

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 9, 2009

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

ELECTION OF DEPUTY MAYOR -- Councilmember Astle nominated Councilmember Ulledalen for Deputy Mayor, seconded by Councilmember Gaghen. Councilmember Ruegamer said he thought it was appropriate to have the person running for the job explain why they wanted it and what to expect from them. Councilmember Ulledalen stated he would serve in that position at the request of the Council and would continue to work on the strategic planning process. Mayor Tussing commented that he believed the Charter was wrong and the election of the Deputy Mayor should occur after the new Council was seated to give new Councilmembers an opportunity to run for the position if they so chose, and to have the opportunity to vote for that position as well. On a voice vote, the nomination was unanimously approved.

ROLL CALL: Councilmembers present on roll call were: Gaghen, Pitman, Brewster, Veis, Ruegamer, McCall, Ulledalen, Astle, and Clark. Councilmember Ronquillo was excused.

MINUTES: October 26, 2009, approved as distributed

COURTESIES

- Mayor Tussing congratulated the successful candidates in the recent election and recognized Mayor-elect Hanel and Councilmembers-elect McFadden and Cimmino who were in the audience. He also commended Mr. Hanel for his attendance at all the Council meetings and work sessions during the past few months.
- Councilmember Clark presented the Bob Worthington Risk Management Achievement Award plaque to Ms. Volek and Mr. McCandless. He said the City of Billings was given the award by Montana Municipal Interlocal Authority at the recent Montana League of Cities and Towns conference.
- Councilmember Gaghen recognized City employees for their participation in the United Way Day of Caring project to provide winter coats, hats, boots and gloves to 287 Head Start children. She noted that Human Resources Associate Denise Hice was the spark plug behind much of the project.

PROCLAMATIONS - National Adoption Month, November 2009

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek advised that several emails regarding Item #3, the recommendation to the Policy Coordinating Committee concerning the Billings North Bypass were included in the ex-parte notebook at the back of the room.
- Ms. Volek advised that the resolution for Item M contained a reference to the wrong ad-hoc committee. She said the resolution was corrected on the online document and a corrected version was in the City Clerk's office, but anyone who received a hard copy of the agenda packet received the copy of the resolution that contained the error.
- Ms. Volek announced that a sound technician, Jim Nichols, was present to make minor adjustments on the sound system in the Council chambers and may need to communicate with the Channel 7 studio during the meeting. She said she believed the hum heard by TV viewers had been corrected.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 3 ONLY. Speaker sign-in required. (Comments offered here are limited to **1 minute** per speaker. 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.

Mayor Tussing explained the public comment procedure and said that since Item 3 appeared to be an issue of extreme importance, Council agreed to extend the public comment period at the beginning of the meeting to **2 minutes** per speaker.

The public comment period was opened.

- **Dr. Janice Linn, Highway 3**, said she had lived on her ranch for 15 years and paid for it by working as an emergency room doctor on the Northern Cheyenne Reservation. She said, “Now the Government wants my land for the Billings Bypass which runs from the 94 through the 312 and Highway 87 all the way to my place on Highway 3. The bypass will also divide in half the century-old Sindelar Ranch by Highway 87. The Sindelar ranch is fighting this and so am I. You would not build a highway on sacred Indian land. My ranch is sacred to me, the Sindelar Ranch is sacred to them, and like the Indians, we were never asked, we were told. We were told that our land would be taken. Eminent domain is a forced sale. A forced sale is not a sale, it is a robbery and I recognize it as such. Everyone who lives in the path of this highway will have a decision to make as to how far they will go to keep their own property. I speak for myself when I say that the government entity that seizes my land will have to send armed men to take it from me. The government men who seize my land will actually have to shoot me for it, I'm afraid to say, and of course there will be cameras there and it will be on U-Tube, I love U-Tube, and in case you're wondering, my heirs are just as ornery as I am. So, tell your friends. Thank you.”

- **Jerry Prouse, Shepherd, MT**, stated that he took a different approach from Dr. Linn in that he believed there was a better way to do what needed to be done. He said he had suggestions that could eliminate a lot of the opposition to the bypass. Councilmember Ulledalen said predecessors had been criticized for not planning ahead for transportation issues and asked Mr. Prouse what he thought of a policy that prohibited further annexation to the northeast in an attempt to solve transportation problems. Mr. Prouse stated that the development was not driven or restricted by planning, but by demand for development in a certain area. He said he did not think the development in the northeast would slow down due to a shift from the west end to the northeast because of the pricing. Councilmember Ulledalen said the City did not have to annex the land and if it was left in the County, there could be broader densities and some of the traffic problems could be alleviated. He said one thing learned from the citizen survey and the community conversations was the desire to preserve some green space, so by leaving some of the land as farm/ranch land and letting the growth go elsewhere would solve some of the problems. Mr. Prouse said if the land Dr. Linn referred to was left as farm/ranch land it could be an attraction for the county. He stated it was necessary to get from the interstate north and he believed Highway 87 as it would not be objectionable to get to Highway 3. He suggested considering County Road 21 as a corridor to use to get to north of Broadview.
- **Connie Wardell, 1302 24th St. West**, stated that she knew the bypass had been discussed for the past 10 years or more. She said she was aware that there had been a tremendous increase in traffic accidents that could be due to the amount of traffic on some roads while others were under construction. She said she did not foresee the bypass being built for 10-15 years and was glad an environmental study was being conducted. She mentioned that the talk of eminent domain was silly because the route had not been specifically identified. She said the planning needed to go forward while being sensitive to the input of people involved. She added that it would eventually happen one way or another, but would be better if it was planned.

