

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

February 8, 2010

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

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

MINUTES: Councilmember Cimmino moved for approval of the minutes of January 25, 2010, as presented, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

COURTESIES – Leaders from Boy Scout Troops 372, 392 and 394, and Cub Scout Packs 81, 318, and 319 introduced themselves. Mayor Hanel expressed the Council's appreciation to the Scouts that led the Pledge of Allegiance at the start of the meeting.

PROCLAMATIONS:

- National Boy Scouts of America Week, February 8 - 14, 2010
- Scouting Legacy Day, February 9, 2010

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek advised that there were no ex-parte items for the evening's meeting.
- Ms. Volek announced that the projector was not in operation that evening so staff presentations would be verbal.
- Ms. Volek asked Public Works Director Dave Mumford to provide a brief update on the snow removal process.

Mr. Mumford stated that the Street and Traffic Division took the concerns expressed in the Citizen Survey about plowing arterial streets seriously, and he thought everyone would agree they had done a good job of plowing those streets. He added that some of the techniques and equipment were changed to try to clear the side streets. He advised that 167 miles of arterial collector streets and the entire downtown were plowed, and after the snow stopped, it took 18-24 hours of non-stop work of 17 plows to do the plowing, and then the hauling period began, and that took two to three days to complete. He said that by that time, the crews had been working non-stop for about five days and needed a break. He explained that the City had never had a policy to plow the 345 miles of residential streets. He noted that if the arterial and residential streets were put together, it was about the same distance as driving to Denver, Colorado. Mr. Mumford explained that if the residential streets were to be plowed, it would be about five days before the crews could get to them and by that time, the snow would be too packed to plow. He advised that snow would have to be plowed to the side of the street due to the lack of manpower and equipment to haul the snow, because to plow it and haul it would take six to eight weeks. Mr. Mumford reported that if residential streets were treated the same as other

streets, it would cost the department an additional \$1.1 million, and that amount was not in the budget. He stated that the cost was about \$1,500 per mile to plow, salt, and sand.

Mr. Mumford explained that crews were working extra hours and taking comp time for the extra hours. He added that an employee could not accrue more than 220 hours, and many were getting close to that amount. He advised that crews made sure the emergency services and hospital driveways were plowed, and worked with the school district to make sure the drop-off and pick-up areas were cleared at the schools. Mr. Mumford said he felt the crews had done a good job.

Ms. Volek advised that if residential streets were plowed, residents would need advanced warning to get vehicles moved off the street. She said she personally received comments from many people that the street crews had done a fine job with the plowing. She said the administration had been extremely responsible as well. Ms. Volek explained that if residential street snow removal was done, other projects that would be funded from the Streets and Traffic budget would not be done or other funding would be needed.

Councilmember Gaghen echoed the excellence of what had been done by the crews and administration and asked for a round of applause. Councilmember Clark commented that former Mayor Frazier's motto about the snow was "the Lord giveth and the Lord taketh away." Councilmember Ruegamer said he felt the crews had done a good job and the bigger problem was with private citizens not shoveling their sidewalks.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 and 2 ONLY. Speaker sign-in required. (Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

The public comment period was opened.

- **Mark Higgins, 814 Ahoy**, thanked the Council for re-examining the medical marijuana issue in a fashion that could make the process work. He said other communities in Montana had been tightening the noose on it to the detriment of the patients. He congratulated the Council for its willingness to work through the issue and come up with a sensible approach.
- **Richard Abromeit, 3308 Laredo Place**, said he owned Montana Advanced Caregivers, a medical marijuana company. He offered his assistance with education, training or zoning regarding the medical marijuana issue.

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

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **Two (2) MET Paratransit Vans.** (Opened 1/12/10). (Delayed from 1/25/10). Recommend Harlow's Bus Sales, \$149,300.

2. **W.O. 08-22, Wastewater Treatment Plant Disinfection Improvements.** (Opened 1/26/10). Recommend Williams Brother Construction, LLC, \$2,663,350.

