

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 26, 2015

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

City Administrator Volek introduced the new City Clerk, Billie Guenther.

ROLL CALL: Councilmembers present on roll call were: Cromley, Yakawich, Pitman, Cimmino, Bird, McFadden, McCall, Swanson, Crouch, and Brown.

MINUTES: May 11, 2015 – Councilmember Cimmino moved for approved, seconded by Councilmember Cromley. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Councilmember Cimmino shared an original poem thanking retiring City Clerk Cari Martin for her work.
- Mayor Hanel thanked the community, the Council, the City of Billings, staff, citizens, and military men and women. He asked that we think of Memorial Day throughout the entire year.
- Councilmember Crouch acknowledged the success of the City's treatment courts. 248 people have entered the program, 102 have graduated. In DUI Court, 72 people have entered the program, and 42 have graduated. 23 people are presently enrolled in the enhancement program. Of those who committed felonies, the repeat rate is currently less than 7%. He noted the positive attributes of the Judge and again acknowledged the success of the treatment courts.
- Councilmember Swanson thanked Councilmember Pitman for his work on the Veterans Cemetery in Laurel. He mentioned that the Cemetery is a true asset to the community.

PROCLAMATIONS: There were no proclamations.

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek brought to Council's attention Item C: Amendment #1, W.O. 15-06, Poly Drive, 32nd to 38th Streets West, Professional Services Contract with DOWL HKM, \$305,715: The original agenda referenced Amendment #2, when it should have been Amendment #1. All documents have been corrected.
- Ms. Volek referenced Item J on the agenda (Donation to the Billings Public Library from the Billings Public Library Foundation in honor of Foundation Founder Royal C.

Johnson in the amount of \$25,000). Ms. Volek mentioned that staff had asked to separate the item for a short presentation.

- Ms. Volek mentioned Item 5 on the agenda (public hearing and resolution creating SILMD 315, Bench Boulevard (Clevenger Park)) and that one protest letter was received, which was placed in the Ex Parte Communications notebook.
- Ms. Volek informed Council that councilmembers received an email regarding the land purchase from the Montana Department of Transportation. The email requested that the purchase be added onto the agenda. Councilmembers were given a copy of the staff report prior to this evening's meeting, and there was also a file placed in the Ex Parte Communications notebook.
- Ms. Volek informed Council that on Item 7 (Public Hearing and Special Review #927), the applicant's architect asked to withdraw the item from the agenda, and it will be submitted at a later date. Ms. Volek also noted that there was a public hearing period for this item, so the public hearing should still be opened before voting on the withdraw.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: #1 ONLY.

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

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

Councilmember Pitman moved that the Land Purchase from the Montana Department of Transportation be added onto the agenda as Item 8, seconded by Councilmember Crouch. On a voice vote, the motion was approved 11 to 0.

1. CONSENT AGENDA

A. Bid Awards:

- 1. SID 1382 Colton Boulevard.** (Opened 5/12/2015) Recommend delay of award until June 8, 2015.
- 2. W.O. 12-31, Yegen Drain Improvements, Phase I.** (Opened 5/26/2015) Recommend delay of award until June 8, 2015.
- 3. W.O. 14-14, Reflections at Copper Ridge Pond Improvements.** (Opened 5/26/2015) Recommend delay of award until June 8, 2015.
- 4. W.O. 15-25, 44th Street West Multi-Use Path.** (Opened 5/26/2015) Recommend delay of award until June 8, 2015.

5. **W.O. 15-08, Exposition Gateway.** (Opened 5/19/2015) Recommend delay of award until June 8, 2015.
- B. **Amendment #2, W.O. 14-09, Briarwood Reservoir,** Professional Services Contract, Kadmas, Lee & Jackson, \$43,100.
- C. **Amendment #2, W.O. 15-06, Poly Drive, 32nd to 38th Streets West,** Professional Services Contract, DOWL HKM, \$305,715.
- D. **Acknowledge Receipt of Petition to Annex #15-08:** approximately 19 acres located at the southwest corner of the intersection of Elysian Road and East Lane; Elysian School, owner; and set a public hearing date of June 8, 2015.
- E. **Easement** with City High Ditch Water Users Association for Arrowhead School Trail.
- F. **Easement** with Montana Dakota Utilities for construction of gas line across City property near Bench Boulevard and Mary Street.
- G. **Easements** with Resource, Support & Development, Inc.; Colt Communications LLC; and Gary & Barbara Klipstein and Karen & Gregory Robey for W.O. 13-15 Calhoun Road Improvements.
- H. **Easements** with Westfeeds, Inc. for W.O. 12-31, Yegen Drain Improvements, Phase I.
- I. **Acceptance of Quitclaim Deed** for portions of Central Avenue road right-of-way that has been annexed into the City of Billings, from Yellowstone County.
- J. **Donation** to Billings Public Library from Billings Public Library Foundation in honor of Foundation Founder, Royal C. Johnson; \$25,000.
- K. **Second and Final Reading Ordinance #15-5653 expanding Ward I (Annexation #15-01)** for portions of 6th Avenue North, 4th Avenue North, 3rd Avenue North, 2nd Avenue North, 1st Avenue North, Main Street (Exposition Drive) and some alleys in the area of East Billings.
- L. **Resolution of Intent #15-10456** to create SID 1398, Mountain View Boulevard Improvements (street and storm drain), and set a public hearing date of June 22, 2015.
- M. **Resolution of Intent #15-10457** to create SILMD 317, Exposition Gateway, and set a public hearing date of June 22, 2015.
- N. **Final Plat Approval**