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

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **Purchase of new Landfill Track-Type Tractor (Dozer) for the Solid Waste Division.** (Opened 10/27/09) Recommend Tractor & Equipment Company; \$497,816.
2. **Purchase of Calcium Chloride Liquid for use in ice and snow removal-Street/Traffic Division.** (Opened 10/27/09). Recommend Brenntag Pacific, Inc.; \$0.83 per gallon, for one year with option to purchase calcium chloride liquid for years two and three on mutual consent of the City and Supplier.

- B. Contract for Professional Services** with HDR Engineering, Inc. to provide engineering design for W.O. 09-15, Grand Avenue from Zimmerman Trail to Shiloh Road, an amount not to exceed \$204,669.
- C. Change Order #5, W.O. 08-01, 2008-2009 Water and Sanitary Sewer Replacement Project;** COP Construction; \$104,803.26.
- D. Amendment #8, W.O. 04-12, Alkali Creek Road Improvements,** Professional Services Contract, Kadrmas, Lee and Jackson, Inc.; not to exceed \$94,500.
- E. Approval** of annual Data Processing Agreement with Yellowstone County Sheriff's Department, July 1, 2009 - June 30, 2010; \$99,939 annual revenue.
- F. Acknowledge receipt of petition to vacate** the alley located in Block 141, Billings Old Town, bounded by 1st Avenue South, 2nd Avenue South, South 26th Street, and South 27th Street; Riverstone Health, petitioner; and setting a public hearing date of December 14, 2009.
- G. Storm drain easements** (Briarwood Subdivision area) with Shirley Lambert, A. Neumann, and Richard A. Robbins or Cinda L. Robbins for W.O. 08-20, Miscellaneous Storm Drain Trouble Spots.
- H. Acceptance** of Substance Abuse and Mental Health Services Administration Grant (3-year) - total \$883,083; Montana Board of Crime Control Justice Assistance Grant (1-year) - \$53,400; Billings Adult Misdemeanor DUI Grant (1-year) - \$205,000; Drug Court State Funds (1-year) - \$82,828; and Federal Congressional Earmark (1-year) - \$52,000.
- I. Subordination of Downtown Revolving Loan** to Beartooth Bank for Anderson Management Group Building (formerly Hospitality Concepts) to include an additional \$5,314.50 in loan fees, for a total of \$357,314.50. (City Council previously approved original subordination on 10/13/09 in the amount of \$352,000.)
- J. Declaring Surplus Property** and authorizing the Police Department to transfer two Streethawk lightbars with controllers and red lenses to the Lewis-Clark State College in Lewistown, ID.
- K. Resolution #09-18895 approving expenditure** of monies related to the 2010 Wastewater Replacement Project prior to the availability of funds from bond sale proceeds and **reimbursement** of the monies after the bonds are sold.
- L. Downtown Signal Improvements**

1. **Resolution #09-18896** amending Resolution Nos. 07-18636, 08-18680, and 08-18744 designating the remaining Downtown Tax Increment District account balance to the downtown street light and traffic signal project, establishing a completion date of 12/31/2010.
 2. **Resolution #09-18897** allowing a Design-Build Contract for W.O. 09-25, Downtown Signal Improvements.
- M. Resolution #09-18898** creating an Ad-Hoc Advisory Committee on Distracted Driving Prevention.
- N. Second/final reading ordinance #09-5497 for Zone Change #850:** A text amendment to the Unified Zoning Regulations, regulating the location of Sexually-Oriented Businesses within the City of Billings; amending Sections 27-201 and 27-611 BMCC to include a definition of 'Adult Cabaret' and regulating the location of an 'Adult Cabaret'.
- O. Second/final reading ordinance #09-5498 for Zone Change #853:** Text amendments to sections of the Billings, Montana City Code (BMCC); including Section 27-604 related to fences, Section 27-615 related to clear vision areas, Section 27-618 illustrations of clear vision areas, and deletion of Sections 22-441 through 22-448, redundancies related to clear vision areas in the chapter on streets and sidewalks.
- P. Second/final reading ordinance #09-5499 for Zone Change #858:** A zone change from Residential 6000 and Residential 9600 to Controlled Industrial on a 4.87-acre parcel of land described as Certificate of Survey 473 and the south 132 feet of Lot 4 in the SW1/4 of Section 9, Township 1S, Range 26E, and generally located at 415 and 431 South Billings Boulevard. Ralph Hanser, applicant.
- Q. Final Plat** of Kuhlman Subdivision, Amended Lot 6.
- R. Final Plat** of Blaesius Subdivision, 1st Filing, Amended Lots 3A & 4A.
- S. Bills and Payroll:**
1. October 9, 2009
 2. October 19, 2009

(Action: approval or disapproval of Consent Agenda.)

