

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
May 10, 2010

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

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

MINUTES:

- April 12, 2010 - approved.
- April 26, 2010 - approved.

COURTESIES - None

PROCLAMATIONS

- Police Week, May 9-15, 2010
- Peace Officers' Memorial Day, May 15, 2010
- Building Safety Month, May, 2010
- Arbor Day, May 14, 2010

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek reminded Council of their Budget Work Session scheduled for the following evening at 5:30 p.m. in the Council Chambers. She said the Legal Department and Public Works were on the agenda.
 - Ms. Volek referenced Agenda Item I and said the resolution had been sent in the Friday packet.
 - Ms. Volek referenced Agenda Item 6 and noted three protest letters had been received and sent in the Friday packet.
 - Ms. Volek referenced Agenda Item 8 and advised three optional ordinances had been sent in the Friday packet of April 30.
 - Ms. Volek advised a copy of a staff report had been sent in the Friday packet regarding a potential add-on item extending the MDU Landfill Natural Gas Sales Agreement. Ms. Volek requested that the item be added to the Consent Agenda as Item M.
 - Ms. Volek referenced Item 8 and said a copy of one letter of 404 identical letters from MT Caregivers Network and copies of comments submitted on the City's complaint line were on their desks that evening.
 - Ms. Volek advised a copy of a staff report asking for an emergency resolution for repairs to Dehler Park was on their desks that evening and asked that the item be added to the Consent Agenda as Item N.

- Ms. Volek said numerous e-mails received by Mayor and City Council 'as a group' regarding medical marijuana were available in the ex-parte notebook for public review.
- Ms. Volek advised all documents mentioned were available for public review in the ex-parte notebook in the back of the room.

Councilmember Ronquillo asked if the City would be reimbursed by insurance for the damages to Dehler Park. Ms. Volek advised the individual involved in the accident and who caused the damage had insurance, and the City would be seeking reimbursement. She said they needed to get the repairs started because of the American Legion tournament scheduled for the upcoming weekend.

Councilmember McCall moved to add the MDU Landfill Natural Gas Sales Agreement extension to the Consent Agenda as Item M, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Councilmember Clark moved to add the resolution for emergency repairs to Dehler Park to the Consent Agenda as Item N, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

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

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

The public comment period was opened.

- **Tom Zurbuchen, 1747 Wicks Lane**, referenced Item 2. He said everything was word for word and line for line as what was in the draft. He said he contacted Planning to ask what changes had been made to the draft due to public comment, and he had yet to receive an answer to his question. He said he assumed Council would be passing the exact draft in the same form, and the draft had problems. Mr. Zurbuchen said the first problem was with Priority One, Lake Elmo Drive, Hansen Lane to Wicks. He said Item 1B3 of the consent agenda that evening would be awarding a contract for \$1.7 million to rebuild Lake Elmo from Main Street to Wicks. He said the draft indicated they would be tearing it up from Hansen to Wicks and redoing it for \$3.8 million later, which seemed like an abundant waste of taxpayer dollars to fix it this year and tear it up in the next few years. He referenced the short range project Highway 312, Dover-Bitterroot Drive reconstruction. He said Highway 312 from US 87 to Barry Road had been rebuilt by the State and now the City was going to tear it up and rebuild it again. Mr. Zurbuchen also said short range plan Priority 9, Lake Elmo – Robertson Road to Rolling Hills widening made sense and then referenced long range plan Priority 4 Pemberton Lane, BBWA Canal to Lake Elmo Drive widening. He said it either had to be Rolling Hills or Pemberton because they were the same street, and they could not do the same thing twice by just changing the name. He said the document had serious flaws that needed

attention. Mr. Zurbuchen said Chapter 4 had an excellent narrative on the Camino Real Freight Corridor from El Paso, TX, to Sweetgrass, MT; yet in the report there was a long range project for \$63 million to do Phase 1 of the Outer Belt Loop and nowhere was the Outer Belt Loop compared to the Camino Real Corridor.

- **Pete Hansen, 1435 Wicks Lane**, referenced Item 2, and said he had concerns because it did not appear that any changes had been made from the draft as a result of 45 days of public comment. He said he had written a letter on April 23. He referenced the Outer Belt Loop and the expenditure of an estimated \$63 million to cross the Yellowstone River and terminate the program at Highway 312. He said the object of the bypass was to reduce the amount of truck traffic coming around the METRA and going up Highway 3, Airport Road. He said if the project stopped at Highway 312, all the trucks were going to have to turn south on Highway 312, drive Main Street through the Heights to Highway 3 to go northbound. He said not one single comment recommendation or consideration had been included in the plan. He said what Council would be voting on that evening was exactly what was put out as a draft. He said if nothing was going to be done with public input, the City should just tell the public what was going to happen and save time and money asking for public input. He also said he had made inquiries and had not received responses from staff. Mayor Hanel asked Mr. Hansen if he had the schedule for the meetings of the PCC committee. Mr. Hansen said he did. Mayor Hanel said there was opportunity for public comment at those meetings. Mr. Hansen reminded Mayor Hanel that the Council voted to approve the initial plan, and the initial plan did not require the ending of the Camino Real at Highway 312 and apparently a decision was made at the County Commission Office.

- **Dennis Himmelberger, 233 Swords Lane**, referenced Item 2, and talked specifically about the Outer Belt Loop. He encouraged the Council to consider making Stages 1, 2 and 3 a priority. He said Stage 1 was the priority involving building a bridge across the Yellowstone, and he was concerned about the increased traffic on Main Street. Mr. Himmelberger said he was concerned about safety and would encourage Council to complete the Northwest By-pass because getting the trucks off the Airport hill and out of the center of town once and for all was in the best interest of all the citizens of Billings. He said he felt until the Northwest By-pass was completed to Highway 3, the Heights would never be able to fully recognize its economic development. He asked that Stages 1, 2, and 3 be prioritized.

Councilmember McCall asked staff to be prepared to answer the questions regarding the testimony of the three gentlemen.

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

Councilmember Cimmino separated Items B2, L1, and L2. Councilmember Gaghen separated Item B3. Councilmember Ulledalen moved for approval of the Consent Agenda with the exception of Items B2, B3, L1 and L2, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Items B2, L1, and L2, and said she needed to abstain from voting on the items due to her employment with the consulting firm.

Councilmember Pitman moved for approval of Item B2, seconded by Councilmember Ruegamer. On a voice vote, the motion was approved 9 to 0.

Councilmember Gaghen asked for background on Item B3 from Scott Walker or David Mumford regarding the hesitation of the Heights residents. Mr. Mumford advised that Public Works had been working with the Planning Department on the transportation update. He said they would not be tearing Lake Elmo up in a couple years. Lora Mattox advised the discrepancy in the project list compared to the bid award they were considering that evening was that the amount in the update was just an estimate and the amount in B3 was the actual bid amount received to do the work. She said Planning had worked with Engineering to clarify the projects with ongoing updates to make sure everything was correct. She advised they would correct the discrepancy before it went to the PCC.

Councilmember Gaghen moved for approval of Item B3, seconded by Councilmember Pitman. On a voice vote the motion was unanimously approved.

Councilmember Pitman moved for approval of Items L1 and L2, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 9 to 0.

