

City Council Work Session

April 20, 2010
5:30 PM
Council Chambers

ATTNENDANCE:

Mayor/Council (please check) x Hanel, x Ronquillo, x Gaghen (at 5:45), x Cimmino, x Pitman, x McFadden, Ruegamer (excused) x Ulledalen, x McCall, x Astle, x Clark.

ADJOURN TIME: 7:59 p.m.

Agenda

TOPIC #1	<i>Public Comment</i>
PRESENTER	
NOTES/OUTCOME	

- **Tom Iverson, 2717 Hoover**, stated that the agreement with the Billings Mustangs required an annual review. He noted that the Mustangs fiscal year ended November 30, and a one-page statement of earnings was provided, which was not a financial statement or a budget for the coming year. He said the City needed to enforce the financial report requirements of the agreement.

Councilmember Pitman stated that was a continual battle and suggested directing staff to follow up on it. Councilmember Clark asked about the membership of the review committee. Mr. Iverson said it was Rick DeVore and Mike Whitaker, and probably Jerry (inaudible).

- **Steve Zimmer, 928 Broadwater**, referred to the project and parking issues at his business which had been discussed at previous meetings. He said he believed the parking issue had been dropped because if enforcement efforts were put in place at 10th and Custer, the same would have to be done at other locations that had similar problems, such as around the high schools and the hospital corridor. He added that the complainant, Dennis Himmelberger, exaggerated some of the facts and the number of times the issue was discussed. He pointed out that Mr. Himmelberger was running a brewery from his garage at 10th and Custer and that was the only reason he wanted the extra parking. He suggested the City review Mr. Himmelberger's zoning. He said he visited with Councilmembers McFadden and Ruegamer and they each knew what the business was doing to improve the parking.

Councilmember Ulledalen asked Mr. Zimmer to explain his role in the situation and what was being done. Mr. Zimmer advised that he owned the building at 928 Broadwater, and that the parking had been expanded over the years, but the business was growing. He pointed out that 40-50 of the students that attended the school were from outside of the city and contributed to the Billings economy. He noted that adjacent property had been purchased for parking. He stated that some remodeling and re-roofing was in progress which had also used up some of the parking spaces, but that was temporary. He said he thought Mr. Himmelberger, possibly Good Stuff owners, and possibly one more person that was likely

Mr. Himmelberger’s tenant, were the only people complaining about the parking. He stated he did not feel parking was that big of a problem. He said he wanted Mr. Himmelberger’s zoning checked because he felt he was out of compliance.

Mayor Hanel asked Mr. Zimmer how many parking spaces he provided, and if he owned other property across the alley. Mr. Zimmer advised that he provided about 100 off-street parking spaces, and also owned six houses across the alley from the school. He said there was potential to gain another 10-12 spaces, which was what he thought was the shortage.

Councilmember Astle asked how many other tenants were in the building along with the nail academy. Mr. Zimmer said there were probably 10-12. Councilmember Astle asked the schedule of the school. Mr. Zimmer advised that the day was typically 8:15 a.m. to 5:15 p.m., Tuesday through Saturday, so there should not be a problem with the daytime parking.

Ms. Volek advised that, as previously reported, the business was properly zoned and the current renovations were not to the extent that additional parking was required. She said staff recommended some alternatives such as two-hour parking that would have to be pursued through the Parking Advisory Board, which would impact the tenants because it would be during the day; as well as a resident-only permit process that would have to go through the neighborhood organization, then brought back to the City. She added that the cost of that would be the responsibility of the property owners. She noted that Councilmember Ruegamer indicated to her that he intended to withdraw his previous initiatives on the matter, but had not done it yet due to his absence for a recent illness.

Mayor Hanel asked Mr. Zimmer if he had any suggestions to alleviate the City’s concern that the street sweeper could not sweep the street with all the cars parked along it. Mr. Zimmer said he did not have any suggestion other than he could ask students to move their cars for the time the sweeper would come by if they knew the time in advance. He said at one time students were asked to park across the street in the former Cine 7 building, but crossing Broadwater was dangerous and one student was hit while doing so.

Councilmember McFadden asked how much it would cost property owners to install signage in front of their home. Ms. Volek said she did not know but could find out. Councilmember McFadden asked how soon the remodeling would be done, and how soon the area to be blacktopped would be done. Mr. Zimmer explained that all the work was nearly done.

Councilmember Gaghen arrived.

