

REGULAR MEETING OF THE BILLINGS CITY COUNCIL  
July 26, 2010

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

**CALL TO ORDER** – Mayor Hanel

**PLEDGE OF ALLEGIANCE** – Mayor Hanel

**INVOCATION** – Mayor Hanel

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

**MINUTES:** July 12, 2010, approved as presented

**COURTESIES** - Councilmember McFadden recognized the Billings Firefighters for raising \$29,707 during their annual boot drive for Muscular Dystrophy.

**PROCLAMATIONS** - None

**ADMINISTRATOR REPORTS - TINA VOLEK**

- Ms. Volek referenced Item 4 and advised a letter from Bob Pulley was on Council desks that evening requesting that the application for Special Review #882 be withdrawn. She said a copy of Mr. Pulley's request was filed in the ex-parte notebook in the back of the room.
- Ms. Volek referenced Item 6. She noted her memorandum to the Mayor and Council with information from the MDT Traffic Safety Problem Identification FY2009 was delivered in the Friday Packets of 7/9/10; two e-mails were sent to the Mayor and Council, dated 7/11 and 7/26/10, opposing the proposed ordinance; and a letter from The Alliance, dated 6/17/10, and a letter from RiverStone Health, dated 6/24/10, in support of the ordinance were distributed at the work session of 7/6/10. She advised all items were filed in the ex-parte notebook in the back of the room.
- Ms. Volek referenced Item 7 and said 24 e-mails had been sent to the Mayor and Council between 6/21 and 7/26/10 regarding disc golf in Pioneer Park; a letter from Glenn Schaffer, dated 7/23/10, opposing disc golf in Pioneer Park had been sent in the 7/23/10 Friday packet; a letter from Friends of Pioneer Park, Billings 912 Group, dated 7/21/10, regarding the legality, liability and location of disc golf at Pioneer Park had been sent to the Mayor and Council via mail; and information on disc golf received from Carol Tasset was on the Council desks that evening. She advised all items were filed in the ex-parte notebook in the back of the room.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 and #7 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.

**Joe White, Billings, MT,** referenced Item B and said Tina Volek needed to follow orders and remove herself from her current position as City Administrator. (The rest of Mr. White's testimony was inaudible.)

**Item 7: Reconsideration of Pioneer Park Master Plan.** The following people testified concerning disc golf in Pioneer Park.

- **Jorrell Nagel, 1412 Concord, Billings, MT,** (6-years old) said if disc golf was taken out of Pioneer Park, he would not be able to play disc golf with his dad.
- **Chris Nagel, 1412 Concord, Billings, MT,** said Jorrell and his dad tried playing disc golf in Phipps Park, but the terrain was too rugged.  
Councilmember Ronquillo asked Ms. Nagel what she thought of limiting the age of disc golf players in Pioneer Park to 6-year-olds through 13-year-olds. Ms. Nagel said her son would then not be able to play disc golf with his dad.
- **Todd Royal, 1031 Arlington, Billings, MT,** said he was a member of the Park and Recreation Advisory Board, but was speaking personally to advocate for a re-evaluation during the probationary period for the Pioneer Park Disc Golf Program.  
Mayor Hanel asked Mr. Royal to explain in more detail what he was asking for with a re-evaluation. Mr. Royal said in the Parks and Rec Advisory Board Meetings they had talked about possibly moving disc golf for six months to a winter course and six months to a summer course, which would allow natural habitat to revitalize itself.  
Councilmember Ronquillo asked Mr. Royal how long he had been serving on the Board. Mr. Royal said he was just winding up his second year. Councilmember Ronquillo asked if the Board had discussed completely moving disc golf out of Pioneer Park. Mr. Royal said they had, and he was aware it had been discussed prior to his appointment to the Board. Mr. Royal said in his last discussion with Tom Iverson they talked about a probationary period to see if there were alternatives so that disc golf could remain and still preserve the park's structure. Councilmember Ronquillo asked if they had discussed moving disc golf to another park for six months. Mr. Royal said they had discussed moving to the south side of Pioneer Park or relocating to another park, but a full consensus had not been reached. Councilmember Ronquillo indicated South Park was available for disc golf for six months in order to rejuvenate Pioneer Park.  
Councilmember McFadden asked if there had been discussion about opening another disc golf park in the city to permanently take pressure off of Pioneer Park. Mr. Royal said he did not recall discussion of a designated disc golf park.
- **Margie Bonner, 4613 Toyon Drive, Billings, MT,** said she was a member of the Parks Board and was speaking in favor of retaining disc golf in Pioneer Park based upon the proposal in the master plan. She said she wanted to clarify

that the master plan included a provision to move some of the baskets to the south end of the park during the winter in order to give the north end a rest. She said it also included removing disc golf from the park for the period of December through April on an annual basis to give the area a rest. She said the master plan further provided that the holes during the prime playing season would be managed so that each hole would have two tee spots that would cut in half the wear and tear on the area, as well as two baskets. Ms. Bonner said the plan provided an alternate location and many different parks were rated, including Optimist Park, which was located in the TIF District, which she hoped would get some TIFD funding.

Councilmember Ronquillo advised that the Southwest Corridor Task Force did not care to have Optimist Park involved, and said South Park was available. He asked for the size of the concrete tee pads. Ms. Bonner said she did not recall if the master plan specified the size. She said the planners indicated best practice would be to have two alternating baskets and two tee pads. Councilmember Ronquillo asked if concrete pads would be moved to the south end of the park. Ms. Bonner said she did not recall if it was in the plan because it would be just for the off-season.

Councilmember McFadden asked Parks Director, Mike Whitaker, to answer Mr. Ronquillo's questions. Mr. Whitaker advised they were looking at having two tee baskets and only one tee pad at each location. He said the pads would be anywhere from four or five feet to 12 feet. He said it depended on what made sense for each site.

Councilmember Ruegamer asked if grass grew in the winter. Mr. Whitaker said the less foot traffic on the grass; the less likely the grass would become compacted. Councilmember Ruegamer asked if they would have to worry about compaction if the bare spots were repaired every year. He said he did not think it was a good idea to close it in the wintertime. Mr. Whitaker said during the winter months a lot of damage could occur, so it was important to keep people off the site during winter months.

Mayor Hanel asked if the purpose of multiple baskets was to rotate and reduce some of the wear and tear. Mr. Whitaker said that was correct. Mayor Hanel asked who would be responsible for putting up and taking down the baskets. Mr. Whitaker said it would be a combination of the Parks Department and the Air Fairways Group.

Councilmember McFadden asked if the Parks Department had the personnel, expertise, and willingness to manage the park in a common sense manner that addressed the issues and would preserve the park over time. Mr. Whitaker said they could as long as they had the partnership with the disc golf community.

- **Bob Cummings, 4902 Country View Drive, Billings, MT,** said he was in favor of disc golf in Pioneer Park and said he and his co-workers went to Pioneer Park on their lunch hour to play disc golf. He said a lot of the disc golfers were younger but they had always been very respectful and polite. Mr. Cummings said he felt the City and private partnerships could work together to maintain disc golf at Pioneer Park.
- **Trina White, 1145 Delphinium, Billings, MT,** said she worked for Real Estate by Hamwey and was in favor of keeping disc golf in Pioneer Park. She said she had two children that played disc golf, and she walked around the park in the mornings, afternoons, and early evenings and never felt threatened or disrespected by the disc golf players. Ms. White said, as a real estate agent, she enjoyed driving people around the park because it showed our community was vibrant and young. She said it showed kids outside playing and not sitting in somebody's basement playing video games. Ms. White asked Council to keep disc golf in the master plan.
- **Jim Rott, 3316 Lynn Avenue, Billings, MT,** said he was one of the founding members of Air Fairways Disc Golf. He said he had the opportunity to study the master plan and said they would love the opportunity to implement the master plan disc golf course; install tee pads and pin placements to alleviate the stress and erosion; repair the current damage on the disc golf course; and pursue other options for disc golf. Mr. Rott said he had spoken with Terry Walters at the State about Lake Elmo and Cal Cummin at the County about county options.