3. **W.O. 10-03, 2010 Street Maintenance Program, City Chip Seal.** (Opened 1/26/10). Recommend Knife River - Billings, \$420,810.22.

B. Acceptance of donation from Sam's Club for Fire Department, \$2,500.

C. Second and final reading Ordinance #10-5502 for Zone Change #860: A zone change from Residential 6,000 to Controlled Industrial on the north two acres of Lot 5 in Section 9, T1 South, R26 East (unplatted), located at 439 South Billings Boulevard; Hanser Properties, LP, applicant; Ralph Hanser, representative. Approval of the zone change and adoption of the determinations of the 12 criteria.

D. Second and final reading Ordinance #10-5503 proposing a construction time limit on new and remodel residential and commercial construction projects.

E. Resolution #10-18910 appointing City Council Member to the Montana League of Cities and Towns Legislative Committee.

F. Resolution #10-18911 creating an Ad-Hoc Advisory Committee on Medical Marijuana.

G. Bills and Payroll:

1. December 31, 2009
2. January 8, 2010
3. January 15, 2010

Councilmember Cimmino separated Items 1A2, 1G1, and 1G3. Councilmember Astle moved for approval of the Consent Agenda with the exception of Items 1A2, 1G1, and 1G3, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved. Councilmember Astle moved for approval of Item 1A2, seconded by Councilmember Pitman. Councilmember Cimmino advised that she would recuse herself from the item due to a potential conflict of interest. On a voice vote, the motion was approved 10-0. Councilmember Astle moved for approval of Item 1G1, seconded by Councilmember Ruegamer. Councilmember Cimmino advised that she would recuse herself from Items 1G1 and 1G3 due to invoices that would present a conflict of interest for her. On a voice vote, the motion was approved 10-0. Councilmember Astle moved for approval of Item 1G3, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 10-0.

REGULAR AGENDA:

2. RESOLUTION #10-18912 APPROPRIATING UP TO \$20,000 OF FY2010 COUNCIL CONTINGENCY FUNDS FOR SPRAYING CITY PARK PINE TREES FOR MOUNTAIN PINE BARK BEETLES. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Superintendent of Parks Jon Thompson advised that he had provided a detailed presentation at a previous Council work session. He said the request for \$20,000 was to spray valuable trees in the parks during April and May to prevent the attack of pine bark beetles during the coming season. Councilmember Astle said he was told that a tree was lost in Mountview Cemetery. Mr. Thompson said they found one spruce tree in the cemetery that had been attacked, and the only explanation he could provide was that the beetles probably missed their target, because they typically only went after spruce trees after there were no more pine trees to attack. Councilmember Astle said he was also informed that there were trees attacked in the Moon Valley area, and he asked if that area would be addressed also. Mr. Thompson advised that some of the pine trees at the Airport would be included in the spraying, with the Airport funding the expense for those trees. Mr. Thompson said discussion would be held with the State about dealing with the native lands. He said the \$20,000 was to protect trees in the developed parks only.

Councilmember Pitman referred to the information posted on the Parks Department website and stated that the entire community needed to be aware of the problem, and residents needed to take precautions to protect their trees or remove the infected trees prior to June. Councilmember McCall suggested educational information published in the City Link and the Billings Gazette. She stated that information about reputable tree services could be included in that information as well. Mr. Thompson said stories had been published in both publications previously and could be published again.

Councilmember Ulledalen pointed out that Mr. Thompson provided a good presentation at the work session that the public would not have seen, but the handout would be available on the City's website or could be obtained from a councilmember. Councilmember Ruegamer said it needed to be emphasized that the trees could not be saved once the beetles attacked them and the only form of prevention was to spray healthy trees before June. Councilmember Gaghen stated that she hoped Mr. Thompson had been in contact with other cities to exchange information about the issue. Mr. Thompson advised that an MSU Extension Agent had some grant funds available to study the issue and Mr. Thompson offered the city's parks for any studies.