Councilmember Ulledalen moved for approval of the Consent Agenda, seconded by Councilmember Ruegamer. Councilmember Ulledalen referred to Item B and said he understood there was a problem with the engineering on the Rimrock Road project where there was a lot of sand under the road surface and a change order was needed. Public Works Director Dave Mumford explained that a change order was needed on the

Rimrock Road project due to the soils. He said the engineering firm drilled it, but there was a section of the road that had bad soils so a substantial change order was needed. He said the work of the State and the City's engineers minimized it and it was not as bad as it could have been. Councilmember Ulledalen commented that the homeowners in that area knew there was a layer of clay with a lot of fine sand under it and if HDR could not have gotten that advice for \$200,000, he had a baggie of it he could give them. Mr. Mumford advised that HDR was not the engineering firm for that project.

Councilmember Brewster referred to Item A2 and asked if it was possible for something to be posted on the City's website about how to clean that chemical off aluminum wheels. Mr. Mumford advised that the chemical was basically used in the downtown area only. He said something could be put on the website.

Councilmember McCall referred to Item H and the tremendous amount of grant funds awarded to the City courts. She commended Judge Knisely and her staff for their hard work to obtain those grants.

Councilmember Gaghen advised that Item M, the Ad-hoc Committee on Distracted Driving Prevention would have 11 members, not 10 as reported in the Billings Gazette. She said a City staff person would not serve on the committee, but would serve in an advisory capacity. She said the committee would include a School District #2 staff member and a staff member from either MSU-B or the College of Technology.

On a voice vote, the motion to approve the Consent Agenda was unanimously approved.

REGULAR AGENDA

2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE.

An interim zoning ordinance creating Section 27-624 - Medical Marijuana Businesses and amending Section 27-306 and Section 27-201 as an interim zoning regulation to be effective for a period not to exceed six months. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Planning and Community Services Manager Candi Beaudry explained that the interim zoning ordinance would regulate the location of medical marijuana dispensaries. She said the interim ordinance would be in place for six months, and then it could be adopted, revised and adopted, or extended for another six months. She advised that the ordinance was modeled after the Sexually Oriented Business ordinance that was passed earlier that evening. She explained that the proposed ordinance basically set up buffer zones of 1000 feet from residential zones, parks, churches, public libraries, public playgrounds, childcare facilities, family and group daycare centers, residential group home facilities, and cemeteries. She said as proposed, there was very little property in the City where a dispensary could be located. She displayed a map that showed the allowed areas as the East Billings Urban Renewal District, around the King Avenue interchange and around the Zoo Drive interchange. She explained that allowing a 600 foot buffer would open up more areas for dispensaries, and the question was whether the Council wanted a 1000-foot buffer or a 600-foot buffer. Councilmember Astle asked if there were separation restrictions between dispensaries. Ms. Beaudry responded that there were not.

Councilmember Brewster asked if consumption on the premises could be restricted. Ms. Beaudry said that State Statute regulated what was allowed to be sold but she needed to defer to Legal. Councilmember Brewster explained he asked that question because what went on in adult entertainment places and casinos was regulated, but in his mind, dispensaries were a place where people picked up what they wanted and left, so he wondered why they would be regulated the same when they were different. Mr. Brooks advised that he would have to review the statute further, but stated that there were restrictions concerning where medical marijuana could and could not be used. Councilmember Brewster asked if the City's self-governing powers could regulate that type of behavior and the location of it. Mr. Brooks advised that the State had adopted fairly stringent regulations for the use, but he would research the questions further. Councilmember Ulledalen said if the City could not regulate it, that was something that should be requested of the legislature. Councilmember Clark asked if the smoking regulation prohibited it from being smoked in a public building. Mr. Brooks said it could, but he would research and address all those questions.

Councilmember Ruegamer asked Ms. Beaudry if she knew of other states that had legalized medical marijuana. Ms. Beaudry said she knew that California had dispensaries and that the town of Santa Barbara had limited the number of them. She added that she knew there were towns in Colorado that had regulated it as well. She explained the Department of Justice's notification that the legality of medical marijuana would not be enforced because it was not legal at a federal level.

Councilmember McCall asked Mr. Brooks if the State Statute set a minimum in terms of location of the dispensaries. Mr. Brooks said he was not aware of any regulations and thought it was left to the cities. Councilmember McCall stated she thought that needed to be addressed by the legislature because not all communities were incorporated. Ms. Beaudry advised that even unincorporated communities could adopt zoning regulations to regulate locations.

Mayor Tussing stated that he still had the same concerns he voiced two weeks earlier when the initiative was brought forward that people had the ability to smoke it where they wanted, however, he hoped that the Police still had the option of stopping people who were smoking marijuana in public to see if they had a medical marijuana card. He said he hoped that would be a deterrent to people who had the medical marijuana card from flaunting the use of it. Mr. Brooks said it was still his opinion that the Police had that authority. He said the act required people to be qualified to possess and use the medical marijuana and dispensaries had to be certified and regulated by the State. He said the unanswered question was to what degree cities could regulate the locations and to what extent the qualified patients could still be checked by law enforcement to see if they still qualified for the program. He said the act was focused primarily on the patient and the dispensary.

Councilmember Pitman stated that when the topic was originally brought forward, he was working with Mark Higgins, who is actively involved in it. He said the Sexually Oriented Business issue was used as a starting point, and he felt it was a matter of hearing the testimony before going further.

Mayor Tussing clarified that the staff recommendation was the setback from residential and 1000 feet from the other certain land uses. Ms. Beaudry advised that

because of comments received, staff had looked at another option of the 600 setback and no residential.

The public hearing was opened.