Councilmember Ronquillo asked if reducing the size of the cement pads at each of the baskets would hinder them. Mr. Rott said the recommended size in the master plan was 5' x 12'. He said based on conditions, some of the pads would not have to be that big. He said he had checked into rubber tee pads made of recycled tires that were permeable and weighed about 100 lbs. each. He said they could install two rubber tee pads per hole for less than what it would cost to install one cement pad per hole. Mr. Rott said the rubber pads were favorable with disc golf players. Councilmember Ronquillo asked if they had thought any more about Coulson Park and said he would like them to take a strong look at South Park. Mr. Rott said they would love the opportunity to pursue any type of park they were given the opportunity to use. He said there were a lot of parks, including South Park and Coulson Park, that would make a great disc golf course – some immediately and some down the road with more time and resources. Councilmember Ronquillo asked Mr. Rott what he meant when he said at a previous meeting that maybe in three to five years they would not be there anyway. He asked if that meant they would pull out altogether or still be there but move to a different park and make a disc golf park. Mr. Rott said it was in relationship to having other venues, and if they had five more parks, maybe Pioneer Park would become the park that was not the most popular place to play disc golf.

Councilmember Astle said he had spoken with a gentleman from MSU-B College of Technology, who indicated there may be some room for disc golf at the college on a temporary, possibly permanent, basis and asked Mr. Rott if he had spoken with anyone from there. Mr. Rott said he had not, but would pursue it.

Councilmember McFadden asked if another course could be put in at South Park without any expense to the City. Mr. Rott said they sent out an e-mail to approximately 750 addresses, and they received 16 pledged sponsorships. He said they were just short of \$1,000 from 15 people, they had a commitment of 206 hours of volunteer services, and two baskets worth \$400 a piece. He said he thought they had the potential to do significantly more fundraising, and they had raised \$500 selling shirts that he had donated.

- **Trevor Thompson, 3912 Victory Circle, #131, Billings, MT,** asked Council to keep frisbee golf in Pioneer Park because it had so many positive benefits from exercise to maintaining a drug-free environment. He said it was cheap and affordable entertainment. Mr. Thompson said he moved from Sheridan a little over a year ago, and said he was pleading with them to keep frisbee golf in Pioneer Park.
- **Brandon DeMars, 2964 Gregory Drive South, Billings, MT,** distributed a memorandum to the council concerning cooperation between the City and their organization regarding fundraising for improving the park and possibly creating a new course in another park.
- **Anya Fiechtl, 512 Avenue C, Billings, MT,** said she wanted to encourage Council to approve the master plan with the disc golf recommendations. She said there were a lot of great ideas in the master plan, from the Parks Board, from the Community, and the Council itself. She said there were a lot of alternatives to completely removing disc golf from Pioneer Park and in order to explore them, they needed to approve the master plan.
- **James Sullivan, 333 Parkhill Drive, Billings, MT,** said the vote taken on June 14<sup>th</sup> to eliminate disc golf from the master plan for Pioneer Park was the best decision for the community as a whole and the viability of Pioneer Park. He said disc golfers were not being denied anything by the vote because further play on the course was being allowed for one year while a new course could be selected and developed. He said a committee needed to be selected to help choose the proper park, design the park, and help in gathering private and public funds as was done with the Skate Park. Mr. Sullivan said the disc golf community could end up with a Class A development that could be second to none in the State of Montana that would be forever their park. He said if the vote taken on June 14<sup>th</sup> was overturned, they would still be dealing with user conflicts, damage to the turf and trees, and people getting hit, such as the 11-year-old

boy requiring stitches below his eye that could have resulted in losing his eye and a big liability. Mr. Sullivan said the vote removing disc golf from the master plan should be sustained, and it would be the best decision for all the citizens of Billings and users of Pioneer Park.

- **Chris Blackwell, 432 Alderson, Billings, MT,** said he was speaking in favor of disc golf because it was a great activity in a park with a good location. He said a baseball would do a lot more damage to someone's eye or nose than a disc. He said there was always a risk of getting hurt while outside recreating.
- **Joel Anderson, 512 Avenue C, Billings, MT,** said he was a homeowner within walking distance of Pioneer Park, and he wanted disc golf to stay in Pioneer Park because he could get to the park without driving. Mr. Anderson said he researched other towns in the region with similar populations that had disc golf courses on city park land. He said Fargo, ND, population 95,000, had three courses and 45 holes; Dickinson, ND, population 20,000, had three courses and 39 holes; Bismarck, ND, population 100,000, had two courses and 48 holes; Minot, ND, had one course and nine holes; and Greeley, CO, had one course and 18 holes.

Councilmember Cimmino asked how many of those courses were actually in residential districts. Mr. Anderson said he did not know because he had gone on the Professional Disc Golf Course Directory and just verified if they were on city park land.

- **Pete Fust, 119 Main Street, Kingston, NM,** said he was visiting family in Billings. He said he had designed over 70 disc golf courses, two of which were in Fargo. He said if a course was designed right, it would pay big dividends and asked Council to consider that in their decision. Mr. Fust said there were currently 1,700 courses in the United States compared to none 35 years ago, and the popularity of disc golf had grown much faster than conventional or ball golf.
- **Rachel Cox, 2015 Azalea Lane, Billings, MT,** said she was the vice president of the Parks and Recreation Advisory Board. She said she "loved our problem" and felt when the community wore out swimming pools, tennis facilities, and gym floors, they had done their job. She said in this case they were wearing out the park but maybe it was good news, because maybe it would open up other parks. She said she thought it was a good problem because it was nice to see 36,000 kids participating in an activity because that was what recreation was all about. Ms. Cox said they should build more, and the board was unanimous with continuing disc golf.

Councilmember Ronquillo asked if the courses he had designed were in multi-use parks or separated parks. Mr. Fust said there was an equal amount of municipal parks like Pioneer Park, as well as county parks and private developments. He said it just had to be designed more carefully when it was in a neighborhood park. Councilmember Ronquillo suggested he go look at Coulson Park and then get with Mr. Rott on what he thought of its possibilities.

Councilmember Astle asked Ms. Cox where she got 36,000. Ms. Cox said she meant 30,000. Councilmember Astle asked if she meant people or rounds. It was clarified to be rounds.

Councilmember Ruegamer said he did not believe that number was even close. He said he admired Ms. Cox's positive attitude, but the City just did not have the money to replace the swimming pools and tennis courts that wore out. Ms. Cox suggested a city-wide park maintenance district.

Councilmember Ulledalen said he did not feel the Parks Board had been energized sufficiently on certain issues and asked for feedback on doing a better job of tasking the Board with specific responsibilities and projects.

Councilmember Ronquillo asked Ms. Cox if she was aware South Park had lost their wading pool, their big pool, and their gazebo. He said it was not a good thing because they would not get them back due to lack of maintenance funds. He said he agreed there should be a city-wide park maintenance district. Ms. Cox said they were in a partnership situation with Pioneer Park, and they were coming up with solutions they did not have before to make it work. Councilmember Ronquillo asked if the Parks Board went out and looked at the parks. Ms. Cox said they have had bus tours to all of the parks and cemetery. Councilmember Ronquillo said the Parks Board needed to look at vandalism reports on every park and discuss the amount of vandalism that was taking place. He said South Park had a \$1,200 slide that someone put a hole in, and it was still boarded up. He said he was told a couple of weeks ago they were supposed to get a new one, but that had not happened. He said he felt unless the Board walked around the parks and saw the vandalism, he did not see how they could make rules and regulations and make recommendations.