1. Cenex Park Subdivision, Lot 10-A-1, Block 3
2. Millennium Market Subdivision, Amended Lots 2A-1 and 3A, Block 1
3. Goodwin Acres Subdivision, Amended Lot 1A of Amended Lots 1-2
4. North Pointe Square Subdivision, 2nd Filing

O. **Bills and Payroll:**

1. April 27, 2015
2. May 4, 2015

Councilmember Yakawich: separated Consent Agenda Items B and C
Councilmember Brown separated Consent Agenda Items O1 and O2 in order to abstain. Councilmember Brown also separated Consent Agenda Item J as requested by staff. Councilmember Cimmino separated Item 1A5. Councilmember Cimmino also separated from Items N2, O1, and O2 in order to abstain. Councilmember McCall moved for approval of the Consent Agenda excluding items 1A5, B, C, J, N2, O1, and O2, seconded by Councilmember Pitman. On a voice vote, the motion was approved 11 to 0.

Mayor Hanel mentioned Item J that was separated at the request of staff. City Administrator Volek introduced Leslie Modrow, Development Director of the Library Foundation. **Ms. Modrow, 320 Clark Avenue, Billings, MT**, noted that in December 2014, the Library Foundation kicked off a special project to honor Foundation Founder Royal Johnson and his accomplishments and contributions to the Library and to the City. Mr. Johnson was a former member of City Council, was elected Deputy Mayor, served 14 years in the State House and Senate. The Foundation believes that without Mr. Johnson's foresight, there would likely not be a new Library today. Mr. Johnson's support has helped create an endowment that is instrumental in our community. In honor of Mr. Johnson's 90th birthday, as well as following the mission of the Library Foundation, the Foundation would like to donate \$25,000 to the Billings Public Library. Councilmember Brown moved to accept the staff recommendation to accept the Library Foundation's \$25,000 donation, seconded by Councilmember McCall. On discussion, Councilmember Cimmino noted that she received the Library Foundation's newsletter which mentioned Mr. Johnson's accolades and that he was also an author of our City Charter. Councilmember Cimmino also noted that she believed the Community Room in the Library would be named after Mr. Johnson, and inquired as to the process of naming rights to the room. Ms. Volek mentioned previous discussions of donors, and turned the question over to Mr. Cochran, Director of the Library. Mr. Cochran referenced previous capital campaign reports which noted naming opportunities for portions of the Library. Ms. Volek apologized that this topic was not brought to Council for approval, but noted that the donation and naming of the Community Room was a surprise from Mr. Johnson, and had already taken place. Councilmember Cimmino inquired as to whether the Library Foundation's contributions of \$5,450,000 to the Library included the

\$300,000/year for 10 years contract with the Foundation. Mr. Cochran stated that he cannot speak directly to the Foundation's finances, but there was also a \$2m anonymous gift to the Foundation, and he believed that there was an additional \$450,000 in donations to the Foundation as well. Councilmember Cimmino also questioned Ms. Volek regarding the \$25,000 donation and where the funds will be deposited. Mr. Cochran answered that the \$25,000 will be added into the Library's cash reserves. Councilmember McCall noted that Ms. Modrow is an exceptionally talented person and that we would not have a new library without her leadership. On a voice vote, the motion was approved 11 to 0.

Councilmember Yakawich referenced Item B and said that he wanted to ask a question regarding the amendment. He asked Dave Mumford, Public Works Director, which party requests amendments to work orders and why. Mr. Mumford replied that, in this particular project, during the geotechnical study, it was determined that a specific type of foundation would be required due to the soils at the site. The additional amount requested is to cover the costs of the consultant who analyzed and determined the proper foundation requirements. Councilmember Yakawich questioned whether the contractor was unclear as to what type of foundation would be required on the project. Mr. Mumford replied that this information would not be known until work on the project began, and that this is typical. Councilmember Yakawich moved for approval of Item B, seconded by Councilmember Cromley. On a voice vote, the motion was approved 11 to 0.

Councilmember Yakawich referenced Item C and said that he wanted to ask a question regarding the amendment. Councilmember Yakawich asked which party requested the amendment. Mr. Mumford stated that Public Works requested the amendment; upon commencement of the project, Mr. Mumford stated that, due to staffing and timing, Public Works believed that it could be the administrator and inspector of the project. Public works then determined that it did not have the staff allocation to be able to do so, and thus would need the consultant to be the administrator and inspector of the project. Councilmember Yakawich questioned whether the additional amount requested after the exploratory phase is typical. Mr. Mumford stated that the additional amount would not have been known until the exploratory phase of the project, and thus could not be factored into the original project cost estimate. Mr. Mumford offered, at a later date, to present to Council information/clarification on project amendments and work order changes. Councilmember Yakawich moved to approve Item C, seconded by Councilmember McCall. On a voice vote, the motion was approved 11 to 0.

