemished existing property with an updated development". However, turning our alley into a city street will severely and negatively affect our property values and our ability to sell. The blemished properties can be replaced as they are currently situated and we would willingly deal with the months of construction with little complaint.

I have not even touched on the quality of life issues. Sitting in our hot tub will no longer be a relaxing and quiet experience. Family BBQs will now include car and street noises that are not currently heard in our backyard. I can't even imagine how our new neighbors Kourtney and Owen felt when they were informed about the loss of privacy and the ink wasn't even dry on their closing documents. Six years ago Rodd & I were married in our beautiful backyard. Any similar event will not be possible for someone who owns property on the south side of the 1600 block of Avenue F if this zoning variance is approved and the units are transformed into giant four plexes and six plexes looking directly into our homes.



Out with the Old . . .

Something new and exciting is happening in your neighborhood.

The Sam & Judith McDonald family will be replacing the 50+ year old apartments known as the "Plaza Pool Apartments" with a beautiful new complex.

The project will begin around April 15th.

We are very excited about this new project and the wonderful look and ambience it will bring to the neighborhood.

Should you have any questions, please contact the family representatives:

Jane Kukes-Penney - 406.690.6394
Tom at Rainbow Property Management - 406.248.9028

. . . In with the New!

(The color scheme is yet to be determined.)

May 7, 2013

Dear City Planning:

I am the owner of a business which is located at 1707 – 17th Street West which across the street from the planned Trailhead Townhomes development on Avenue E. The developer has shown me the site plan and explained the project. I am strongly in favor of this new project. It will be a nice improvement to the site and neighborhood. Please approve it.

Thank you very much.

Judy L Bergman

Caramel Cookie Waffles

Jane Kukes-Penney

From: Mail.bresnan.net <jkastrop@bresnan.net>
Sent: Tuesday, May 07, 2013 11:50 AM
To: janekp@mtintouch.net
Subject: Proposed Development

We, Judy and Marvin C. Kastrop owners of the following properties:

1. 1701 Ave. E
2. 1710 Ave. F

are in favor of the proposed property development by the McDonald Land Company near our property.

If you have further questions of us, please contact us at 406 698 0785 or 406 656 0783

Thank you,

Judy Kastrop
Marvin C Kastrop

Effective today, May 7, 2013

Sent from my iPad

May 7, 2013

Dear City Planning:

I am the owner of a business which is located at 1701 Ave E Ste D. which across the street from the planned Trailhead Townhomes development on Avenue E. The developer has shown me the site plan and explained the project. I am strongly in favor of this new project. It will be a nice improvement to the site and neighborhood. Please approve it.

Thank you very much.

Chad Kriskovich D.D.S.

May 7, 2013

Dear City Planning:

I am the owner of a business which is located at 1701 Avenue E which across the street from the planned Trailhead Townhomes development on Avenue E. The developer has shown me the site plan and explained the project. I am strongly in favor of this new project. It will be a nice improvement to the site and neighborhood. Please approve it.

Thank you very much.

Cameron Townsend.

May 7, 2013

Dear City Planning:

I am the owner of a business which is located at 1709 – 17th Street West which across the street from the planned Trailhead Townhomes development on Avenue E. The developer has shown me the site plan and explained the project. I am strongly in favor of this new project. It will be a nice improvement to the site and neighborhood. Please approve it.

Thank you very much.

Salon 17

May 7, 2013

Dear City Planning:

I am the owner of a business which is located at 1701 Ave E. which across the street from the planned Trailhead Townhomes development on Avenue E. The developer has shown me the site plan and explained the project. I am strongly in favor of this new project. It will be a nice improvement to the site and neighborhood. Please approve it.

Thank you very much.

Osthy orthodontics

Regular City Council Meeting
Meeting Date: 05/28/2013
TITLE: Special Review 905 - Public Hearing - 3140 Broadwater Avenue
PRESENTED BY: Candi Beaudry
Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

This is a request for a special review to allow the expansion of an existing church at 3140 Broadwater Avenue. The new construction will add 11,288 square feet to the south east of the existing structure. The plans include future expansion for classrooms, a storage building and a future 24-space parking lot. Four years ago the church expanded its off-street parking. The property is located in a Residential 9,600 (R-96) zoning district on Parcel 2 of C/S 1161, a 5-acre parcel of land. The property is owned by the Apostles Evangelical Lutheran Church and Carl Rose and Durward Sobek are the agents. The Zoning Commission conducted a public hearing May 7, 2013, and is forwarding a recommendation of conditional approval on a 5-0 vote.

ALTERNATIVES ANALYZED

The Planning Division reviewed the application and recommended conditional approval to the Zoning Commission. The Zoning Commission concurred with this recommendation and amended 1 of the proposed conditions. Before a recommendation of approval or conditional approval can be made, each special review request must demonstrate conformance with three primary criteria: 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2008 Growth Policy, and 3) is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts. This application conforms to the first criteria, in so far, that it is in a district that allows churches by special review. The proposed building meets all required setbacks and lot coverage limitations. The application is conforming to the purposes of the regulations and the 2008 Growth Policy.

The application also conforms to the third criteria and conditions of approval are recommended to mitigate any potential impacts to surrounding property. The proposed building will increase the building size from 5,650 square feet to 16,938 square feet. The building does not exceed lot coverage and meets the required front, side, and rear setbacks. The proposal is consistent with goals of the 2008 Growth Policy, specifically the recommendation to encourage predictable land uses in existing neighborhoods. Planning staff recommended conditions for this special review based on the approval criteria for special review uses. The Zoning Commission concurred and amended condition #7 to reflect compliance with Chapter 17 of the city code on noise.

PROPOSED CONDITIONS
1. The special review approval shall be limited to Parcel 2 of C/S 1161 a 5 acre parcel of land generally located at 3140 Broadwater Avenue.
2. The special review approval is for the construction of an addition to an existing church. The addition to be constructed now is 11,288 square feet with 2 future additions for classroom space, a future storage building and a future 24-space parking lot. No other use is intended or implied by this approval.

3. Any expansion of the proposed building or off-street parking greater than 10 percent of what is shown on the submitted site plan, including the future expansion, will require an additional special review approval.
4. All exterior lighting shall have full cut-off shields so no part of the fixture or lens projects below the cut-off shield. The maximum height of any light pole in the future parking lot or any new light pole will be 15 feet or less above grade.
5. The proposed future parking lot on the east property line shall require the installation of a 6-foot sight obscuring fence for the length of the proposed parking lot at the time of its construction.
6. No outdoor announcement system is allowed on a permanent or temporary basis.
7. Construction or demolition activity will conform to the requirements in Chapter 17 (Noise) of the city code.
8. Any new sign will require sign permit approval from the Planning Division.
9. The site will be developed in substantial conformance with the submitted site plan including landscaping, parking and building location.
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. 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.

FINANCIAL IMPACT

There should be no financial impact to the city from the proposed church expansion.

BACKGROUND

This is a request for a special review to allow the addition of 11,288 square feet to the existing Apostles Evangelical Lutheran Church at 3140 Broadwater Avenue. The existing 5,650 square foot church was constructed 42 years and ago and the congregation has outgrown its existing space. The proposed addition will mirror the existing architecture, allow two accessible entrances, and create space for future meeting rooms, classrooms, a storage building and a 24-space parking lot. The existing church is 5,650 square feet and the site has 82 parking spaces. The proposed addition will be a single story building with similar roof lines and similar building height of 30 feet. The church intends to construct the addition but only partially complete the interior finishes. The church states it will complete the interior spaces as funding becomes available.

The immediate neighborhood to the south and east are residential neighborhoods. The neighborhood to the south is mostly two-family dwellings and to the east are single family homes. To the north is property in Yellowstone County, zoned A-1 and is part of the Peter Yegen Golf Course. Property to the west is zoned R-96 and is developed with 2 churches. The church is located on the south east corner of Broadwater Avenue and 32nd Street West. Both streets are principle arterial streets. The intersection of Broadwater Avenue and 32nd Street West is a fully signalized intersection and the city recently installed a right turn lane on the west side of the church property. 32nd Street West carries over 11,000 vehicle trips per day and Broadwater Avenue carries over 9,000 vehicles per day.

The existing church and the proposed addition are located near the northwest corner of the property and will be over 330 feet from the neighborhood to the south and 106 feet from the neighborhood to the east. A proposed future parking lot will be close to the east property line and staff is recommending conditions to be implemented when the future parking lot is constructed.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on May 7, 2013, and received the staff recommendation and testimony from the applicant and agent. No other testimony was received. The Zoning Commission concurred with the staff recommendation of conditional approval with an amendment to proposed Condition #7. Condition #7 was concerning the start and stop time for construction activity. The Commission recommends the condition worded so the applicant conform to the requirements in Chapter 17 (Noise) of the city code.
The Zoning Commission voted 5 to 0 to recommend conditional approval.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The consistency with adopted policies and plans is discussed in the alternatives analyzed section above.

RECOMMENDATION

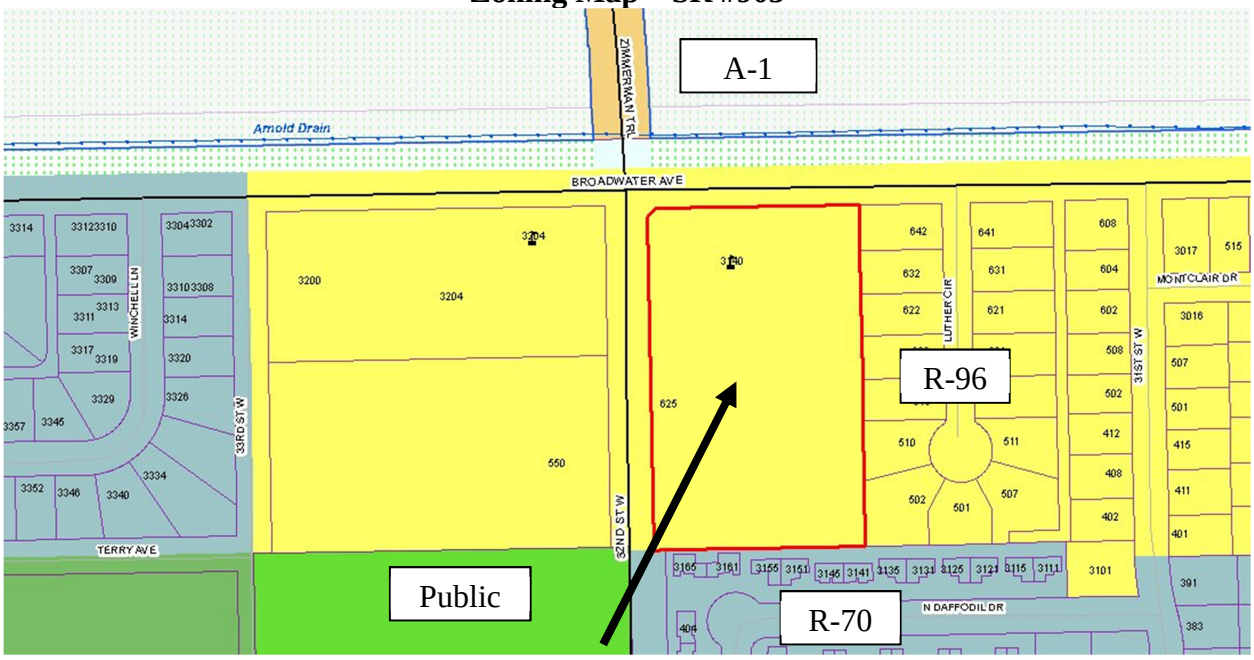
The Zoning Commission is recommending conditional approval on a 5-0 vote.