1. **CONSENT AGENDA**

A. Mayor Hanel recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	No Applications	Board of Appeals - Architect	05/10/10	12/31/13
2.	No Applications	Board of Appeals - Electrical Contractor	05/10/10	12/31/13
3.	Thomas Mahlen	Community Development Board	05/10/10	12/31/11
4.	No Applications	Community Development Low-Mod	05/10/10	12/31/13
5.	No Applications	Emergency Medical Services	05/10/10	12/31/10
6.	Trent Currie	Energy & Conservation Commission	05/10/10	12/31/10
7.	No Applications	Housing Authority - Resident Commissioner	05/10/10	12/31/13
8.	No Applications	Human Relations Board	05/10/10	12/31/10
9.	No Applications	Human Relations Board	05/10/10	12/31/13
10.	Nick Angeloff	Mayor's Commission on Homelessness	05/10/10	12/31/13
11.	Lawrence Smith	Parking Advisory Board	05/10/10	12/31/13
12.	No Applications	Tourism BID Board	05/10/10	06/30/10
13.	No Applications	Traffic Control Board	05/10/10	12/31/10

- 3. Unexpired term of Kathleen Walters
- 5. Unexpired term of Dr. Peter Light
- 6. Unexpired term of Russ Doty
- 8. Unexpired term of Everall Fox
- 10. Unexpired term of Patrick Chapel

12. Unexpired term of Linda Gallagher
13. Unexpired term of Keith Lang

B. Bid Awards:

1. **W.O. 09-10 Heights Water Booster Station.** (Opened 4/27/10) Recommend Engineered Fluid, Inc.; \$155,089.
2. **W.O. 09-08 Wastewater Treatment Plant Water Line Replacement.** (Opened 4/13/10) (Delayed from 4/26/10); Recommend Becco General Construction Services; \$585,000.
3. **W.O. 08-21, Lake Elmo Drive - Main Street to Wicks Lane.** (Opened 4/27/10); Recommend Riverside Sand and Gravel; \$1,689,497.
4. **W.O. 09-02 Miscellaneous/Developer-Related Improvements.** (Opened 4/27/10) Recommend J&J Concrete, Inc.; \$492,100.

C. Change Order #3 (Final) - 2009 Street Maintenance City Crack Seal Project, Z & Z Seal Coating, \$4,137.12.

D. Amendment #11, Engineering Services for Airport Improvement Program (AIP) 2010 Projects; Morrison-Maierle, Inc.; \$429,577.

E. Approval of Tax Payment to the Internal Revenue Service; \$54,439.92.

F. Street Closures:

1. **Petapalooza Festival,** May 22, 2010, 8 a.m. - 5 p.m., Parade staging will begin at 3rd Avenue North & North 25th Street, continue west to North 32nd Street; continue south to 2nd Avenue North and east to North 29th Street; related events will close 2nd Avenue North between North 27th and North 29th, North 28th between 1st and 3rd Avenues North, and North 29th between 1st and 2nd Avenues North.

2. **Central Heights PTA Community Fun Run,** May 22, 2010, 8:30 a.m. to 10:30 a.m., commencing at 120 Lexington Drive, proceeding west on Eldorado Drive, south on Pueblo Drive, east on Alamo Drive, north on Lexington Drive, east on Eldorado Drive, north on S. Santa Fe Drive, east on Concord Drive, south on Birchwood Drive, west on Beloit Drive, northwest on Fair Park Drive, southeast on S. Santa Fe Drive, south on Berthoud Drive, west on Pueblo Drive, north on Pueblo Drive, east on Beloit Drive, northwest on Lexington Drive, west on Dallas Drive, north on Pueblo Drive, east on Eldorado Drive, and south on Lexington Drive.

3. **Yellowstone Valley Farmers Market - Saturdays,** July 17, 2010, through October 2, 2010, from 6:00 a.m. to 1:00 p.m., North 28th Street from 1st Avenue North to 3rd Avenue North and 2nd Avenue North from North 27th Street to North 29th Street;

and Wednesdays, August 4, 2010. through August 25, 2010, from 3:00 p.m. to 9:00 p.m., North 28th Street from 2nd Avenue North to 3rd Avenue North.

G. Grant Application Approval to submit U.S. Department of Housing and Urban Development application for purchase of generators for water system emergency power project, \$974,000.

H. Resolution of Intent #10-18932 to expand the existing Downtown Business Improvement District (BID) No. 0001 to Poly Drive on the north, to North Park on the east, to South Park on the south, and to N. 32nd Street on the west specifically for the "Cooperative Safety Zone;" and set a public hearing date for June 14, 2010.

I. Resolution of Intent #10-18933 to enact an ordinance imposing a Customer Facility Charge (CFC) to cover the annual debt service costs of a bond issue to finance the Airport Quick Turn Around Facility; \$3.00 fee to be collected for each contract day of a car rental.

J. Resolution #10-18934 for temporary suspension of the camping ordinance for BLM's annual seasonal fire mobilization operation at Billings Logan International Airport, July 1, 2010, through October 31, 2010, at no cost to the City.

K. Final Plat of Mattson Acres Subdivision, Amended Lot 14.

L. Bills and Payroll:

1. April 12, 2010
2. April 16, 2010

M. Amendment to Landfill Gas Sales Agreement with Montana-Dakota Utilities, extending the contract to December 1, 2010.

N. Resolution #10-18938 approving emergency repairs to the fence, railing, and field at Dehler Park.

REGULAR AGENDA:

2. RECOMMENDATION TO THE POLICY COORDINATING COMMITTEE for adoption of the 2009 Billings Urban Area Transportation Plan Update. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Lora Mattox, Planner II, advised the last Transportation Plan was updated in 2005, and they were required to update it every four years. Ms. Mattox began her PowerPoint presentation and advised their main goal of the plan was to make sure they were in compliance with the SAFTEA-LU requirements. She said they updated the long and short range transportation projects; the functional classification map; the transit, airport and freight information; the bike/pedestrian information; and the traffic model to 2035. Ms. Mattox displayed the Billings MPO Boundary map and said it

included Lockwood and portions of the county. She said the Bicycle and Pedestrian element came up; and the Heritage Trail Plan was discussed significantly at their public meeting of March 11, 2010. She said they were able to tell the residents that they were in the process of updating the entire plan; so a lot of the items that came up would be addressed. She said the Transit element also came up, and current MET policies, current routes, and funding were discussed. Ms. Mattox said there were also discussions on allocating 20% of Congestion Mitigation and Air Quality (CMAQ) funds towards Traffic Demand Management Strategies. She said the Planning Board was recommending that a Transportation Goal be established that would allocate 20% of future CMAQ funds received by the Billings MPO to be used towards Traffic Demand Management Strategies. Ms. Mattox advised there was a 45-day comment period and at the March 11, 2010, public meeting, it was stated that comments and questions received would be incorporated with the Transportation Plan and any additional information that may have been left out, or typos, would be updated and corrected in the Plan. She said when it came to projects and policies and goals, staff could only bring the recommendations forward to each governing body for discussion and possible inclusion in the Plan. She said copies of all comments and questions the Planning Department received on the Plan were available for review in the City Clerk's Office. Ms. Mattox said they reached out to 37 local agencies to discuss the Transportation Plan and worked with the Planning Board, City Council, County Commissioners, City Engineering, and MDT on project identification. She said they conducted a public meeting with significant public notification on March 11, 2010, and provided information plan updates to each Neighborhood Task Force during the month of March.

Councilmember Ronquillo said there was concern with funding and maintaining the City's current trails and asked Ms. Mattox where the funding would come from. Ms. Mattox said one of the goals of the Heritage Trail Plan Update was to look at funding and how other communities were building trails and maintaining them. She said it was also a concern of the County Commissioners.

Councilmember Pitman asked if there was a statement in the plan indicating the City's position on the North Bypass to Highway 3. Ms. Mattox said not specifically in the long range projects. She said she had been working with Dave Mumford and the Engineering Division on the projects, and the projects identified did not have a long description or narrative discussing each one; as most were either so far out or the funding sources had not been completed. Ms. Mattox said the North Bypass was not specifically identified in the Transportation Plan. Councilmember Pitman asked if it could be added. Ms. Mattox said they could work on adding it.