Councilmember Cimmino referenced Item 1A5 and said that she had a question for Mr. Mumford regarding \$250,000 to be allocated by the County into the SID fund. Councilmember Cimmino noted that the staff report appeared to reflect \$250,000 from the City, rather than the County. Mr. Mumford stated that the funding from the County will be allocated to a water line, outside of this project. Councilmember Cimmino also asked whether the City will be allocating \$2m or \$2.8m to this project, based on information provided in the staff report. Mr. Mumford replied that the amount that will be bonded for the project from the City is \$2.8m. Ms. Volek noted that this agenda item is requested to be delayed until June 8, 2015, and offered for staff to provide additional information at that time. Councilmember Cimmino moved to approve Item 1A5,

seconded by Councilmember Yakawich. On a voice vote, the motion was approved 11 to 0.

Councilmember McCall moved to approve Consent Agenda Item N2, seconded by Councilmember Pitman. On a voice vote, the motion was approved 10 to 0, with Councilmember Cimmino abstaining.

Councilmember McCall moved to approve Consent Agenda Item O1, seconded by Councilmember Yakawich. On a voice vote, the motion was approved 9 to 0, with Councilmembers Brown and Cimmino abstaining.

Councilmember McCall moved to approve Consent Agenda Item O2, seconded by Councilmember Cromley. On a voice vote, the motion was approved 9 to 0, with Councilmembers Brown and Cimmino abstaining.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION #15-10458 authorizing filing of the annual Federal Transit Administration Section 5307 Grant. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised that staff had no presentation but was available to answer questions.

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

Councilmember McFadden moved to approve Item 2, seconded by Councilmember Bird. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION #15-10459 adopting water and wastewater rate and fee schedule effective July 1, 2015. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Finance Manager Jennifer Duray began a presentation on water and wastewater rate fees.

NOTE: Due to technical issues, Mayor Hanel called for a short recess at 7:18 pm, and called the meeting back to order at 7:30 pm.

Ms. Duray resumed a summary of the FY16 and FY17 water and wastewater rates. She noted that the full presentation was given at the April 20, 2015 work session, and that notice was provided to the public. Ms. Duray discussed the proposed fees providing the following information:

Existing Water Rate Structure

Meter Size	FY15 Monthly Charge - Inside Users	FY15 Monthly Charge - Outside Users
3/4"	\$8.00	\$8.60
1"	\$9.01	\$9.80
1-1/2"	\$10.45	\$11.39
2"	\$14.41	\$15.78
3"	\$43.58	\$48.09
4"	\$54.35	\$60.01
6"	\$79.55	\$88.02
8"	\$108.37	\$119.98
10"	\$167.10	\$185.17

Residential Unit Less than four	Range	FY15 Rate (\$/CCF)
Tier 1	0 - 14 CCF	\$2.21
Tier 2	16 - 43 CCF	\$2.45
Tier 3	44 - 100 CCF	\$3.45
Tier 4	Greater than 100 CCF	\$4.18
Non-Residential (Includes Unit Four or Greater)	Range	FY15 Rate (\$/CCF)
Non-Residential Tier	All CCF	\$1.71

Water Rate Recommendations – Minimum Monthly Water Charges

Meter Size	Inside City Proposed Rates FY16 and FY17	Outside City Proposed Rates FY16 and FY17	% Increase
3/4"	\$8.00	\$8.60	0%
1"	\$9.01	\$9.80	
1-1/2"	\$10.45	\$11.39	
2"	\$14.41	\$15.78	
3"	\$43.58	\$48.09	
4"	\$54.35	\$60.01	
6"	\$79.55	\$88.02	
8"	\$108.37	\$119.98	
10"	\$167.10	\$185.17	

Water Rate Recommendations - Inside Users

Single Family Tier	Current Rate FY15 (\$/CCF)	Recommended FY16 (\$/CCF)	% Increase	Recommended FY17 (\$/CCF)	% Increase
Tier 1: 0-14 CCF	\$2.21	\$2.21	0%	\$2.21	0%
Tier 2: 15-43 CCF	\$2.65	\$2.65			
Tier 3: 44-100 CCF	\$3.45	\$3.45			
Tier 4: >100 CCF	\$5.18	\$5.18			

User Class	Current Rate FY15 (\$/CCF)	Recommended FY16 (\$/CCF)	% Increase	Recommended FY17 (\$/CCF)	% Increase
Multi-Family	\$1.71	\$2.18	27%	\$2.31	6%
Non-Residential	\$1.71	\$2.00	17%	\$2.00	0%
Seasonal	\$2.87	\$3.18	11%	\$3.18	0%

