

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

July 9, 2018

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 Cole called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Yakawich gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Cromley, Yakawich, Brewster, Ewalt, Joy, Friedel, Gibbs, Ronning, Clark and Brown.

**MINUTES:** June 25, 2018 – Pending

### **COURTESIES:**

- There were no courtesies.

### **PROCLAMATIONS:**

- There were no proclamations.

### **ADMINISTRATOR REPORTS - BRUCE MCCANDLESS**

- Mr. McCandless informed Council that Consent Agenda Item 1A3, W.O. 18-28, City/County Drain at Jackson Street-culvert replacement, had stated the recommendation would be provided to Council in the July 6, 2018 Friday packet. Instead, the recommendation had been placed at each Councilmember's desk.
- Mr. McCandless stated Dave Mumford, Public Works Director, would be available to answer questions regarding Consent Agenda Item 1H, W.O. 18-34, Mountain View Boulevard rock fall. He reminded Council the item would not need to be separated in order for Council to ask questions.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1 ONLY. Speaker sign-in required.** (Comments are limited to one (1) minute for one item, or three (3) minutes for multiple items. Please sign the roster located on the cart at the back of Council chambers or at the podium. Comments 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. **Airport Terminal Water Chiller Replacement.** (Opened 6/26/18) Recommend Plumb MT, Inc; \$206,000.
  2. **W.O. 18-06, EBURD 10th Avenue North to 13th Avenue North (sanitary sewer, storm drain, street improvements and the construction of streetlights).** (Opened 6/26/18) Recommend Knife River-Billings; \$4,924,041.10.
  3. **W.O. 18-28, City-County Drain at Jackson Street - Culvert Replacement.** (Opened 7/3/18) ~~Recommendation in July 6, 2018 Friday packet.~~ Staff recommendation of D.W. Oxendahl, LLC placed on Councilmembers desks.
- B. **Approval** of Billings Community Cable Corporation (Community 7) five-year agreement.
- C. **Approval** of amended interlocal agreement adding the City of Havre to the Montana Firefighters Testing Consortium.
- D. **Acceptance** of donation to the Billings Fire Department from Fire Suppression Systems for children's fire helmets; \$1,000.
- E. **Acceptance** of donation to Billings Fire Department from David Trost and St. John's Lutheran Ministries, Inc. for seven BBQ grills; valued up to \$3,000.
- F. **Declaring surplus property** and authorizing the sale of twenty (20) Unication Alpha Legend Plus pagers to the Bozeman Fire Department for the sum of \$1,900.
- G. **Resolutions 18-10747 and 18-10748** authorizing the issuance of the EBURD project bonds through a negotiated sale and setting the parameters.
- H. **Resolution 18-10749** declaring an emergency and authorizing payment to stabilize the slope and remove rocks from Mountain View Boulevard.
- I. **Second/Final Reading Ordinance 18-5713 for Zone Change 966:** a zone change from the EBURD-Industrial Sanctuary (EBURD-IS) zone to the EBURD-Central Works (EBURD-CW) zone on a 5.64 acre parcel of land, generally located at 1st Avenue North and North 15th Street. Kairos Center LLC, owner; Martin Connell, agent. Zoning Commission recommends approval and adoption of the findings of the 10 criteria.

**J. Second/Final Reading Ordinance 18-5714 for Zone Change 967:** a zone change from Residential Multi-Family (RMF) to Community Commercial (CC) on a 1.72 acre parcel of land, generally located at the intersection of Lake Elmo Drive and Josephine Drive. Orville Kurtz, owner; David Goodridge, agent. Zoning Commission recommends approval and adoption of the findings of the 10 criteria.

**K. Bills and Payroll:**

1. June 22, 2018

Councilmember Cromley separated Item 1K1 in order to abstain.

Councilmember Ewalt separated Item 1A3 for discussion.

Councilmember Friedel separated Items 1H for discussion.