APPROVED BY CITY ADMINISTRATOR

Attachments

Zoning Map
Site photos
Site Plans
Appicant's Letter

Attachment A
Zoning Map – SR #905



Subject Property

Attachment B

Site photos – SR #905

Subject Property

View east along Broadwater Avenue

Attachment B, continued
Site photos – SR #905

View west along Broadwater Avenue

View of east property line – location of future parking lot

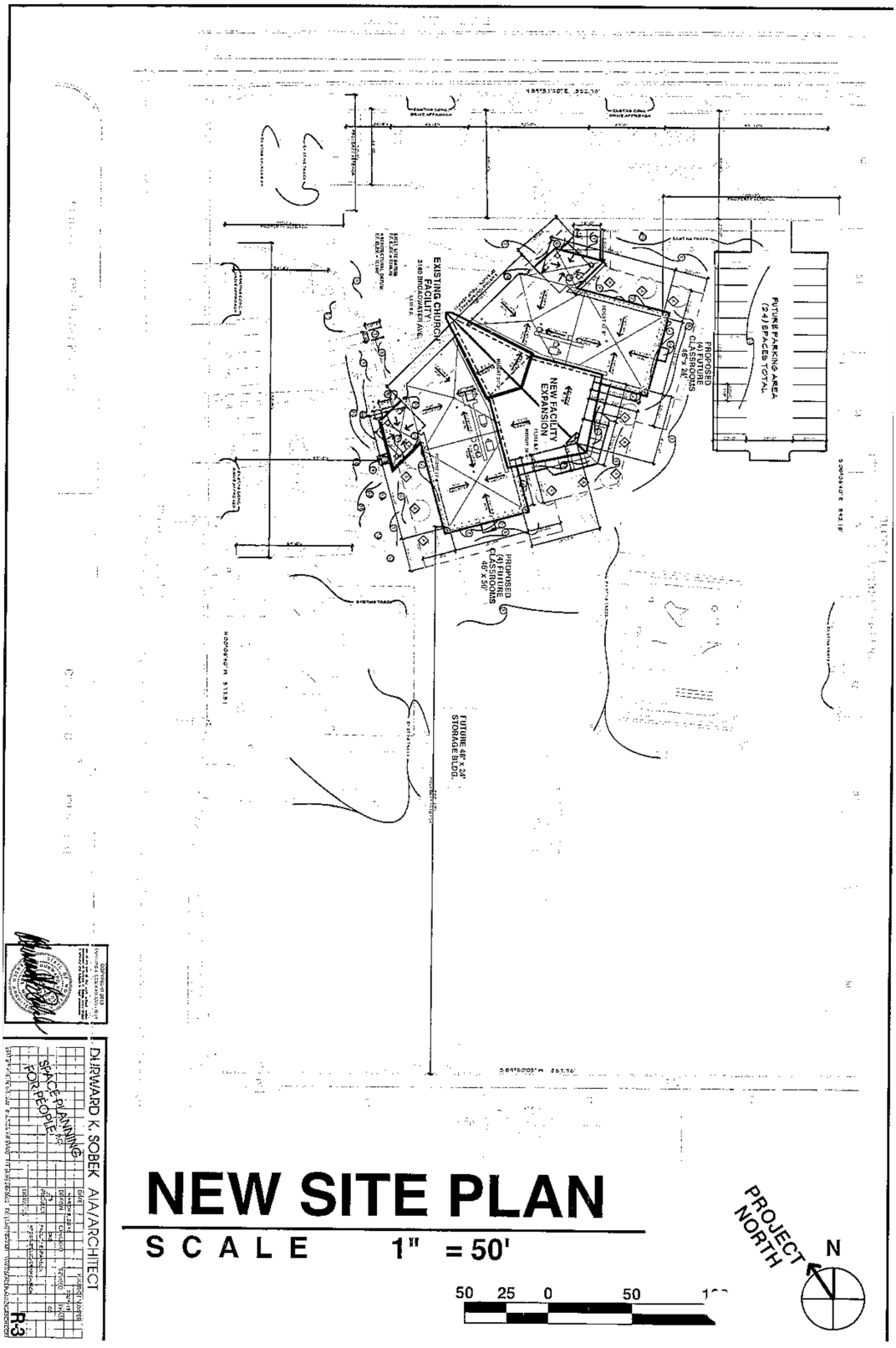
Attachment B, continued
Site photos – SR #905

View south along 32nd Street West

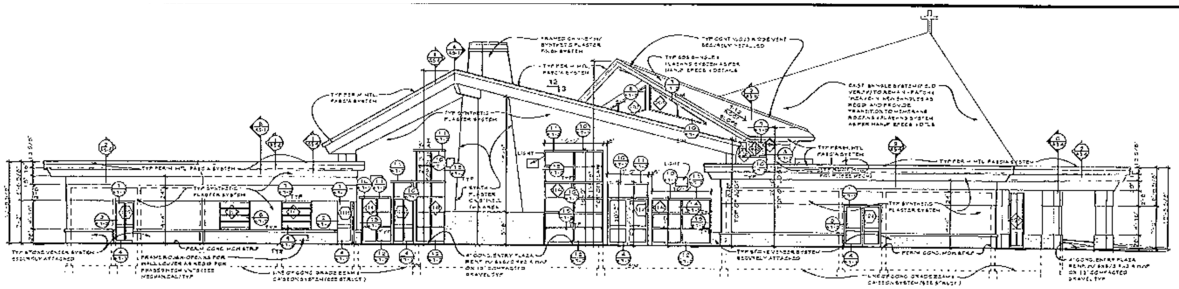
Aerial of subject property

Attachment C

Site Plan – SR #905

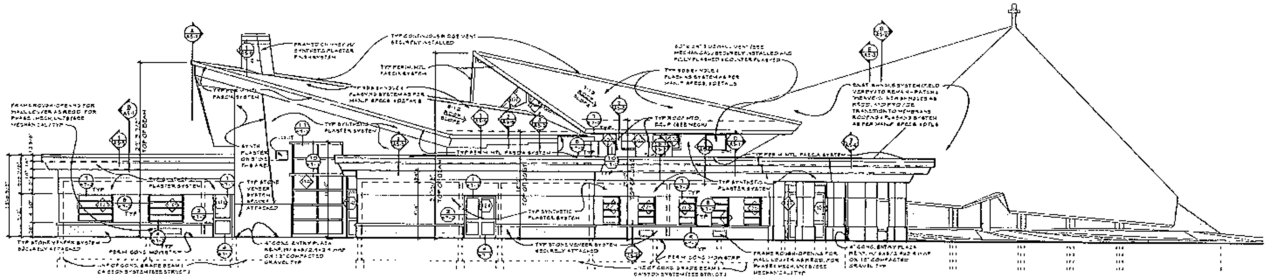


Attachment C, continued
Site Plan – SR #905



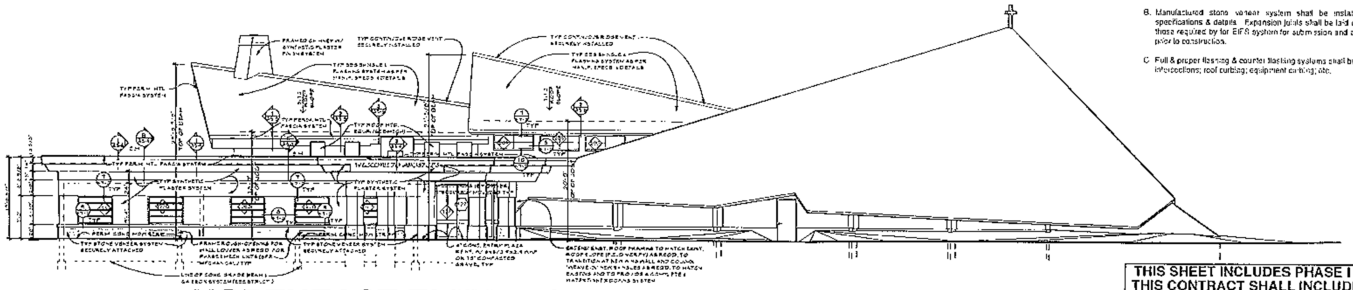
SOUTHEAST ELEVATION

SCALE 1/8" = 1'-0"



EAST ELEVATION

SCALE 1/8" = 1'-0"



NORTHEAST ELEVATION

SCALE 1/8" = 1'-0"

GENERAL EXTERIOR FINISH NOTES

A. EIFS system shall be installed per manufacturer's specifications & details. Expansion joints (see details) shall be laid out for submission and approval by the Architect prior to construction.

B. Manufactured stone veneer system shall be installed per manufacturer's specifications & details. Expansion joints shall be laid out and coordinated with those required by for EIFS system for submission and approval by the Architect prior to construction.

C. Full & proper flashing & counterflashing systems shall be provided at all roof/wall intersections; roof curbing; equipment curbing; etc.

THIS SHEET INCLUDES PHASE I WORK TYPICAL
THIS CONTRACT SHALL INCLUDE PHASE I ONLY.

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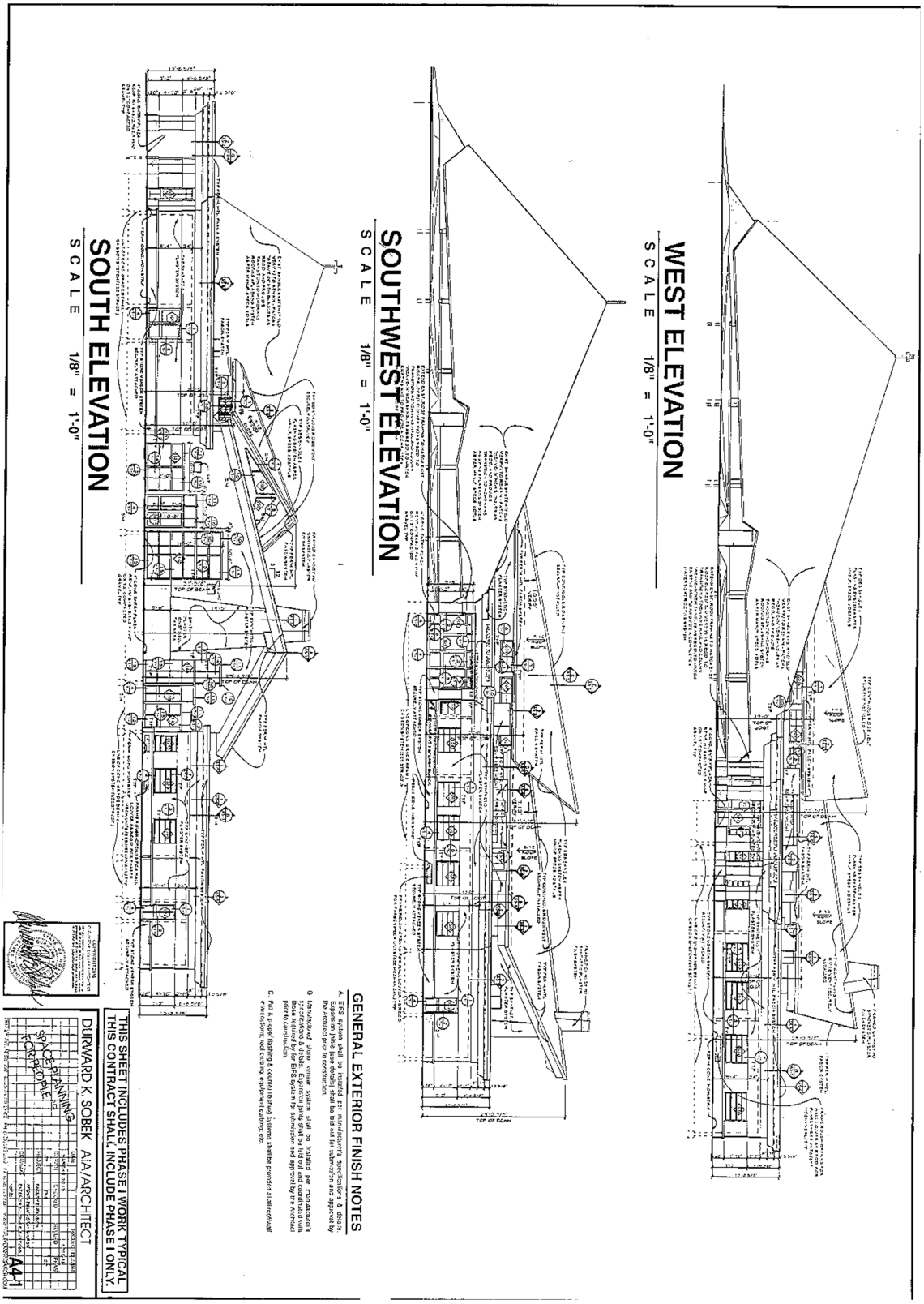
DURWARD K. SOBEK AIA/ARCHITECT
SPACE PLANNING FOR PEOPLE

A4-2

Attachment C, continued

Site Plan – SR #905



Attachment D
Applicant Letter – SR #905

APOSTLES
EVANGELICAL LUTHERAN
CHURCH & PRE-SCHOOL

April 1, 2013

TO: CITY of BILLINGS
PLANNING & COMMUNITY SERVICES DEPARTMENT
510 North Broadway, 4th Floor
Billings, MT 59101

RE: Apostles Evan. Lutheran Church
3140 Broadwater Ave.
Billings, MT 59102

Special Review

Dear Zoning Coordinator:
Please consider our request for a special review for the proposed addition to our existing church facility located at 3140 Broadwater Ave.

1A. Our proposal is consistent with the goals and policies of the adopted Growth Policy as outlined below:

1. LAND USE ELEMENT
   - Preservation of current neighborhood character and integrity
   - Continuation of current sense of community
   - Maintain attractive aesthetics
   - Ensure natural and continued property functionality
   - Provide self-contained off-street vehicle parking with ease of property access minimizing traffic flow
   - Promote social foundation for a balanced neighborhood

3140 Broadwater Avenue • Billings, MT 59102
406-656-7141 • FAX: 406-656-7425 • Email: apostleschurch@msn.com
A member of the Wisconsin Evangelical Lutheran Synod

2. ECONOMIC DEVELOPMENT
    - Strengthen neighborhood living
    - Offer neighborhood services such as pre-school education and related functions
    - Sustain high visual appeal of the neighborhood
    - Generate efficient and safe property infrastructure
    - Compliment city development
    - Encourage city revitalization efforts.
    - Preserve neighborhood culture and living standards
    - Reflect quality standards of Billings living and future growth

3. AESTHETICS ELEMENT
    - Preserve current neighbor assets
    - Improve the overall neighborhood image
    - Protect the "landmark" quality of the existing property
    - Maintain generous open space
    - Increase green area development
    - Retain low key signage elements

4. NATURAL RESOURCES ELEMENT
    - Increase recreational use
    - Maintain natural resource elements
    - Protect the natural environment
    - Utilize available fire protection resources
    - Maintain safety and protection of life and property

5. OPEN SPACE AND RECREATION ELEMENT
    - Maintain high standards for site grooming
    - Increase youth recreation availability
    - Continue a strong "good neighbor" posture
    - Provide convenient non-vehicular access
    - Compliment Billings life style

6. TRANPORTATION ELEMENT
    - Promote traffic safety
    - Integrate with intercity travel options
    - Maintain same and efficient traffic flow
    - Preserve right-of-way accesses
    - Minimize impediments to traffic flow
    - Respond appropriately with traffic demands
    - Maintain "open door" policy to public needs
    - Coordinate project with "efficiency" priorities
    - Maintain convenient access to bus transportation
    - Promote improved safety and health related functions
    - Encourage use of bicycles and other alternative transportation

7. PUBLIC FACILITIES AND SERVICES ELEMENT
    - Welcome public involvement
    - Provide timely public notifications
    - Maintain and improve overall community image
    - Raise level of property values
    - Maintain public access
    - Ensure a high level of property maintenance
    - Sympathetic toward neighborhood needs.
    - Engage conservation measures
    - Encourage civic involvement
    - Enforce development regulations
    - Respond to community needs
    - Share community and neighborhood vision
    - Maintain neighborhood communication and problem solving

8. CULTURAL AND HISTORIC RESOURCES ELEMENT
    - Increase of property values
    - Promote historic and cultural values
    - Enhance the natural environment
    - Support cultural appreciation

9. COMMUNITY HEALTH ELEMENT
    - Prepare emergency plan for quick response
    - Maintain clear and effective pedestrian and traffic routes
    - Promote a sense of neighborhood pride and belonging
    - Sensitivity toward children and related safety
    - Participation in neighborhood crime prevention

1B. Need for proposed addition:

Our existing facility is 42 years old. The needs of the congregation and community have changed. Our members would like to have more room for fellowship, gathering, and classroom areas. Every aspect of ministry is in need of extra space, which is currently causing Apostles to use fellowship and balcony space for offices. It is becoming increasingly difficult to serve our own members and our community, while at the same time maintaining a facility that doesn't look cluttered.