Water Rate Recommendations - Outside Users

Single Family Tier	Current Rate FY15 (\$/CCF)	Recommended FY16 (\$/CCF)	% Increase	Recommended FY17 (\$/CCF)	% Increase
Tier 1: 0-14 CCF	\$2.21	\$2.21	0%	\$2.29	4%
Tier 2: 15-43 CCF	\$2.65	\$2.65			
Tier 3: 44-100 CCF	\$3.45	\$3.45			
Tier 4: >100 CCF	\$5.18	\$5.18			

User Class	Current Rate FY15 (\$/CCF)	Recommended FY16 (\$/CCF)	% Increase	Recommended FY17 (\$/CCF)	% Increase
Non-Residential	\$1.71	\$2.00	17%	\$2.12	6%
Resale	\$1.74	\$1.78	2%	\$1.86	5%

Retail Water Bill Impacts

Owner User Classes	Existing Rates	Recommended FY16 Rates	Percent Change
Single Family Residential ¾": 2 CCF	\$12.42	\$12.42	0%
Single Family Residential ¾": 10 CCF	\$30.10	\$30.10	0%
Multi-Family Residential 1": 20 CCF	\$49.21	\$52.61	22%
Multi-Family Residential 1": 50 CCF	\$94.51	\$118.01	25%
Commercial ¾": 10 CCF	\$25.10	\$28.05	12%
Commercial 1": 100 CCF	\$180.01	\$209.47	16%

Non-Owner User Classes	Existing Rates	Recommended FY16 Rates	Percent Change
Single Family Residential ¾": 2 CCF	\$13.02	\$13.02	0%
Single Family Residential ¾": 10 CCF	\$30.70	\$30.70	0%
Commercial ¾": 10 CCF	\$25.70	\$28.60	11%
Commercial 1": 100 CCF	\$180.80	\$209.80	16%

Existing Wastewater Rate Structure

Meter Size	FY15 Monthly Charge - Inside Users	FY15 Monthly Charge - Outside Users
¾"	\$6.45	\$7.10
1"	\$8.20	\$9.00
1-1/2"	\$10.10	\$11.10
2"	\$10.55	\$11.60
3"	\$17.00	\$18.45
4"	\$64.50	\$71.00
6"	\$92.10	\$90.33
8"	\$123.15	\$135.50
10"	\$170.05	\$187.10

Customer Class	Inside & Outside FY 15 Volume Charge
Residential (Units < 4)	\$3.00
Multi-Family (Units > 3)	\$3.00
Commercial	\$3.00
High Strength Commercial	\$3.95

Wastewater Rate Recommendations – Minimum Monthly Charges

Meter Size	Inside City Proposed Rates FY16 and FY17	Outside City Proposed Rates FY16 and FY17	% Increase
3/4"	\$6.45	\$7.10	0%
1"	\$8.20	\$9.00	
1-1/2"	\$10.10	\$11.10	
2"	\$10.55	\$11.60	
3"	\$17.00	\$18.65	
4"	\$64.50	\$71.00	
6"	\$82.10	\$90.35	
8"	\$123.15	\$135.50	
10"	\$170.05	\$187.10	

Wastewater Rate Recommendations Volumetric Rate (\$/ccf)

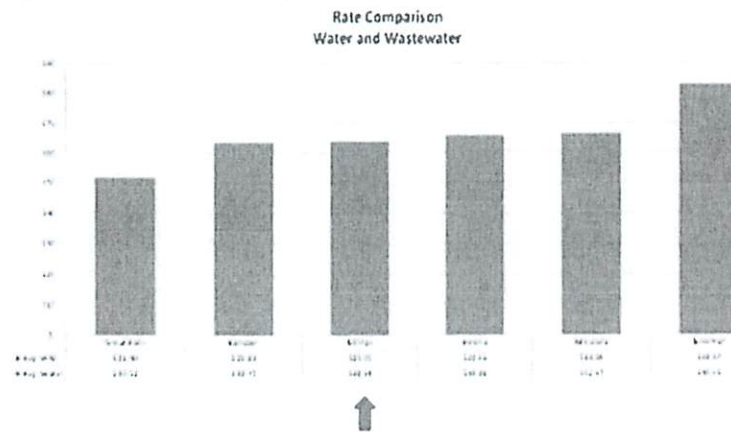
User Class (Inside and Outside)	FY15 \$/CCF	FY16 \$/CCF	% Change	FY17 \$/CCF	% Change
Residential	\$3.00	\$3.10	3.2%	\$3.20	3.2%
Multi-Family	\$3.00	\$3.10	3.2%	\$3.20	3.2%
Commercial	\$3.00	\$3.10	3.2%	\$3.20	3.2%
High-Strength Commercial	\$3.95	\$4.70	19.0%	\$4.95	5.3%

Retail Wastewater Bill Impacts

Residential Consumption	Existing Rates	Proposed Rates	Percent Change
0	\$6.45	\$6.45	0.0%
2	\$12.45	\$12.64	1.5%
6	\$24.45	\$25.05	2.5%
20	\$66.45	\$68.37	2.9%

1 st Commercial Consumption	Existing Rates	Proposed Rates	Percent Change
0	\$8.20	\$8.20	0.0%
20	\$68.20	\$70.12	2.8%
50	\$158.20	\$163.00	3.0%
400	\$1,208.20	\$1,246.60	3.2%