Councilmember McFadden asked Mr. Thompson to explain the difference, for the benefit of the public, between foliage insects and the insects that attacked the vascular system of a tree. Mr. Thompson explained that the insects that attacked the vascular system basically cut off the tree's access to water and nutrients, which killed the tree.

Councilmember Pitman suggested publicizing that in-kind contributions would be appreciated. Councilmember Pitman moved for approval of the resolution appropriating up to \$20,000 of FY2010 Council Contingency funds for spraying city park pine trees for mountain pine bark beetles, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE changing the name of the Public Utilities Board to the Public Works Board. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Mr. Mumford advised that part of the discussion held by the Council a year ago about efficient utilization of the Boards and Commissions included the Public Utilities Board and using it more efficiently for all of Public Works. He said the Public Utilities Board supported that idea and felt it would be helpful to Public Works. He noted that Board members Barry Nolan, Rod Wilson, and James Mariska were present if Council had questions for them.

Councilmember Ulledalen asked if the suggestion to merge the Traffic Advisory Board with the Public Utilities Board was considered. Mr. Mumford explained that the two boards had different functions whereby the Traffic Control Board dealt with specific issues as opposed to working with the department as a whole. Councilmember McCall mentioned that when there was discussion about terminating some of the boards, two members of the Public Utilities Board expressed their concerns to her about a possible termination because they had a good working relationship with staff and felt the board's input was valuable. She said she felt the name change was a proactive move.

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

Councilmember McCall moved for approval of the first reading ordinance to change the name of the Public Utilities Board to the Public Works Board, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING FOR APPROVAL OF THE AIRPORT TWENTY-YEAR MASTER PLAN UPDATE. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Aviation and Transit Director Tom Binford explained that since the presentation about the master plan was made at the January 4 Work Session, he would provide a few brief comments. He stated that the master plan was simply a comprehensive study of the Airport with the end goal being the development of short, medium, and long-term plans to meet future aviation demands of the airport and the community it served. He explained that after the projects were identified, staff worked with the Federal Aviation Administration to place the items eligible for grant funding into a national system plan. Mr. Binford added that the FAA required a twenty-year plan, so it was anticipated that the plan would be changed during that time period. He said he wanted Council to understand that approval of the plan was approval of the concept, not approval of any particular project, and any proposed projects would proceed through the City's budget and CIP process.

The public hearing was opened.

- **Joe White, Billings, MT**, said he had not read the master plan but thought there were some things that should be included such as: a weed control plan, restrooms in Rimrock Park, and the volume of airplane fuel released. *The remainder of Mr. White's testimony was inaudible.*

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

Councilmember Ulledalen moved for approval of Item 4, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

5. PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Please sign up on the clipboard located at the back of the Council Chambers.*)

The public comment period was opened.

- **Bob Pearson, 1214 Oakland**, stated that citizens pledged allegiance to a republic and Councilmembers took an oath to uphold the U.S. Constitution. He said he recently began to study the Constitution and he was presenting an opportunity for an overview of it. He said the Constitution was interpreted by its founders in their own words in their study of government prior to writing the Constitution. He invited Council and members of the public to an overview of the Constitution, at 7 p.m., February 9, 2010, at Grace Baptist Church, 3616 Broadwater Avenue.

Councilmember Gaghen advised that a gentleman provided notice of that event at the January 25 Council meeting.

- **Joe White, Billings, MT**, spoke about the lack of enough air to survive. *The remainder of Mr. White's testimony was inaudible.*
- **Kevin Nelson, 4235 Bruce Avenue**, said he did not speak earlier because he did not want to speak specific to the issue, but he wondered if the City saw the big picture. He referred to S. 27th Street that was full of non-profit agencies and said that a tax increment district was created in the Cabelas area, and then a junk yard was put on the street. He said years ago, the City voted that it wanted to improve South Billings Boulevard, Arlene Street and another place in the Heights, and he wondered if the citizens really thought a bond issue was going to be created to improve roads, build bike paths, and other things, and then end up with a pick-apart junk yard on South Billings Boulevard. He said he doubted that was the vision portrayed to the community, and he did not think Bozeman, Boise or other cities would do that. He stated that Ralph Hanser knew how he felt because he had expressed his views at meetings. He said the City seemed to put its least revenue-producing businesses on its most valuable property. He said South Billings Boulevard was supposed to be a great entrance to the city, and now that was there.