Councilmember Gaghen said she had concerns about looking beyond today. She said she did not think everything needed to be used to the max. She asked if there was no value in a peaceful location to enjoy nature and a simpler time.

- **Beth Dopp, 1209 2<sup>nd</sup> Street West, Billings, MT,** said she loved Pioneer Park and asked that disc golf be allowed to stay in Pioneer Park.
- **Harold Gillian, 1236 Grubstake, Billings, MT,** said he had lived in Billings since 1999, and disc golf was one of the first things he sought out when he moved to Billings. He said he had played in 15 different states, and the disc golf course in Pioneer Park was very unique and challenging, yet a course a child could play without conflict from anyone else.
- **Paul Miller, 1109 Delphinium, Billings, MT,** said he frequently walked in the area of Pioneer Park and never had any problems with disc golfers. He said he represented the Yellowstone Valley Citizens Council that was much in favor of keeping disc golf in Pioneer Park. He said he felt the liability risk of disc golf was minimal.

Mayor Hanel asked how often the Yellowstone Valley Citizens Council met and where. Mr. Miller said they met quarterly at the Home on the Range Building, 221 South 27<sup>th</sup>.

- **Dave Bovee, 424 Lewis Avenue, Billings, MT,** said he wanted to point out a historical context that bad behavior, vandalism, drunkenness, drug use, lack of sportsmanship, damage, and everything else was not just from disc golf. He said it was from the population of the region.
- **Cameron Jacoby, 990 Solita Drive, Billings, MT,** said an avid golfer could walk down a golf course and get hit by a golf ball. He said it was the same thing with frisbee golf. He said the kid that was hit with the disc should have been supervised by his parents. He said disc golf helped him meet people after he moved to Billings, and led him to participate in the Big Sky State Games.

Councilmember Astle said there was a difference between a person who paid to walk on a golf course and an 11-year-old child walking through a park. He said he was not anti disc golf, but an 11-year-old child did not necessarily have to be supervised by his parents at all times. He said that was the disc golfers fault, and if a golfer hit a ball and hit someone, a golfer could be held liable. Councilmember Astle told Mr. Jacoby to think about that before he made the statement again.

Councilmember McFadden asked which course the Big Sky State Games used. Mr. Jacoby said he played in the amateur division, which was 18 holes at Phipps Park, and 24 holes were played at Pioneer Park.

- **Lance Brady, 2916 Mickey Wright Lane, Billings, MT,** said he played disc golf over the last 2 to 3 years at a lot of different courses. He said both Phipps Park and Pioneer Park courses were very busy during peak times and encouraged keeping disc golf at Pioneer Park. He said he was in favor of expanding to additional courses, but keeping Phipps and Pioneer Parks. He said both parks were unique.
- **Alonzo Marquez, 1121 Rays Lane, Billings, MT,** said he was a student at Senior High and one of the greatest things to do in their Health Enhancement Curriculum was to play disc golf. He said it was a great time to socialize and exercise. Mr. Marquez said he felt he spoke for the vast majority of the Senior High student body.

- **Gary Brese, 236 Burlington Avenue, Billings, MT,** said he was there as a neighbor of Pioneer Park and encouraged the Council to maintain the ban and the one-year target established at the June 14<sup>th</sup> meeting. He said he called Stan Griswold, one of the consultants who previously lived in Billings; and his initial recommendation was to take disc golf out of Pioneer Park because it was destroying the park. He said Mr. Griswold told him that the parks system had two problems - underfunding and enforcement. Mr. Brese said he had joined effort with a volunteer group to manage and enforce, and he would hate to see vigilante. He said the police were not going to enforce and the Parks Department was not capable of enforcement.  
Councilmember Ruegamer said he was glad Mr. Brese talked to the consultant. He said consultants were a waste of money, and the Council would have to make a decision on what happened, not the consultant.
- **Greg Bush, 5531 Billy Casper Drive, Billings, MT,** said he was pro disc golf because it gave the high school and college kids something to do, and it had easy access and inexpensive. Mr. Bush said it was a healthy family sport.
- **Justin Stockfish, 226 Avenue B, Billings, MT,** said there were not a lot of problems that could not be mitigated with proper involvement. Mr. Stockfish said he could probably answer any questions the Council might have.
- **Nick Enslow, 726 Parkhill, Billings, MT,** said he was the site director/coordinator at the Bench Boys and Girls Club and the residing program manager at the Castlerock Boys and Girls Club. He said he was speaking on behalf of the children in the organization and asking Council to consider leaving disc golf in Pioneer Park. He said disc golf helped build confidence and self esteem.
- **Francis Harris, The Terrace, Billings, MT,** urged the Council to stay with their original decision to ban disc golf from Pioneer Park. She said Bozeman and Missoula had banned it, and Bozeman provided land to the disc golfers to build a beautiful course, which was what Billings should do. Ms. Harris advised Council to let the young people with all their youthful energy and creativity build their own course. She said in the long run, the young people would appreciate it and feel the accomplishment.
- **Carol Tasset, 231 Terry Avenue, Billings, MT,** said the question was not whether it was fun to have disc golf in a residential neighborhood but whether it was legal. She said she searched through multiple city and state statutes and ended up seeking private legal counsel regarding public nuisance and endangerment laws. Ms. Tasset came to the conclusion that no master plan passed rescinded state and local protections. She said the attorney told her all laws cited were applicable and the state statues were enforceable by the police, sheriff and other peace officers, even if the Council allowed it.
- **Liz Welch, 225 Avenue D, Billings, MT,** asked if creating an alternate park for disc golf would require another expensive master plan and approval process.  
Councilmember Astle advised a master plan was a guiding document, and the City Council could abridge it, change it, or ignore it. He said the last master plan for Pioneer Park had been mostly ignored. He said Pioneer Park was nothing like it was when it was dedicated to the City.  
City Administrator Volek advised one of the major features of the master plan was there were public hearings and opportunities for the public to comment on the plan. Ms. Volek advised a master plan was not mandatory.
- **Olivia Stockman, 937 N. 24<sup>th</sup> Street, Billings, MT,** said she felt banning disc golf from Pioneer Park before trying to work with the community to resolve concerns was an extreme measure. Ms. Stockman said Pioneer Park belonged to her just as much as it belonged to everyone else. She said the park did not belong more to nearby residents as though it were a "private country club." She said parks were meant to be used and enjoyed and disc golf should remain at Pioneer Park.
- **Erik Gasper, 739 Lewis, Billings, MT,** said if disc golf was banned on the grounds of people getting hurt, why would the tennis courts, ultimate frisbee, and volleyball be allowed to stay in the park. Mr. Gasper urged Council to reconsider removing disc golf from Pioneer Park.
- **Deb Fischer, 3129 Canyon Drive, Billings, MT,** said her adult kids played disc golf. She said disc golf was what the kids currently played, and it was a healthy activity. She said it would not hurt Billings to be flexible and change with the times. Ms. Fischer advocated for additional courses in other parks so Pioneer Park was not used so heavily.

There were no other speakers, and the Public Comment Period was closed.

## 1. CONSENT AGENDA

### A. Bid Awards:

1. **W.O. 05-15 Howard Heights Storm Drainage.** (Opened 7/13/2010) Recommend Ahanu Construction, Inc.; \$1,321,594.
2. **W.O. 10-07 Grand Avenue and 24th Street West eastbound, right turn lane adjacent to CVS Pharmacy** (Opened 7/13/2010) Recommend Knife River-Billings; \$187,687.

### B. **W.O. 04-12, Alkali Creek Stabilization, Phase 3,** increasing City Administrator's signing authority for change orders totaling up to \$233,655.80.