- **Mark Higgins, 814 Ahoy**, stated that he could answer some of the specific questions. He advised that he received a copy of codified rules from the State and would provide a copy that evening. He stated that as far as interim zoning, he was thinking more along the lines of a protective bubble near parks, schools, and churches, and he felt that being proactive about the issue was better for everyone involved. Mr. Higgins said the proposed ordinance was too restrictive. He stated that business owners with retail space for rent would not be able to fill those spaces if the location of the dispensaries was limited. He added that some patients would not be able to get to the allowed areas due to transportation limitations or their disabilities, which made the medicine inaccessible to them even though the State Legislature said those people could have access to the medical marijuana. He suggested being more open minded and not having the 1000-foot buffer zone. He pointed out that most of the major streets backed up to residential areas and it was not fair to the medical marijuana patients to have all those restrictions just because it was about marijuana. He agreed with common sense restrictions, but noted that it was not about a strip club or a liquor license. He said people should not be using marijuana in the dispensaries for any reason, because it was against the law to use it and drive and if they drove there, they would have to drive home. Councilmember Ulledalen asked Mr. Higgins why he thought it was a bad idea to have the dispensaries around churches, schools and parks. Mr. Higgins said he did not think it was a bad idea, but if kids were being taught that using drugs was wrong, the medical marijuana should be kept away from them as they walked to school. He said kids could deal with the medical marijuana issue when they were age appropriate and he thought it was responsible to have the protective area around schools and churches. Councilmember Ulledalen said it was puzzling to him because on one hand Mr. Higgins advocated for the medical marijuana but on the other hand he said it was logical to not have it in other areas.

Councilmember Gaghen asked Mr. Higgins if he had any estimate of the number of people who relied on the medical marijuana. Mr. Higgins advised there were approximately 84 caregivers and 300 patients in Yellowstone County. Councilmember Gaghen asked how many facilities he thought was practical. Mr. Higgins said he was not saying the number of businesses should be regulated. He noted that if people did not want to follow the regulations, they would be shut down by the legal system or other agencies. He said it was being responsible to not put dispensaries next to schools. He said the number of patients and applications was increasing and most of the people used the medical marijuana for chronic pain. Councilmember Gaghen stated that citizens had expressed frustration because the Council could not limit the number of casinos, but the limit on the number of machines somewhat limited the size of the casino, so she thought the number of people that needed to be served would be relative to the number of facilities that provided the marijuana. Mr. Higgins stated that he

brought the issue up because Montana allowed caregivers to profit as a caregiver, so that would result in numerous people who wanted to get into the business either for the money or to provide the care. He added that it was a way to avoid the problems that occurred in California and Colorado. Councilmember McCall asked Mr. Higgins about the location of his dispensary, the number of transactions he had on a daily and weekly basis, and whether some caregivers went directly to homes. Mr. Higgins explained that he went to patient residences because zoning regulations did not allow him to distribute the medicine from his residence. He said the number of patients he served depended on the need and how fast the patients were using the medicine. He explained the various ways the marijuana was used such as baking or smoking. Councilmember Gaghen stated that she was not aware that marijuana could be used in baking.

Councilmember Ulledalen asked why pharmacies did not distribute the marijuana. Mr. Higgins advised that marijuana was a Schedule I narcotic and licensed pharmacies were only allowed to dispense Schedule II narcotics. Councilmember Ulledalen suggested getting the law changed. Mayor Tussing advised that the federal government classified the narcotics. Mr. Higgins said that someone asked the question about whether patients could use the marijuana at a dispensary, and in his proposed establishment, no use of the marijuana would be allowed. He said he advocated use of it at the patient's residence.

- **Mariah Eastman**, said she was an attorney. She stated she became interested in the topic about four years ago when her mother developed glaucoma. She said she had opportunity to review cases related to some of the legal questions that had been raised that evening. She said she wanted to point out before a motion was made that zoning was an easy thing to get sued over. She explained there had to be a logical connection, known as a legal nexus, between the evil that was to be regulated and the action taken. She noted there was no data that supported the nexus of medical marijuana with adult entertainment, and including medical marijuana in the category of adult businesses would get the City into legal trouble. She asked what evils the City was trying to regulate. She said the statute provided a good idea of allowed areas and that it zoned itself. She said she did not see a connection between sick people needing medicine and the religious community. She explained that even if smoking or alcohol was prohibited by religion, there were other ways the medicine was ingested. She said she believed, in her professional opinion, that the restrictions went too far and legal action would be seen in the next few days if the motion was passed as worded. She recommended further review and input, and suggested adoption of what was in Statute 46-205, because those areas were already legislatively approved and the burden of proof of that nexus would not be required. She said it would be City's burden to prove why that business was regulated to that size district.
- **Doug Medina, 3733 Montana Avenue**, said he was an owner of the Green Cross and MMP, which also helped distribute medicine to patients. He said he was appalled at the way the Council laughed at the way sick people needed medicine. He stated that the State of Montana regulated the licensed people and

California and Colorado did not regulate the licensed people. He said the Council was crossing the lines when any moves were made to move the providers anywhere because it was not a business to be regulated by the City because it was done by the state. He said the term “dispensary” was illegal, because it was not a dispensary, but a place where people who needed medicine, got medicine.