Councilmember Gaghen said she was surprised that Mr. Nelson typified the Hanser operation as a junk yard because there was a fence around it and nothing could be seen from the road. She said he should consider the number of productive jobs that had been provided by that business, and she did not understand his anxiety about it. Mr. Nelson said the jobs would be there whether it was at that location or not. He said he thought a different vision should have been there.

Councilmember McFadden asked Mr. Nelson how he could justify the City government telling the Hansers what they could do on their own private property that they paid taxes for, in light of the previous testimony about the Constitution and that this was a free America. Mr. Nelson said a no-smoking law was just passed in the state and liquor licenses were consistently denied which denied people to choose their prosperity. Mr. Nelson said if Councilmember McFadden believed he took an oath to uphold the Constitution, he should study the '88 Lobell decision that

determined that school funding was a fundamental right, and a special legislative session was called that resulted in creation of the 95 mills that were protected by the constitution, but the tax increment dollars took that money away.

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

COUNCIL INITIATIVES

- **Ruegamer** moved to ask staff to bring the skate park restroom project back with alternatives to what was proposed, seconded by Councilmember Ronquillo. Councilmember Ruegamer stated that he felt that spending that much money at the skate park was rewarding bad behavior because the portable toilets put there were destroyed. He said he would be surprised if it was the people that used that skate park, but felt it was vagrants and transients that vandalized them. He said he would like to have a discussion and public hearing at a Council meeting and would like to know how it impacted the CDBG funds since that was the funding source. Ms. Volek explained that the project was approved two years ago as part of the CDBG funding, and if the funds were not used, they would likely be reallocated by the Community Development Board. She reviewed the process that would be followed if another type of restroom was chosen or if the funds were not used for that project.

Councilmember Ulledalen asked if there had been complaints from the surrounding businesses, and whether restroom facilities in that area would reduce the transient population at the Library. Parks Superintendent Jon Thompson reported that he had been working with owners of the nearby Subway that were currently under the expectation that a restroom would be installed to help alleviate the problems they had had with non-paying customers using their restrooms. Councilmember Astle stated he did not think Councilmember Ruegamer's motion precluded a restroom, but the problem was the abhorrent price tag, and the Government's stance that if the money was not spent, it would be lost and the next year's budget would be cut. He said local people could build a bullet-proof restroom for less than \$130,000. Mr. Thompson stated the cost was not \$130,000 and reviewed the proposed project and the cost estimates that totaled about \$85,000. He noted that any restroom facility would require the same infrastructure. Councilmember Gaghen commented that when it was broken down like that, it did not seem that frivolous. Councilmember Ruegamer suggested consideration of a restroom similar to what was on the bike path near the water treatment plant that only cost about \$5,200 and was not vandalized by the people. He said he would guarantee that the proposed restroom could be vandalized. He stated he would probably not support a \$45,000, \$85,000 or \$130,000 bathroom because it was rewarding bad behavior. Ms. Volek advised that any time a permanent structure was completed within 300 feet of a sewer line, State Code required connection to that sewer.

Councilmember McFadden asked how many months that type of restroom could be opened. Mr. Thompson explained that it would be open six to eight months per year, the same as other park restrooms.

Councilmember Astle asked if there were other bidders on the project. Mr. Thompson provided a history of the project and how the model was selected.

Parks, Recreation and Public Lands Director Mike Whitaker noted that CTA Architect, Mike Radke, the architect for Dehler Park, recommended the product that was proposed. Councilmember Pitman asked if the project could be completed without impacting the CDBG funding. Mr. Thompson advised that the funding expired March, 2011.

