

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

March 27, 2017

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

ROLL CALL: Councilmembers present on roll call were: Cromley, Yakawich, Brewster, McFadden, Sullivan, Swanson, Clark and Brown. Councilmembers Cimmino and Friedel were excused.

MINUTES: March 13, 2017 – Councilmember Sullivan moved for approval, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Mayor Hanel welcomed Boy Scout Troop #319 and Boy Scout Troop #10. They were attending the City Council meeting to work towards their Communications Merit Badge. The troops took a picture with the Mayor and the Councilmembers.
- Councilmember Yakawich congratulated Mayor Hanel on his nomination for the 2017 Salute Award from YWCA.
- Councilmember Yakawich thanked the Meals on Wheels Program for their service.

PROCLAMATIONS:

- Mayor Hanel read a proclamation that declared April 4, 2017 as National Service Recognition Day. He presented Brenda Beckett, Community Development Manager, with the proclamation and thanked her for her hard work and service.

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek, in reference to Item 1A1, W.O. 16-09, reminded Council that a recommendation needed to be made after being presented with bid results.
- Ms. Volek, in reference to Item #2, reminded Council of the updated information from EBURD requesting the amount for the Pedestrian Overpass be amended to \$3,500,000 and the East End Tiff Reconstruction be amended to \$7,500,000.
- Ms. Volek stated the Public Works Department had received a Montana Department of Transportation (MDOT) offer of \$168,044 of the \$194,092 cost of a new vacuum sweeper from the Montana Air & Congestion Initiative (MACI). She added that this item could be added to the agenda with a $\frac{3}{4}$ Council vote.
- Councilmember Clark moved to add the vacuum sweeper as Item 1I on the Consent Agenda, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute for one item, or three (3) minutes for multiple items. Please sign in at the cart located at the back of the council chambers or at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda.)

The public comment period was opened.

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

1. CONSENT AGENDA

A. Bid Awards:

- 1. W.O. 16-09, Grand Avenue Widening between 52nd Street West and 58th Street West.** (Opened 3/21/17) Recommendation was made during the Council meeting.

B. Development Agreement with Albertsons for water and sanitary sewer services with the Grand Avenue project.

C. Reimbursement for qualified property improvements from East Billings Urban Renewal District (EBURD) to Fischer Commercial Flooring, \$66,000.

D. Resolution of Intent to construct W.O. 17-02, Miscellaneous Improvements Program, and setting a public hearing date of 04/24/17.

E. Hope Evangelical Church:

- 1. Right of Way Agreement and Warranty Deed** with Hope Evangelical Church.

- 2. Resolution** rescinding the Resolution of Intent #17-10604 assessing Hope Evangelical Church for their frontage improvements along Grand Avenue.

F. Preliminary Major Plat of Coal Creek Subdivision, generally located on the northwest corner of the intersection of Rimrock Road and 62nd Street West; Magnus Land Development, LLC, owner; Performance Engineering and Consulting, agent.

G. Preliminary Major Plat of Lake Hill Subdivision, 35th Filing, generally located on both sides of Gleneagles Boulevard, between Cherry Hills Road and Annandale Road, northwest of the Lake Hills Golf Course; Trenton Parks, owner; Performance Engineering and Consulting, agent.

H. Bills and Payroll:

1. February 27, 2017
2. March 6, 2017

I. **Approval** of application to the Montana Department of Transportation (MDT) for financial assistance to purchase a new sweeper.

Councilmember Sullivan separated Item 1A1 for discussion.

Councilmember Brown separated Items 1H1 and 1H2 in order to abstain.