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

TOPIC #2	<i>CDBG/HOME Allocations Review</i>
PRESENTER	
NOTES/OUTCOME	

Community Development Manager Brenda Beckett advised that a letter from the Community Development Board and a copy of her PowerPoint presentation were located near the public comment signup sheet. She explained that a presentation regarding proposed allocations would be made at the April 26 Council Meeting. Ms. Beckett introduced Community Development Board Members Jim Hartung and Emily Shaffer.

Ms. Beckett stated that \$1.3 million in new funding was approved, which brought the funding level equal to the 1998 funding level. She reviewed the proposed allocations for CDBG

and HOME program funds and pointed out that about 85% of the funds were allocated to programs, and the remainder allocated toward administration. She reviewed public service activities and recommended grant awards to those programs.

Councilmember Gaghen asked how it was determined that there was an increase of about 25% in homelessness. Ms. Beckett explained that public service providers, such as the food bank and housing authority, reported the increase in demand for their services. Councilmember Gaghen asked if people were moving to Billings or if it was a result of changes in the local economy. Ms. Beckett stated she felt it was due to the change in the Billings economy. Councilmember McCall asked if Ms. Beckett had any national statistics. Ms. Beckett advised that she did not, but knew there were places in Florida, Arizona and Nevada had higher statistics.

Councilmember Clark reported that the school district had experienced an increase in homelessness in the elementary schools due to families moving to Billings to find jobs, and if they did not find them, they were left homeless and in need of food.

Ms. Beckett announced that a more detailed presentation would be made at the Council meeting.

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

TOPIC #3	<i>Airport Quick Turn Around Facility Progress Report</i>
PRESENTER	
NOTES/OUTCOME	

Tom Binford, Director of Aviation and Transit, reported that he would soon ask for approval of the Car Rental Quick Turnaround Facility Project, and the facility fee that would finance the project. He explained that airport funding was generated through user fees assessed to customers. He explained that since airports were historically user-fee funded, they had been provided the authority to assess fees to those that used the facilities. He noted that one of Federal grant assurances that must be followed was that the airport be as self-sustaining as possible. He stated that activity levels needed to remain high to support operations through fees and to be able to fund larger projects. He reviewed the options to fund projects like the quick turn around facility. He said it was determined that a customer facility charge (CFC) was the best option to fund that project. He explained how the car rental companies would collect funds and then turn them over to the City to retire the debt on the project. He noted that car rental companies agreed that was the best option to pay for the facility.

Mr. Binford advised that a draft ordinance was included in the information packet, and was similar to a previous ordinance used for the terminal building expansion project. He reviewed the key provisions of the ordinance, and explained the proposed use of revenue bonds to finance the cost of the project and refinancing existing bonds. He explained that refinancing the existing bonds would lower the annual cost of the bonds.

Councilmember Clark asked if there had been a decline in the car rental business with the current economy. Mr. Binford advised that there had been a decline, but they were now seeing a slight increase. He explained that the forecast was conservative and the bond issue was based on that trend line. He said the car rental companies agreed with the trend line.

Councilmember Gaghen said people were encouraged to rent cars off-site and asked if that caused a decline in the business. Mr. Binford said it did not, because car rental companies were charged a fee by some airports, even the off-site operations.

Councilmember McCall asked how many other customer facility charges were assessed. Mr. Binford explained that there were no other CFCs, that the one being discussed was specific to the car rental companies. He advised there was a passenger facility charge that was approved by the FAA and was assessed on airline tickets, but the funds could only be used on capital items at the airport.

Mayor Hanel asked about a timeline for the project. Mr. Binford advised that they hoped to build during the winter and occupy in the spring. He said the old facility would be cleared and was a desirable property for an air service company.

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

TOPIC #4	<i>Social Host Ordinance</i>
PRESENTER	
NOTES/OUTCOME	

City Attorney Brent Brooks provided background of the Social Host Ordinance. He explained that the current ordinance was adopted by Council in April, 2009. He explained that based on a request by a constituent to amend it, staff presented possible revisions at a January, 2010, work session, and received no further instruction from Council, but a recent Council Initiative requested that it be presented again.

Mr. Brooks referred to the two alternative amendments that were presented at the January work session and provided a brief explanation of each. He said they were similar and included a mental state, which meant that the person intended to do something. He advised that the Billings Association of Realtors recently requested consideration of a third alternative which was included in the materials provided to Council. He said the difference in their proposal was that it excluded absentee landlords, property managers or property owners that leased or rented property to a third party. He explained Council's options as: leaving the ordinance as is; adopting any of the three proposed amendments; or gathering comments from the public for a period of time; and then having a presentation at a future meeting.