Councilmember Clark asked Ms. Mattox to explain what the PCC was and how much power the City Council had to change anything. Ms. Mattox advised the PCC was the Policy Coordinating Committee that was established with a representative from the City Council, the Board of County Commissioners, the City/County Planning Board, and the local district of the Montana Department of Transportation. She said each representative had a vote. She said projects or plans were brought to each governing body for review and recommendation to the PCC.

Councilmember Cimmino asked Ms. Mattox to respond to the concerns raised by the gentlemen during the Public Comment Period. Ms. Cimmino said Mr. Zurbuchen's concern was the draft document and how the comments would be included after the

completion of the 45-day period and Mr. Himmelberger's recommendation to make Stages 1, 2, and 3 a priority to complete Highway 3. Ms. Mattox advised staff was not in a position to make changes as the result of comments they received regarding policy or projects. She said the changes needed to be discussed by the governing bodies; and at the direction of the PCC, changes to projects or policies within the document would be made. Ms. Mattox said they had done updates to the Transportation Plan after the public meeting such as bus service information and they corrected typos in the document. She said overall the main portion of the document was the long and short range project priority list that they had been working extensively on. She said none of the projects on the priority list were different from what they had identified in the past. She said the descriptions had been changed a little to be more conforming with the entire document and any project that was already in design or being awarded had been moved to a non-rated project. Ms. Mattox said when they did the functional class map, the North By-pass was being shown as going all the way to Highway 3; however, they had been advised by the Montana Department of Transportation that the funding was not available to complete the entire section, which was the reason for the phases.

Wyeth Friday said staff needed clarification that evening on what kind of action Council wanted to make regarding the By-pass and the way it was currently spelled out in the document. He said if the Council was interested in providing information in the document about how it should be prioritized or put into phases, staff needed to know. Councilmember Pitman advised that Council had previously supported the three full phases; but Councilmember Veis had voted no because it was against the wishes of the Council so he could not support it. Mr. Friday advised if that was the case and if there was going to be different information included at this time going forward, staff wanted to make sure they had the correct information in the document.

Councilmember McFadden asked for more information on the discussion to separate MET from the Airport. Ms. Mattox said they were not given much direction other than it was felt that MET should be its own division of the City and not part of Aviation. She said they were not given any details.

Councilmember Ulledalen advised that it was a deliberative process that involved four different bureaucracies, and public comment made by an individual was taken and heard but not necessarily adopted as policy. He said it was taken as part of consideration and added to the process. He said they had to cooperate with four different entities in bringing comments forward. Councilmember Ulledalen referenced the Outer Belt Loop and said there was some confusion in the discussions between what the County Commissioners and the Highway Department were thinking and what the Council was thinking. He said some of the projects that had been on the wish list to get done were becoming increasingly unlikely because of federal funding constraints. He said they could go to the federal government and ask for funding, but it did not mean they would get it. He said there was increasing pressure on the metropolitan planning authorities to have fiscally constrained projects, which meant if they were going to go ahead with a two or three phased project, they needed to figure out where they were going to come up with the money to get the local match. He said the pressure on all of the policy bodies was to be more realistic of what could be expected in terms of federal government funding. Councilmember Ulledalen said he had a discussion at a meeting between the Federal Highway Administration people and the State people and he could

not understand what they were saying back and forth in terms of what the issues were because it had to do with the length of how long the environmental impact statement would be good for and how far out they could reach without being fiscally constrained. Councilmember Ulledalen said they were outvoted at the PCC because the state and County Commissioners did not want to stick those two phases out so far into the future; so basically they backed off and went ahead with Phase 1. He said at this point there would be no support to go forward with Phases 2 and 3. He said they could say all they wanted but were basically outvoted at the PCC.

Wyeth Friday added that one of the key pieces of consideration with the By-pass project was the fiscally constrained piece. He said when the Transportation Plan went forward and the local MPO looked at projects and plans for projects, they had to be fiscally constrained and shown as fiscally constrained. He said the fiscally constrained piece was very important. Councilmember McCall clarified that the PCC was not saying that Phases 2 or 3 may not come back on the table in the future but for the time being, it would just be Phase 1. Mr. Friday said that was a correct way to put it. He said the mapping still included the proposed corridor all the way to Highway 3 and it was still being looked at as a future connection, but right now the funding and the ability to potentially fund it did not go any further than Highway 312.

Councilmember Ulledalen said there was no assurance that Phase 1 was going to be done because, as a result of the planning process, the recommendation could be not to build. He also said another question he had asked early on and never received an answer to was how much of a local match the City was expected to come up with for Phases 2 and 3. Councilmember Ulledalen asked Scott Walker if he knew. Mr. Walker advised he knew for sure the match would be zero.

Councilmember Pitman asked if there was any way to add Phases 2 and 3 to the plan without a dollar amount so they just were not on the map but on the plan to eventually be looked at. Ms. Mattox advised the plan was a fluid document and in three years it would be done again. She said in three years hopefully there would be a new transportation bill, and they would have a better idea. She said it was not a document that would last 25 years but would be moving and changing. She said the phases could not be put in without a dollar amount because anything listed had to have a funding source, funding amount, and be fiscally constrained.

Councilmember Ronquillo stated projects took a long time, and they had been trying for ten years to get a stoplight at Hallowell and State. He said if the federal government did not come up with the money, the projects were not going to happen.

Councilmember Ulledalen moved for approval, seconded by Councilmember McCall. On a voice vote, the motion was approved 9 to 1. Councilmember Pitman voted 'no'.

3. PUBLIC HEARING AND FIRST READING ORDINANCE adopting the 2009 Edition of the International Fire Code by reference with certain amendments. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no staff presentation, but staff was available for questions.

Councilmember Ulledalen asked what would come back to "bite them" if they adopted it and asked when they would be hearing back from architects, builders, and

developers that would say they did not know it was coming. He said there were issues with sprinkling, etc. in the last iteration and asked what would be prominent that they would have to deal with in the next couple of years. Fire Marshall Mike Spini said he did not think there would be any problems or negative feedback from architects, engineers, etc., as they typically would like a newer code adopted as the new building code was adopted. He said the State of Montana was in the process of adopting the 2009 International Building Code that should be in effect in July 2010. He said they were going along with that to adopt the companion code. Mr. Spini said if they adopted a code that was not a companion code, they would hear some complaints and issues. He said it was a fairly routine adoption, and they tried to do it every 3 to 4 years.

Councilmember Gaghen asked if, at one time, the City was using dual fire codes. Mr. Spini said at one time they had a non-companion fire code with the building code, as well as other construction codes. He said a few years ago they used a non-compatible code, and in the last cycle they adopted the 2006 International Fire Code that matched with the building code. Councilmember Gaghen asked if the non-compatible code was far more challenging and unworkable than the 2006 International Fire Code. Mr. Spini said the incompatible codes made it very difficult.

Mayor Hanel asked if they were using a normal cycle. Mr. Spini said the code was on a 3-year cycle; the last code was 2006, and they would like to adopt the 2009 code. He said it usually took a year for adoption. He said the State Fire Marshall had already adopted the 2009 International Fire Code, and it was in place throughout the state.

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

Councilmember Gaghen moved for approval, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION #10-18935 FOR ANNEXATION #10-02: A 1.911-acre of vacant cropland described as Tract 2A, Certificate of Survey No. 3364 Amended and located on the west side of Zimmerman Trail and north of Grand Avenue; KZ Bar Limited Partnership, owner and petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no staff presentation, but staff was available for questions.

The public hearing was opened.