The members of Apostles firmly believe that if we are to serve the community in the future that additional space is a must. The future addition will also provide curb appeal that will communicate community pride from a congregation that is well established in the Billings.

1C. Serving the public:

Our congregation's mission statement states that "As God's disciples, we the men, women and children of Apostles, are united in the preaching, teaching and sharing of God's Word...and we will joyfully spread the Word of God in our community." Apostles is dedicated to assisting our own members and beyond. We have offered several public events including soccer camps, Trick or Trunk, food drives, clothing drives, Christmas donations to the needy, etc. Apostles also assists with fuel and food cards to those who are in need.

The members have implemented events that offered the community the opportunity to ride through a road course that the Billings Police setup in our parking lot. At this event safety kits were distributed along with new bike helmets. Backpacks loaded with new school supplies were also handed out at another community event.

The church is located north of community development that holds regular meetings. The homeowners make use of our facility along with the crime prevention committee that they developed. The space is limits us from having no more than 25 people comfortably fit in our fellowship space for such a business meeting. Apostles desires to be able to provide a place where the community can gather and from which different organizations can serve.

The preschool that Apostles has developed serves mostly non-members of the 22 families that send their children to our school. This has given to us some great opportunities to be a part of the community as we support families and get involved with community events.

In the past the surrounding neighbors have used our campus as a park by using the open area and playground.

1D. Intended use of the property:

We are planning an addition to our existing facility that will increase the Narthex area (the entry area), add classrooms, provide storage space, add an administrative area, and a fellowship room.

Our intent is to build the entire building shell for the above areas. Only the Narthex, Lobbies, and Vestibules will be finished during this first phase. This is outlined in the architectural plans. This will allow the building exterior to be completely finished including grass, trees and other landscaping features.

As money is raised the unfinished areas with be completed. Since the exterior of the addition will be finished there will be no major disruptions to the outside of the building (i.e. heavy equipment, digging, dust, etc.) when we continue with the completion of the interior areas.

Sincerely,

Carl W. Rose

Carl. W. Rose
Owners' Representative

Regular City Council Meeting

Meeting Date: 05/28/2013

TITLE: Public Hearing and Resolution to Exclude Lot 20, Block 3, Rolle Subdivision from the City Limits

PRESENTED BY: Candi Beaudry

Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

The Planning Division is requesting the City Council conduct a public hearing and consider a Resolution to Exclude Property described as Lot 20, Block 3, Rolle Subdivision, located between Alkali Creek Road and Highway 3 (Airport Road). The deannexation would result in about 6.64 acres of undeveloped land being taken out of the City. Petitioner and property owner Robert Honaker has signed the attached petition to request this property be deannexed. A 20-day public comment period beginning April 25, 2013 was legally noticed on April 25 and May 9. No comments have been received as of May 9. City staff has reviewed this deannexation request and supports the deannexation of this property.

ALTERNATIVES ANALYZED

The City Council may:
• Approve the Resolution to Exclude Property to deannex the subject property; or
• Not approve the Resolution to Exclude Property and not deannex the subject property.

FINANCIAL IMPACT

This property was intended to be developed in the City for residential uses and has been providing City tax and assessment revenue even as undeveloped land for the past 24 years. The tax year 2012 taxes and assessments equal $2,026, most of which is City storm and street maintenance revenue that will be lost if the property is deannexed. The property is within the City's Limits of Annexation designated for annexation into the City within the next 5 years. This means that the City could deannex the property now and be petitioned to annex the property again at any time. However, as described in other parts of this report, City service provision to the property has significant challenges.

BACKGROUND

The Planning Division is requesting the City Council conduct a public hearing and consider a Resolution to Exclude Property described as Lot 20, Block 3, Rolle Subdivision. The deannexation would result in about 6.64 acres of undeveloped land being taken out of the City between Alkali Creek Road and Highway 3 (Airport Road). The zoning of Residential 9600 would remain in place on the property as the property has been zoned the same since it was in the County originally and single family development is possible on the property, either in the City or County.

Staff has reviewed this deannexation petition and finds that the requested deannexation meets some of the criteria in the City's Deannexation Policy for deannexation. The requested

deannexation is consistent with the City's Deannexation Policy in that:

1. The property is not connected to City water, wastewater, or storm drainage facilities, and appears to not be able to connect to these facilities without a significant expenditure of personal or public funds, and
2. The property is not encumbered by any indebtedness of any improvement district of which the territory is a part, and
3. The property is not adjacent to any public right-of-way

The requested deannexation is not consistent with the City's deannexation policy in that:
1. The property is not located on the outer perimeter of the City limits and upon exclusion of the property will contribute to a series of parcels wholly surrounded by City limits.
2. The property is bordered by other property within the City Limits on the north and east, and is adjacent to the acceptable limits of annexation as defined on the most recent update of the Limits of Annexation Map.

From a service standpoint, City staff did not have any significant concerns with deannexation of the property since it has not yet been developed and service delivery and access to the property is challenging. A major challenge for providing some services to the property is that it is accessed from Airport Rd. via an easement across property in the County, so there is no public right-of-way adjacent to the property itself.

Comments from the City Police, Fire, Public Works, MET Transit, Finance, Legal, and Planning departments expressed no significant impacts to their services if the property were deannexed. A summary of the specific comments from some of the Departments regarding services is provided below:

Public Works:
Water – Water service is available from Alkali Creek Road, but it would be difficult for the property owner to provide the extension from the City water main to this property. It would require a very long extension at the responsibility of the developer from one direction and there are severe topographical issues if the water was extended from the Alkali Creek direction (There are no water mains in Airport Road in this area). There is a rock ridge outcropping that extends for much of the north and west frontage of the property facing Alkali Creek Road that creates physical challenges for utility infrastructure.

Sanitary Sewer – Sanitary service is available, but like water it would be difficult for the property owner to provide the extension from the City sanitary sewer main to this property. It would require a very long extension at the responsibility of the developer from one direction and there are severe topographical issues if the sewer was extended from the Alkali Creek direction (There are no sewer mains in Airport Road in this area).

Solid Waste division – The Public Works Department is able to serve this property, but would have to access it off of Airport Road via the access easement and given the traffic and speeds on Airport Road, an access that was safe would have to be developed.

MET Transit:The closets MET bus route is along Alkali Creek Road, but this property accesses Airport Road for ingress and egress. There is no way to serve this property safely or easily given that there is no bus service on Airport Road at this time.

Planning: Since the property appears difficult to develop, access, and serve, it is not critical to City/urban expansion. While it would add to several properties that are within the 5-year Limits of Annexation Area in this area, it is likely that given the service challenges several of these properties will not be annexed into the City.

Fire: The Fire Department pointed out that this property will fall under the Billings Urban Fire Service Area (BUFSA) if it is deannexed and still be served by the Billings Fire Department under that service agreement.

Parks: Park staff pointed out that it owns the property directy east of the subject property and the Sale of Parkland Committee has identified the parkland adjacent to the property requesting de-annexation as well as the property to the east of it across the BBWA Canal as land to sell. The property is not currently being analyzed by the Committee for sale but is on its list of possible properties. It is also important to note that the park land property adjacent to the property requesting deannexation is below rock outcroppings that separate the two properties and so the issues of service delivery and access even with City property currently adjacent are still significant.

STAKEHOLDERS

The property owner petitioning to deannex is the primary stakeholder in this process. The City has followed the procedures for deannexation as per 7-2-48 of the MCA, including advertising and allowing for a 20-day comment period on the deannexation request prior to conducting a public hearing on the request. The Planning Division has not received any public comment about this deannexation, aside from the information submitted by the property owner.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

This deannexation petition is in alignment with some of the deannexation critera as set out in the City's Deannexation Policy and this is discussed in more detail in the Background Section of this report.

RECOMMENDATION

Staff recommends that Council approve the Resolution to Exclude property described as Lot 20, Block 3, Rolle Subdivision from the city limits based on the criteria laid out in the City's Deanenxation Policy.

APPROVED BY CITY ADMINISTRATOR

Attachments

Resolution to Exclude Territory

Deannexation Petition

Deannexation Exhibit

City Deannexation Policy

RESOLUTION 13 - _____

A RESOLUTION TO EXCLUDE TERRITORY UNDER THE PROVISIONS OF TITLE 7, CHAPTER 2, PART 48 OF THE MONTANA CODE ANNOTATED

WHEREAS, the City Council of the City of Billings has determined that a petition to exclude the territory now within the City of Billings was signed by the requisite number of qualified electors of the City, and that granting of the petition is in the best interest of the City of Billings and will not materially mar the symmetry of the City; and

WHEREAS, the Billings City Council desires to exclude said territory from the City of Billings pursuant to Title 7, Chapter 2, Part 48 of the Montana Code Annotated; and

WHEREAS, the boundaries of the territory that the Billings City Council desires to exclude is particularly described as follows:

TERRITORY DEANNEXED. A tract of land situated in the SW1/4 of Section 28, T.1N., R.26E., Billings, Yellowstone County, Montana, more particularly described as:

A 6.642 gross acre tract of land located between Alkali Creek Road and Highway 3 (Airport Road) described as Rolle Subdivision, Lot 20, Block 3, Recorded January 2, 1957, Under Document No. 575483, Records of Yellowstone County, Montana, annexed under Resolution No. 89-16236, Passed and Approved by City Council December 11, 1989;
(# 13-05) See Exhibit "A" Attached

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

A. The Billings City Council desires to exclude the above described contiguous territory.
B. All registered voters in the territory to be embraced were immediately notified, in writing.
C. Notice of the City Council's intent to exclude said territory was passed under Resolution No. 13-19260, and published as provided in Section 7-1-4127, MCA, with notice that for a period of twenty (20) days after first publication of the notice, the Billings City Clerk accepted written comments approving or disapproving the proposed exclusion of the above described territory from the City of Billings from registered voters residing in the area proposed to be excluded.
D. The City Clerk forwarded all written communication received by the Clerk to the City Council for consideration.
E. A public hearing on the question of exclusion of said territory was held on May 28, 2013.

APPROVED AND PASSED by the City Council of the City of Billings this 28th day of May, 2013.