Rate Comparison Water and Wastewater



Recommended Wholesale Wastewater Rates

Lockwood

	Current	FY16	FY17
Fixed, \$/mo	8,148	8,373	22,901
Variable, \$/ccf	0.57	0.833	0.919
Total Annual \$	\$125,000	\$146,000	\$326,000
Overall Increase		\$21,000/17%	\$180,000/123%

Phillips 66

	Current	FY16	FY17
Fixed, \$/mo	7,590	6,618	10,609
Variable, \$/ccf	0.431	0.503	0.556
Total Annual \$	\$255,000	\$282,000	\$351,000
Overall Increase		\$27,000/10.5%	\$69,000/25%

Recommended Water SDF

	Existing			Proposed		
	Residential	Non-Residential	Irrigation	Residential	Non-Residential	Irrigation
3/4" or less	\$2,450	\$8,655	\$7,320	\$2,275	\$6,680	\$8,035
1"	\$2,450	\$14,674	\$12,410	\$2,275	\$11,330	\$13,625
1 1/2"	\$2,450	\$29,346	\$24,821	\$2,275	\$22,655	\$27,255
2"	\$2,450	\$46,956	\$39,713	\$2,275	\$36,250	\$43,615
3"	\$2,450	\$93,912	\$79,426	\$2,275	\$72,510	\$87,190
4"	\$2,450	\$146,736	\$124,104	\$2,275	\$113,300	\$136,235

Recommended Wastewater SDF

Billings

	Existing	Proposed
3/4" or less	\$1,560	\$1,760
1"	\$4,785	\$5,410
1 1/2"	\$13,895	\$15,705
2"	\$23,990	\$27,110
3"	\$62,240	\$70,340
4"	\$145,715	\$164,680

Lockwood

	Existing	Proposed
3/4" or less	\$620	\$905
1"	\$1,900	\$2,780
1 1/2"	\$5,520	\$8,080
2"	\$9,535	\$13,950
3"	\$28,735	\$36,190
4"	\$57,910	\$84,730

Unreimbursed Services

Service	\$ Amount of Unreimbursed Services at FY 16 Rates	Impact to Rates
Water	\$495,000	3%
Wastewater	\$ 90,000	Nominal
Solid Waste	\$ 48,000	Nominal
Total	\$633,000	

After the presentation, Councilmember Cromley asked Ms. Duray whether setting the rates for two years at a time is common. Ms. Duray replied that Public Works is moving to two year rate schedules going forward. Councilmember Brown inquired as to the rate increasing for Lockwood. Ms. Duray replied that the rate increase was due to the conditions and covering our expenses for adding Lockwood into the City's services.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, stated that he believes the fees for water are higher than necessary as a result of unreimbursed services. Mr. Nelson asked that the City examine unreimbursed service fees by department and allocate payments accordingly.

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

Councilmember Crouch moved to approve Item 3, seconded by Councilmember Swanson. Councilmember Pitman moved to amend the motion by stating that all city departments should be billed by the Public Works department for the use of water and wastewater, and that all user rates be adjusted to reflect this change, seconded by Councilmember Cimmino.

Councilmember Brown asked Councilmember Pitman to elaborate on his amendment; Councilmember Pitman explained that the unreimbursed fees are being absorbed into citizens' water bills, and that he believes that all City departments should be billed for their water usage. Councilmember Pitman explained that transparency is important, and this would allow the public to be able to see where the funds are being allocated. Ms. Volek noted that in order to meet Councilmember Pitman's request, the City would be required to cut services.

Councilmember McFadden asked staff if there is a system in place that would allow for the accounting and billing of water usage across City departments. Ms. Volek stated that there was not a system in place across the City, noting City Hall as an example. Mr. Mumford noted that water usage in the City's parks is metered, but outside of the parks, there is no meter system in place. Mayor Hanel mentioned that this resolution had been previously discussed at length, and opposed Councilmember Pitman's amendment.

Councilmember Bird questioned whether the \$633,000 in unreimbursed water charges is for City-used water, and Ms. Volek responded that it is. Councilmember Bird also questioned whether the billing for City-used water is unusual in any way. Ms. Volek responded that the current system has been in place for many years, and again explained the challenges of accounting and billing for water on a department to department basis. Councilmember Bird stated that she would be open to discussing Councilmember Pitman's motion, but not at this time.

Councilmember McCall appreciated Councilmember Pitman's motion, but also noted that she could not support it at this time. Councilmember Pitman noted that he hopes to move this motion forward.

Councilmember Brown questioned the significance of unreimbursed fees on the Public Works Budget. Councilmember Pitman distributed the breakdown of each department's water usage.

Councilmember Bird stated that there are going to be costs associated with this, but that it may be worth looking into at a different time. Councilmember McFadden believed that the costs associated with this project would outweigh the benefits. Councilmember Yakawich believed that the City departments should be held accountable for their water usage.