- **Lyle Zimmerman, 387 Candlelight Drive, Bozeman, MT**, said he and his brother, Roy, represented KZ Bar Limited Liability Partnership, which was the Zimmerman family. He said they would like to express their appreciation to the doctors and staff at the Billings Children's Clinic for the opportunity they had provided to their family, as well as the neighborhood that had supported the process. He said the Zimmerman property had been in the family for over 100 years, and his father was born 90 years ago across from where the clinic would be located. Mr. Zimmerman said his parents were buried in the cemetery just southwest of the property, and all five of their children were raised on the property. He said the property was more than just a piece of

land to them and due to the commitment, dedication, and hard work of their parents, they felt they had been successful in their own careers and were grateful they would be able to decline other offers for development of the property that would not be a legacy their family would be proud of. Mr. Zimmerman said the Clinic would be a great asset to the community and said the Zimmerman family strongly supported the annexation of the property.

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

Councilmember Clark moved for approval of the annexation, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #CC-10-2: A variance from Section 1208(h)(5) allowing one additional curb cut for two (2) fourplex units (eight units total) on Chesapeake Drive, located on Lot 6, Block 3 of Riverfront Pointe Subdivision. John Pratt, Developer; Sanderson Stewart, Agent. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no staff presentation, but staff was available to answer questions.

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

Councilmember McFadden moved for approval of the variance, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTION #10-18936 CREATING SID 1388, Dorothy Lane Improvements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director, David Mumford, advised 3 out of 46 residents protested the SID. He said it was a project that had gone on for several years, and Councilmembers Pitman and Cimmino and the Engineering staff had worked a lot of hours on the project going door-to-door and talking with the residents. He said Engineering had designed the project not to meet the standards that were normally met on streets. He said they worked with the neighborhood recognizing drainage issues and developing alternate methods.

Mayor Hanel asked Mr. Mumford to explain the alternate drainage methods. Mr. Mumford advised they were doing a strip pave with a ribbon curb on the side. He said there were some low sections that would have curb and gutter but the drainage would mainly be along the edge of the road. He said standard drainage would be a \$2 million extension of pipe, which would be way beyond the neighborhood's ability to pay, so they were providing for a typical road section with drainage alongside the road.

The public hearing was opened.

- **Ronald Focht, 928 Dorothy Lane**, said he had been waiting for this for 37 years because he was tired of eating dust. Mr. Focht said he was in favor of the SID.

Councilmember Pitman said Mr. Focht had done a lot of the footwork visiting with the neighbors and asked Mr. Focht to express to the Council the general sentiment of the neighbors. Mr. Focht said it had been a problem for years, everybody was tired of it, and it was time to do something about it. Councilmember Pitman thanked Mr. Focht for his hard work.

- **George Graham, 3608 Kiowa Trail**, said his mother lived at 936 Dorothy Lane, and she also was in favor of the SID. He said he could not think of a better time to do it because with the economy, the price was where it should be.

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

Councilmember Pitman moved for approval of the resolution creating SID 1388, seconded by Councilmember Cimmino. Councilmember Pitman said it was an amazing project that would be a model for a lot of roads in town that did not have the drainage available. He said the City used to have a code that if a street was paved, it needed curb, gutter sidewalk, and drainage. He said it would help with EPA because the water would drain down naturally through the ground instead of going to the river, and the City would be getting ahead of the curve by protecting the environment and protecting the river.

Councilmember Cimmino said she wanted to publicly acknowledge Dave Mumford, Debi Meling, and Tyler Westrope who were very instrumental in meeting with the neighbors and who were very patient providing information and feedback.

On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION #10-18937 approving and adopting budget amendments for Fiscal Year 2009-2010. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) City Administrator Volek advised there was no staff report, but staff was available to answer questions.

Councilmember Ronquillo referenced the Southside TIF Fund and asked if they could get a breakdown of exactly how much in taxes Four Square paid, how much of the revenue they would get to keep, and how much of the rest of the tax increment the south side would receive. He said they had heard two different accounts from different people. Ms. Volek advised staff would provide the correct information and said since December, there had been three different evaluations from the Department of Revenue, which had caused some of the concerns and issues raised.

Councilmember Cimmino referenced Paragraph 4 regarding the removal of a rock from the rims that 'may' fall and damage private property. She asked what happened if it did not fall. Ms. Volek advised it was a piece of the rims that had a great deal of separation, and it was just a matter of time. She said currently staff was trying to locate a vendor who could meet the City's insurance requirements. She said the rock was directly above Shady Lane and definitely needed to come down. She said there had already been some failure of the rock, and they needed to safely remove the rest of it.

Councilmember McCall said she supported what Ms. Volek said in that they had been very diligent in trying to get the matter resolved. Attorney Brooks added staff had

tried to locate a contractor with the expertise to do the work and willingness to provide the appropriate liability insurance and indemnification of the City.

Councilmember Pitman asked how long the City had owned the property. Ms. Volek advised the City had owned it for a long time, and it was part of a city park.

The public hearing was opened.

- **Kevin Nelson, 4235 Bruce Avenue**, said he would like to comment on the Miller Crossing and South TIF District budget amendment. He said they were starting to generate revenue and expense, which would generate a budget fund; but in the 2010 budget there was not one listed for the South Billings Boulevard Fund, Miller Crossing Fund, or East End TIF Fund; and the only thing listed was the South Billings Urban Construction Fund. He said the people really did not know what was going on. He said the document was over 300 pages and he may have missed it but he thought the funds could be tracked. Mr. Nelson asked if the SID had ever been spread. He said he felt they needed a fund for it because if they were unaware how the DOR calculated the tax increment finance district, it was going to be extremely complicated. He said the DOR assessed a percentage of all of the property to get the taxable increment value. He said his value went down but he still contributed to the tax increment district. He said they needed to determine how much incremental value was in Four Square Development, which would be extremely complicated without some kind of financial tracking system. He said he hoped it worked out better because Cabela's contributed \$40,000 in incremental taxes this year, and there was a \$523,000 bill to pay. He said we would need 13 Cabela's down there to get enough incremental taxes to make it work.

Mayor Hanel asked Ms. Volek to comment on the matters of the special fund and the spread of the SID. Ms. Volek advised the City was aware the Department of Revenue's (DOR) preferred plan was, rather than keeping track of the in-flow and out-flow of value from each individual property, to combine all the numbers together and assess a portion equivalent to the amount that was actually due from the special properties throughout the district. She said it was a practice the DOR had been involved in throughout the state. She said other communities had unsuccessfully protested. She said they would not be creating a special fund for tracking purposes for a single property because DOR did not want to create a separate account for every single property that had an improvement. Ms. Volek advised the SID had been spread.

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

Councilmember Ronquillo moved for approval, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Mayor Hanel called for a 10-minute recess at 8:00 p.m. Mayor Hanel called the meeting back to order at 8:10 p.m.

8. PUBLIC HEARING AND ADOPTION OF AN INTERIM ZONING ORINANCE #10-5512 PLACING A MORATORIUM ON ANY BUSINESSES THAT GROW, SELL OR DISTRIBUTE MEDICAL MARIJUANA IN THE CITY AND CONSIDERATION OF

PROHIBITING EXISTING AND FUTURE MEDICAL MARIJUANA BUSINESSES WITHIN 1,000 FEET OF SCHOOLS. Medical Marijuana Ad Hoc Committee recommends approval. (Action: approval or disapproval of Medical Marijuana Ad Hoc Committee recommendation.) City Attorney Brent Brooks reminded the City Council that the appointed medical marijuana ad-hoc committee had met twice and presented recommendations at the May 3rd work session; one of which was to provide an ordinance for a complete moratorium on future new businesses that operated as medical marijuana providers within the city limits. He said in the Friday packet Council was provided the following three optional ordinances for regulating medical marijuana.