Councilmember Clark moved for approval of the Consent Agenda with the exception of Items 1A3, 1H and 1K1, seconded by Councilmember Brewster. Councilmember Yakawich thanked David Trost and St. John's Lutheran Ministries, Inc. for their donation of BBQ grills to the Billings Fire Stations. Mayor Cole thanked Fire Suppression Systems for their donation of children's fire helmets. On a voice vote, the motion was unanimously approved.

Councilmember Ewalt, in reference to Item 1A3, asked Dave Mumford, Public Works Director, about the cause of the collapsed culvert. Mr. Mumford stated the recent storms had caused high water pressure which had collapsed the culvert. He added they would be using an existing concrete box culvert that had not been used on a previous project, which would save several weeks of time.

Councilmember Ewalt moved for approval of Item 1A3, seconded by Councilmember Gibbs. On a voice vote, the motion was unanimously approved.

Councilmember Friedel, in reference to Item 1H, asked Mr. Mumford about the cause of the rock fall. Mr. Mumford stated it had been a natural occurring rock fall and there were significant fissure cracks on the rims above the rock fall area. He added the west side would be monitored, but the east side had an 18-inch fissure that would require remediation. Mr. Mumford stated a consultant would be hired to provide a technical report before proceeding. He added the City would be responsible for the road, but homeowners would be responsible for their private property. He stated the road was unstable and was shifting towards the south.

Councilmember Cromley asked about the City's past expressed wishes to abandon the road. Mr. Mumford stated that was favorable, but there was no other existing access. He added it was a very difficult road for garbage trucks and snow plows to maneuver.

Mayor Cole asked about the resolution declaring an emergency and waiving the bidding process. Mr. Mumford stated it would expedite the process and the contract would still come to Council for approval.

Councilmember Friedel asked for legal counsel on the liability of rocks falling. Brent Brooks, City Attorney, stated there was a known unsafe condition in the area that needed to be addressed, for which the City had some legal responsibility. He added that the City could not be liable for unknown conditions on the Rims.

Councilmember Brown asked about liability for the consultant's predictions of where the rocks would fall when the work started. Mr. Mumford stated the consultant would have liability insurance that would cover any issues. He added they would be responsible for giving a calculated assessment on where the rocks would fall, in order to minimize home damage.

Councilmember Yakawich asked about the road conditions in the area. Mr. Mumford stated the top part, where the houses were, had been paved but the dirt road that went towards the top was sloughing. He stated the homeowners had been made aware of the road shifting and rock issues.

Councilmember Friedel moved for approval of Item 1H, seconded by Councilmember Yakawich.

Councilmember Brown asked Council to consider adding an amendment that would require staff to bring the item back to Council before approving payment. Mr. McCandless stated that any contract over \$50,000 would come back to Council. Councilmember Friedel agreed to add the amendment to his motion, Councilmember Yakawich agreed to amend his second. On a voice vote, the amended motion was unanimously approved.

Councilmember Yakawich moved for approval of Item 1K1, seconded by Councilmember Friedel. On a voice vote, the motion was approved 10-0, Councilmember Cromley abstained.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND RESOLUTION 18-10750 approving and adopting the Tax Increment Financing (TIF) Policy. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Wyeth Friday, Planning Director, gave a brief presentation on the proposed TIF Policy. He added that Council had previously directed staff to form a committee to review the draft policy and the revised policy reflected the changes that had been proposed. He reviewed the proposed minor wording changes requested by Mayor Cole.

Councilmember Friedel stated he had issues with Section 1C regarding benefitting the public. He stated it would only benefit the property owner. Mr. Friday stated Section 1C would benefit the public by improving overall blight and public safety issues. Councilmember Brewster stated that individual properties would be presented to Council for approval, and that would be the appropriate time to address any issues Council had. He stated needs and blight changed every year, so a blanket policy would allow more freedom.