THE CITY OF BILLINGS

BY:_____

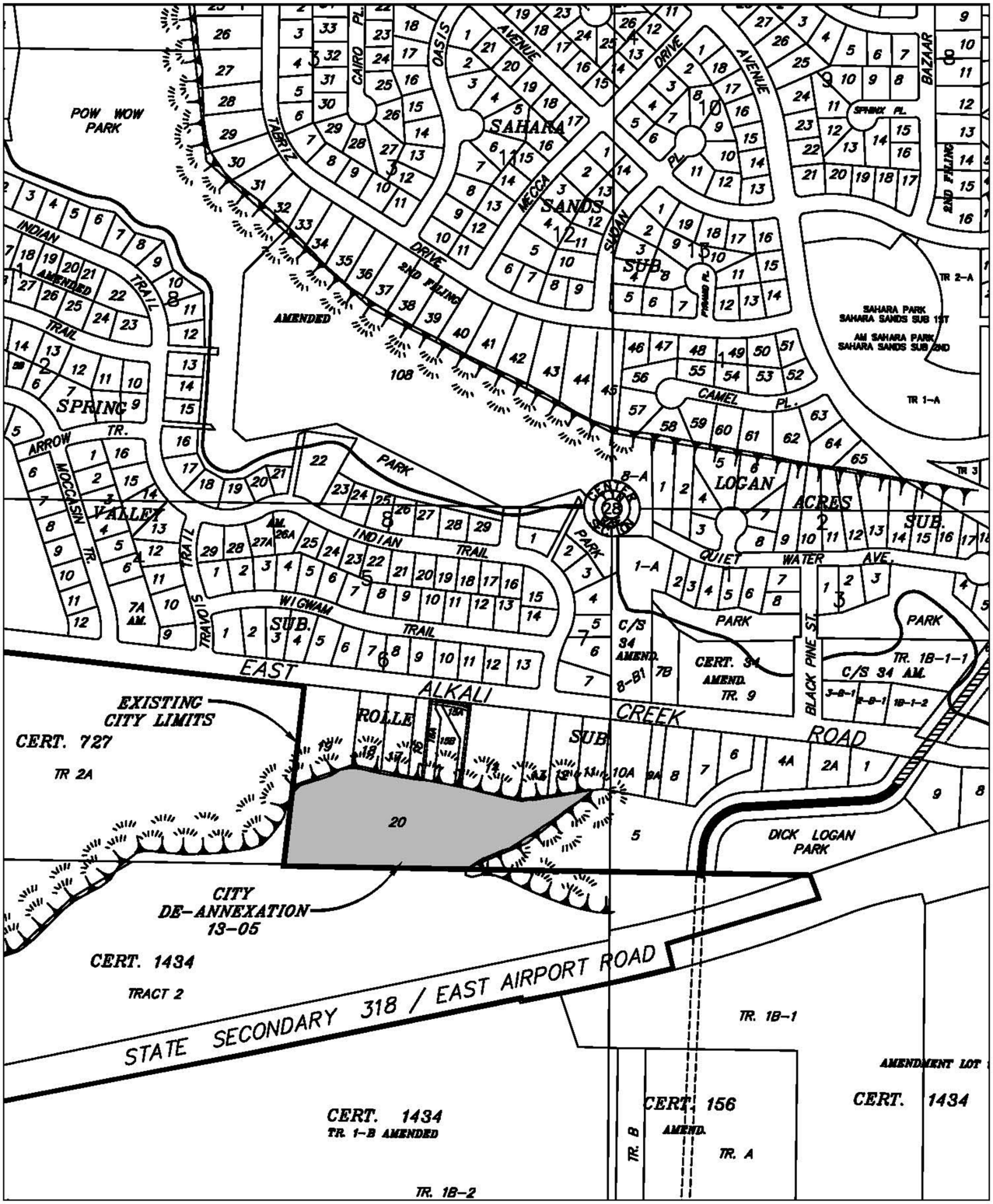
Thomas W. Hanel, MAYOR

ATTEST:

BY:_____

Cari Martin, CITY CLERK

EXHIBIT "A"


POW WOW PARK
SAHARA
SANDS SUB.
SPRING VALLEY
LOGAN ACRES SUB.
EAST ALKALI CREEK ROAD
QUIET WATER AVE.
BLACK PINE ST.
DICK LOGAN PARK
SAHARA PARK
SAHARA SANDS SUB 1ST
AM SAHARA PARK
SAHARA SANDS SUB 2ND
EXISTING CITY LIMITS
CERT. 727
TR 2A
CITY DE-ANNEXATION 13-05
CERT. 1434
TRACT 2
STATE SECONDARY 318 / EAST AIRPORT ROAD
CERT. 1434
TR. 1-B AMENDED
TR. 1B-2
TR. 1B-1
CERT. 156
AMEND.
TR. A
TR. B
CERT. 1434
AMENDMENT LOT
20

13-77

PETITION FOR DE-ANNEXATION FROM THE CITY OF BILLINGS

RECEIVED
MAR 26 2013
PLANNING & COMMUNITY SERVICES DEPARTMENT

NOTICE TO PETITIONER

This is a Petition to the City of Billings requesting the DE-annexation of property from the City, pursuant to MCA Title 7, Chapter 2, Part 48. Procedures for de-annexation are governed by the Statutes of the State of Montana. This Petition requires the signatures of not less than 75% of the Resident Freeholder Electors to be considered for de-annexation.

INSTRUCTIONS

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.

2. Prepare a map drawn to a scale adequate and legible to show the property requesting de-annexation and all other property within one-quarter (1/4) mile.

   The map must show:

   a. The boundaries of the municipality;

   b. The present streets, major trunk water mains and sewer mains;

   c. The zoning of the property requesting de-annexation and the property immediately adjacent to it.

3. The Petition should be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parmly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, Parks and Recreation Department, and the Finance Department. If the departments find no problems with the Petition, the City Clerk will schedule the Petition for City Council action.

4. If the Council finds that the petition is signed by the required number of owners of the territory to be excluded, and that the granting of said petition will be to the best interest of the city and the inhabitants thereof and will not materially mar the symmetry of the city, they shall pass a resolution of intent to De-Annex the territory. Then the City Clerk shall publish in the newspaper for two successive notice of the Council's Resolution of Intent to De-annex, of a 20-day comment period, and of an upcoming public hearing on the question of de-annexation.

5. A description of the territory to be de-annexed from the City is legally described on a document attached hereto.

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
3/26/2013	Robert G Honaker		428 Tumbleweed Dr Billings, MT 59105

(continued on separate page)

(Should be completed prior to obtaining signatures of resident freeholder electors)

DESCRIPTION OF THE TERRITORY TO BE DE-ANNEXED FROM THE CITY OF BILLINGS

RECEIVED
MAR 23 2013
PLANNING & COMMUNITY
SERVICES DEPARTMENT

Legal Description	Tax Code	Address of General Location	Use of Property	Legal Property Owners	Address	Phone
Rolle Subd, S28, T01N, R26E, Block 3, Lot 20	A13383 (A13383)	Off of Airport Rd between Airport and Billings Heights	Vacant Land Urban	Robert Honaker	428 Tumbleweed Dr Billings, MT 59105	406-671-0630
- OR -			#Proposed: Single family residential			
Lot 20, Block 3, Rolle Subdivision, Yellowstone County Billings MT						

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: 3/26/13

Received By: Tamara Adams

Petition Number: 13-05 (13-77)

Fee Paid: $952.00 / $45.00 Deposit

13-77

Revised 10/03

ATTACHMENT:
Petition For De-Annexation
Robert Honaker

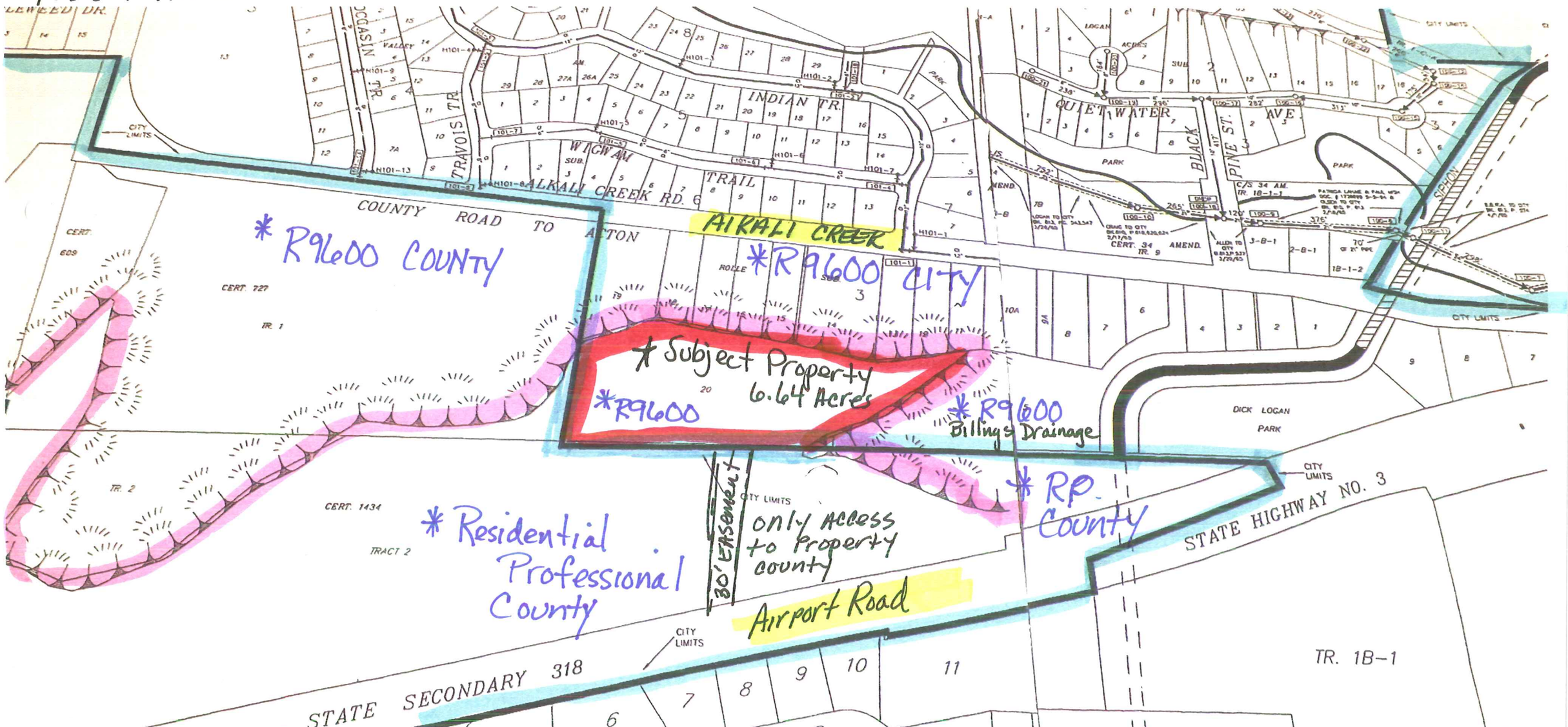
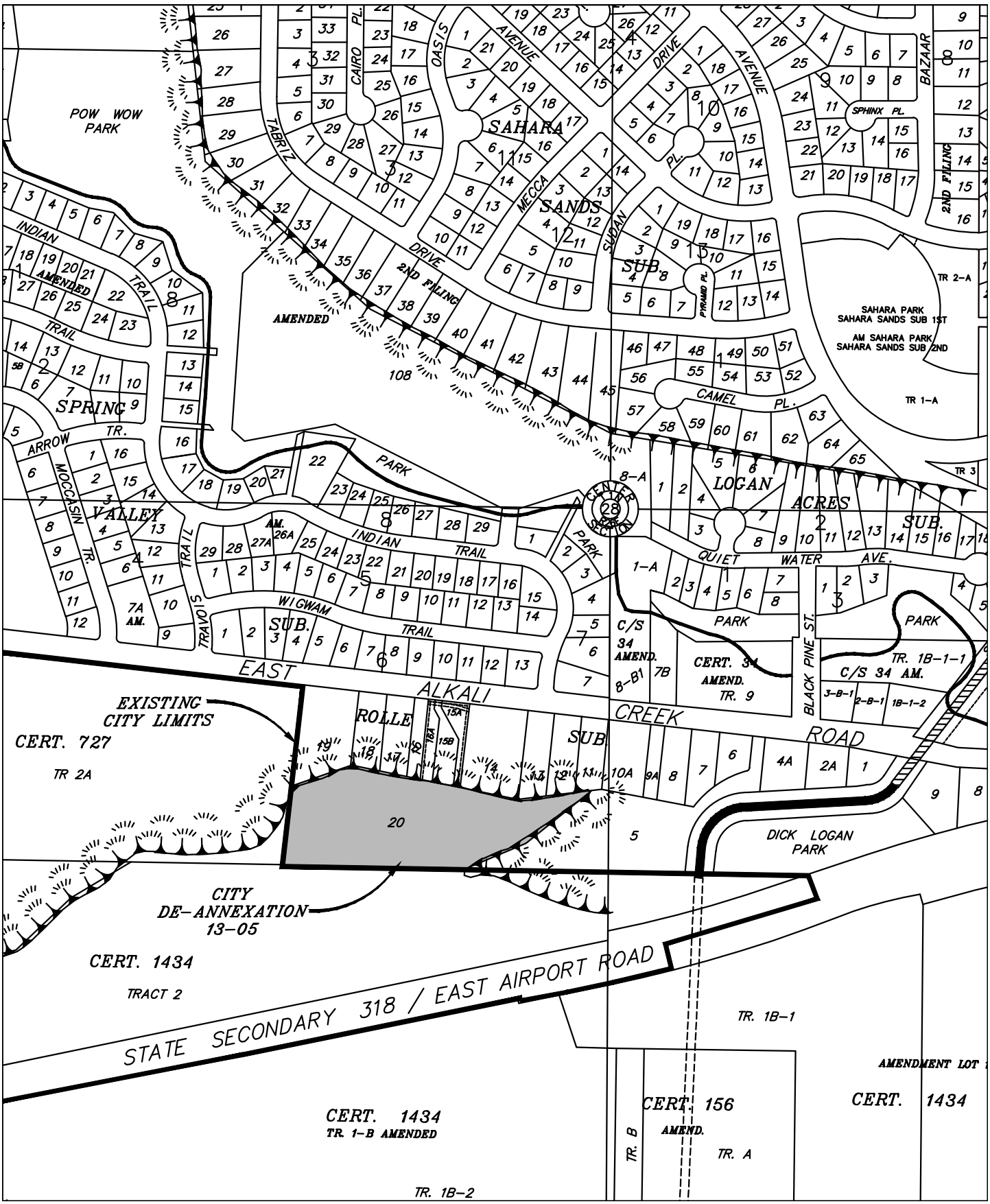


EXHIBIT "A"


POW WOW PARK
SAHARA
SANDS SUB.
SAHARA PARK
SAHARA SANDS SUB 1ST
AM SAHARA PARK
SAHARA SANDS SUB 2ND
TR 2-A
TR 1-A
TR 3
LOGAN ACRES SUB.
SPRING VALLEY
INDIAN TRAIL
ARROW TR.
MOCCASIN TR.
TRAVOIS TRAIL
WIGWAM TRAIL
CAMEL PL.
QUIET WATER AVE.
BLACK PINE ST.
DICK LOGAN PARK
EAST ALKALI CREEK ROAD
ROLLE SUB
EXISTING CITY LIMITS
CERT. 727
TR 2A
CITY DE-ANNEXATION 13-05
CERT. 1434
TRACT 2
STATE SECONDARY 318 / EAST AIRPORT ROAD
CERT. 1434
TR. 1-B AMENDED
TR. 1B-2
CERT. 156
AMEND.
TR. B
TR. A
TR. 1B-1
AMENDMENT LOT
CERT. 1434
TR. 1B-1-1
C/S 34 AM.
C/S 34 AMEND.
CERT. 34 AMEND.
TR. 9
20

RESOLUTION 05-18271

A RESOLUTION ESTABLISHING A POLICY RELATED TO THE **EXCLUSION OF TERRITORY FROM THE CITY OF BILLINGS** OTHERWISE REFERRED TO AS "**DEANNEXATION**", PURSUANT TO MANDATORY PROVISIONS OF SELF-GOVERNING LOCAL GOVERNMENTS, 7-1-114, MCA AND EXCLUSION OF TERRITORY, 7-2-4801, ET. SEQ., MCA.