A. An interim ordinance imposing a moratorium on all new medical marijuana businesses.

B. An interim ordinance allowing medical marijuana businesses but restricting them to specific districts.

C. An ordinance prohibiting medical marijuana anywhere within the city limits because it violated federal law, which was similar to what Kalispell recently passed. He said the ordinance would need to be modified to make it clear that it was also an interim ordinance, which meant that an interim ordinance was effective for six months but could be extended for another 12 months.

City Attorney Brooks said the concept of amortization had been mentioned, which meant businesses were allowed to exist in a certain location for a designated period of time after which they had to move to a different location if a zoning law or ordinance had changed making their present location unlawful. He said it was staff's recommendation that if Council passed the complete moratorium on all new businesses, they would not include an amortization under an interim 6-month basis because by doing so, the ordinance would only be effective for six months, and they would be forcing businesses to move in six months. He said in the case law staff had found, a period of three to four years was typically considered the most reasonable approach to amortizing with the type of business involved. Attorney Brooks advised staff was recommending Option A until such time as the Council acted permanently. He said Kalispell had chosen to completely prohibit any of the activity within the city limits because it violated federal law, Missoula had chosen only to regulate as they would a regular retail business, and several smaller communities continued to struggle with what to do. He said City Attorneys came together to discuss the matter the prior week, and the opinions on the right or wrong thing to do varied.

Councilmember Ruegamer asked Attorney Brooks to clarify amortization. Attorney Brooks advised there had been many types of cases where with land use issues, a particular activity had been deemed unlawful. He said those particular businesses engaging in that particular activity in a particular location were allowed to exist and called legal non-conforming uses; however, there were times when the governing body could determine that a particular activity was a safety and health issue that required the businesses to leave the prohibited areas within a certain designated time. He said most of the time it dealt with sexually-oriented businesses operating in large cities. Attorney Brooks said what that meant was they were not grandfathered in completely with unlimited non-conforming legal status, but were given three to four

years to move from the current location to a location where the business was lawful to operate. Councilmember Ruegamer asked if there were any legal ramifications associated. Attorney Brooks advised if Council were to tell all existing businesses engaged in medical marijuana within the city limits that were up and operating in a specific location they had six months to move, there would be a higher risk of litigation. Councilmember Ruegamer asked if Council passed the option staff was recommending, could amortization be added in later. Attorney Brooks advised if Council eventually came to a permanent ordinance, amortization would be an option they could consider.

Councilmember Gaghen asked if the amortization he was referring to was for long-established businesses or those that were newly established. She asked if it had any bearing on the legality or cutting back on the length of time that changes could be enforced. Attorney Brooks said most of the cases had not made a great distinction on how long a business had been established but instead how long a business was given to move and how fair the process was to the business owner.

Planning Director, Candi Beaudry, reviewed the following three options staff was presenting that evening for the interim ordinances.

A. Moratorium

- Recommended by ad-hoc committee
- Would become effective immediately
- All 89 licenses would become legal, non-conforming status
- Would prohibit any new businesses; all phases of the medical marijuana business such as growing, manufacturing, and selling for the next six months.

B. Highly-Restricted Zoning

- No medical marijuana business would be allowed in residential zones, which would prohibit all home occupations. Would also include a 1,000-foot buffer around the residentially-zoned areas.
- Would create a 1,000-foot buffer around schools, churches, parks, daycares, and cemeteries. Cemeteries could be considered a place of worship.
- Would limit the location of the businesses of growing, manufacturing, and selling medical marijuana to certain commercial zoning districts. Would be restricted to five different commercial zoning districts instead of the current seven districts.

Ms. Beaudry showed PowerPoint slides of Billings city maps showing (1) 1000-foot school buffers and fewer commercial zones where medical marijuana businesses would be permitted; (2) 1000-foot buffers around schools, churches, playgrounds and restricted number of commercial zoning districts allowing 51 legally non-conforming businesses; (3) Non-allowed zones, or what's left after the 1,000-foot buffers for schools, parks, churches & cemeteries, and residential zones with only 1 conforming business; and (4) Areas within the city limits with 300-foot buffers for Residential-zoned and 1,000-foot buffers for churches, schools, and parks (including multi-use trails).

- C. Prohibit all land uses from being permitted or conditionally permitted within the City of Billings in violation of local, state, and federal laws
- Not recommended

Councilmember Ulledalen asked if Council would have six months to decide which option they wanted to adopt and the option of an additional 12 months if they approved the moratorium. Ms. Beaudry said that was correct.

Councilmember Ronquillo asked if county islands were included. Ms. Beaudry advised it only applied to businesses located within the city limits. Councilmember Ronquillo asked if a business would be prohibited if it had purchased a business license but had not opened yet. Ms. Beaudry said if Council went with the moratorium, the establishments had to already be licensed and operating; so if a business was only licensed and had not opened up for business, the business would be prohibited. Councilmember Ronquillo asked if the money for a business license would be refunded if the business was not allowed to open. Ms. Beaudry said the business tax determination was a service provided to investigate that the business was legally located and following codes. She said if the license fee had already been paid, staff still had to go through the process to provide the service so there was no reason to refund it.

Councilmember Gaghen asked Ms. Beaudry if staff knew how many businesses were actually operational at a site operating as a medical marijuana business. Ms. Beaudry said they did not have an exact number. She said she had a list of businesses that had been licensed, but there was duplication of locations and names. She said there could be a single business with two licenses so it was hard to tell. Councilmember Gaghen asked how they would go about determining the number of operational businesses if the moratorium passed that evening. Ms. Beaudry said it was a good question that had been discussed. She said they knew everyone listed on the spreadsheet was grandfathered in as legally non-conforming. She said if they received a complaint of a new business operating, they would proceed with Code Enforcement to go around and identify which businesses were operating. She said a problem would be the home occupations that were not readily apparent.

Councilmember Clark asked if the business licenses were transferable. Ms. Beaudry advised the code was silent on that issue, but there was a requirement to put the name of the business operator and location on the license. She said if the name and location were to change, a new business license would be required. City Attorney Brooks agreed with Ms. Beaudry. He said each license had to be attached to an operating location and buying up licenses to re-sell to someone else would not be allowable under the code. Councilmember Clark asked if it could be written into the ordinance that the business licenses were not transferable. Ms. Beaudry said she would be a little concerned about that because the authority the Council had to adopt an interim zoning ordinance was under the zoning code; and the zoning code did not address business licenses. She said they were under the purpose of the Zoning Act to protect public health, safety and welfare through zoning and not through the administration business. Councilmember Clark asked what if they stepped outside zoning as a separate ordinance. Attorney Brooks said they could amend the current business license ordinances separately to reflect it, which would involve a public

hearing, and first and second reading. He said he agreed with Ms. Beaudry that under the proposed zoning ordinances, it could not be addressed.

Councilmember Pitman said at 5:00 p.m. that day he found out there were 39 active licenses and 50 licenses in review. Councilmember Pitman asked for the status of the 50 in review. Ms. Beaudry said when a person applied for a license, there was a delay of approximately one day before the license was given a number and entered into the system. She said they did not consider the license in review until it was in the system; and once it was in the system, the form was routed to Fire, Building, and Planning for investigation. Ms. Beaudry advised they had been looking into not issuing a license until after the investigation because they had run into problems where the licenses were issued, followed by the investigations, and something amiss turned up so they had to proceed with Code Enforcement action. She said people thought if they had a business license they could operate, which was not necessarily the case.