Councilmember Gaghen commented that when Mr. Medina alluded to the fact that the group was laughing, it was because she was naïve and did not know about it. Mr. Medina stated that all the Council was naïve. Councilmember Gaghen responded that they were not laughing at the intensity of people’s need for medical marijuana, but the Council laughed because she was a little naïve about how it was used. Mr. Medina said he believed they laughed because they were ignorant. He stated that he objected to what the Council was trying to do and they would hear objections from 10,000 people. Councilmember Ruegamer stated that Mr. Medina was very naïve about what the Council laughed about. He said he found humor in a lot of things because it relived tension. He stated that the Council knew the medical marijuana was for people that were in bad shape. Councilmember Ruegamer stated that the Council was aware of why it was doing what it was doing and that was why there was open discussion so both sides could be heard and people would learn about it. Mr. Medina commented that laughing and intimidation did not teach anything.

- **Mitch Ronshaugen, 4016 2nd Avenue S**, stated he was deeply offended as a long-standing member of the Vineyard Church. He said that he knew that clergy members had overwhelming compassion for medical marijuana use and overall drug policy reform. He provided information on the Interfaith Drug Policy Initiative. Mr. Ronshaugen stated that Senate Bill 212 addressed a similar issue that would restrict access to driving privileges for being under the influence and was shot down because it was discriminatory. He said that was the same issue and confirmed that legal action would be seen within 24 hours from national organizations. He explained that he was waiting for social security disability determination and using and growing marijuana was therapeutic for him and the use was therapeutic to his patients. He said the issue was being muddied with illegal drug use, and it was not illegal to use medical marijuana. He said the decision needed to be made from a compassionate and loving stance for the benefit of the patients. He stated it did not make sense to limit access as far as schools, clergy or public buildings because it was not a dangerous drug. He said it was not distributed through a pharmacy because it could not kill a person. He advised that denying him access would mean that he could not buy the house he was in the process of buying because growing the medical marijuana was his only means of support. Mayor Tussing asked why medical marijuana should be so special since the City regulated locations of hospitals and pharmacies. Mr. Ronshaugen said if it was regulated, it should be in the same manner as a retail store. He stated that the medical marijuana was safer than some herbal supplements available in stores.
- **Douglas Medina, 3621 Montana Avenue**, stated he was an employee of Green Cross of Montana which provided consultation and fill services for patients,

doctors and caregivers in the Billings community. He said the facility had been open since April and the City approved his business license. He explained that his business was a medical supply facility, not a marijuana dispensary, but a clinic where doctors and patients had one-on-one visits. He said his business provided care for the patients and the products they consumed. He stated that the business had 31 different types of product growing for the different symptoms. He referred to Part II of Title 50 Chapter 46 about limitations and use and said everyone had to adhere to those laws. He said they were looking to open clinics that would boost the economy, like the clinics did in Bozeman and Missoula. He said medical marijuana patients had been fighting for their rights for 80 years and he was asking for special rights now for those patients. He explained the growth process of the marijuana and said it was expensive to grow. Councilmember McCall asked how many providers in the Billings area operated clinics like Mr. Medina's. Mr. Medina said he had a petition signed by multiple caregivers just that day, but if he had until the next day, he could fill a book. Councilmember Ulledalen asked how many facilities Mr. Medina thought were needed in Billings. Mr. Medina responded that there were potential for 44,000 patients in the Billings area, and 300-400 new patients were added each month. He said he dealt with 53 caregivers, and his father had about 68 patients, and the numbers were growing. Councilmember Pitman asked Mr. Medina if he was suggesting the restrictions should be imposed the same as on commercial businesses. Mr. Medina stated that if the residential limitation was passed, that would keep people from being allowed to operate from their homes. He said he knew of 538 people that would not be allowed to continue growing, dispensing it or providing it for themselves. He said that calling it a dispensary made it illegal. He stated he had a state license saying he could do what he was doing. Mayor Tussing commented that all the liquor establishments were state licensed also, yet the City still regulated where they were located. Councilmember Ulledalen asked what would happen if 1500 of them popped up and nobody made any money because there were so many of them. Mr. Medina suggested creating a license that they could purchase to regulate the people that could provide for the patients they had. He said not everyone could be a caregiver and explained the knowledge and equipment needed to grow the marijuana. He said a full harvest took about \$235 in chemicals for the plants grown in his establishment. Councilmember Gaghen asked how the caregivers learned about the process. Mr. Medina advised there were 25 universities throughout the U.S. that had horticulture programs. He referenced California and said the state did not regulate that business.

Ms. Volek pointed out that limitations on home occupations were not solely related to marijuana, but were required on any home occupation to prevent neighborhoods from being burdened by large numbers of people going to homes to conduct business. She said the home occupations license was very specific about what was and was not allowed.

- **Darren Moore, 3733 Montana Avenue**, said he was a patient of medical marijuana and was appalled that he was compared to adult entertainment. He said he was sick and in need of medicine and did not want to go to districts

where only adult entertainment could go because he was a Christian. He stated he had the right to get medicine from caregivers wherever he wanted. He said Montana had the best marijuana laws in the country and the Council should read them and help him.

Councilmember Ruegamer asked what the marijuana did for him. Mr. Moore said he used the marijuana for pain. He explained he was an ex-junkie and did not want to use narcotics so marijuana was an option. Councilmember Ruegamer said the point he was trying to make was that marijuana had a bad name and he wanted Mr. Moore to state that he was not using it to get high; he was using it for pain relief. Mr. Moore confirmed that he used it for pain medication. He said his caregiver had a relationship with him and helped him with his medication.