Councilmember Friedel stated, in reference to Section 2B, not-for-profit organizations should not benefit from tax dollars since they did not contribute to the tax base. Mr. Friday stated that supporting non-profits helped revitalize the area and private businesses would see the benefits from improvements.

The public hearing period was opened.

- **Jeff Essmann, 3130 McMasters, Billings, Montana**, stated a clear, precise blanket policy could help with conflict of interest issues. He added he supported urban renewal and the removal of blight.

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

Councilmember Brewster moved for approval of Item 2, with the minor proposed wording changes, seconded by Councilmember Ronning.

Councilmember Joy stated she was concerned about the \$5 to \$1 private/public investment ratio and thought the \$100,000 threshold was too high for most small businesses. She made a substitute motion to approve Item 2, with the removal of the first two sentences of Section 2A. The substitute motion died for lack of a second.

Councilmember Clark asked about the Memorandum of Understanding (MOU) process for the urban renewal districts. Mr. Friday stated staff had started conversations with a few of the districts and was reviewing past documents to create more consistency between them.

Mayor Cole stated a standardized application process could help Council find the information that they had concerns about more easily.

Councilmember Friedel moved to amend the motion to remove “non-profit” from Section 2B and “lessee” from Section 3A, seconded by Councilmember Ewalt. On a voice vote, the amended motion failed 9-2, Councilmembers Cromley, Brewster, Yakawich, Joy, Gibbs, Ronning, Clark, Brown and Mayor Cole voted in opposition.

Councilmember Cromley moved to call the question. On a voice vote, Councilmember Brewster’s motion was approved 9-2, Councilmembers Joy and Friedel voted in opposition.

**3. PUBLIC HEARING AND FIRST READING ORDINANCE amending Billings, Montana City Code (BMCC) Section 2-211, Calling to Order. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Brent Brooks, City Attorney, stated the proposed ordinance change had been due to Councilmember Clark's initiative from May 29, 2018, to adjust the regular Business Council meeting time from 6:30 p.m. to 5:30 p.m.

The public hearing was opened.

- **Jeff Essmann, 3130 McMasters, Billings, Montana**, stated Council should regain authority to set policies without the current restrictions in City Code. He encouraged Council to establish public comment similar to legislature. He stated all proponents and opponents would have an allotted time to speak, followed by Council questions. He stated Council questions could be answered during the public hearing process.

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

Councilmember Clark moved for approval of Item 3, seconded by Councilmember Brewster.

Council discussion followed concerning pros and cons of earlier meeting times and focused on the length of the meetings.

Mayor Cole stated he would like to discuss the possibility of changing the day of the week that Council meetings took place, as Mondays could be very hectic for staff. He added that having a Council of 11 members was unprecedented in Montana and most Councils only had 5-7 members. He stated the extra numbers certainly added to the length of meetings.

On a voice vote, the motion was approved 8-3, Councilmembers Cromley, Ewalt and Joy voted in opposition.

**PUBLIC COMMENT on "NON-AGENDA ITEMS". Speaker Sign-in required.**

*(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes. Please sign the roster located on the cart at the back of Council chambers or at the podium.)*

The public comment period was opened.

- **Gerald Kessler, 237 Avenue B, Billings, Montana**, encouraged Council to address the noise issues at Daylis/Wendy's Stadium. He stated the new sound system was very loud and disruptive. He added he would be interested in participating in the City's future plans to address the issue.

- **Jeff Essmann, 3130 McMasters, Billings, Montana**, stated there were noise issues at various schools throughout town that needed to be addressed. He added that the City may wish to re-think its ownership role near the Mountain View Boulevard area, due to its consistent, repetitive problems. He stated the City may need to kindly encourage the neighborhood to relocate, because the area was not an appropriate place to build.

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

**COUNCIL INITIATIVES:**

There were no Council initiatives.

There was no further business, and the meeting adjourned at 8:53 p.m.

CITY OF BILLINGS

BY: \_\_\_\_\_  
William A. Cole, Mayor

ATTEST:

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