Councilmember Astle asked for a definition of an absentee landlord. Mr. Brooks advised that he did not have a definition of one, but the realtor association might have the best definition. He said that he interpreted it to mean that the person did not live on the premises.

Mr. Brooks advised that since the ordinance became effective, there were 28 convictions with 24 guilty pleas, and two more that were guilty, but were later dismissed through a deferred imposition of sentence process. Mr. Brooks advised that Deputy City Attorney Craig Hensel did the majority of work on the ordinance and was present to answer questions.

Councilmember McFadden asked how many of the 28 citations were given to landlords. Mr. Brooks responded that they did not know right then, but would try to find out.

Councilmember Clark asked who determined if a person had knowledge of what happened. He said he did not like that part of the ordinance. Mr. Brooks explained that the surrounding facts were considered. Councilmember Gaghen said she felt that the 24 people that pled guilty knew they had done something wrong.

Councilmember Ulledalen asked about the associated fine. Mr. Hensel advised it was a misdemeanor offense which could carry up to a six-month jail sentence and up to a \$500.00 fine.

Councilmember Astle asked if the accused could post bond. Deputy Police Chief Tim O'Connell explained first that when Police responded to a call regarding a violation, the charge had to be backed up with proof. He said the statistics showed the success of the ordinance. He added that he was unaware of any complaints about the ordinance.

Councilmember Ronquillo stated he hoped that helped the Police and let people know that the City was trying to deal with the problem. Deputy Chief O'Connell stated that the ordinance was not aimed at landlords, but was intended for anyone that participated or helped with underage drinking.

Councilmember McCall commented that when it was last discussed, Chief St. John recommended keeping the present ordinance as is, and asked if that was still their recommendation. Deputy Chief O'Connell answered that it was.

Councilmember Gaghen asked if it would help at graduation time, when adults assisted underage drinking. Deputy Chief O'Connell said it helped and most of the violations probably occurred during the summer.

Councilmember Clark asked about rented hotel rooms and what responsibility the hotel had. Deputy Chief O'Connell said it depended on the particular case and it had to be proven.

Mr. Hensel advised he was the primary architect of the ordinance that was taken primarily from the Great Falls ordinance. He said he reviewed the list of citations and they were all first-time offenders of it. He referred to how it was proven whether someone knew. He explained it was fact driven and prosecution would not occur if the facts were not there. He said a judge or jury would ultimately decide if the issue went to trial, but the prosecution would have to prove that the people knew or should have known. He said he was not aware of an instance where an absentee landlord was charged in an instance when someone renting their property had a party with underage drinking.

Councilmember Cimmino suggested dropping the term 'absentee' when referring to a landlord. Mr. Hensel stated that the ordinance proposed by the Billings Association of Realtors completely exempted landlords. Councilmember Cimmino said it seemed that a landlord would incorporate that language between the parties. She said she felt considering a landlord as absentee, was evasive. Mr. Hensel said it was intended to mean someone that lived off premises.

Councilmember McFadden asked if it meant that a landlord that lived across town was less responsible than someone that lived nearby. Mr. Hensel explained that if the landlord knew, they were culpable. Mr. Brooks added that it was intended to consider the person's knowledge, not necessarily just the geographic location.

Mr. Hensel referred to the definition of social host included in the ordinance that suggested an affirmative act had to take place before a charge was made.

The public comment period for the item was opened.

- **John Van Norman, 2501 Keel**, stated he was treasurer of local chapter of the Montana Landlords Association. He said he was concerned with the definition of social host. He stated that landlords could not control the conduct of tenants and had to take action after something occurred. He added that another concern was response costs, and felt that landlords should not be charged for those costs because there was a public safety mill levy to cover them. He asked if private homes were also subject to that provision. He explained that

to him, an absentee landlord meant that the landlord was out of state. He noted that landlords could not enter property without a 24-hour notice to the tenant, and the Police had jurisdiction that he did not have. He referred to wording regarding “reasonably should know” and said it was open to interpretation. He asked if landlords would be responsible for actions after someone left the property. He stated that landlords should not have to act as law enforcement. He stated that landlords that had property in a trust, LLC, or partnership could not represent themselves in court and had to be represented by legal counsel which was an additional expense if they had to defend themselves. Mayor Hanel asked Mr. VanNorman if he was reading from State Law. Mr. VanNorman said he was. Mr. Brooks said that was a prior business arrangement and had nothing to do with the social host. Councilmember Astle said he thought that was correct for civil actions, but not for criminal, which was what the social host violation would be. Mr. VanNorman stated he that was originally asking for an amendment, but was now asking for repeal. He said the Great Falls ordinance was amended, and the Helena ordinance was better. Councilmember Gaghen asked if any landlords had been cited. Mr. VanNorman said he was not aware of any. He said he assumed that paying the fine was less expensive than fighting the charge.