WHEREAS, The City of Billings is subject to all state laws providing for the exclusion of territory from the City pursuant to 7-1-114, MCA, and

WHEREAS, The City Council desires a policy to determine when exclusion of territory is in the best interest of the City pursuant to 7-2-4801, et. seq., MCA,

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

That the City of Billings is committed to providing cost effective services to all territories within the City. It is recognized that in some instances the City may be incapable of providing these services to certain territories without unreasonably burdening the existing taxpayers or the individual landowner. In those cases, it may be in the best interest of the City and City residents to exclude these territories from the municipality.

The Billings City Council has the authority to exclude territory from the City in accordance with 7-2-4801, et seq, MCA. In doing so, the City Council must find that:

1. A petition, signed by a majority of qualified electors who voted in the last City election or by owners of not less than three-fourths in value of territory to be excluded, has been filed with the City Clerk; and
2. The territory to be excluded is within the existing City limits and on the border of the City; and
3. Granting the petition is in the best interest of the City; and
4. The exclusion of the territory will not mar the symmetry of the City.

Exclusion of the territory may be considered in the best interest of the City if the territory:

1. Is not currently connected to City water, wastewater or storm drainage facilities, and cannot connect to these facilities without an unreasonable expenditure of personal or public funds, and
2. Is not adjacent to public rights-of-way, and
3. Is not encumbered by any indebtedness of any improvement district of which the territory is a part, and
4. Is located on the outer perimeter of the City limits and upon exclusion of the property will not result in a parcel wholly surrounded by City limits, and
5. Is not adjacent to acceptable limits of annexation as defined on the most recent update of the Limits of Annexation Map.

Passed by the City Council, this 23rd day of May, 2005

THE CITY OF BILLINGS:

BY: _____
Charles F. Tooley MAYOR

Mayor Pro Tem in the absence of the Mayor

ATTEST:

BY: Marita Herold
Marita Herold, CMC/AAE CITY CLERK

Regular City Council Meeting
Meeting Date: 05/28/2013
TITLE: Public Hearing and Resolution for Annexation #13-06
PRESENTED BY: Candi Beaudry
Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

Origer Enterprises, Inc. (Doug Origer) and TNC Development, LLC (Natalie Carson) have submitted petitions to annex land to the City of Billings under Section 7-2-4600, MCA. The subject property is composed of two lots totaling about 7 acres. The property is described as Lot 5, Block 2, and Lot 1, Block 3, Titan Subdivision. The property is located on the north and south sides of Interstate Avenue just west of its intersection with Mullowney Lane. The property is mostly vacant, with one commercial building on Lot 1. The property owners are requesting annexation in order to obtain City services for future development of the property in the City. No development plans were provided with the annexation request. The property is zoned Highway Commercial and if it is brought into the City, it would retain this commercial zoning designation. The property is located within the five-year annexation area of the City's Limits of Annexation Map and appears to meet many of the City's criteria in its Annexation Policy.

ALTERNATIVES ANALYZED

The City Council may approve or deny a petition submitted by owners of 50% or more of the real property in the area to be annexed (7-2-4601 (3)(b), MCA).

FINANCIAL IMPACT

The City can provide municipal sewer and water service to the subject properties. The owner will be responsible for all costs of extending the utilities from Mullowney Lane and Frontier Drive. Staff is recommending a standard condition of approval for this annexation that either a development agreement or a Subdivision Improvement Agreement (if the property is subdivided)between the City and the property owners be executed to clarify how City services will be provided. If the proposed annexation is approved and the property is further developed for commercial uses, it will contribute additional tax revenue to the City.

BACKGROUND

The subject property is composed of two lots totaling about 7 acres. The property is located on the north and south sides of Interstate Avenue just west of the intersection of Interstate Avenue and Mullowney Lane. The property owners are requesting annexation in order to obtain City services for development of the properties in the future. The properties are zoned Highway Commercial and will remain under that zoning if brought into the City Limits.

The property is located within the five year annexation area of the City's Limits of Annexation Map and appears to meet many of the City's criteria in its Annexation Policy. The City Limits are immediately adjacent to the subject property on the north and east.

PROCEDURAL HISTORY

- On April 9, 2013, the annexation petitions were submitted to the Planning Division.
- On May 13, the City Council acknowledged receipt of the annexation petitions and set a public hearing for May 28.
- On May 28, the City Council will conduct the public hearing for the annexations and may take action on the request.
- On June 10, if the resolution to annex is approved by the City Council, a public hearing and first reading of an ordinance to include the property in City Council Ward III will be conducted.
- On June 24, the City Council will conduct the second and final reading for the ordinance expanding the Ward III boundary.

STAKEHOLDERS

Annexation by petition does not require notification of adjoining landowners; however, it does require that the City Council conduct a public hearing. Notice of the public hearing was posted on the property on May 10 and published in the Billings Times on May 9. The Planning Division has not received any inquiries about this petition at the time this memo was prepared.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The City Council has expressed concerns regarding how annexing additional properties may affect the City's ability to provide services to new developments without diminishing the services provided to existing City residents. To address these concerns, the City Council adopted an annexation policy that lists criteria for suitable annexations. The proposed annexation complies with the adopted Annexation Policy criteria as follows:

1. The area is located within the Limits of Annexation.
2. The City is able to adequately provide municipal water and sewer services. Sewer and water services will require extension of lines by the property owner at the time of development.
3. Any proposed improvements to the property will meet City standards.
4. As part of a Development Agreement or Subdivision Improvement Agreement, the owners will sign a Waiver of Right to Protest the creation of any Special Improvement Districts.
5. If annexed, any proposed land use will comply with the zoning. Future development also may conform to the goals of the City of Billings and Yellowstone County Growth Policy.

Although MCA 7-2-4600 allows the municipality to waive the requirement of an annexation public services plan, it is the City's custom for staff to prepare an analysis of predicted impacts to services and facilities. State law lists the required contents of a public services plan including a 5-year (minimum) plan that outlines how and when services and infrastructure will be extended to the annexed area and how they will be financed. This report follows that general format.

Departmental Response: City and County Departments were given the opportunity to comment on this annexation. City departments responded favorably and detailed responses are provided below.

City Facilities: The following improvements and facilities are necessary to provide adequate services to the subject property.

• Water: Water service is available and will need to be extended from Mullowney Lane to the subject properties along Interstate Avenue. The cost to extend service for the property will be at

the developer's expense.

• Sewer: The property may be served by the developers extending City sanitary sewer from Frontier Drive west across Mullowney Lane to Interstate Avenue. The developer will be required to fund and construct sanitary extension(s) as defined in city policy.

• Stormwater: There is no storm drain in Mullowney Lane. Barrow pits are currently utilized along Interstate Avenue in front of the subject properties. Storm water impacts will be identified during the subdivision and site development process and mitigating measures developed at that time, meeting the requirements of the city and the public works department.

• Transportation: The subject properties have frontage on Mullowney Lane and Interstate Avenue. Mullowney Lane is a collector and Interstate Avenue is a commercial local access street. Both are currently built to County Standards. Any required street improvements for Mullowney Lane and/or Interstate Avenue will be identified during the site development process. Any specific traffic impacts will be identified during the site development process and mitigating measures developed at that time.

• Fire Stations: The subject property is currently served by the Billings Fire Department through the Billings Urban Fire Service Area and the Billings Fire Department will continue to serve the property upon annexation. The Billings Fire Chief stated that as this and other annexations are built out, additional fire department resources will be needed. The nearest fire station is Station #5, located at 604 South 24th Street West, about 1.5 miles northwest of the subject property. The Fire Department also will work with the developers and City Public Works to ensure proper water supply and emergency vehicle access is provided with development of these lots in the City.

• Parks: The subject property will remain zoned Highway Commercial if annexed. Park land dedication will not be required but the owners will execute a waiver of protest to creating future SIDs.

• Bicycle and pedestrian facilities: The property lies within the jurisdiction of the Billings Area Bikeway and Trail Master Plan. Bike lanes are proposed on Mullowney Lane in front of the subject properties when there are future improvements to the roadway in this area.

General City Services: These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded did not object to the annexation of this property.

• Transit: MET transit system operators have no objections to the annexation request, but the nearest bus route follows King Avenue West and the Laurel Frontage Road, with some weekend service just south of the I-90 corridor to Midland Road between a quarter and a half a mile north of the subject property.

• Police: The Police Department states that the subject property is in an established patrol area.

• Public Utilities: The Public Works-- Distribution and Collection Division had no objection with the annexation request as long as the owner agrees to fund the necessary water and sewer extension and connection costs, and agrees to a waiver of protest for future SIDs through a Development Agreement or Subdivision Improvement Agreement as a condition in the

Annexation Resolution.

• Public Works -Street and Traffic Division: The Street and Traffic Division stated that it has no problems serving the property.

• Public Works-Solid Waste: The Solid Waste Division notes that it can serve the property when developed, but noted that Senate Bill 234 passed in the 2011 State Legislature dictates that it is up to the property owner as to whether the City or a private carrier collects solid waste from the property.

• Ambulance Service: The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City ordinance, 90% of ambulance calls must be answered within 8 minutes; this annexation is within the area of acceptable response time.

• Legal and Finance: General Fund services, such as the Legal and Finance Departments should not be negatively impacted by this annexation. The Finance Department responded that it did not see any issues with the petition request. The Legal Department stated that the properties are contiguous with the existing City Limits and the request appears to be consistent with the CIty's current Annexation Policy.

• Other Departments: City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve new development whether in the City or the County.

Annexation of this property would adhere to the following goals, objectives and policies of the Yellowstone County and City of Billings 2008 Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)
- Limit regional commercial centers to areas having efficient and direct access to Interstate 90 or other regional corridor (Planned Growth Goal, page 18)
- Attractive and accessible communities. (Economic Development Element Goal, page 7) The proposed zoning will encourage new businesses to locate in this gateway area.

RECOMMENDATION

Staff recommends that the City Council conduct the public hearing and approve the Resolution annexing the subject property, subject to the following conditions of approval:
• Prior to site development, a Development Agreement shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements, and a Waiver of Right to Protest the Creation of Special Improvement Districts will be recorded; and/or
• A Subdivision Improvements Agreement (SIA) and Waiver of Right to Protest the Creation of Special Improvement Districts shall be approved and recorded that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

APPROVED BY CITY ADMINISTRATOR

Attachments

Annexation Petition

Annexation Exhibit
Annexation Resolution

13-65

RECEIVED
MAR 12 2013

PETITION
FOR ANNEXATION
TO THE CITY OF BILLINGS

NOTICE TO PETITIONER

This is a Petition to the City of Billings requesting the annexation of property to the City, pursuant to MCA Title 7, Chapter 2, Part 46. Procedures for annexation are governed by the Statutes of the State of Montana. This Petition requires the signatures of more than 50% of the Resident Freeholder Electors to be considered for annexation.

INSTRUCTIONS

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.

2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.

   The map must show:

   a. The present and proposed boundaries of the municipality;

   b. The present streets, major trunk water mains and sewer mains;

   c. The zoning of the property requesting annexation and the property immediately adjacent to it.

3. The Petition should be submitted to the Planning Department, Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., located on the 4th Floor of Parmly Billings Library at 510 North Broadway, Billings, Montana. Upon presentation, the Petition will be checked for completeness. Once accepted, the Petition will be routed to the following City Departments: Public Works, City-County Planning, Public Utilities, Fire Department, City Attorney, Police Department, and Finance Department. If no problems with the Petition have been noted by the departments, the City Clerk will schedule the Petition for City Council action.

4. By filing the petition for annexation, the Petitioner(s) agree that only those City services which are available to the general area shall be provided to Petitioner, and that additional services as may become available to the general area shall be made available to Petitioner(s) in the same manner as said services are made available to other residents of the City. Petitioner(s) specifically waive the right to the report and plans for extension of services as provided in MCA Title 7, Chapter 2, Part 47.