On a roll call vote, the amendment to the motion failed by a vote of 4 to 7, with Councilmembers Yakawich, Pitman, Cimmino, and Brown voting in favor of it, and Councilmembers Cromley, McFadden, Bird, McCall, Swanson, Crouch, and Mayor Hanel voting against the motion.

Council reverted to Councilmember Brown's initial motion to approve Item 3.

Mayor Hanel asked Ms. Duray to display the Montana rate comparison slide from her presentation again. Mayor Hanel expressed that the quality and quantity of water received by citizens of the City is a bargain for citizens. Mayor Hanel spoke in favor of the motion to approve Item 3. On a voice vote, the motion was approved 9 to 2, with Councilmembers Cimmino and Pitman voting in opposition.

4. PUBLIC HEARING AND RESOLUTION #15-10460 establishing Collection, Disposal, and Landfill Fees effective July 1, 2015. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford advised staff that there was no formal presentation, as 2015 is the second of three years in a three year planned increased approved by Council. The proposed rate effective July 1, 2015 is \$9.43/month for solid waste collection. Mr. Mumford requested one change in the proposed rates; if a second truck needs to be sent back for a second/excess pickup, Mr. Mumford proposed a \$10 fee for this service for residential customers. This fee would be charged only for excess waste placed out for pickup that would not fit into the initial truck on initial pickup (when a second truck needs to be sent back out). This fee would not cover refrigerator pickups as there is a separate fee for this service. Councilmember McCall noted that the \$10 fee is an excellent buy for the service being provided for an extra pickup. Councilmember Swanson voiced his support for the proposed \$10 fee.

The public hearing was opened.

- **Dennis Ulvestad, 3040 Central Avenue, Billings, MT**, asked if the current fees will be sustainable for the next 20 years to continue supporting the landfill. Ms. Volek replied that the current City landfill has an 85 year life based on current fees and collection rates.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, inquired about shifting costs for unreimbursed fees. Mr. Nelson mentioned the Cost Allocation Plan. Mr. Nelson also questioned the City: "why did you waste the time to send out a notice for a public hearing...about a plan that a councilmember wanted for you to consider but you said it would be too difficult?" He believes that citizens are being overcharged on rates due to unreimbursed fees.

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

Councilmember McCall moved for approval of Item 4, seconded by Councilmember Cromley. Councilmember Pitman moved to amend the motion to state that all City departments should be billed by the Public Works department for the use of solid waste, and that all user rates should be adjusted to reflect this change. Councilmember Bird called for the question, seconded by Councilmember Cimmino. On a roll call vote, the amendment to the motion failed by 4 to 7, with Councilmembers Yakawich, Pitman, Cimmino, and Brown voting in favor of the amendment, and Councilmembers Cromley, McFadden, Bird, McCall, Swanson, Crouch and Mayor Hanel voting against the amendment.

Council reverted to Councilmember McCall's motion, with the motion being approved 8 to 3. Councilmembers Yakawich, Cimmino, and Pitman voted against the motion.

5. PUBLIC HEARING AND RESOLUTION #15-10461 creating SILMD 315, Bench Boulevard (Clevenger Park). Staff recommends approval. (Action: approval

or disapproval of staff recommendation.) City Administrator Volek noted that staff did not have a formal presentation, but was available for questions.

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

Councilmember Pitman moved for approval of Item 5, seconded by Councilmember Cimmino. The motion was unanimously approved.

6. PUBLIC HEARING AND SPECIAL REVIEW #924: a special review to allow four, nine-plex multi-family buildings in a Residential 6000 zone on Lot 4, Block 1, Chalice Acres Subdivision, generally located west of 1442 Bench Boulevard. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.) Nicole Cromwell, Zoning Coordinator, began her PowerPoint presentation with a zoning map, revised site plan, aerial view, and photographs. Ms. Cromwell noted that the plans had been adjusted to include more parking spaces (an average of 2.1 spaces per residence in the development), and also presented the following 10 recommended conditions for the site plan:

1. The special review is limited to Lot 4, Block 1 Chalice Acres Subdivision
2. Limited to four, 9-plex multi-family dwellings
3. Any expansion greater than 10 percent will require additional special review approval.
4. All exterior lighting shall have full cut-off shields. The maximum height of any light pole in the outdoor areas shall be 15 feet above grade.
5. No construction or demolition activity will occur before 7 am or after 8 pm daily.
6. Centralized solid waste storage shall be enclosed by a wall and a closing gate or gates. The wall and gates for the solid waste storage shall be similar or complimentary in color to the adjacent buildings and shall be sight-obscuring. The wall and gates shall be tall enough that no part of the interior dumpster(s) are visible from the outside.
7. The site will be developed in substantial conformance with the revised site plans submitted April 10, 2015.
8. The applicant will install and provide, at no cost to the City or adjacent owners, the required improvements to the private access road including but not limited to all pavement, utilities, pavement markings, private driveways, signs and other road appurtenances as required. The applicant will coordinate any such improvements with the City Engineering Division.
9. These conditions of special review approval shall run with the land.
10. The proposed development shall comply with all other limitations of Section 27-613 and all other City of Billings regulations and ordinances that apply.