Councilmember McFadden asked if it was smarter to remain quiet about it and pay a fine, than to turn the tenant in and risk extensive property damage that would cost the landlord more. Mr. VanNorman said that was possible, but the thought had not crossed his mind. Councilmember McFadden commented that, in essence, he was being held hostage by the tenant.

Councilmember Ulledalen asked how neighbors should deal with problem landlords. Mr. VanNorman advised there were some laws on the books that covered things like underage drinking. Councilmember Ulledalen said it was more extensive than just underage drinking. Mr. VanNorman stated his association tried to educate landlords, but had no enforcement authority over them. He said he handled about 40-50 calls per month concerning landlord/tenant issues.

Councilmember McCall stated she was baffled by Mr. VanNorman’s statement that the association wanted the entire ordinance repealed and asked for the rationale. Mr. VanNorman explained that it was due to potential problems. Councilmember McCall asked if the association felt it was not valuable to try to curb underage drinking, which was a purpose of the ordinance. Mr. VanNorman said the association did not say that, but was saying the landlord could not be held responsible for the action of tenants. Councilmember McCall stated she disagreed with that interpretation. Councilmember Ronquillo stated that he knew there were bad landlords, but if a landlord knew something bad was going on, it was their responsibility to try to address it.

- **Fran Dunn, PO Box 802**, stated that Mr. VanNorman covered most of it but felt someone else needed to support him. She said tenants knew that cops would be called if illegal activity was occurring, but landlords could not control activities of tenants. She said the Council talked about proving beyond a reasonable doubt, which meant court and paying for legal counsel. She stated that neighbors that saw the illegal activity also had the responsibility for reporting it to Police. Councilmember McCall asked Ms. Dunn what percentage of her tenants were problem tenants. She advised that she was not aware of any at the present time. Councilmember McCall asked if Ms. Dunn agreed that the ordinance should be repealed. Ms. Dunn responded that she felt it should be left to legislators to make the laws.

- **Dennis Cook, 1825 Three Bars Trail**, referred to a Billings Association of Realtors email presentation and said he wanted to make sure the Council understood their viewpoint. He said the association had previously concurred that Alternative #1 was the best one, but suggested changes to that amendment. He commented that it appeared that the burden of proof was on the landlord, which put it in a different light. Councilmember Ulledalen commented that cities did not have a lot of tools to deal with that, and read a letter received on a related situation. He asked if the realtor association had suggestions to improve behavior/neighborliness on the part of landlords. Mr. Cook advised he thought some mechanisms were in place to encourage and educate landlords, but not all landlords cared enough about their property to do more than just collect rent. Mr. Cook stated that the Association did not ask to have the ordinance appealed, but concurred with Alternative #1.

Councilmember Pitman asked if the language should be summarized to address anyone who knew or should have known but did not do anything to stop or report it. Mr. Cook said the problem was with the burden of proof and the property owners that did not know what was going on.

Mr. Brooks commented that the ordinance's foundation was about having knowledge of an illegal act and doing nothing about it. He added that it was an important component of DUIs.

- **Joseph Femling, 1516 12th Street West**, expressed his disappointment with police response on a complaint he called in to the Police Department. He said he had to take corrective action and did not feel that the Police took enough action to deter the tenant from that behavior. Councilmember McFadden asked how a landlord knew if the tenants or their guests were 21 years old or older. Mr. Femling explained that he obtained identification when they rented the property, but did not have the right to do the same for guests. Mayor Hanel advised that he would ask the Police Chief or Deputy Chief to visit with him about his complaint.
- **Roger Aldinger, 4610 S. Woodhaven**, stated he wanted to underscore previous comments and had more to add. He said society had changed and people were no longer innocent until proven guilty. He advised that there was an organization out there that employed testers to try to catch landlords doing something wrong. He said landlords had to screen carefully to protect themselves, which had become a very big burden. He said he did not need another ordinance he had to watch for and wanted to see it repealed or amended to replace the term 'absentee landlord' with 'landlord.'
- **Dean Kile, 1611 Cook**, said he was a landlord and agreed with previous testimony. He said he would like to see the ordinance repealed or amended. He stated he felt it was too vague. He added that he agreed he should not have to prove that he had not done anything wrong. Councilmember Gaghen asked about the entity that tested landlords. Mr. Kile responded that he felt the ordinance as written was a bit of a threat, and with some work it could provide a bit more protection for the good guy. He said he knew that rental property was administered by HUD.