5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
3-4-13	Doug (Finn) Origer	D	536 S 18th St W

(continued on separate page)

RECEIVED
APR - 9 2013
PLANNING & COMMUNITY
SERVICES DEPARTMENT

PETITION FOR ANNEXATION TO THE CITY OF BILLINGS

NOTICE TO PETITIONER

This is a Petition to the City of Billings requesting the annexation of property to the City, pursuant to MCA Title 7, Chapter 2, Part 46. Procedures for annexation are governed by the Statutes of the State of Montana. This Petition requires the signatures of more than 50% of the Resident Freeholder Electors to be considered for annexation.

INSTRUCTIONS

1. All items must be completed or provided. Please type or print. You may attach additional pages if more space is needed.

2. Prepare a map drawn to a scale adequate and legible to show the property requesting annexation and all other property within one-quarter (1/4) mile.

   The map must show:

   a. The present and proposed boundaries of the municipality;

   b. The present streets, major trunk water mains and sewer mains;

   c. The zoning of the property requesting annexation and the property immediately adjacent to it.

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5. A description of the territory to be annexed to the City is legally described on a document attached hereto.

RESIDENT FREEHOLDER ELECTORS

Date	Print Name	Name Signature	Address
4-2-13	Natalie Carson	Natalie Carson	4620 Cliff View Cir. Billings MT 59106
	Member TNC Development, LLC		

(continued on separate page)

(Should be completed prior to obtaining signatures of resident freeholder electors)

DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS

Legal Description	Tax Code	Address of General Location	Use of Property	Legal Property Owners	Address	Phone
L1, B3, Titan Sub	C13294	5605 Interstate Ave	Commercial	Oroger Enterprises Inc		
L5, B2, Titan Sub	C13288	5530 Interstate Ave	Commercial	TNC Development, LLC	4620 Cliff View Cr	670-0505

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: 4/9/13

Received By: Tammy

Petition Number: 13-05

Fee Paid: Paid at Origer Submission (See 2nd petition form)

RECEIVED
APR - 9 2013
PLANNING & COMMUNITY SERVICES DEPARTMENT

Revised 6/99

(Should be completed prior to obtaining signatures of resident freeholder electors)

DESCRIPTION OF THE TERRITORY TO BE ANNEXED TO THE CITY OF BILLINGS

Legal Description	Tax Code	Address of General Location	Use of Property	Legal Property Owners	Address	Phone
Titan Sub Block 3 Lot 1	C13294	560S Interstate Ave	Commercial	Doug Origer	536 S 18th St W	656-9660

ALL ITEMS BELOW SHALL BE COMPLETED BY STAFF

Date Submitted: 3/12/13

Received By: Tam

Petition Number: 13-05

Fee Paid: $952.-

Proj #13-065

Sign Dep. $45.

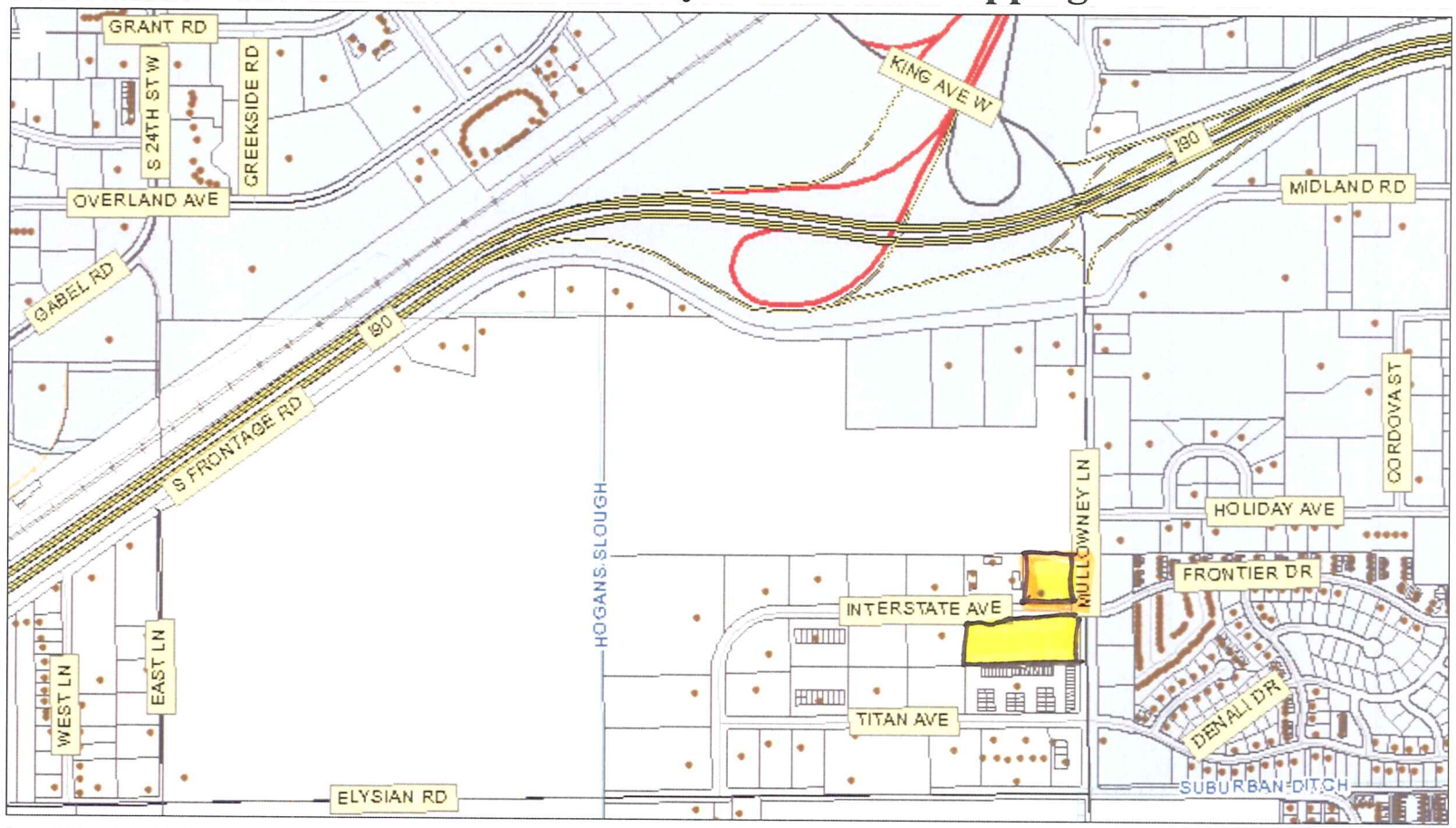
Revised 6/99

Google earth

feet 3000
km 1

Address : *(Address, City)* Locate

Yellowstone County Interactive Mapping Site



Lon:-108.568 Lat:45.752

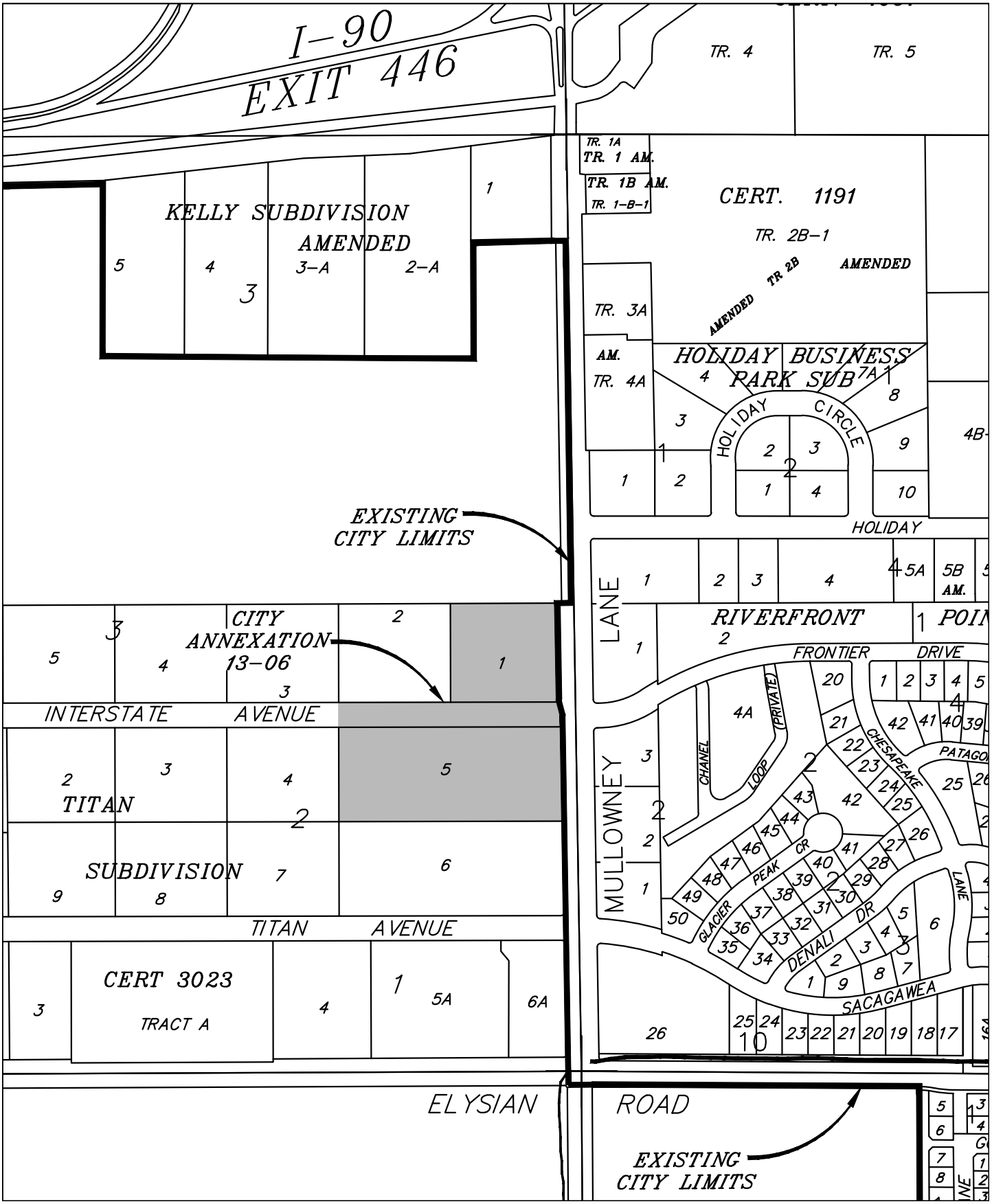
Legend

City

- BILLINGS
- BROADVIEW
- LAUREL

Results

EXHIBIT "A"


I-90
EXIT 446
TR. 4
TR. 5
TR. 1A
TR. 1 AM.
TR. 1B AM.
TR. 1-B-1
CERT. 1191
TR. 2B-1
AMENDED TR 2B
AMENDED
KELLY SUBDIVISION
AMENDED
TR. 3A
AM.
TR. 4A
HOLIDAY BUSINESS
PARK SUB
HOLIDAY CIRCLE
HOLIDAY
EXISTING
CITY LIMITS
LANE
RIVERFRONT
FRONTIER
DRIVE
CITY
ANNEXATION
13-06
INTERSTATE
AVENUE
TITAN
SUBDIVISION
TITAN
AVENUE
CERT 3023
TRACT A
MULLOWNEY
CHANEL
LOOP
(PRIVATE)
CHESAPEAKE
PEAK
DR
GLACIER
DENALI
SACAGAWEA
LANE
ELYSIAN
ROAD
EXISTING
CITY LIMITS

RESOLUTION NO. 13-

A RESOLUTION OF THE CITY OF BILLINGS APPROVING PETITIONS FOR ANNEXATION AND ANNEXING TERRITORY TO THE CITY.

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law, and

WHEREAS, annexation of said territory would be in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AS FOLLOWS:

1. TERRITORY ANNEXED. Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

   A tract of land situated in the SE1/4 of Section 18, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

   Titan Subdivision, Lot 5, Block 2 and Lot 1, Block 3, Recorded June 18, 2001, under Document No. 3133913. Including all adjacent Right-Of-Way of Interstate Avenue.
   Containing 6.898 gross and 5.885 net acres more or less.
   (# 13-06) See Exhibit "A" Attached

2. CONDITIONS. The annexations are approved, subject to the following conditions:

   - Prior to site development, Development Agreements shall be executed between the owner(s) and the City that shall stipulate specific infrastructure improvements and provide guarantees for said improvements and Waivers of Right to Protest the Creation of Special Improvement Districts will be recorded; and/or

   - Subdivision Improvements Agreements (SIA) and Waivers of Right to Protest the Creation of Special Improvement Districts shall be approved and recorded that will stipulate specific infrastructure improvements and provide guarantees for such infrastructure improvements.

3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

PASSED by the City Council and APPROVED this 28th day of May, 2013.