- **Richard McFadden, 619 Terry**, stated that he had a brother in Colorado who used medical marijuana, so he could relate to the conversation on stigmatizing the people that used it. He said too many zoning restrictions would stigmatize people the same as people that went to adult bookstores. He asked that be considered when zoning regulations were put on the medical marijuana.
- **Kevin Hubbard, 86 Antelope Trail**, stated that the zoning was ridiculous. He said he got pulled over in his car with his medicine in a jar and inside a bag right next to him. He said he was taken out of his car and had to do a sobriety test and was taken to a clinic to draw his blood. He stated that the police still had his medicine. He stated that he was allergic to opiates and used the marijuana for his back pain. He asked that the ordinance not be passed. He commented that his mother died from MS, and was a medical marijuana user before it was legal in the state. He said he believed in it with all his heart.
- **Jerry Prouse, Shepherd, MT**, stated that he had a political slogan “Stand for Something.” He said he heard the attorney threaten a lawsuit and felt he might do the same thing under certain circumstances, but he felt that was what was called “the camel putting his nose into the tent.” He said he hoped that a sensible solution could be reached. He stated that he would not deprive anyone from getting medication that would help them. He said he realized he had past differences with the Planning Department, but in this case, he was 100% behind them and he believed there was a sensible way to address it. He said there were places he would not want to see zoning, but there were also certain items that needed to be held to a standard.
- **Connie Wardell, 1302 24th St. West**, said she would like to speak from a different perspective. She explained she was a property manager and had people wanting to rent properties to use for their caregiver business. She suggested including the home occupation business regulation in any regulation that went forward. She noted that she did not allow any type of business in her rental properties. She said she liked the idea of an interim ordinance while learning how it needed to be regulated. She said she felt it needed to be zoned like a professional medical office, and did not want it in residential areas because it was a commercial enterprise. She suggested interim zoning so the issues could be studied and the people could be involved in the process. She added that she would be willing to be involved in the process.

- **Matt** (*last name inaudible and speaker not listed on sign-in sheet*), **920 Harvard**, stated he was a new caregiver. He said he had a close relationship with his patients and had an agricultural background, which would help his patients. He said the restrictions proposed were absurd. Councilmember Brewster commented that it seemed most of the caregivers had home-based businesses. Matt said he had nowhere else to operate. Councilmember Brewster said his point was that it would be difficult to find a landlord that would rent to that type of business. Matt said he agreed and that people would look down on the medical marijuana use because it had been illegal for so many years.
- **Jonathan Irwin, 18 N. 15th St.**, stated he was a medical marijuana patient. He said he was not entirely opposed to the interim zoning but felt the restrictions would impede business growth and would keep people from being able to get their medication. He said he understood not having it in residential areas, but could see it in commercial or medical areas. He said he did not see what was so hard about getting a home-based business license to do it.
- **Tom Mahan, 1903 N. 3rd, Huntley**, stated that he was a current MMP holder and the restrictions were harsh. He said he felt it should be treated like a pharmacy because people picked up the medication and took it home to use it. He said he knew people that abused prescribed pain pills, but did not know of anyone with a MMP card that was as bad. He stated that people were not concerned about having pharmacies around and the marijuana was less harmful than what a doctor prescribed and people became addicted to.

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

Councilmember Pitman requested advice from Mr. Brooks. Mr. Brooks stated he was always concerned when someone threatened to sue the City. He said hoped that anyone that was considering that would instead work with the City and would provide copies of ordinances from other cities that worked. He said the Council was dealing with two groups that had divergent interests and no matter what was decided, there would be a group of people that was unsatisfied. He said if the City was sued, he would defend it but hoped the people would realize it was an interim ordinance that would not last and one reason for the interim ordinance was to allow the issue to be studied. He reported that Boulder, Colorado, was considering an outright prohibition of medical marijuana at any location for a period of time so the issue could be studied. He said anyone that felt the Council was being overly restrictive should read the articles and the agenda for the Boulder City Council. He reviewed the Council's options: to pass the interim ordinance as presented; delay it and seek input; or form another ad-hoc committee to study the issue. He stated that as far as he knew, Billings was the only city in Montana that had addressed the issue. Mayor Tussing asked if there was a risk that the caregivers or distributors would be grandfathered if an interim ordinance was not passed that evening. Mr. Brooks advised that was a possibility. Ms. Volek stated that staff was aware that there were business license applications from individuals for about six locations and some were multiple holders. She stated there was nothing in the home occupations license that allowed that type of business in a residential area. Councilmember Astle asked how Councilmember Brewster's question about

consumption could be answered if the proposed ordinance was adopted. Councilmember Brewster said he believed that question was answered since smoking was not allowed in public buildings and he believed the Council's opinion was that the regulation applied to the marijuana the same as tobacco. Mr. Brooks added that having a medical marijuana card and being entitled to use it did not exempt the individual from the law of driving under the influence or impaired. He added that providers would not want the liability of someone becoming impaired in their facility, and then be allowed to leave. He said it sounded like some witnesses indicated that those restrictions were already in place. Councilmember Brewster said his question was how the State regulated that business. Mr. Brooks explained the State was required to devise rules, but the Department of Public Health and Human Services had not passed anything in addition to what the act stated, so the State had not come up to speed with regulations for dispensing or using it. He said for that reason, he hoped the people involved in the issue would work with the City, not against it.