### C. **Annual Agreements** for Landfill Use with Bighorn County, Carbon County, Musselshell County, Stillwater County, Treasure County, Town of Columbus, Town of Fromberg, Town of Hysham, Town of Bridger, Town of Joliet, City of Laurel, City of Big Timber, and City of Red Lodge (7/1/10 – 6/30/11); and 3-year Landfill Use Agreement with Yellowstone County (7/1/10 – 6/30/13, with annual amendments).

### D. **Approval** of annual lease with PASSUR Aerospace, Inc. for space in the Airport Terminal Building to provide real time flight information for airlines (8/1/10 - 7/31/11); first year revenue - \$3,277.51; subsequent annual revenue based on Consumer Price Index for all Urban Consumers.

### E. **Amendment #13** with Morrison-Maierle, Inc. for design services for Airport's Car Rental Quick Turn Around Facility, \$833,698.

### F. **Amendment #6, WO 02-10: 6th Avenue North to Bench Boulevard, Phase 1,** Professional Architectural and Engineering Services, Morrison-Maierle, Inc.; \$2,917.

### G. Street Closures:

1. **Mexican Fiesta Celebration,** July 31, 2010, 6:00 a.m. - 7:00 p.m., Sixth Avenue South between South 28th and South 29th Streets.

2. **Roll and Run 5K Stroller Run for Charity**, August 7, 2010, 8:00 a.m. to 9:45 a.m., commencing on 3rd Street West at Pioneer Park, proceeding along Parkhill Drive to 10th Street West, north to Poly Drive, east to Virginia Lane, south to Parkhill Drive ending at Pioneer Park.

- H. **Approval of grant application and acceptance of the 2010 Justice Assistance Grant (JAG) for continuation of LED light bar replacement project on police vehicles and other Police Department equipment purchases; \$66,520.**
- I. **Resolution #10-18968** authorizing the issuance and calling for a negotiated sale of \$725,000 Pooled Sidewalk Bonds 2010A (WO 05-17 Highland; WO 08-30 Poly Drive; WO 08-02 2008 Misc/Developer Related; WO 08-21 Lake Elmo; WO 04-12 Alkali Creek).
- J. **Resolution #10-18969** authorizing the issuance and calling for a negotiated sale of \$300,000 Special Improvement District 1388 bonds.
- K. **Resolution #10-18970** fixing the form and detail of the Series 2010A Airport Re-funding Bonds.
- L. **Approval of Quarterly Report for Pledged Collateral for First Interstate Bank Certificate of Deposit, US Bank Municipal Investor Accounts, US Bank Repurchase Account, and US Bank Certificates of Deposit.**
- M. **Bills and Payroll:**
  - 1. June 30, 2010

Councilmember Cimmino separated Item M1; Councilmember Ulledalen separated Item C; and Councilmember Ronquillo separated Item B.

Councilmember Astle moved for approval of the Consent Agenda with the exceptions of Items B, C, and M1, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino advised she would be abstaining from the vote on Item M1 because she was employed by the consulting firm involved with Invoice 733631.

Councilmember Astle moved for approval of Item M1, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 8 to 0.

Councilmember Ronquillo said he had always had problems with change orders and asked Mr. Mumford if there had been other change orders on the project. Mr. Mumford said the current change order was for additional landscaping. He said the landscaping bid had come in lower than anticipated, and adequate landscaping was a real concern with the neighborhood. He said the City Administrator had signed a change order earlier that brought them very close to the 10 percent mark. Mr. Mumford advised change orders were for items that came up during construction that were unforeseen. He said they did not know of any additional change orders at that point but because they were using federal dollars for the project, they had a September 1 deadline to spend the money, so if they had to go through the normal 3-week process of bringing it to Council, they would possibly jeopardize getting the project done. He said he hoped they would not have any more change orders.

Mayor Hanel asked Ms. Volek to provide the Council with the history on her authority to sign change orders and the amounts at her convenience. Ms. Volek advised that currently, by council action, she had the authority to sign a change order of up to 10 percent or change orders of up to 10 percent of the cost of the project. She said the amount was raised from \$50,000 to \$100,000 fairly recently. Mr. Mumford advised in the back of the weekly report that Public Works provided to the City Administrator and City Council, all change orders signed by the City Administrator were tracked and explained.

Councilmember Cimmino moved for approval of Item B, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen said his question on Item C had been answered and moved for approval, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Mayor Hanel called for a short break at 7:57 p.m.

Mayor Hanel called the meeting back to order at 8:06 p.m.

#### **REGULAR AGENDA:**

#### **2. PUBLIC HEARING AND RESOLUTION #10-18971 AMENDING FY2011 WATER AND WASTEWATER RATE AND FEE SCHEDULE. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Public Works Director, David Mumford, advised this was the third rate increase approved in 2008 by the City Council. He said they would normally not have brought it forward because it had been approved in 2008 at 6 percent for water and 6.5 percent for wastewater on a 3-year basis. Mr. Mumford advised the reason it had come forward this year was because each year they evaluated to make sure the rates were set correctly. He said this year they were asking for the rate to be reduced to 4.5 percent for water due to the slowdown in growth and they did not need the capital in water. He said wastewater had significant challenges in the future, so they were asking for a 3 percent increase to 9.5 percent so there would be funding to start the planning and preliminary design work. Mr. Mumford advised they sent their customers a notice that their rate for wastewater would increase on average by approximately 43 cents a month, and water rates would decrease on average by approximately 44 cents a month.

Councilmember Clark asked Mr. Mumford to explain how they calculated the amount of wastewater a person was putting out. Mr. Mumford advised that wastewater was calculated on average water use in the months of January, February, and March.

Councilmember Ruegamer said several years prior Council asked that rates be raised every year instead of waiting four or five years and then trying to catch up with big increases. He asked if they were following that recommendation. Mr. Mumford advised they were. He said in 2008 Council approved a 3-year rate study with 6 percent for water per year and 6.5 percent for wastewater. Mr. Mumford said they still looked at the rates each year to make sure they were the correct amount, and they had never had to change before. He said this year they did not want to continue with the same amount for water; and with the unexpected new DEQ and EPA regulations, they needed to start stepping up slowly in wastewater so they could get ahead of it.

Councilmember Astle asked Mr. Mumford to explain how inexpensive Billings's water was compared to what the EPA thought Billings should be charging. Mr. Mumford said Senate Bill 95 that passed in the last legislature stated that one percent of median household income was not an excessive charge for wastewater collection and treatment. He said the EPA had come back and said it may be as high as two percent. Mr. Mumford said Billings was at less than half a percent and would have to more than double the wastewater rates to meet what Senate Bill 95 considered to be the minimum.

Councilmember Gaghen asked Mr. Mumford if he could project how long it would take for Billings to get to one percent. Mr. Mumford said they were about to go into the next 5-year cycle of permits, and they were anticipating they would have between two and two and half permit cycles before they had to meet the standards, which meant they had, at the most, 12 years; but in order to meet that, they would probably need to be up around one percent in five to six years to get construction built and on-line in time.

Councilmember Ronquillo asked how many gallons were used and cleaned during the summer months. Mr. Mumford advised the wastewater plant treated 17 to 18 million gallons a day. He said during the Father's Day high water, they were up in the 40 to 41 million gallon range.

Councilmember McFadden asked how much the average water user in Billings would pay a month. Mr. Mumford said the average amount for wastewater would be \$1.23 and \$1.31 for water.

Councilmember Gaghen asked if the plant was pushed to capacity during the Father's Day storm. Mr. Mumford advised they exceeded the capacity of what the plant was built for, but they were able to treat it and deal with it. Mr. Mumford said the plant had very good people who were all there during the storm to make sure they kept things going, and there were no violations on the discharge.

The public hearing was opened.

- **James Sullivan, 333 Parkhill,** asked if there had been any consideration given to a two-tiered billing similar to what the gas company had where they lowered their rate during the winter because of increased usage and raised their rate during the summer because of less usage. Mr. Sullivan said his mother-in-law paid over \$200 a month during the summer to water her average-sized lawn.