THE CITY OF BILLINGS:

BY: _____

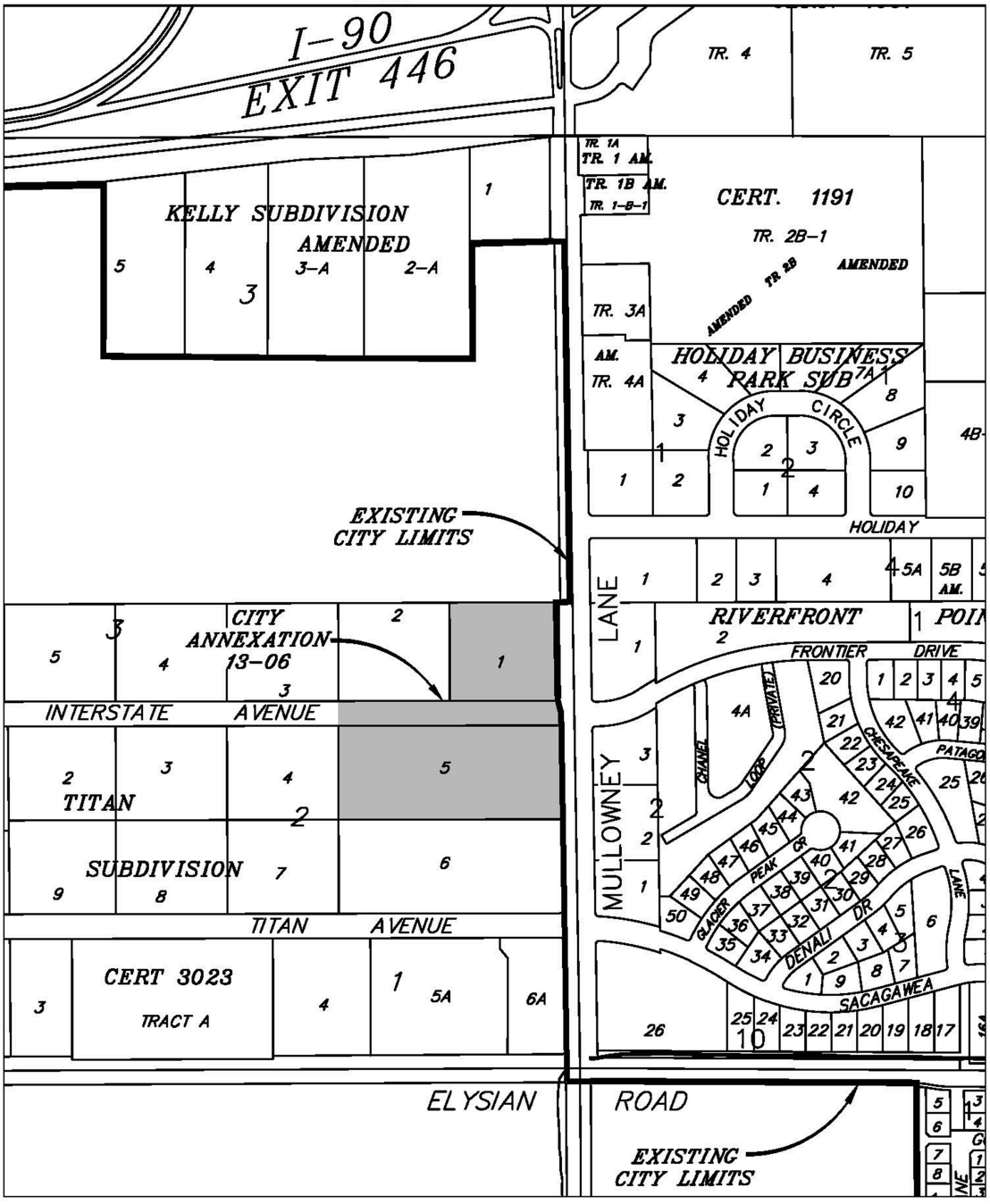
Thomas W. Hanel, MAYOR

ATTEST:

BY: _____

CITY CLERK
(AN# 13-06)

EXHIBIT "A"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HOLIDAY BUSINESS PARK SUB
HOLIDAY CIRCLE
HOLIDAY
KELLY SUBDIVISION AMENDED
EXISTING CITY LIMITS
CITY ANNEXATION 13-06
INTERSTATE AVENUE
TITAN SUBDIVISION
TITAN AVENUE
CERT 3023
TRACT A
LANE
RIVERFRONT
FRONTIER DRIVE
MULLOWNEY LANE
CHANEL
TRAIL
LOOP
CHESAPEAKE
PATAGO
PEAK
GLACIER
DENALI
DR
SACAGAWEA
ELYSIAN ROAD
EXISTING CITY LIMITS

Regular City Council Meeting

Meeting Date: 05/28/2013

TITLE: Zone Change 909 - Public Hearing - Amendment to Lenhardt Square Planned Development

PRESENTED BY: Candi Beaudry

Department: Planning & Community Services

Information

PROBLEM/ISSUE STATEMENT

This is a zone change request to amend an existing Planned Development (PD) to allow an increase in the maximum density from 15 dwelling units per acre to 20 dwelling units per acre on Tract 3A of C/S 2063 with an underlying zoning of PD-MF-R in the Lenhardt Square PD. The subject property is 25.186 acres in area. The area used for calculating the average density does not include any of the open space or pathways shown on the Lenhardt Square Master Plan. The current maximum density for the net area of Tract 3A is 289 dwelling units. The proposed amendment would increase this maximum density to 386 dwelling units. The property is owned by Stock Land Properties, Inc. and the agent is Sanderson Stewart. The agents and owner conducted a pre-application neighborhood meeting on February 25, 2013 and a preliminary review meeting was held by city staff on March 27, 2013. The Zoning Commission continued the public hearing from April 2 to May 7, 2013 due to lack of a quorum. The Zoning Commission conducted the public hearing on May 7, 2013, and is forwarding a recommendation of approval on a 5 to 0 vote.

ALTERNATIVES ANALYZED

State law at Section 76-2-304, MCA, requires that all zone changes be reviewed in accordance with 10 criteria. Using the 10 criteria to determine the appropriateness of the zone change request, the City Council may:

1. Approve the zone change request
2. Deny the zone change request
3. Allow withdrawal of the application
4. Delay action for up to thirty (30) days

FINANCIAL IMPACT

There should be no immediate financial impact to the city from the change in the Planned Development Agreement. When the property is developed, additional property tax and city fees will be realized based on the construction.

BACKGROUND

The applicant is requesting to change the Planned Development zoning restrictions on this property in order to increase the number of possible dwelling units from 15/units per acre to 20/units per acre. The underlying zoning of PD-MF-R would not be changed. The Lenhardt Square Master Plan and Planned Development Agreement approved by the City Council in 2008 allowed a 20/unit per acre density for the lots zoned PD-MF-R east of 44th Street West. Tract 3A west of 44th Street West however was limited to 15/units per acre. The lots north and west of Tract 3A have an underlying zoning of MF-4 with a density limit of 10 units per acre.

The entire Master Plan for Lenhardt Square is also governed by an annexation development agreement that limits the amount of city water available for the development pending completion of water system improvements that include increasing water pressure and storage capacity for fire protection.

The applicant has purchased 2 lots east of 44th Street West and is beginning construction of multi-family apartment buildings. These 2 lots will have 320 dwelling units in 4 buildings on 15.6 acres. Tract 3A will have a similar development plan but will have about 6 acres of central open space dedicated as well as the linear parkways on each street frontage.

The applicant conducted a pre-application neighborhood meeting on February 25, 2013. No surrounding owners attended the meeting. A preliminary meeting with city staff, surrounding owners, and the applicant was held on March 27, 2013. Representatives of Cal Kunkel, an adjacent property owner, attended the preliminary review. The applicant and agent discussed the development plan with the staff. There were no concerns with the proposed amendment.

STAKEHOLDERS

The Zoning Commission conducted a public hearing on May 7, 2013, and received the staff recommendation and testimony from the agent, Rick Leuthold of Sanderson Stewart. Jan Rehberg, a founding member of the Lenhardt Square Association, provided testimony in favor of the zone change. No other testimony was received. The Zoning Commission concurred with the staff recommendation and is forwarding a recommendation of approval on a 5 to 0 vote.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

The Planning Division reviewed the application and recommended approval of the proposed change to the Planned Development agreement. The Zoning Commission concurred with the recommendation. The Zoning Commission recommendation is based on the ten (10) criteria for zone changes. The subject property is the central parcel of the Lenhardt Square development and will have an open space and park area. The increased density will be compatible with the existing development to the east and across King Avenue West in the Western Sky Subdivision. The 2008 Growth Policy encourages predictable land use decisions that are consistent with neighborhood character and land use patterns. The existing use and proposed zoning are consistent with this neighborhood and land use pattern. Water supply limitations are currently in place for this development and traffic impacts will need to be assessed by the city as development occurs within this subdivision and the surrounding subdivisions.

Prior to any making a decision on the proposed zone change, the City Council shall consider the following 10 criteria:

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following goals of the Growth Policy:

• Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)

The proposed change to the maximum average density will be consistent with the other lots zoned MF-R in the Lenhardt Square Subdivision. The average density in this area is 14 to 22 units per acres including developments in Lenhardt Square and in surrounding subdivisions.

• Contiguous development focused in and around existing population centers. (Land Use Element Goal, page 6)

The proposed change in the development density will continue to focus new multi-family housing inside the city limits, and avoid “leapfrogging” development outside of the urban area.

2. Is the new zoning designed to secure from fire and other dangers?
The new density limitation will not change the existing approved building height limits and setbacks. Those setbacks, open and landscaped areas, and building separations will provide adequate building separations and density limits to provide security from fire and other dangers. The City Fire Department will ensure safe access to the site and provision for minimum fire flow to the new buildings.

3. Whether the new zoning will promote public health, public safety and general welfare?
Public health and public safety will be promoted by the proposed zoning. Any development of the property will require connection to the city public utilities and improvements to adjacent streets and intersections. The city and state have invested in nearby transportation systems and utilities that will provide service to the property. Additional users and rate payers for those systems will benefit the general welfare.

4. Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?
Transportation: The proposed zoning will impact the surrounding streets, and a traffic impact study or an update of an existing study will likely be required prior to development of the property. The City Engineering Division will have to assess any traffic impacts and may require street and intersection improvements prior to or concurrent with any development of the property.
Water and Sewer: The City will be able to provide water and sewer to the property by extension of lines. The developer will pay all related costs of this utility extensions as well as systems development fees. The development is governed by an agreement that limits the provision of water service based on completion of water system improvements. The current water use rate for the existing apartments is much lower than predicted in 2008. Public Works is not concerned the proposed density will exceed the existing limitation. The applicant expects the city improvements will raise the water use cap in near future.
Schools and Parks: There may be an impact to schools from the proposed increase in the development density. It is unknown how many of the multi-family dwellings will have school age children.
Fire and Police: The subject property is currently served by the Billings Fire Department and Police Department. Public Safety Services has no concerns.

5. Will the new zoning provide adequate light and air?
The new zoning, as do all zoning districts, requires building setbacks and separations so adequate light and air are assured.

6. Will the new zoning effect motorized and non-motorized transportation?
The subject property when developed will likely add several hundred new vehicle trips per day to adjacent streets. Anticipated traffic generation greater than 500 new trips per day will require a Traffic Accessibility Study or an update to an existing study to determine the impacts and to provide for improvements to those streets and intersections. Lenhardt Square will have an interconnected system of pathways and bikeways to improve non-motorized transportation.

7. Will the new zoning will promote compatible urban growth?
The new zoning does promote compatibility with urban growth. Lower density development is inefficient and ineffective in recovering the costs to extend city services. There are compatible uses and zoning to the south and east.

8. Does the new zoning consider the character of the district and the peculiar suitability of the

property for particular uses?
The proposed zoning does consider the character of district and the suitability of the property for a multi-family uses at the proposed density of 20 units per acre. Similar density exists on the first lots developed in Lenhardt Square (18 units per acre) and in Montana Sapphire Subdivision to the south (16 units per acre – Sunset Beach Apartments).

9. Will the new zoning conserve the value of buildings?
Surrounding property may increase in market value if the increased density is approved. There are no structures on the subject property. Most structures in the area are new construction.

10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?
The proposed zoning will encourage the most appropriate use of land in this area of Billings. The proposed increase in density will make this parcel equivalent to the other PD-MF-R lots within Lenhardt Square and the surrounding subdivisions with multi-family residential zoning.

RECOMMENDATION

The Zoning Commission is forwarding a recommendation of approval of Zone Change 909 and adoption of the findings of the 10 criteria on a 5 to 0 vote.