Councilmember Clark moved for approval of the Consent Agenda, with the exception of Items 1A1, 1H1 and 1H2, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan asked for clarification on Item 1A1. Vern Heisler, Deputy Public Works Director, stated that the recommended bidder was Knife River with a low bid of \$2,674,433.35. Councilmember Sullivan asked if staff had considered using the cost savings to make the planned three-lane road into a five-lane road. He added that the road would eventually need to be a five lanes. Mr. Heisler stated the traffic study indicated the need for a three-lane road at the current time. Ms. Volek stated the County had indicated it did not currently have enough money to make a five-lane road. Ms. Volek stated financially the additional two lanes needed to be postponed until a later date. Councilmember Clark stated the project would have to be re-bid if a five-lane road was desired and it would not be completed before school started. Mayor Hanel stated that pedestrian walkways and traffic control devices would also be related to the project. He added lighting along the pedestrian walkway alongside the west side of 54th Street West would be advantageous. Councilmember Brown asked if the savings that had occurred on the project could be used for lighting. Mr. Heisler stated that he could research what would be needed for lighting in the area. Councilmember Swanson moved for approval of item 1A1, seconded by Councilmember Clark. On a voice vote, the motion was approved 8-1, with Councilmember Sullivan voting in opposition.

Councilmember Brewster moved for approval of Items 1H1 and 1H2, seconded by Councilmember Sullivan. Councilmember Yakawich asked for clarification on why P-Cards were used for purchases. Andy Zoeller, Accounting Manager, stated that using P-Cards saved the City money by allowing one payment to be made to each vendor. Councilmember Yakawich asked for clarification on the number 56 being used on the report. Mr. Zoeller stated that he was unfamiliar with what the number meant, but could research it for Council. Councilmember Sullivan asked if it would be possible to show the department using the P-Card on the report. Mr. Zoeller stated that staff could work on altering the report to show the departments. Councilmember Clark stated that he had been asking for departments to be on the report for several months. On a voice vote, the motion was approved 8-0, with Councilmember Brown abstaining.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION approving FY18-FY22 Capital Improvement Plan (CIP), FY18 Equipment Replacement Plan (ERP) and FY18 Technology Replacement Plan (TRP). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Mr. Heisler reminded Council of the two amendments that had been made to the staff report. He stated that staff did not have a presentation, but was available for questions.

The public hearing was opened.

- **Kevin Nelson, 4238 Bruce Avenue, Billings, Montana**, stated that staff needed to finish the street between Little Horn State Bank and the apartment building along the vacant field. He stated that side of the street was not finished. He added the corner on Shiloh and Grand was not finished either. Mr. Heisler stated that some of the property near Shiloh and Grand was undeveloped and in the county, therefore, had no right of way.

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

Councilmember Clark moved for approval of Item #2 with the two amendments, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE amending and repealing the City's Ethics Ordinances and adopting State of Montana Ethics Statutes. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Brent Brooks, City Attorney, began a brief presentation summarizing two sections in the draft ordinance that had been presented to staff. He stated that Councilmember Cromley had requested the City Attorney's office research the current Ethics Ordinance and compare it to the City Charter to verify legality of the ordinances. Mr. Brooks stated most of the larger cities in Montana relied exclusively on State Ethics Statutes when an ethics issue occurred. He added that after the research material had been presented, Councilmember Cromley had requested the City's Ethics Ordinance be repealed and replaced with the State Ethics Statutes. He stated the draft of the ordinance and a comparison between the two had been presented to the Ethics Board in December 2016 and after review, the Ethics Board had agreed to the changes and repeal of the Ethics Board. Mr. Brooks added there were parts of the Ethics Ordinance, regarding conflicts of interest. He stated it would fit well within the Council's rules of procedure concerning voting, so staff took part of the ordinance and placed it under Council meeting protocol in the City Code. Mr. Brooks stated there was a portion, at the end of State Ethics Statutes, allowing a local government body to appoint a three-member committee. He stated that a three-member committee conflicted with the City Charter, because that statute referred to an interview by the panel and submitting information to the County Attorney. He stated that he had included an attachment with point-by-point references. He stated there had been issues in 2015 with ethics complaints and added that the Ethics Board had thoroughly and courteously handled the complaints and he thanked them for their hard work.

Councilmember Sullivan asked what would happen if the State ethics rules changed in the future. Mr. Brooks stated that if any State statute changed, the City would have to make changes to amend their ordinances. He stated changes would have to be reviewed on a case-by-case basis. He added the State Ethics Statute had been in place for many years.

The public hearing was opened.