Councilmembers Pitman and Brown inquired as to the location of the access road to the development. Ms. Cromwell replied that the access road will be on Bench Blvd, and will be a private access road.

Councilmember Yakawich asked Ms. Cromwell for clarification on this Item. Ms. Cromwell noted that two residences opposed the previous site plan, and that the Zoning Commission had a negative recommendation for the original plan. The two residences opposing the original site plan did not appear for the public hearing on the revised site plan. The concerns addressed from the original site plan, and reflected in the revised site plan were as follows: on-street parking on the access road, screening and buffering on adjacent property lines, building height, and the lack of sidewalks to Bench Blvd. Ms. Cromwell noted that the Applicant spoke with property owners to address concerns.

Councilmember Bird asked for clarification on parking. Ms. Cromwell pointed out the off-street and on-street parking options available in the proposed development.

Mayor Hanel asked Ms. Cromwell if, in her opinion, she would consider this to be infill, to which Ms. Cromwell responded affirmatively.

The public hearing was opened.

- **Gene Culver, CEO of Kincaid Land**, thanked Council for the special review of the plan. Mr. Culver noted the improvements made to the plan. Mr. Culver also discussed meeting with surrounding property owners regarding the development, and that the developer and property owners were in agreement on six out of seven conditions being discussed. Mr. Culver concluded with a list of benefits the development would create: housing in The Heights, infill development, increased tax base for the city, uses existing City utilities, is more neighbor-friendly than the original site plan, more trees, water retention, and is an attractive development. Councilmember Yakawich noted his appreciation for Mr. Culver speaking with the neighbors of the development, and confirmed with Mr. Culver that residents would be able to communicate with the new owner of the development should Mr. Culver decide to sell it. Councilmember Bird also expressed appreciation to Mr. Culver for speaking to the neighbors of the development. Councilmember Bird expressed concerns over access to the development and to neighboring properties; she also expressed concerns over the sidewalks in the development. Councilmember Bird asked Mr. Culver if there were any additional points of contention with neighbors of the development. Mr. Culver replied that the only remaining item being discussed is that owners would like the easement properties deeded back over to them at the present time, but Mr. Culver stated that the property cannot be deeded back until utility construction is complete.
- **William Smith of Octagon Consulting Engineers, PO Box 75, Emigrant, MT, Project Engineer and Designer**, clarified that the access road to the development will be "plenty wide." Councilmember Bird expressed concerns over sidewalks and pedestrian traffic in the area. Mr. Smith replied that the end of the access road on Bench Blvd will provide access to a sidewalk.

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

Ms. Cromwell, at the request of Councilmember Bird, returned for questions. Councilmember Bird asked Ms. Cromwell for her opinion on the lack of sidewalks on the access road. Ms. Cromwell replied that the road is a private access road for vehicular access; she also stated the access road's parking lane should provide sufficient pedestrian space.

Councilmember Cimmino moved for conditional approval of Item 6, seconded by Councilmember Pitman. Councilmember Pitman thanked the developer for working with the neighbors of the development, and noted that the new Bench Blvd project will further benefit pedestrian traffic. Mayor Hanel noted that this area needs housing and noted the importance of considering pedestrian traffic. Councilmember Bird expressed concerns over pedestrian safety and stated that she was satisfied with discussions. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND SPECIAL REVIEW #927: a special review to locate an all-beverage liquor license without gaming in a Highway Commercial zone located on Lot 7, Block 1, Montana Sapphire Subdivision, generally located at 4020 Montana Sapphire Drive. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.) City Administrator Volek noted that staff was prepared to make a presentation, but she recommended that staff postpone the presentation to a later date due to the applicant's request to withdraw the application. Ms. Volek recommended to open the public hearing and discussion of this item, and then vote on the proposed withdraw.

The public hearing was opened.

- **Scott Atwood, Atwood Architecture, 1301 Division, Billings, MT**, was present for questions. Mr. Atwood noted that an error was discovered in the calculations for the parking lot of the proposed project. Councilmember Cimmino clarified that this project will be resubmitted to the Zoning Commission.

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

Councilmember McCall moved to withdraw Item 7 from the agenda, seconded by Councilmember Swanson. On a voice vote, the motion was approved unanimously.

8. ADD-ON ITEM: RESOLUTION authorizing the City to purchase property adjacent to the Walter Pump Station located on Airport Road west of Main. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford began a presentation and described that the City was notified of available land to purchase which is located adjacent to existing City land and the Walter Pump Station. Mr. Mumford stated that this property was desirable because of anticipated growth and needs for servicing The Heights. The Montana Department of Transportation notified the City that the land would be available for purchase through an auction, but that the State would allow the City to purchase the land ahead of the auction for the appraised value of \$140,000. Mr.

Mumford asked Council for approval of this purchase. City Administrator Volek directed Council's attention to Resolution 93-16740, which requires both a first appraisal and a secondary appraisal. Ms. Volek also noted that the Resolution does allow for a waiver when the demands of a project require a variance in this procedure; the City Administrator may request approval of the variance by the Council. Ms. Volek asked that Council approve the variance and also approve the purchase of the property.