Councilmember Pitman asked if commercial zoning would be more appropriate on an interim basis. Mr. Brooks responded that would certainly broaden the interim ordinance. Ms. Beaudry advised she would consider the sale of medical marijuana to be a retail use and it would be regulated under commercial zoning. She said if it was a clinic, it could be allowed in residential professional zones, which were a little more lenient. Ms. Beaudry said as it was right now, there were several zoning districts where it was allowed. She explained that in a residential professional zone, the clinic would have to be the primary use and the dispensing would be an accessory to that use and would be allowed. Mayor Tussing asked if that zoning was broader than a commercial use. Ms. Beaudry said the same clinic use would be allowed in commercial but commercial use was actually broader. Councilmember Astle asked if everyone that was currently operating from their home was doing so illegally. Ms. Beaudry explained that a mail-order business was allowed from homes, but actual retail sales from homes were regulated. Councilmember Astle said he happened to know the medical marijuana was effective so he was not against it, but he was looking to restrict its location so it did not look like illegal drug use. He asked if it was illegal to dispense it from a residence. Ms. Beaudry said it was.

Councilmember McCall stated that she felt the Council was headed down the wrong track because she did not think it should be compared to adult entertainment and it should go back to the drawing board. She moved to postpone the issue for two weeks to allow additional time for staff to research the issue, seconded by Councilmember Pitman. Councilmember Gaghen asked if that was ample time. Mr. Brooks said that would depend on the direction given to staff, but it would be difficult for staff to have something new for the November 23 meeting, but something could probably be ready by the December 14 meeting. Councilmember McCall stated that people would be in non-compliance whether or not something was passed, so she felt staff needed to be able to take the time to get it right. Councilmember McCall amended her motion to postpone the issue for four weeks, seconded by Councilmember Pitman. Councilmember Veis stated he would rather see that ordinance put to bed and better direction given to staff during Council Initiatives because delaying that one meant that what was returned would be somewhat the same. He said it was a good tool as far as education on the issue during the public hearing, but he would rather see something

different. Councilmember Veis made a substitute motion to table the interim ordinance indefinitely, seconded by Councilmember Ruegamer. Councilmember Ruegamer commented that they should have seen this coming, and since it was an emotional issue, it needed to be looked at longer and further. He said the threat of a lawsuit was something the Council heard all the time so the people that said that were wasting their words. He said he personally felt there were enough ordinances already in place to cover that issue. He said it was a medical issue and he did not agree with comparing it to adult entertainment. He commented he felt the law of supply and demand would ultimately govern it. Mayor Tussing stated that he did not think the Planning Department was comparing the activity to the other activities, but was comparing the zoning regulations to those activities. Councilmember Clark clarified that the home occupation regulations prohibited the sale of the medical marijuana from a home. Mr. Brooks advised that was correct. On a voice vote, the motion to table the ordinance indefinitely was unanimously approved.

3. RECOMMENDATION TO THE POLICY COORDINATING COMMITTEE (PCC) PROVIDING GUIDANCE FOR THE FUTURE PROGRESS OF THE BILLINGS NORTH BYPASS PROJECT. Staff recommends making a recommendation to the PCC to move forward with the Billings North Bypass Project in phases by completing the current Environmental Impact Statement and fiscally constraining the project through a series of construction and funding phases from I-90/94 to Highway 3. (Action: approval or disapproval of staff recommendation.)

Ms. Volek advised that staff provided a detailed presentation at a recent work session and did not have an additional presentation but was available to answer questions. Transportation Planner Scott Walker advised that Stefan Streeter from Montana Department of Transportation was also present. He reminded Council of the review process and that the item would go before the Board of County Commissioners and the PCC the next day. He explained that the transportation plan had to be fiscally constrained, which meant that projects had to be in it that could be realistically accomplished in 20 years. He said that depending on the level of detail, the north bypass project was \$165 million to \$180 million. Mr. Walker advised that the City was one of four votes on the PCC. Mayor Tussing asked if there was a guarantee that the project would be built or if federal funding would be approved if the staff recommendation was approved that evening. Mr. Walker responded that it did not guarantee that it would be built although there was about \$20 million already obtained for the project that was being used for the environmental phase. He said the environmental study that had been in progress for five years could be finished in its present state, or it could indicate that the project should be scaled back. Mayor Tussing asked Mr. Walker or Mr. Streeter to review the public process that had already taken place. Mr. Streeter explained he had only been involved for two years, and during that time, he had attended two public meetings, including the advisory committee that consisted of City and County members, Lockwood transportation individuals and other community members. He reported there had been numerous public meetings; one in Lockwood, one in the Heights, and one at Independent School just since he had been in his position, and many were held before that. He said there had been quite a bit of public involvement over the years. He cautioned the Council to be careful in its recommendation because the document had to stand on its own and be

approved by the federal government, and it had to be fiscally constrained. He said it was his understanding that the City-County Planning had fiscally constrained the part of the project that went from the interstate to Highway 312. He said the environmental document also had a life expectancy, so if it took too many years to get to the project, that process would have to start over. Mayor Tussing asked what the project had to do with NAFTA. Mr. Streeter responded that he did not know how they intertwined, but it was part of the Camino-Real trade route and he was told that the only section not on the interstate system was Billings to Great Falls. Councilmember Ulledalen asked if leaving it open provided latitude to decide how many lanes were on the road and the rest of the design. Mr. Streeter said that it would allow that latitude to decide what worked best. Councilmember Pitman stated that the key point was that the discussion basically focused on I90/94 to 312. Mr. Streeter responded that was up to the Council.