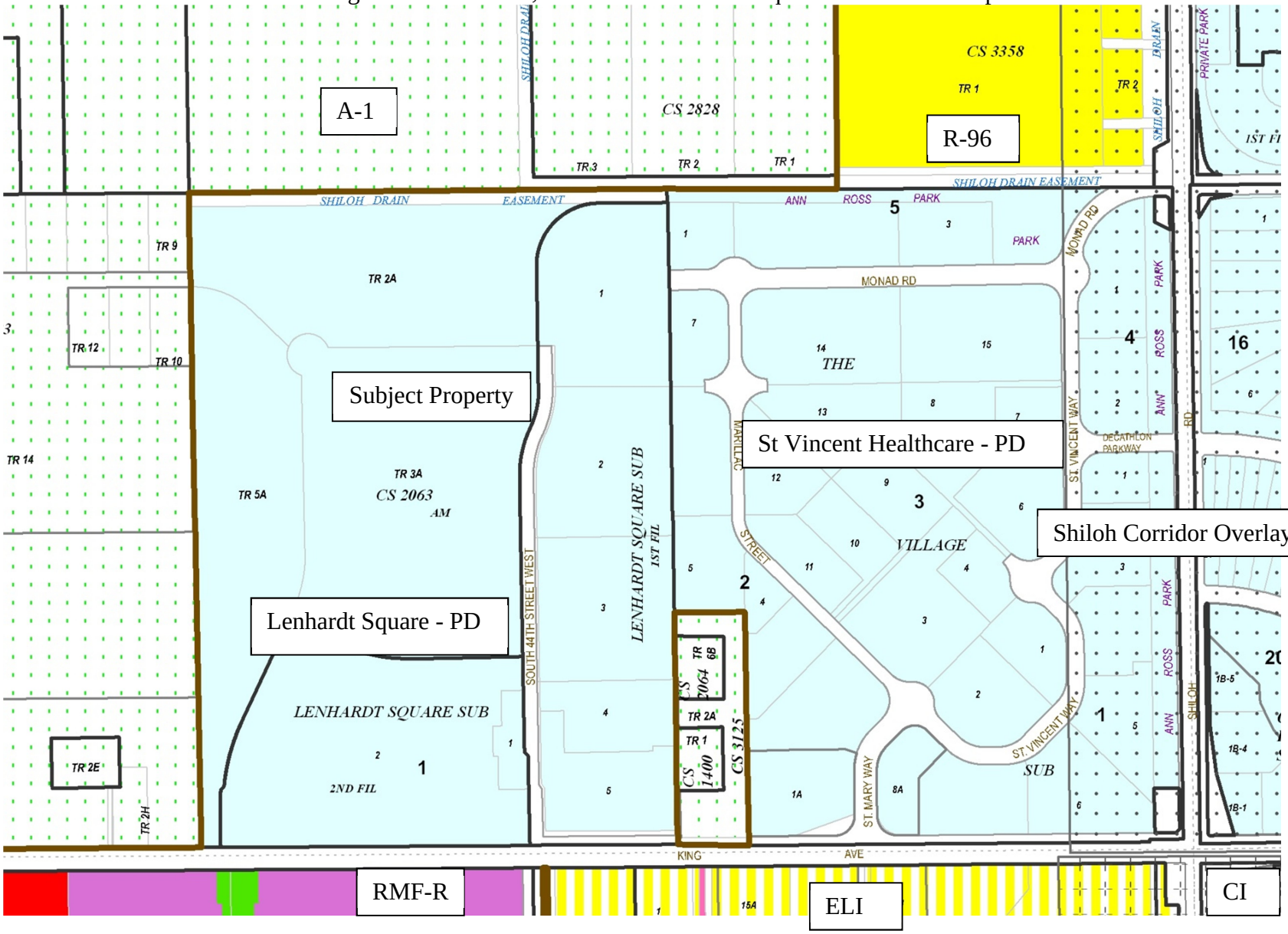
APPROVED BY CITY ADMINISTRATOR

Attachments

Zoning Map
Site Photos
Applicant's Letter
Planned Development Amendment

Attachment A: Surrounding Zoning

Zone Change #909 –Tract 3A, C/S 2063 – Lenhardt Square Planned Development



Attachment B

Site Photographs, Zone Change #909 – Lenhardt Square Planned Development

Subject Property – north from the current dead-end of 44th Street West

View north and west

Attachment B, continued

Site Photographs, Zone Change #909 – Lenhardt Square Planned Development

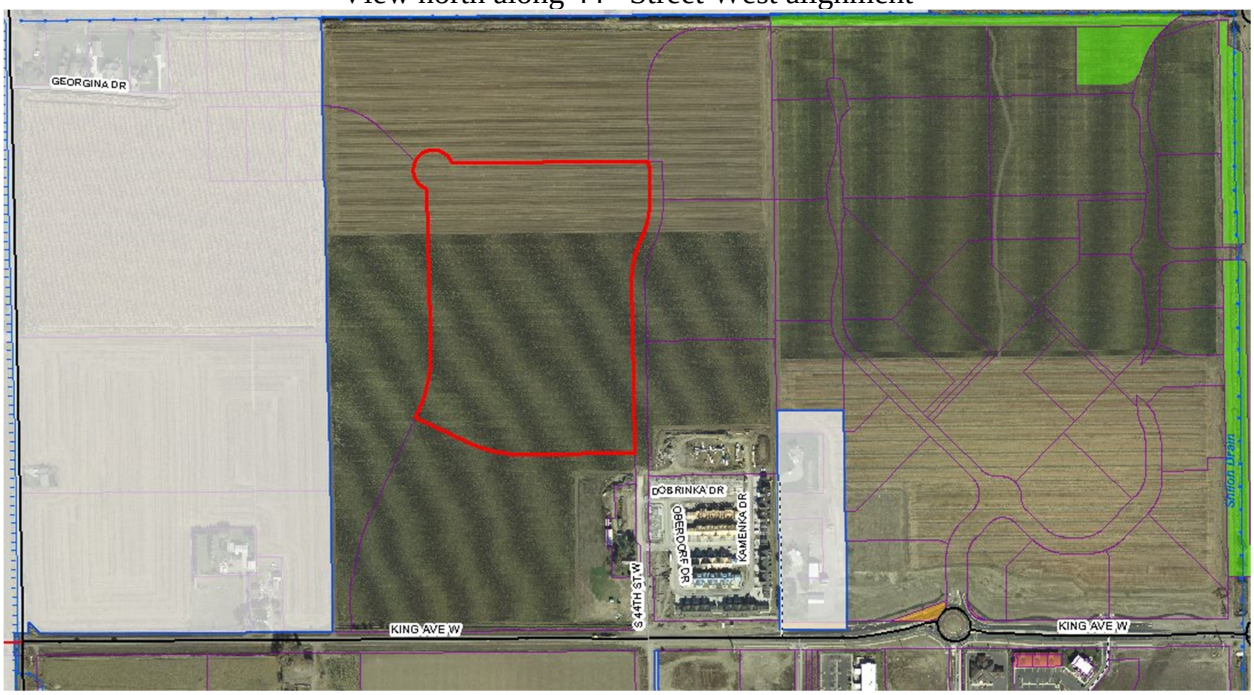
View south and east to existing King West One Apartments

View south along west side of 44th Street West

Attachment B, continued

Site Photographs, Zone Change #909 – Lenhardt Square Planned Development

View north along 44th Street West alignment



Aerial

Attachment C
Applicant's Letter

SANDERSON STEWART

March 4, 2013
Project No. 07054.12

TRACT 3A
CERTIFICATE OF SURVEY NO. 2063 AMENDED
ZONE CHANGE APPLICATION

INTRODUCTION

The attached Zone Change Application is being submitted on behalf of Stock Land Properties, Inc. for a proposed zone change from an average maximum density of 15 dwelling units per acre to an average maximum density of 20 dwelling units per acre, for a total of 400 dwelling units for Tract 3A of Certificate of Survey No. 2063 Amended. An exhibit identifying the subject parcels is attached to this application for reference.

The following information is provided to satisfy the supplemental information requirements for the Zone Change Application.

In what way is the proposal consistent with the goals and policies of the adopted growth policy?

The proposed zone change request is consistent with the land use element goals and objectives as it is consistent with the nature of the existing neighborhood and the type of uses allowed under the proposed zoning are compatible with adjacent uses. The proposed zone change may also encourage economic development by allowing more flexibility in land use.

Explain the need for the intended zone change and why the property cannot be used under the existing zoning. Explain how the new zoning will fit in with the existing zoning and land uses of the immediate area.

The need for the zone change is to allow for more flexibility and density in land use than is allowed under the existing zoning. The existing adjacent zoning and land uses consist of mixed land uses including multi-family residential, planned unit development and commercial land uses. The allowed land uses under the proposed zoning is consistent with the adjacent properties.

1300 North Transtech Way
Billings, Montana 59102
Phone 406.656.5255
Fax 406.656.0967
www.sandersonstewart.com

Attachment D

AMENDED PLANNED DEVELOPMENT AGREEMENT
LENHARDT SQUARE
For Tract 3A, C/S 2063
in the City of Billings, Yellowstone County, Montana

THIS AGREEMENT, made and entered into this ___ day of _____, 2013, by and between STOCK LAND PROPERTIES, Inc., a Montana corporation (hereinafter referred to as "Owner"), and the City of Billings (hereinafter referred to as "City").

WITNESSETH

WHEREAS, the undersigned is the Owner of all of Tract 3A, C/S 2063 within the Lenhardt Square Planned Development, according to a Document No. 3460596 on file with County Clerk and Recorder;

WHEREAS, Tract 3A, C/S 2063 is currently governed by a planned development agreement on file with Clerk and Recorder as Document No. 3464966 and as amended by Document No. 3501505 and as outlined within the City Zoning Ordinance;

WHEREAS, the aforesaid Owner applied for a change of the development density allowed as shown in Exhibit B (First Amended) – General Requirements for the above-described real property from 15 dwelling units per acre to 20 dwelling units per acre;

WHEREAS, the City has approved the change to Exhibit B (First Amended) – General Requirements after due and proper administrative review, notice and public hearing, all in accordance with City Ordinances and requirements;

NOW, THEREFORE, in consideration of the premises, the Owner and the City hereby establish and declare that Exhibit B (First Amended) – General Requirements of the Lenhardt Square Planned Development Agreement is hereby amended to allow a development density of 20 units per acre on Tract 3A, C/S 2063, effective immediately.

I. PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT.

All persons, corporations or other entities, who now have or shall hereafter acquire any interest in and to the above-described real property shall be taken and held to agree to the zoning of the above-described real property as Planned Development and as described in the foregoing documents and as amended by this agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"OWNER"
STOCK LAND PROPERTIES, Inc.
a Montana corporation

BY _____

Michael D. Stock
Its President and duly authorized agent

ATTEST _____

"CITY"
THE CITY OF BILLINGS,

BY _____

Thomas W. Hanel
Its Mayor and duly authorized agent

ATTEST _____
Cari Martin, City Clerk

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this ____ day of _____, 2013, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Rona Steel, known to me to be the President and duly authorized agent of STOCK LAND PROPERTIES, INC., the corporation executing the within instrument, and acknowledged to me that he executed the within instrument on behalf of said corporation, having first been authorized so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

(Notary Seal)

_____
Printed Name: _____
Notary Public for the State of Montana
Residing at _____, Montana
My Commission Expires:____ , 20___

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this ____ day of _____, 2013, before me, the undersigned, a Notary

Public for the State of Montana, personally appeared Thomas W. Hanel, known to me to be the Mayor and duly authorized agent of the City of Billings, executing the within instrument, and acknowledged to me that he executed the within instrument on behalf of said corporation, having first been authorized so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

(Notary Seal)

_____
Printed Name: _____
Notary Public for the State of Montana
Residing at _____, Montana
My Commission Expires:___, 20___

Note: This Exhibit B (Second Amended) is a modification of the Planned Development Agreement for Lenhardt Square, Exhibit B (First Amended) (pages 6 and 7), recorded on April 29, 2009 as Document No. 3505105.

EXHIBIT B (Second Amended)
GENERAL REQUIREMENTS*

Minimum Lot Size Per Structure	MF-4**	MF-R**	MU**
1 dwelling unit	6,000	6,000	
2 dwelling units	7,000	7,000	
3 dwelling units	8,500	8,500	
4 dwelling units	10,000	10,000	
5 dwelling units		11,000	
6 dwelling units		12,000	
7 dwelling units		13,000	
8 dwelling units		14,500	
9 dwelling units		16,000	
10 or more dwelling units		1,500 sq.ft. each additional dwelling unit	
Minimum Setback Requirements (in feet from property line unless otherwise specified)			
Front:			
From Linear Parkway[1]	5	5	5
From back of curb	20[2]	20	0[3]
Sides:[4]			
1 Story	5	5	5
2 Story	8	8	8
3+ Story	9 + 1/story	9 + 1/story	0
Side Adjacent to Street	10	10	0
Rear[4]	20	15	0
Arterials	25	25	25
Maximum Height (in feet)	34	40	80[5]
Maximum Lot Coverage	50%	50%	100%
Maximum Average Densities (Dwelling Units/Acre)	10	20 (Tract 1A & 3A) ~~15 (Tract 3A)~~	20
Fence/Wall/Berm/Shrub Max. Height			
Front Yard and Adjacent to Street	2	2	2
Rear and Side Yards not on Street	8	8	6

* The limitations described in this table are subject to, and in no way supersede, all applicable building codes and regulations. Developers shall at all times comply with the International Building Code, the International Fire Code, and all other local, state, or federal building codes or regulations.

** As of the date this Agreement was originally approved, these zones generally correspond to the following Tracts: MF-4 (Tract 2A, Tract 5A.1); MF-R (Tract 1A, Tract 3A); MU (Tract 4A, Tract 5A.2).

[1] If not inconsistent with the Master Design Guidelines and upon approval of the Reviewer, the front setback from any Linear Parkway may be reduced to less than 5 feet, provided the structure is a minimum of 5 feet from any hard surface walkway or bikeway in the Linear Parkway. This setback does not apply from the Linear Parkway on the north side of King Avenue.

[2] Staggered building facades and angled placement of structures relative to the front lot line are encouraged in all zones. The minimum setback requirement in the MF-4 zone is also a maximum setback or "build-to" requirement. In that zone at least 20% of the façade must be at the applicable minimum setback line (measured from either the curb or the Linear Parkway) if the structure is oriented parallel to the street. If the structure is oriented at an angle to the street, at least one structural corner of the structure must be located at the setback line.

[3] At 40 feet or 3 stories visible from street, remainder of floors must be set back at least 30% of the depth of the lot.

[4] The zero lot line on one side of a shared property line allowed pursuant to 27-617 Unified Zoning Regulations for adjacent single family dwellings shall also be permitted in all zones and for accessory structures and garages.

[5]Height limitation applies to the uppermost, enclosed portion of the structure. Antennae, towers, and non-enclosed portions of a structure may extend fifteen feet (15') above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.