Councilmember McFadden said he was reading the rules on medical marijuana caregiver and patient permits on the State's website where it said the permits would not be issued by the State under the name of a business. He asked what ramifications that would have. Ms. Beaudry advised the license was issued to the patient and the patient had to identify a caregiver. She said they did not call it a business, but the caregiver was essentially selling, growing, and manufacturing the product for the patient, which at the city level, was considered a business. She said even though the State may not identify it as a business, the way it came out at the local level, it walked, talked, and acted like a business. Councilmember McFadden asked if the State wanted to prohibit the caregiver from going into business by putting those words in the regulations. Attorney Brooks said that was one of the good questions those serving in the legislature may try to ask each other and discuss at the interim legislative committee hearings because he had been told third hand that the initiative did not initially contemplate a business type relationship; it only contemplated a personal relationship between a caregiver and a qualifying patient. He said whether or not the information was true or accurate, he was just merely repeating what he had been told. He said he was not sure anyone could answer Councilmember McFadden's question. Councilmember McFadden asked if we could assume that the legislature was silent on the issue. Attorney Brooks said he was not sure they were silent, but the act itself did not say one way or the other.

The public hearing was opened.

- **Jill Jepperson, 7065 Lakeshore Drive**, said she was speaking as a concerned citizen and mother. She said she recommended a moratorium without a grandfather clause until appropriate boundaries could be established. She said she felt the voters thought medical marijuana would be regulated as other medical drugs. She encouraged the Council to work with the County Commissioners and State Legislatures to work on the issues and resolve the problems.

Councilmember Ruegamer asked Ms. Jepperson if she was aware that if Council tried to bypass the grandfather clause, the City would be sued and it would lose. Ms. Jepperson said she knew it was the case in Los Angeles. She said she spoke with an

attorney who felt it was appropriate to have a moratorium until regulations were set. Councilmember Clark said a moratorium and not grandfathering did not go together.

- **Kim Prill, 4440 Ridgeway Lane South**, said she was a parent of three and a long-time resident of the community. She said unfortunately Montana communities had been left to deal with how to navigate the policy and were limited by code enforcement or existing policies to regulate an unregulated policy that was encroaching into their community and school district. Ms. Prill said 3 to 4 years to move an existing business was unacceptable to her. She said they chose a home so their children could go to the schools, which had been in place for a number of years. She said she could see the struggle with the risk of litigation. She said we lived in a community in Montana in the United States that had a federal law that prohibited possession of marijuana. Ms. Prill said she felt there was common ground without having to go through litigation. She said they were in a very strong catch 22.

- **Stacey Tupon, 1807 Laura Circle**, said her greatest treasure was her kids. She said she had five children, and it was her responsibility to nurture, teach, and protect them. She said she categorized marijuana as a harmful substance and to allow it near schools, parks, and churches was destructive. She said marijuana was illegal and just because the word medical was placed in front of it, did not make it legal.

Councilmember McFadden said there was a liquor store very close to Lewis and Clark Middle School and asked Ms. Tupon if she felt the liquor store was a bad influence on the students. Ms. Tupon said she felt the casinos and bars affected everyone and were a bad influence. Councilmember McFadden asked if friends or the liquor store down the street was the worse influence on children. Ms. Tupon said she felt friends were.

Councilmember Ruegamer commented it was inappropriate to cheer for people who testified. He said some people were talking for medical marijuana and some people were talking against it. He said when people cheered for one or the other, they were intimidating the other side, and it was inappropriate in the chambers. Councilmember Ulledalen said he would like to echo that as a point of order. He said past Mayors had quieted that activity in the council chamber. Mayor Hanel advised it had been asked a couple of times by those present. He said we were all responsible adults and asked everyone to cooperate with the requests.

- **Pam Christianson, 3916 Bushwood Drive**, said she had spoken to the Council at the last several meetings acting as a community activist. She said she, too, was a mom and asked that Council adopt an interim zoning ordinance placing a moratorium on any businesses that grew, sold, or distributed medical marijuana in the City. She encouraged Council to prohibit any existing and future medical marijuana businesses from within 1000 feet of at least our schools. She said it was not reasonable to allow a marijuana business near a school for any length of time.

- **Kevin Flynn, 4944 Danford Drive**, read the City of Billings Vision Statement. He said he had not heard anyone talk about job creation, and how these medical marijuana businesses had helped the Billings economy. He said the caregivers had created new jobs and stimulated the economy by employing at least three people, for a total of 240 new jobs within the city limits, and they bought their supplies locally. He said caregivers were no different than any other legitimate business, such as CVS and Walgreens who

sold prescription drugs, and they should be treated the same way. He said the new businesses had not been accommodated with tax breaks or the creation of TIFDs.

Councilmember McCall asked Mr. Flynn if he was aware if caregivers had to meet certain qualifications to provide medical marijuana. Mr. Flynn said the qualifications were on Initiative 148 for the State of Montana. Councilmember McCall asked Mr. Flynn if she were to tell him there were no qualifications with any depth at all, would it make any difference to him. Mr. Flynn said they were here because the cart came before the horse. He said a law was made, and Council had six years to make the zoning ordinance but did nothing until the people came knocking on their door with a problem.

Councilmember Gaghen said it was her understanding it was voted on in 2004 but not legally in place until 2008 when the legislature 'tossed' it to the state to deal with.

Councilmember Cimmino asked Mr. Flynn how he applied his theory to come up with the amount of new jobs created. Mr. Flynn said he took 80 existing licensed caregivers who employed approximately three people each for a total of 240. Councilmember Cimmino asked how he based that amount. Mr. Flynn said he was a community organizer working to build an alliance with the caregivers for future litigation.

Councilmember McFadden told Mr. Flynn he was contradicting himself when he said he was concerned about the blighted areas of town. He said our zoning ordinances would take his type of businesses away from the schools and put them right down in that blighted neighborhood. Councilmember McFadden asked if that would not be a win-win situation. Mr. Flynn said public safety, health and (blighted areas) were mentioned in the three options. He said the existing businesses were being predicted to turn neighborhoods into blighted areas, when there were already blighted areas in town.

Councilmember Ulledalen said the community had hit a tipping point, and Council had not heard any outcries from the public until the last couple of weeks. Councilmember Ulledalen asked Mr. Flynn what he felt would be some common sense regulations or ordinances that the industry itself could impose that might make them less engendering of public opposition. Mr. Flynn said it was his personal opinion that to grandfather anybody in to anything, there needed to be an established time. He said some of the businesses had been in operation for six to eight months and had invested hundreds of thousands of dollars into the businesses to stimulate the economy. Mr. Flynn said the existing businesses around the schools should not be shut down because they established their businesses in good faith with the City. Councilmember Ulledalen repeated his question. Mr. Flynn said the ad-hoc committee's proposal for Option A without the 1000 feet because businesses already existed within the 1000 feet. Councilmember Ulledalen asked Mr. Flynn if Council should not impose any kind of restrictions. Mr. Flynn referenced Lewis and Clark and said by the time a person would get to the low-profile existing business, he or she would have to walk past Albertsons and IGA who sold alcohol and tobacco; four casinos; and Walgreens and CVS who dispensed Oxycontin.

Councilmember Gaghen said Mr. Flynn commented that the businesses were a real stimulus to the local economy and asked him if he thought the City could use 1,000 medical marijuana businesses. Mr. Flynn said as long as they were regulated like any other business.

Mayor Hanel verified Mr. Flynn's address in Billings and asked if he had a business within the city limits or was a licensed provider. Mr. Flynn said he did not have a business within the city limits and was not a licensed provider.

Councilmember Ronquillo asked Mr. Flynn if the caregivers he was trying to organize had liability insurance. Mr. Flynn said those he worked with did. Councilmember Ronquillo said the city held the tavern owners accountable if a patron was drunk and got behind the wheel and killed someone. He asked Mr. Flynn if his liability clause covered him in the same way. Mr. Flynn said the businesses he operated with were covered in the same way, and did not smoke in their buildings.