- **Kevin Nelson, 4238 Bruce Avenue, Billings, Montana**, stated that the City should not abandon their Ethics policy. He added that the City had not provided the Ethics Board with any training. Mr. Nelson stated that none of the information discussed had been included in the Friday packet.
- **Cathy Grott, 1225 Juniper Drive, Billings, Montana, Ethics Board member**, thanked Mr. Brooks for all of the work that he provided. She stated she would like the Ethics Board to continue and thought it might feel more approachable to the public. She urged Council to reconsider dismantling the Ethics Board and thought it could be beneficial if provided some training. Councilmember Sullivan stated that having an Ethics Board that is appointed by the Mayor and Council could be seen as conflict of interest. Councilmember Cromley asked if Ms. Grott was aware of any ethics complaints being filed against anyone other than a councilmember. Ms. Grott stated she was not aware of any complaints. Councilmember Cromley asked if Ms. Grott saw a conflict of interest in Council appointing a board that could determine an ethics complaint filed against a councilmember. Ms. Grott stated that she could see a conflict but hoped that the councilmember involved would remove themselves. Mr. Brooks stated the Ethics Board was the only board that investigates in a quasi-judicial type of atmosphere and it raised some legal implications for the City. He added if the Ethics Board remained, there would need to be some consideration in what the ordinance stated and what the duties would be. He stated that the conflict of interest would be removed if the issues were investigated by the County Attorney.
- **Herb Schiefelbein, 915 Nutter Boulevard, Billings, Montana, Ethics Board member**, thanked the Council and Mr. Brooks for all of the time given to resolve the matter. He stated the Ethics Board had not received any training and when the complaints were brought to the Board they only had the City Charter, ordinances, etc. to help them. He added that without a definition of "reasonable grounds" or help available, it was very difficult to make a decision. He stated that he did not think there would have been as many complaints if there had been training available. Mr. Schiefelbein stated he would like to see citizens utilized in some way on the topic.

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

Councilmember Cromley moved for approval of Item 3, seconded by Councilmember Sullivan. Councilmember Cromley stated the local ethics ordinance predated the State statute. He stated the Montana Constitution in 1972 mandated on the State legislature to pass an ethics statute which covered all public officials including local officials. He stated it had very specific guidelines regarding conflicts of interest of State and Local officials. He stated it was very complete and indicated that a person could file a complaint with the County Attorney and that staff would follow up and investigate to make a determination. He stated that the Billings Ethics Commission was completely out of line because it pre-dated the Constitution and had five-members. Councilmember Cromley stated that an ethics complaint was a very serious and costly issue and thought it would be better handled by the County Attorney's office.

Councilmember Sullivan stated the City Charter stated that “boards, commissions and committees of the City government shall be advisory only”. He stated having a quasi-judicial board did not make sense. He added that an approachable place where citizens could discuss issues may be needed. Councilmember McFadden stated all citizens had a different opinion on what is ethical. He added the County Attorney’s office would be able to decide between legal and illegal. Councilmember Brewster stated some training for board members should occur in the future. Councilmember Swanson stated he would abstain from the vote because he had been charged and exonerated in a past ethics complaint. Councilmember Yakawich stated he had attended ethics training in Bozeman and had found it very helpful. Mr. Brooks stated there was mandatory staff ethics training and Council could choose to attend. He added there was an ethics section in the Council handbook that discussed ordinances and State statutes. On a voice vote, the motion was approved 8-0, with Councilmember Swanson abstaining.

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

The public comment period was opened.

- **Dennis Ulvestad, 3040 Central Avenue, Billings, Montana**, stated that the Inner Belt Loop project had been discussed for years. He stated the project needed to be moved to the top of the list.
- **Kevin Nelson, 4238 Bruce Avenue, Billings, Montana**, stated there were too many loud vehicles and the City needed to address the issue. He added that the Animal Control Board needed to address the issue of barking dogs. Mr. Nelson stated he would like all meetings notices made more available to the public.

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

COUNCIL INITIATIVES:

There were no Council Initiatives.

Councilmember Clark stated that House Bill 473 had made it out of appropriations and would go back on the House floor.

Councilmember Cromley stated he had emailed *The Billings Times* to request an online version of the subscription.

There was no further business, and the meeting adjourned at 8:03 pm.

CITY OF BILLINGS



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

ATTEST:

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