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

Mr. Brooks advised that he could provide a copy of the Helena ordinance, but felt it was more onerous and burdensome on landowners than the Billings one. He pointed out that the

burden of proof was on the prosecutor to prove each element on the offense beyond a reasonable doubt. He said he felt that important part had been lost in the discussion.

Ms. Volek commented that if Council had direction for staff, information would be provided, or the Council could consider an initiative at a future meeting to give staff direction.

Councilmember Pitman stated that he felt it was valuable to know that staff would have a discussion with the realtors and landlords to try to address their concerns.

Councilmember Gaghen stated she wanted to know if any of the people charged were landlords. Mr. Brooks advised that information could be provided. He added that staff would also attend any meetings with the Police Chief or Deputy Chief, and would also provide additional information on proposed changes and the Helena ordinance.

TOPIC #5	<i>Districting & Apportionment Report</i>
PRESENTER	
NOTES/OUTCOME	

Ms. Volek distributed copies of Councilmember Cimmino’s notes from the previous evening’s districting and apportionment meeting.

Councilmember Clark commented that testimony from rural residents expressed the same concerns the Council had. He said they wanted representatives that could better reflect that area.

Councilmember Ulledalen stated he felt there was a sense of futility about whether there was anything that could be done. He referred to Taylor Brown’s comment about the differences within his area.

Councilmember McCall stated that nearly everyone that testified was on the same page and agreed that districting really needed to change.

Mayor Hanel commented that his intention was to remind the Commission of the basics of state law and that the 5% variance was unacceptable with today’s technology. He added that partisan politics had been too important in their past decisions.

Councilmember McCall advised that the idea of a starting point being in the northeast or southeast corner of state made sense.

Councilmember Ronquillo stated that the four Council representatives that spoke did a nice job. He said the committee heard the same thing from the people present and the same thing would be heard at the other forums they would have.

Councilmember Gaghen stated that the Native American comments were important. She noted that she did not think that Jim Regnier would make the final decisions as some had predicted.

Councilmember Cimmino stated that was her first exposure, a great learning experience, and the message that something different needed to be done was clear.

Additional Information:

Councilmember Ulledalen stated he found out that the former Justice of Supreme Court limited comments to 3-5 minutes. He asked Mayor Hanel if he had any sense of how long public comment should last because after the previous meeting, he had heard comments from people that some speakers had up to 15 minutes for comments. Mayor Hanel stated he would like to know the names of people who said that because he had spoken with 30-50 people that had told him that for years, the Council was disrespectful, did not listen to the citizens, and their thoughts

could not be conveyed in short time. He said he committed that the Council would listen and there would not be rudeness in shutting people off. He said the meeting Councilmember Ulledalen was referring to was extremely important to the administration, Fire Chief, and the firefighter union, and they had all put a considerable amount of work into the QRV issue and it needed a lot of testimony because of the emotion. He said the extra time helped bring some of the animosity and ill feelings together. He said he intended to rebuild the communication with the Council, unions, administration and the citizens.

Councilmember Ulledalen said it was a disservice to people when they had to wait until late at night to speak. He suggested a timed guideline.

Mayor Hanel commented that allowing the firefighters to speak longer was a disservice to them, because the longer they talked, the less effective they were. He said Administration spoke a shorter time and was more effective. He added that a proper vote was given by the Council and it was a better process. He noted that certain situations would take more time.

Councilmember Clark suggested that on important votes like the previous week, the Mayor should repeat the vote count or identify who voted yes and who voted no.

Councilmember Cimmino commented that being on the Council was a lot of work and she took her vote seriously and based it on information she received and her own research. She suggested a regular, consistent procedure to ensure accurate records.

Mr. Brooks explained that state law indicated that all votes were voice votes, but roll call votes could be taken if the outcome was indeterminate. He stated that the Mayor could ask for a show of hands of yes or no votes.

Councilmember Ulledalen commented that critical votes required knowing who was on each side of the vote.

Ms. Volek advised that in February, the Council asked how other cities handled time testimony and Mr. Brooks would report back on that by the end of the month. Mr. Brooks stated that it appeared from his research that three minutes was a common minimum floor. He said he would provide details in a memo to Council.