- **Angela Piper, 2267 Westfield Drive**, said she was a concerned parent and thought medical marijuana was in a different category than alcohol and casinos. She said it was supposed to be a specialized drug just like prescription drugs from a pharmacy. She said she was concerned that many kids in Billings were smoking medical marijuana, and they were getting it from other kids whose parents had signed cards. She said she wanted Council to know it was there and escalating, and she was talking about athletes and good kids who were selling to each other. Ms. Piper said she recommended Option C, like Kalispell and Helena, to make it illegal inside the city limits. She said she felt it was just an excuse for people to smoke pot.

Councilmember McFadden asked if Ms. Piper had contacted her state representative. Ms. Piper said she had and was told it would be discussed when they were back in session.

- **Mort Reed, 1120 Yale**, said he had been a Billings resident since 1961 and owned a caregiver business at 1234 Avenue C. He said he applied for a city business license two months ago and was granted his license to operate last month. He said he had invested a great deal of money into his building and had not put up any gaudy signs. He said the only outward changes to the building were letters around the front and rear doors designating it as a caregiver business. He said it was as low key and low profile as anyone could ask for, and Lewis and Clark students walked by his business every day and paid no attention. He said he had heard a lot of testimony from concerned parents who thought operating his business would cause harm to their children. He said he was also a parent, and the children passing his business ran a greater risk of crossing Grand Avenue than receiving any harm from walking past his business. Mr. Reed said he bought all his supplies locally and spent \$1,000 a month to provide supplies to grow the marijuana for the patients. He said the caregivers could and were able to contribute a huge amount to the tax base if the situation was handled properly. He said if Council created a retroactive ban on the businesses, he would have to litigate to recover his investment in his property. He said it was not something he wanted to do, but would be left with no alternative.

Councilmember Gaghen asked Mr. Reed how many employees he had. Mr. Reed said he had three full-time including himself, and three part-time. Councilmember Gaghen asked how many patients he was able to serve. Mr. Reed said he currently had 30 and 30 more pending with the State.

Councilmember Ronquillo asked Mr. Reed if he had liability coverage. Mr. Reed said he did. Councilmember Ronquillo asked if someone burned his building, how he would report his loss amount to the insurance carrier. Mr. Reed said under Initiative 148, a caregiver was required to keep an adequate amount of marijuana in stock to

provide an uninterrupted supply to patients, so if a caregiver figured an ounce per patient and had cards to cover the patients, it was a pretty easy mathematical formula to figure out how much there was in stock. Mr. Reed told Councilmember Ronquillo if he was asking whether or not there was some leverage for insurance fraud in the industry, he said the answer would be yes; but that same liability existed in every industry.

- **Dale Williams, 3723 Donna Drive**, said he was a citizen and concerned parent of eight children. He said the location of medical marijuana caregivers within 1,000 feet of a school concerned him. He said the exposure near the crosswalk on Grand near Will James would be a detrimental influence on the children. He said just the presence of marijuana in the children's minds would be a detriment to our society and community. He said as a city we wanted to establish a place that was family friendly and revenue should not be the sole basis for determining business in the City of Billings. Mr. Williams encouraged Council to pass a moratorium immediately and consider the implications of not allowing grandfathering. He said there was a possibility of litigation and realized the City coffers were not endless. He said some things were more important than money, and the 'goof' by the legislature needed to be put back on the State.

City Administrator Volek clarified that the City of Billings received no revenue from any of the buildings or direct revenue from casinos. She said the revenue collected was done by the State of Montana, and a portion was returned to the City of Billings after the State took the money for itself. She said she wanted to clarify there was no income to the City of Billings other than a modest business fee and property taxes on the buildings whether or not it was a marijuana business.

- **David Lewis, 520 Charles Street**, said he was a business owner of a manufacturing facility in Billings. He said there was a presumption that an individual who had a medical marijuana card was qualified for employment. He said it was mentioned the medical marijuana industry was creating jobs, but it was actually killing jobs and the opportunity for people to have jobs at a much greater rate. Mr. Lewis said men and women who were trying to get work were being denied because businesses did not allow marijuana. He said Dr. Barry Smith was not able to attend and asked him to comment that medical marijuana was a smoking mirrors approach toward recreational marijuana use and clearly youth were using it as a recreational tool. Mr. Lewis asked where the courage and strength would come from to overcome the issues. He said sometimes it was best to just 'rip the band-aid off', do what was right and be strong in your resolve.

- **Cal Zastrow, 1041 N. 23rd Street**, said he wanted to echo what Mr. Lewis had to say. He said he was a father of four, and thinking regulations would prevent children from being harmed was not reality.

- **Pete Hansen, 1435 Wicks Lane**, said they had heard a whole litany of excuses and concerns. He said people signed the Initiative because they thought people whose pain could not be helped by any other drug would be helped. He said there were people who needed such things and if the teenagers were smoking marijuana today, they had been smoking it a lot longer than before 2004 and they had not been getting it from those people with businesses. Mr. Hansen said he had back surgery three years ago, and he had to take a handful of drugs every morning. He said sooner or later his liver would go on strike. He said for people concerned about where others were getting marijuana, he had to fill out a marijuana approval card and get his physician's approval.

He said it was not just a matter of walking into any store and getting what he needed. Mr. Hansen said he was hoping he would be approved so he would not have to take the drugs he took now to be ambulatory because they were ruining his life. He said if there was anything more punitive than Option B, he did not know what it would be. Mr. Hansen compared the situation to the Gold Rush in California and said they did not have a handle on it yet; but he did not think they needed to lose sight of the primary focus and reason.

Councilmember Pitman asked Mr. Hansen if he needed a caregiver right next door. Mr. Hansen said they were legal businesses and for a good reason and not marijuana madness. Councilmember Pitman asked Mr. Hansen if a bar opened next door to Mr. Hansen, did he think it would affect his property value. Mr. Hansen said he had a neighbor with a washing machine in her front yard that he could not get Code Enforcement to do anything about.

- **Gary Lustgarten, Masterson Circle**, said he had back surgery two months ago, and he was free from any type of medication or medical marijuana. Mr. Lustgarten congratulated the City Council for looking at the matter professionally and asked them to be a leader for the City. He said sometimes the leader had to take a risk and worry later.

- **Roger Watson, 3109 Avenue D**, said he had been making a lot of phone calls and talking to a lot of people about morals and things that were happening. He said a good foundation was needed because the City was moving into an area it did not understand and did not know where it would end up. Mr. Watson said his son was a parole officer, and there were people moving into the area because it was there for them and easy to get. He said the City needed more control for the people who did need it.

- **Marvin McCann, PO Box 50562**, thanked the citizens that were present that evening to address the issue. He said he was a father of three children and encouraged the Council to adopt a moratorium for as long as possible and adopt Option C as their final action. Mr. McCann said some of the proponents had talked about the vibrancy of the businesses and the positive effect it would have on the economy. He said he knew people who used and abused marijuana and he would not describe them as vibrant. Mr. McCann said he would be interested to know how many of the businesses paid in taxes, self-employment taxes, and how much their employees paid in income taxes. He said he suspected zero. He said the medical marijuana act was a bill of goods sold to the voters as a method of giving low cost medication to people with dire illnesses that could not afford medications otherwise. He commented medical marijuana was being sold for \$250 an ounce. Mr. McCann said there were many medical professionals in the audience, and he encouraged Council to ask them about the effects of medical marijuana use on developing brains.

Councilmember McFadden asked what role a governmental body should play in dictating and prescribing the moral behavior of its citizens. Mr. McCann said he did not think moral behavior could be dictated.

- **Tari Burt, 1825 Avenue B**, said she strongly encouraged the Council to accept Exhibit C as an ordinance. She said she had data from the Prevention Needs Assessment that was widely used in Montana for prevention. She said 58% of our youth in treatment had a primary addiction to marijuana, which was more than all the other

drugs and alcohol combined. She said there were currently stores near schools and churches, and they should not mind moving in her opinion. She said there was an FDA approved medication called Merital. She said there were no rigorous qualifications for caregivers; they were not pharmacists.