Councilmember Ruegamer moved for approval of Item 3, the recommendation to the PCC to provide guidance for the future progress of the north Billings Bypass Project, seconded by Councilmember Pitman. Councilmember Ruegamer asked for clarification of how much land was taken on the Shiloh Road project. Mr. Streeter responded that none was taken; the State was able to negotiate on each parcel. Councilmember Brewster clarified the recommendation was for support of the construction from I90 to Highway 3. Councilmember Veis explained that the language was carefully chosen so the environmental process could continue from where it was currently and did not have to be restarted. On a voice vote, the motion was unanimously approved.

4. PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required.
(*Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.*)

The public comment period was opened.

- **Michelle Johnson, 2705 Bluecreek Road**, said she watched the previous week's work session when the Mayor kept the concerned citizen to the allotted 60 seconds to express concerns about the proposed bypass that affected her property. She said it was her understanding that the City Council's role was to represent constituents and asked how they could represent them if they did not listen. She said it would behoove the Council to forego the time limit if it wanted to improve public relations. She commented that if they did not have the time to listen to constituents, they had no business being a councilmember. She noted that City staff was allowed unlimited time to justify their manipulation and control of people's lives, and they also had work sessions and private meetings to make their presentations. She said the Council's role was not to cater to the City staff but to constituents. She said if they were going to make decisions that impacted people's lives, they should be prepared to listen to them. She said she hoped that they wanted to get rid of the time limits and not be City staff puppets.

Councilmember Veis explained that the Council was in the process of changing the public comment period at work sessions, and the Mayor was using the protocol still in place. Mr. Brooks advised that he was in the process of

preparing a memo that outlined how other communities handled the public comment period. Mayor Tussing pointed out that at the work session in question, he allowed the witness to testify, even though she arrived late after the public comment period was closed, allowed her to set up her video equipment prior to starting her allotted time, and allowed her additional time after her 60 seconds were up and asked her several times to be seated. Councilmember Ulledalen asked if people that were not city residents should be treated equal to residents that did or did not live in the County. Ms. Johnson replied that they could if they wanted to. Councilmember Ulledalen asked if she was saying they should be treated the same. Ms. Johnson said she thought it was arrogant to not take the opinion of those people and how things affected them. Councilmember Ulledalen said his point was that in Great Falls, there was a group of people that attended meetings only to disrupt them, so he wondered if there was a reasonable point when there should be decorum of if people should be allowed to go on and on, which was a waste of taxpayer time. Ms. Johnson said she went before the County Commissioners and it was a completely different process from the City Council meetings. She said it was demeaning to give someone only 60 seconds to defend how the Council's decision affected them. She stated did that she not think having people from outlying areas would happen often, but she was not prepared to address that question. She said the Commissioners respected what people said and if the person speaking was making a valid point and their time ran out, the Commissioners allowed them to keep going. She said she hoped all the Council was on the receiving end at some point.

Councilmember Astle asked Ms. Johnson if she was aware that there were three County Commissioners and they were full-time positions, but the City Council and Mayor positions were not full-time. Ms. Johnson replied that she was aware of that, but they chose those positions. Councilmember Gaghen stated that the Council had concerns about the time limits and visited with other community leaders about that at the recent Montana League of Cities and Towns meetings. She said some communities had limits and some did not. Ms. Johnson stated she did not care what other communities did; she cared how people were treated here. She said checking what other cities did seemed to be sheep-like behavior. She stated that she understood that it seemed like people rambled on sometimes, but the Councilmembers chose that and if they chose to meddle in people's lives and make decisions, they also had the responsibility to listen to how it affected them. Councilmember Pitman stated that the dialogue and interaction they were having right then was what the Council was working toward. He said he believed the Council was taking steps to engage people who spoke, not to attack them, but to ask questions and learn. Councilmember Ulledalen mentioned that Councilmembers also received comments from people that wanted to know why someone was allowed to go on and on. Ms. Johnson said she had attended a lot of Council meetings and had not ever seen that. She said that she knew good and well that if Councilmembers were told in a work session not to do something, they did not say anything to the person that spoke and she knew that Councilmembers came in with their minds made up about the issue. She said it was an imbalance of power when staff was given unlimited

time and the person affected was limited to 60 seconds or three minutes. Councilmember McCall told Ms. Johnson she had valid points and thanked her for her comments.

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

COUNCIL INITIATIVES

- Councilmember Ulledalen asked on behalf of Councilmember Ronquillo, who was not present, if staff could report on the number of Police Department calls to Passages and Alpha House for a specific period of time. He said Councilmember Ronquillo was wondering how the number of calls to those facilities impacted the ability to service the rest of the citizens. Councilmember Astle asked to look at a like period just before 2003, about the time that the law was changed when more than DUI offenders were sent to those facilities. Ms. Volek advised that Passages was not in operation until about two years ago but the information for like facilities would be provided.

ADJOURN -- The meeting adjourned at 8:50 p.m.

THE CITY OF BILLINGS

BY: _____
Ron Tussing, Mayor

ATTEST:

BY: _____
Cari Martin, City Clerk