Councilmember Cromley clarified with Mr. Mumford that the existing Walter Pump Station land is less than one half of an acre.

Councilmember Yakawich asked whether the proposed land would be annexed into Ward I. Mr. Mumford replied that the land was already City land. The land is currently owned by the State but is part of the City.

Councilmember Bird asked Mr. Mumford if the proposed \$140,000 investment would allow for cost savings in the future. Mr. Mumford stated that if the City did not purchase this piece of property, there would be no option for expanding the Walter Pump Station and using its existing equipment and lines; additional lines would need to be brought into the Heights and additional land would need to be purchased along Main Street in The Heights. Mr. Mumford noted that land would be difficult to procure in this area, and new infrastructure for a new pump station would need to be installed if new land were purchased. Mr. Mumford stated that the costs of creating a new pump station would be significantly higher than the \$140,000 purchase price for the land adjacent to the Walter Pump Station. Mr. Mumford confirmed that the proposed land purchase would likely save the City millions of dollars in the future.

City Attorney Brent Brooks stated that a public hearing is not required, but is permitted on this item.

The public hearing was opened.

There were no speakers and the public hearing was closed.

Councilmember Yakawich moved to approve Item 8 and to allow the waiver permitted under Resolution 93-136740, seconded by Councilmember Bird. Councilmember Brown confirmed with Mr. Mumford that the current fiscal year budget does include enough funds to purchase this land. On a voice vote, the motion was unanimously approved.

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

The public comment period was opened.

- **Margy Bonner, 4613 Toyon Drive, Billings, MT**, noted that Special Review 926 (application for the LDS church to build a 20,000 ft² religious meeting house with a two acre parking lot in Rimpoint Subdivision) will be discussed at the June 22 regular Council meeting. Ms. Bonner noted that neighbors to the property are strongly opposed to the meeting house, and have filed a petition with the Zoning

Commission objecting to the meeting house. Ms. Bonner stated that Council will be deciding issues related to the City's zoning ordinance as well as the promises made by the LDS church when its temple was built in 1997. Ms. Bonner noted that she intends to distribute a packet of background information to Councilmembers via mail.

- **Keith Ligman, 4607 Pine Cove, Billings, MT**, noted that he will be contacting each Council member and that he would like to meet with Council members individually to explain his concerns over the meeting house. Mr. Ligman invited Council members to his home so that they may examine the property and discuss his concerns. Mayor Hanel explained that Council appreciated Mr. Ligman being present at this meeting, and that Council welcomes the distribution of any information; however, Mayor Hanel stated that Council members may, at their discretion, decline to meet with Mr. Ligman privately in order to avoid a conflict of interest. In regards to submitting information to Council, City Administrator Volek recommended submitting items in writing so that staff may make this information available for the public. City Attorney Brooks mentioned a 2006 memo which addressed the issue of Councilmembers meeting privately with proponents or opponents of land-use issues. Mr. Brooks noted that there is a great risk of litigation for the Council if Councilmembers engage in private meetings with citizens regarding issues. Mr. Brooks offered to circulate or provide the memo to interested parties. Mr. Brooks strongly warned Councilmembers that extracurricular meetings with individuals (outside of Council meetings) create a danger of Council decisions being challenged on the basis of inequity. Councilmember Cromley stated that if he were to discuss an issue with an individual outside of a Council meeting, he would likely recuse himself from the issue during the actual Council meeting. Councilmember McFadden noted that he went to examine the land in question, and encouraged others to do so as well.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, referenced the Friday, May 1 packet that was distributed regarding budget decisions. Mr. Nelson questioned the topic of "revenue sources for the general fund" and noted the mention of "\$2.3 million from SID supplemental revolving fund of FY06 and FY08," and "transfer 1.8 SID revolving loan fund FY13." Mr. Nelson wanted to know why the City is generating revenue from SIDs to supplement the general fund. Mr. Nelson stated that the City should not profit from SIDs. Mr. Nelson wanted to know why the SID revenue was allocated to the general fund and not redistributed to citizens. "Secondly, the Planning Department said: 'we need to spend down the reserves and buy some software.' How about we refund the reserves down? That would be sort of a novel approach you might try once." In regards to this decision, Mr. Nelson questioned where the Finance Director, department heads, and Administration members were when the reserves were accumulating. City Administrator Volek clarified that the Planning Department is encompassed in the Building Division, which has a self-sustaining fund. Ms. Volek noted that the Building Division suffered heavy losses during the recession, and was forced to make many cuts. When development in the City began to grow, the fund began to increase rapidly. Ms. Volek noted that staff has plans to reduce certain fees charged by the Building Division. Ms. Volek stated that the funds from 2006 and

2008 seemed to be balances that were transferred back, and that she will check on them and provide an answer at a later date.

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

COUNCIL INITIATIVES: There were no council initiatives.

There was no further business and the meeting adjourned at 9:26 pm.

CITY OF BILLINGS



ATTEST:

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

BY: Billie Guenther
Billie Guenther, City Clerk