Mr. Mumford advised they established a tiered system in 2008. He said the basic first block, which was normal domestic use in a house, at the lowest rate, calculated out to be \$1.73 per 748 gallons. He said there were two additional rates to encourage people who watered excessively to slow down. He said they found when they had a single-tiered system, the smaller users paid to subsidize the bigger users who the City had to build bigger pipes, pump stations and reservoirs to accommodate. He said they hoped with the tiered system they could get some small reduction in usage on the high end and keep the lower end users at a lesser rate.

Councilmember McFadden asked if someone paying \$200 a month to water their lawn could have a water leak. Mr. Mumford said they had checked for leaks for people concerned about \$500 a month water bills, and a lot did not have leaks. He said they just used that much water.

Mayor Hanel asked if the City provided the service to test for underground leaks. Mr. Mumford said they could check for a leak coming from the main to the house, but they did not check irrigation systems on private property.

Councilmember Gaghen asked if the City had budget billing. Mr. Mumford said the City did. Ms. Gaghen advised the budget billing should be publicized more. Mr. Mumford advised they had offered budget billing and the ability to pay by credit card for quite some time. Councilmember Gaghen asked if there was a charge for use of a credit card. Mr. Mumford said there was not.

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

Councilmember Ronquillo moved for approval of Item 2, seconded by Councilmember Ruegamer. Councilmember Ruegamer said Billings had good people at both the wastewater and water plants. He said he had been through the plants several times, and they really knew what they were doing. He said last time he saw a state-wide comparison of rates, Billings was considerably lower than any other municipality. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION #10-18972 CREATING SID 1391, LYNN AVENUE IMPROVEMENTS. Staff recommends approval. (Action: approval or disapproval of staff recommendation)** Public Works Director, Dave Mumford, advised the residents of Lynn Avenue had struggled with a gravel street for quite a few years that had a lot of traffic coming from the Career Center. He said the residents met with staff regarding options and had stepped up to support an SID with no protests. Mr. Mumford said the SID included speed platforms to slow traffic. He said the property owners were great to work with, and he thanked them for their patience. Mr. Mumford advised the total estimated cost for the SID was \$190,000, and the City would be contributing \$40,000. He said modifications were made to some of the standards to make it work for the residents.

Councilmember Ruegamer asked Mr. Mumford to define a speed platform. Mr. Mumford advised speed bumps were installed in parking lots and were approximately six inches high and would jar a vehicle substantially. He said a speed platform was 12 feet across with a gradual incline, flat top, and gradual decline. He said if a vehicle was traveling the speed limit of 20 to 25 miles per hour, a driver would not even know it was there; and they did not affect response times of emergency vehicles. Mr. Mumford advised the faster the vehicle was traveling, the more the driver would feel the platform. Councilmember Ruegamer asked Mr. Mumford to confirm the City did not install speed bumps. Mr. Mumford confirmed that the City did not install speed bumps.

City Administrator Volek advised the City did not pay for the speed platforms, and the cost would be paid for by the neighborhood.

Councilmember Ulledalen said there were speed platforms installed around the Poly Vista Complex on 38<sup>th</sup> Street West and asked if there was a difference in cost when they were designed into a project. Mr. Mumford advised they were less expensive if they were part of a project.

The public hearing was opened.

- **Jeffrey Cummins, 3538 Lynn Avenue, Billings, MT,** said the SID had been a long time coming and encouraged Council to approve it.

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

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

**4. PUBLIC HEARING AND SPECIAL REVIEW #882: A special review for an all-beverage liquor license with gaming within an existing multi-tenant building located at 1313 Grand Avenue, currently zoned Community Commercial, and legally described as Lots 2A, 3-23, 24A and 25-47, Block 1, Evergreen Subdivision, Evergreen Midtown Plaza, LLC, applicant; Bob Pulley and Rob Veltkamp, agents. Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)** Councilmember Cimmino asked if the applicant could re-apply four months after withdrawing the application; and if the applicant would have to wait a year to re-

apply if they went through the entire process and it was denied by Council. Zoning Coordinator, Nicole Cromwell, advised that process applied to zone changes and variances, and not to special reviews.

Councilmember Cimmino moved to accept the request from the applicant to withdraw the application for Special Review 882, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND SPECIAL REVIEW #883: A special review for expansion of Bethlehem Lutheran Church located in a Residential 6000 zone, legally described as Lots 8-11, Block 1, Dahl Subdivision, and generally located at 40 10th Street West and 1008 St. John's Avenue. Bethlehem Lutheran Church, applicant, Zoning Commission and Planning Department recommend conditional approval. (Action: approval or disapproval of Zoning Commission and Planning Department recommendation.)** Zoning Coordinator, Nicole Cromwell, advised the application was from an existing church planning an expansion to create an accessible vestibule and drop off/pick up area in front of the church. She began her PowerPoint presentation showing photos of the subject property and describing the surrounding properties. She showed the site plan that was submitted and said the expansion was mainly to accommodate an elevator and a new door entrance to the sanctuary and to the fellowship center in the basement. She said the one-way drive would come in off of St. Johns Avenue and exit onto 10<sup>th</sup> Street West. Ms. Cromwell advised the Zoning Commission conducted a public hearing on July 6, 2010, and there was no opposition. She said the Zoning Commission was recommending the following eight conditions of approval.

1. The special review approval shall be limited to Lots 8-11, Block 1 of Dahl Subdivision generally located at 40 10th St West and 1008 St. John's Avenue.
2. Any expansion of the proposed building, building occupancy, or parking lot greater than 10 percent of what is shown on the submitted site plan will require an additional special review approval.
3. The development of the addition shall be in substantial conformance with the submitted site plan.
4. All site lighting on the building, in parking areas and under the canopy shall have full cut-off shields so lighting is projected to the ground and not on to adjacent properties.
5. The relocated cross tower shall meet required building setbacks and will not be located within a clear vision area of any drive approach or the intersection of 10th St West and St John's Avenue.
6. Pedestrian crossing signs shall be posted at the new drive approach entrance on St. Johns Avenue and at the new drive approach exit on to 10th Street West. These signs will alert drivers entering and exiting to watch for pedestrians on the public sidewalks.
7. 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.
8. 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.

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

Councilmember Ruegamer moved for approval of Item 5 with the eight conditions, seconded by Councilmember Gaghen.

Councilmember Clark commented it was the church he had grown up in, and they had planned for a long time to install an elevator to access the basement. Councilmember Gaghen advised the church was part of the Interfaith Hospitality Network, which pushed the focus all the more for access to the lower level. She said their willingness to step forward to help the homeless was commendable, and it was a worthy project.

On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND FIRST READING ORDINANCE REGULATING USE OF ELECTRONIC COMMUNICATION DEVICES WHILE OPERATING A MOTOR VEHICLE. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Craig Hensel, Deputy City Attorney, advised the ordinance was presented to Council at the July 6, 2010, work session. He said the ordinance would ban anything that was not hands free while driving. He said there would be exceptions for law enforcement, persons reporting emergencies, and people using 2-way radios during the course of their official work duties, such as taxi drivers and delivery drivers. Mr. Hensel advised violation of the ordinance would be considered a municipal infraction. He said the ad-hoc committee unanimously recommended the ordinance with a delay date of October 31, 2010, in order to allow time to educate the public.

Councilmember Ruegamer asked what the fine would be if caught. Mr. Hensel advised the municipal infraction ordinance allowed the judge to impose no minimum fine but up to a maximum of \$300 for first offense and up to a maximum of \$500 for repeated offenses within 12 months. He said the judge had established a bond schedule, and it had been her decision that most municipal infractions or traffic violations would have a bond set at \$110, so he suspected the judge would set the bond at \$110 but it would be her discretion to set it at anything she wanted to between \$0 and \$300.