Councilmember Ronquillo said he did not disagree that a bathroom could be used there, but he did not think \$85,000 should be spent on one. He said they knew there would be a certain amount of vandalism to any bathroom there. Mr. Thompson noted that nearly every restroom in the parks had been the subject of some type of vandalism. Councilmember Ulledalen asked if it might be possible to get a lower bid from a local contractor. He asked what options existed for the funding if it was not used on the restroom project. Mr. Thompson stated that bids could be sought on a structure, but with engineering and design costs, it might not be cost effective. Ms. Volek explained that if the funds were not used to purchase the model proposed, it was recommended to put the money back into the first-time homebuyer program. Mr. Thompson said it was his understanding that if the scope of the project was changed, further review would be required by CDBG. Councilmember Ruegamer said he felt it had become too complicated and an estimate could be obtained with one call to a contractor. Ms. Volek noted that a phone call could be made to obtain an estimate, but the City's purchasing policy would require a bid process. Councilmember Astle asked if there was another company that sold the pre-made units. Mr. Thompson advised that other companies and products were considered, and the proposed product was the least expensive and smallest. Councilmember Astle asked if bids had been received for the infrastructure. Mr. Thompson said they had received formal quotes for the work but it was on hold until final direction was received from Council.

Councilmember McFadden asked if the structure could be considered temporary since it would be operated only part of the year, which would allow a pit toilet. Mr. Thompson said he would have to consult with the Building Department. Councilmember Cimmino stated that she thought hooking up to the utility services should not cost \$18,000 and maybe that could be looked at. Councilmember Gaghen referred to the loft apartments that had been developed in the area of the skate park and said that having a toilet similar to what was on Forest Service land did not seem to be a good idea for that area. Mr. Thompson explained how those toilets were vented so that the odors were put into the air outside the building.

Councilmember Pitman stated the issue could be debated all night and it was time to close the conversation. Ms. Volek asked for clarification about the motion because she did not think a public hearing was included in the motion. Councilmember Ruegamer stated he wanted a public hearing as part of his initiative and Councilmember Ronquillo advised he would second a motion that included it. Councilmember Ulledalen stated that the point of the discussion was to let staff know the questions Council had so they could be prepared. He added that part of the discussion should be whether a bathroom was even needed in that area. Mayor Hanel commended Mr. Thompson for his accurate and thorough answers to the many questions by the Council.

On a voice vote, the motion was unanimously approved.

- **Clark** moved to revise BMCC 27-614 regarding allowing temporary storage of construction supplies on property not zoned for industrial usage during a construction project, seconded by Councilmember Astle. Councilmember Clark explained that a revision would mean that parts of streets would not have to be closed to store equipment, but it could be stored on vacant lots. He added that a small shed or office could be placed on the vacant lot to facilitate the construction, but not used for living or sleeping quarters. He said staff would draft the changes and take them to the Zoning Commission before presenting them to the Council. Ms. Volek explained that in order to revise the Code, it had to be initiated by the Council. On a voice vote, the motion was unanimously approved.
- **Pitman** announced that Gazette Reporter Matt Hagengruber was also an Eagle Scout.
- **Ronquillo** said he had heard some rumbling that Parks staff did not know how the new refuse truck would be used. He asked staff to provide an explanation at a future work session.
- **Mayor Hanel** requested a presentation at a future work session from the Public Works Department about the possibility of electronic billing for City utilities.
- **Cimmino** moved to direct staff to draft individual letters to Senator Baucus, Senator Tester and Representative Rehberg requesting the federal appropriation, and that the letters be signed by all Mayor and Council, and delivered personally when the Council delegation visited Washington D.C., seconded by Councilmember Pitman. Councilmember Cimmino said that in light of the fact that Councilmembers ranked some of the projects for federal funds, she thought it would be a wonderful gesture to hand the Legislators something tangible. On a voice vote, the motion was unanimously approved.

ADJOURN – The meeting adjourned at 8:18 p.m.

THE CITY OF BILLINGS

BY: _____
Thomas W. Hanel, Mayor

ATTEST

BY: _____
Cari Martin, City Clerk