Mayor Hanel advised he had received inquiries as to why certain people were exempt and asked Mr. Hensel to explain. Mr. Hensel said most of the ordinances they had looked at in approximately 35 states with similar legislation exempted reporting a health, fire or safety emergency. He said if there was a situation where fire, ambulance, or police were in an area where they did not have 2-way radio coverage and needed to communicate, it would be allowed. Mayor Hanel asked Mr. Hensel if there were significant accident count comparisons between intoxicated drivers and drivers using electronic devices. Mr. Hensel advised the most compelling study they found that had been recognized nationwide and given the most respect and credibility was done by Virginia Tech, which indicated a texting driver had a slower reaction time than an intoxicated driver.

Councilmember Ulledalen asked if using a GPS unit affixed in a vehicle would be allowed. Mr. Hensel advised if the GPS was hands-free with voice activation, it would be allowed; but if it had to be physically manipulated in some way, it would not be allowed.

Councilmember McFadden asked if City of Billings employees driving city vehicles would be exempt. Mr. Hensel said there was no exemption for government employees other than emergency personnel such as fire, police, ambulance, and anyone else defined as an authorized emergency vehicle under statute.

Councilmember Ulledalen said he thought it would be a good example if the Police Department refrained from using cell phones except in the case of an emergency.

The public hearing was opened.

- **Bob Rightmire, 839 Parkhill, Billings, MT,** said his FCC Amateur Radio License # was WA7YNU and he had provided input to the committee with regard to amateur radio and the use of cell phones and texting while driving. Mr. Rightmire said he was convinced the use of cell phones and texting while driving was a safety hazard. He said they worked hard to explain the differences between amateur radio and cell phones, which was incorporated into the ordinance; and he was in full support of the ordinance, as presented.  
Councilmember Gaghen commented the input from the amateur radio operators was very valuable because it was an area the committee had not thought about when drafting the ordinance.
- **Terry Whiteside, 372 Zion Circle, Billings, MT,** said he was an amateur radio operator, call sign W7WWW, and the government liaison for the American Radio Relay League for the Montana section, which supported the ordinance. He said they spent time in the legislature in the last session dealing with SB278 and HB49, and the ordinance the committee developed would become the model. He said Councilmembers Clark and Gaghen did a wonderful job, and the committee worked very well together. Mr. Whiteside said it was not an easy issue but a safety issue and becoming a problem more and more every day.
  - **Janice Linn, 7550 Highway 3, Billings, MT,** said people liked to refer to the University of Utah study in 2003 that claimed that cell phone driving was just as bad as drunk driving. She said the study was very flawed. She distributed a copy of the 2010 Highway Loss Data Institute Study, which stated that the crash rates in states that had banned cell phones were no lower than crash rates in surrounding states that allowed cell phones while driving. Ms. Linn said they found that most of the states that banned cell phones completely were on the coast, and over the last ten years cell phone subscriptions had gone from 100 million to 300 million but the number of crashes had declined from 7 million to less than 6 million. She said the AAA website stated that AAA believed it was premature to ban cell phones while driving and advocated for more education and research. Ms. Linn asked the Council to do the same.
  - **Ed Melcher, 1218 Longhorn Way, Billings, MT,** distributed a copy of a study that stated distractions, not cell phones, caused car crashes. He said he wanted to talk about hands-free versus holding a phone to an ear. Mr. Melcher said the study showed there were a lot of other distractions within a vehicle, such as radios, CD players, and GPS systems. He said the study looked at states with a complete ban and states without a complete ban, and there was no correlation between them. Mr. Melcher said he would like to argue the fact that holding a cell phone to an ear was no different than being distracted with children. Mr. Melcher said he was an insurance agent who wanted safety but during the months of November and December the crash rates went up substantially so they should think about taking out Thanksgiving and Christmas because they caused a distraction.  
Councilmember Astle asked what insurance company he represented. Mr. Melcher said he worked for Farmers Insurance Group in Billings. Councilmember Astle asked what Farmers Insurance said about it. Mr. Melcher said he had not asked, and he was there as a personal individual. He said all of the accidents his clients have had were not the result of a cell phone.
- **Ed Melcher, 1218 Longhorn Way, Billings, MT,** distributed a copy of a study that stated distractions, not cell phones, caused car crashes. He said he wanted to talk about hands-free versus holding a phone to an ear. Mr. Melcher said the study showed there were a lot of other distractions within a vehicle, such as radios, CD players, and GPS systems. He said the study looked at states with a complete ban and states without a complete ban, and there was no correlation between them. Mr. Melcher said he would like to argue the fact that holding a cell phone to an ear was no different than being distracted with children. Mr. Melcher said he was an insurance agent who wanted safety but during the months of November and December the crash rates went up substantially so they should think about taking out Thanksgiving and Christmas because they caused a distraction.  
Councilmember Astle asked what insurance company he represented. Mr. Melcher said he worked for Farmers Insurance Group in Billings. Councilmember Astle asked what Farmers Insurance said about it. Mr. Melcher said he had not asked, and he was there as a personal individual. He said all of the accidents his clients have had were not the result of a cell phone.  
Councilmember Gaghen said she was almost hit by a woman who did not realize she had driven through a red light at 5<sup>th</sup> and Broadwater, and she had heard from so many people who shared the same type of experiences. She said 40 nations throughout the world had some type of regulation on hand-held cell phones. Mr. Melcher said he understood and could appreciate it but there were still so many distractions in a vehicle other than a cell phone. He said accident rates were going down nation-wide, and people were changing their habits.
- **James Knox, 661 Garnet Avenue, Billings, MT,** said his company made it a point to buy 'hands-free' for all of his employees. Mr. Knox said he agreed it was completely irresponsible for people to text while driving. He said there was already a law on the books called the distractive driving law, and there was not one officer that could not pull someone over when they were distracted and cite them for it. Mr. Knox said it was time the city government started enacting the current laws instead of stacking the books trying to mandate common sense.
- **Alan Towlerton, 275 Nubias Place, Billings, MT,** urged the Council to support the ordinance on first reading. He said he agreed there were many other distractions while driving. He said he considered himself pretty intelligent and capable, but the other day he was talking on his cell phone while driving and had to admit a couple blocks later he realized he was not mindful of his surroundings while he was driving. Mr. Towlerton said the ordinance was not perfect but was a good step forward and urged Council to support it.
- **Dan Carter, 1104 Princeton, Billings, MT,** said he was a member of the ad-hoc committee. He said they had students from the university and from Senior High, and they had a broad sector of other members. He said they looked at all kinds of options and discussed all kinds of things and thanked the city staff for providing the context in which it was done. Mr. Carter said the main thing he wanted to point out was that they were not talking about taking anyone's phone or car away from them, they just did not want people to do both at the same time. He said technologies were colliding and it was time to take a stand and do something for the city and everyone involved.
- **Patty Fain, 2917 17<sup>th</sup> Street West, Billings, MT,** said she was a member of the ad-hoc committee. She said she was present to entertain questions and wanted to address some of the earlier comments. She said relative to the University of Utah study, they specifically did not cite the study for its lack of data. She said the studies they cited were well documented and considered to be experts in the field. Ms. Fain said relative to holding a phone to an ear, she would not discount the perils of being distracted by talking on the phone and the myopic view a person had while engaging in a conversation. She said she had been asked why not restrict teens only or a certain population, and she said she felt that would be like telling people they could only play Russian Roulette if they were an experienced marksman. Ms. Fain agreed a dog in a lap or a hamburger in the hand were distractions, but when a driver took his/her eyes off the road for an average of 4.5 seconds, or the length of a football field, the driver would be more distracted than from taking a bite out of a Big Mac or swatting a dog off his/her lap. Ms. Fain said she did not believe there was a distracted driving statute; but instead a careless driving statute identifiable when a driver was weaving in and out on the road. Ms. Fain encouraged Council to pass the ordinance.  
Councilmember McFadden asked if everyone on the ad hoc committee was in favor of passing the ordinance. Ms. Fain said it was a unanimous decision. She said they met a total of six times, and it was very thoroughly debated and carefully and intelligently considered. She said she did not believe anyone was bullied, there was fair consideration, and there was a very strong consensus.  
Councilmember Gaghen listed her fellow ad-hoc committee members, as follows: Councilmember Clark, Patty Fain (Citizen), Tim Beeter (Insurance), Dan Carter (MSU-B), Dr. Michael Dennis (RiverStone Health), Tyler Harris (MSU-B Student), Roger Janssen (Citizen), Charlie Reed (SD #2), Jake Wilson (SD #2 Student), and Adam Kimmitt (Cell Phone Industry). She said they also received input from Terry Whiteside and Bob Rightmire, and Rod Wilson from City Cab. She praised the committee for their sense of commitment and knowledge they all brought to the group.



- **Joe Splihter, 937 N. 24<sup>th</sup> Street, Billings, MT,** said he was involved in an accident last fall because he was looking down and checking his cell phone. He said he was a law abiding citizen, and the ordinance would ultimately keep him from looking at his cell phone while driving.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT,** referenced Section 24-300 of the proposed ordinance and read "...any other mobile communication device that uses short-wave analog or digital radio transmissions between the device and a transmitter to permit wireless communications to and from the user of the device." He read further "Immediate physical possession means touching the hand held electronic communications device..." and "Use of a hands free device is permitted while operating a motor vehicle provided the driver does not touch the wireless telephone or wireless or electronic communications device while operating a motor vehicle." Mr. Nelson said he could energize his On-Star from his steering wheel and asked if he was supposed to steer with his knees because he would have an electronic control device in his hands at all times. He asked if people were illegal with On-Star because they had it in their hands and were touching an electronic device.

Mayor Hanel told Mr. Nelson he could respect his comments, but he thought a lot of it came down to common sense. He said the purpose of the entire proposal as it had been presented was because people spent too much time picking up the phone while driving. He said the newer vehicles had the ability to operate from the steering wheel, which was designed for safety. Mr. Nelson said they had taken great effort to include very specific language in the ordinance that said a person was not to touch or be in physical possession of an electronic device. He said the ordinance bans anyone from using On-Star and he would like to see the ordinance revised to take it into consideration.

Councilmember Gaghen asked for staff comment on Mr. Nelson's concern. Mr. Hensel said he did not personally have On-Star, but the steering wheel was not an electronic communications device that needed to be physically manipulated to activate.

- **Beth Dopp, 1209 2<sup>nd</sup> Street West, Billings, MT,** said a couple of years ago she began riding her bicycle every day to and from work. She said she needed to be a lot more aware of her surroundings when riding her bicycle than when she was protected by an automobile, and she was startled by the number of drivers on their phones completely oblivious to the fact that she was there. Ms. Dopp said so far she had only had one serious accident that involved a woman driver who was on her cell phone and not using her turn signal. She said the woman turned, she had to hit her brakes and hit the ground, and the woman looked at her very indignantly and stayed on her phone. Ms. Dopp said everyone had a couple of minutes to pull over and stop if a call was that important or wait until they got home.

Councilmember Ruegamer asked Ms. Dopp to repeat what she said about the woman being totally oblivious to her presence because everybody needed to hear it again. Ms. Dopp repeated that the driver was on her phone and was completely oblivious that she was there. Ms. Dopp said the only time the driver saw her was when she was lying in the street. Ms. Dopp said it was not the first time a driver had been oblivious to her on her bike.

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

Councilmember Gaghen moved for approval of the ordinance regulating use of electronic communications devices while operating motor vehicles, seconded by Councilmember Clark.

Councilmember Ruegamer stated that a lot had been said about distractions, and distractions and imperatives were not the same thing. He said a distraction could be a kid, and a person would not just stop and kick a kid out of the car. He said a driver did not have to pick up a phone so it would be considered a voluntary distraction.

Councilmember McFadden stated he did not believe the ordinance would significantly reduce accidents or make the streets safer. He said he did believe it would significantly increase the amount of government intrusion into their personal liberties.

Mayor Hanel asked Mr. Hensel if there would be a need for revisions to the proposed ordinance. Mr. Hensel said he was not familiar with On-Star but if it was like the other controls he had seen on newer vehicles allowing the navigation of a GPS system or controlling a stereo, the electronic control device would be the control that controlled the device and not the steering wheel itself. He said it was a common sense interpretation of the statute, and he did not believe the ordinance needed amended.

Mayor Hanel said he had received inquiries on the police's ability to enforce the ordinance. He said as far as stopping and taking corrective action for each and every driver using a hand-held device, they probably could not; however, should a driver be using a hand-held device and cause an accident, it would give law enforcement the ability to cite the driver under the ordinance.

Councilmember Gaghen said she would also like to recognize R.D. Harper from the Police Department, who had attended all of the ad hoc committee meetings.

On a voice vote, the motion was approved 7 to 2. Councilmembers Ronquillo, Gaghen, Ruegamer, Ulledalen, Astle, Clark, and Mayor Hanel voted in favor of the motion. Councilmembers Cimmino and McFadden voted against the motion.

**7. RECONSIDERATION OF PIONEER PARK MASTER PLAN - RESOLUTION #10-18973. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina Volek advised there had been much comment that evening on the item, and staff had no additional presentation but was available for questions.

Councilmember Ulledalen moved for approval of the original Pioneer Park Master Plan with the inclusion of disc golf, seconded by Councilmember Astle.

Councilmember Ruegamer said he was changing his vote from the last time. He said it was not because of the pressure, because he had pressure from three sides. He said there were people who did not care, people who did not want disc golf, and people who wanted disc golf. Councilmember Ruegamer stated he heard what he needed to hear after the last vote and that was that the disc golf players were willing to repair the course and shorten the course as specified in the master plan. He also said by next year at this time, the disc golfers had to have finished another venue with the help of the city parks and private and public partnerships. Councilmember Ruegamer said if it was not accomplished, the Council could still remove disc golf from Pioneer Park. He said he talked to Mr. Rott, and he said there would be no problem and they would do it. He said he felt it was up to the City to make sure they had the proper land to do it, and up to the players to push it. He said he played softball in the 70's, and the Men's Slow Pitch organization had put hundreds of thousands of dollars into Stewart Park. He gave the example of the Skate Park and Amend Park being built through public and private partnership and the Little League, who had built all of their fields at great expense. He said the disc golfers needed to do the same and jump onboard, get things rolling, and take the pressure off of Pioneer Park.

Councilmember McFadden commented that the City had a competent and capable Parks Department, and they would look back in a couple of years and be glad they handed it over to the Parks Department with their master plan and let them do what they were paid to do.

Councilmember Ronquillo said he did not think it could be accomplished in one year and said he would like to make an amendment to give them three years in Pioneer Park and then they would have to find another park suitable for their use. (Died for lack of a second)

City Administrator Tina Volek advised there were no dates within the master plan for completion of sections. She advised a council initiative requiring staff to bring a plan forward with a given time would be the best way to handle it. She said she felt that would be a better way to address Councilmember Ronquillo's comment.

Councilmember Astle said he was also changing his vote. He said people had told him they felt safe walking through Pioneer Park compared to the 1970's. He said he felt the master plan was a stupid waste of \$87,000 and told the Parks Department he did not want to hear from them that they could not do something because they did not have any money. He told them to find a way to do it with what they had because they were not getting any more money. He said there was no more money. Councilmember Astle said Pioneer Park was not a botanical garden or a nature preserve but a city park to be used by the citizens to play in.

Councilmember Clark said he was still voting against accepting the master plan. He said it was a waste of money, and the whole plan was poorly done. He said it was directed totally towards disc golf with a bunch of other stuff thrown in that would never get done anyway; so why adopt a plan. He said they should just take a vote that they would allow disc golf in Pioneer Park.

Councilmember Ulledalen said it was an opportunity to do a better job presenting problems to the community and asking for help in solving them rather than just saying there was no money. He said he felt there were wiser ways to spend the money, but they might as well use the plan the best they could since the money was already spent. He said the master plan would address the management issues of disc golf in the park and help mitigate the damages and reduce the footprint. He said it gave them a blueprint to work with for helping preserve the park. He said if they were going to ban disc golf, they probably needed to ban ultimate frisbee. He said if it was a hazard issue, then tennis or horseshoes may have to be removed. He said their issue was how to do the best for the most in the community and if they were going to listen to a minority at the expense of hundreds of people expressing something else, they needed to pay attention. He said he thought it was a quality of life issue. Councilmember Ulledalen said he was willing to work with the people but did not feel there were any reasons for setting a timeframe. He said disc golf provided an alternative for a lot of people in a broad range of ages. He said he agreed with Councilmember Ruegamer that they needed to see demonstrations of measured progress working on alternate venues but they did not need to get so specific on what they wanted to see happen in a short period of time. He said the disc golf community had better organization with broad ranges of ages and capabilities of people. Councilmember Ulledalen said they needed to work with the Parks Department and Parks Board on what it would take to find another park. He said he did not want to set up too many barriers that were unattainable in the next 12 months, and said he would make a commitment to work with the people wherever they needed guidance and help. He said he thought they would see a group of people coming together and they might be able to use it as an example on how other problems in the community could be solved. He said it was a great opportunity to step up to the plate and he planned to vote in favor of it.

Mayor Hanel said he was a police officer in the mid 70's who had a walking beat in Pioneer Park at night with another officer. He said they spent their entire shift in the park because of all the crimes, drugs, sexual assaults, and vandalism. He said they were common occurrences and the officers would flip a coin to see who had to work Pioneer Park. He said that was not the Pioneer Park of today because the citizens had improved it and made it a place they were proud of. He said the way disc golf was presently set up in the park was intrusive to some people, whether they were driving by the park, walking through the park, or living near the park. He said all three of the plans called for a smaller, reduced course with a less-intrusive layout. He said he had walked the current course and watched recent state games activities where he saw the enjoyment of the people using the park. Mayor Hanel said he thought the plans needed to be reduced to be less intrusive on the park and challenged all persons who testified in favor of disc golf in Pioneer Park to fill vacancies on the Parks Board and share their knowledge and expertise. He said they could not rely solely on Pioneer Park for disc golf, and they needed other locations. Mayor Hanel said he voted against disc golf in Pioneer Park initially, but the little boy who testified earlier that evening really influenced him and what it was all about. He said he would be voting in favor of the master plan.

Councilmember Ruegamer said he did not mean that the disc golfers needed to put hundreds of thousands of dollars into a park. He said it had happened at Stewart Park over 40 years. He said his point was that when the ball players wanted their own venue, they were willing to spend some time and money to get what they wanted. He said he did not want to put anything on the disc golf players they could not do, but he wanted to see things happen within a year. Councilmember Ruegamer cautioned everyone not to look at parks that were already developed because they would run into the same problem as Pioneer Park. He said there was enough empty space in Billings to develop for disc golf.

Councilmember Clark said he was not voting against disc golf. He said they needed disc golf. He said he was voting against the Pioneer Park Master Plan because he did not like the whole plan. He said there was more to the master plan than disc golf, but nothing else had even been talked about. He said the master plan was poorly done, and the City wasted its money.

Councilmember Ulledalen challenged Councilmember Clark to make the most of the misguided investment and work on implementing other items in the master plan. He said the question now was how to salvage the money that had already been spent.

Councilmember Astle said disc golf was different than regular golf and did not have to be designed like Par 3 or Lake Hills or require the same amount of land. He made the suggestion of checking into using Lampman Park or the College of Technology or other undeveloped parkland.

Councilmember Cimmino made a substitute motion to accept the proposal from the Friends of Billings Disc Golf and Air Fairways to work with the Parks Department and the Parks Board on the resolution suggested in the memorandum submitted that evening, specifically mitigating the impacts of the neighborhood of Pioneer Park.

Councilmember Clark asked Councilmember Cimmino what she hoped to accomplish. Councilmember Cimmino said working together and leaving the master plan out of it. Councilmember Clark seconded the substitute motion.

City Administrator Tina Volek noted that the approved plan discontinued disc golf in Pioneer Park one year from the first action on the master plan. She said Council amended the master plan at that time; so if the council did not remove the amendment, that would be what carried forward.

City Attorney Brooks said he was a little unclear on what the substitute motion did. He asked if the substitute motion was designed to be incorporated within the master plan or if it was totally in lieu of approving the master plan. Councilmember Cimmino said it was not totally in lieu of approving the master plan; and for working together with the three entities identified, which were the Parks Department Staff properly managing disc golf, along with the Parks Board serving as an Advisory Committee, and working with the Friends of Billings Disc Golf and Air Fairways. She said they made an offer to work with the community to implement disc golf in the City of Billings. Councilmember Cimmino said she wanted to go on record by saying disc golf was not anything new and had been in existence in Billings for over ten years but it was high time that they addressed the issues of maintenance and for it to be properly managed and to also address the issues that impacted the neighborhood.

Councilmember Clark withdrew his second because he said it was not what Councilmember Cimmino had said a minute before.

Councilmember Ulledalen said he felt there was merit in what Councilmember Cimmino was trying to accomplish with her motion, but he felt there was opportunity for them to come forward with a resolution like it three to four months down the road. He said things just did not happen in 12 months, and he did not want to be pinned down to a specific timeframe and commit to failure. He said they needed to wait until after the Parks Board had met with the entity and the entity was officially formed to do a resolution where benchmarks could be set.

The substitute motion failed for lack of a second.

City Attorney Brooks clarified that Councilmember Ulledalen's motion was to approve the original version of the Pioneer Park Master Plan, which included disc golf. He said by that action Council would be reconsidering and eliminating the one-year amortization.

City Administrator Tina Volek advised that Parks Director, Mike Whitaker, indicated to her that the master plan provided for a cooperative effort with private groups to undertake alternatives to disc golf in Pioneer Park.

On a voice vote, the motion to approve the original version of the Pioneer Park Master Plan, to include disc golf, was approved 6 to 3. Councilmembers Cimmino, McFadden, Ruegamer, Ulledalen, Astle, and Mayor Hanel voted in favor of the motion. Councilmembers Ronquillo, Gaghen, and Clark voted against the motion.

**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. There were no speakers, and the Public Comment Period was closed

**COUNCIL INITIATIVES** - There were no initiatives.

- **Ronquillo:** Advised a fundraiser for a new gazebo at South Park would be held on Thursday, August 19, 6:00 p.m., at the South Park Senior Center. He said they would be serving hamburgers, hotdogs, potato salad, chips, dessert, and drinks for \$5.
- **Astle:** Asked Mike Whitaker for the status of the restroom at the Skate Park. Mr. Whitaker said when the Council initially started discussing the need for a restroom at the Skate Park, they put a stop on the order. He said it was not until Council approved the restroom that they placed the order. He said it was a pre-fab unit that needed to be built. Mr. Whitaker said he was told it should arrive mid to late July and said as soon as it arrived, it should not take more than a couple of days to install. Mayor Hanel asked Mr. Whitaker to check on the status of the restroom and let Ms. Volek know so she could pass the information to Council.

**ADJOURN** - The meeting adjourned at 9:45 p.m.



CITY OF BILLINGS

By: Thomas W. Hanel  
Thomas W. Hanel, Mayor

ATTEST:

By: Cari Martin  
Cari Martin, City Clerk