- **Nick Frentsos, 37 Thompson Lane**, said he was present on behalf of Montana Cannabis, a caregiver and cooperative that served patients state-wide. He said they had operated an office in Billings for months now without any problems of any kind. Mr. Frentsos said they had a different philosophy and approach than others; and their founders included leaders of patient rights movement who helped write Montana's medical marijuana law and who led the initial campaign in 2004 and who founded Patients and Families United 3.5 years ago. He said they served patients legally with complete accountability. He said they had no publicly visible signs and their patients were the only customers they could serve who knew where they were located. He said they strongly supported the medical marijuana law and believed behavior of some of the caregivers fell outside the bounds of the law's intent and purpose. Mr. Frentsos said they believed the legislature needed to improve the law in a number of ways, and they were working with, not against, law enforcement and others toward productive consensus on the issue. He said their leaders had worked closely with Dr. Ed Stickney of Billings, a respected member of the city and a member of the medical marijuana ad hoc committee. He said Dr. Stickney was a strong supporter of patients' rights and medical marijuana and was the past president of the Montana Medical Association. He said Dr. Stickney made the motion to recommend a temporary moratorium on additional marijuana businesses, and they supported his view. Mr. Frentsos said they also supported additional regulations, including a ban on store signs, loitering, public smoking, and other similar measures. He said their view of facility locations was much less significant than its behavior and atmosphere. He said professional and discreet approaches were workable everywhere.

Councilmember McCall said she appreciated Mr. Frentsos' testimony and asked him to talk about some of the parameters that should be put in place at the state-wide level. Mr. Frentsos said he believed that most caregivers lacked some sort of accounting on inventory, amount of production, and amount sold, which was something they followed closely. He said they supplied receipts to each of the patients so they could account for how much was sold and how much they had in their coffers.

Councilmember Gaghen asked if Mr. Frentsos supported a type of licensing procedure for the individuals considered caregivers. Mr. Frentsos said he supported it wholeheartedly. Councilmember Gaghen said she had concerns about those dispensing dosages to people. Mr. Frentsos said not being a physician, it would be hard for him to give testimony as what was a legitimate dosage for a patient. He said the patients had varying degrees of disabilities that warranted varying degrees of usage. Councilmember Gaghen asked if they had a physician with that knowledge. Mr. Frentsos said the responsibility was on the patient's physician.

Councilmember Pitman asked Mr. Frentsos to expand on the comment he made that some providers were acting outside the law's intent and purpose. Mr. Frentsos said without going in to great detail, he knew for a fact that caregivers provided to other caregivers, which was not allowed by law and happened behind closed doors.

Councilmember Ulledalen said he felt the state had reached a tipping point, as well. He said they had heard from people in the community that what they voted for was not what was in place today. He said one of the issues was defining debilitating illness because people were getting cards for almost any condition. Councilmember Ulledalen asked Mr. Frentsos to comment. Mr. Frentsos said he felt the responsibility was on the physician who was signing the paperwork. He said as far as being a caregiver, it would be difficult for him to define what a debilitating illness was.

Councilmember Gaghen asked if his group had been associated with the legislative subcommittee that held a hearing the previous week. Mr. Frentsos said he was not sure what contact there had been. He said he knew one of the partners he worked for helped draft the initiative and worked very closely with the legislature.

Councilmember McFadden asked why it would be of prime importance for a medical marijuana outlet to be located in a nice neighborhood if it was delivered to patients at home. Mr. Frentsos said Montana was a large state, and they serviced quite a few patients across the state. He said some patients required the convenience of a location in a city; and others were miles off the beaten path and needed delivery.

- **Sarah Baugh, 943 North 23rd Street**, distributed copies of testimonies from caregivers, patients, and concerned citizens and a signed petition to create sensible medical marijuana business restrictions. Ms. Baugh said a ban was not the solution, nor was harsh zoning. She said there was room for a happy medium, such as reasonable zoning, restricted signage, and mandatory security. She said the phrase she had heard over and over again was “fair compromise.” Ms. Baugh confirmed with the City Council that there was a medical marijuana patient on the ad-hoc committee. She referenced the wording in Section 4 of the ordinance that stated, “It is the purpose of this Section to regulate medical marijuana businesses to promote health, safety, morals, and general welfare of the City of Billings...” Ms. Baugh advised the wording was offensive to legitimate patients to use the word “morals” when speaking of medical marijuana. She said patients respected the rights of others not to have their medication near children and places of worship and not to have it thrown in others’ faces during their day-to-day living; however, there was no need to insult patients using the word “morals”. Ms. Baugh asked the Council to change the wording.

Councilmember Ulledalen said the last time Ms. Baugh spoke, she was opposed to limiting the number of medical marijuana caregivers in Billings and asked her how many she thought the city should have. Ms. Baugh said the number needed to be considered consistently as the number of patients continued to rise across the state.

Councilmember Cimmino asked Ms. Baugh to define in her own words what she believed was reasonable zoning. Ms. Baugh said the schools were certainly an issue and she felt everyone more than agreed that was fair; but she did not think it was reasonable to restrict around parks or cemeteries, and that was where the restricted signing should come in. Councilmember Cimmino asked if Ms. Baugh thought there was a need for a 1,000-foot separation from schools and in this case, Will James. Ms. Baugh said she did.

- **Melissa Shimamoto, 7100 Silversprings**, said she lived in the county but did business in the city and had children who would eventually attend West High School. She added there were so many people who had already said what she had planned to say; and she was in support of a moratorium and very restrictive ordinances on the

location of medical marijuana shops. Ms. Shimamoto said she did not think she would go as far as Plan C, but she felt Plan B could use even greater restrictions. She expressed sympathy to those who experienced chronic pain and found marijuana as the only answer to their situation. She said she thought the original intention was to provide a means for a small number of people who suffered from severe medical conditions to acquire marijuana. She asked if that was the original intention, why there was such an astronomical amount of people applying for licenses in Billings. She said if there was such a small portion of people who experienced the problem, there should not be that many businesses needed to serve a population of 100,000. She said there was something amiss in the situation because there were not that many pharmacies in Billings.

- **Roy Brown, PO Box 22273**, said he was a state senator from Billings. He said he was on the interim committee discussed earlier, and two weeks ago they held hearings on medical marijuana. He said during the meeting there was a gentleman by the name of Tom Dobare who made the following statements: "This law is in serious need of sideboards and clarity, more oversight and regulations are needed. Many voters are now thinking what they are seeing is not what they voted for. Montana voters did not vote for open smoking or public use of cannabis. Montana voters did not vote for any tolerance of driving while impaired by cannabis. Montanans did not vote for mass traveling clinics in hotels and warehouses. Montanans did not vote for patients to receive recommendations from doctors without the benefit of medical records and physical exams. Montana did not vote for flashy stores, even on Main Street, much less across from schools. Montanans did not vote for large, indoor commercial production operations in residential areas." Mr. Brown said it was an interesting perspective from the man who developed the initiative, wrote it and got it passed. He said their committee was looking into all of the situations and put together a subcommittee to deal with all people on all sides of the issue to come up with solutions in the 2011 session, which made it more imperative that the City do something so that they could help solve the problem in 2011 without more situations like this. Mr. Brown thanked the Council for their consideration.

Councilmember Ruegamer asked if the legislature had the authority to make laws that regulated the use of medical marijuana, the production, and the sale. Mr. Brown said they did.

Councilmember Ulledalen said he had the sense after talking to people that the Council would have to act on it. He said the next Montana Legislature was going to be such a partisan quagmire with so many issues and pots boiling, that it would be difficult to get a bill out of committee let alone get it to vote; so Council needed to act. Mr. Brown said he thought Council needed to act, because the situation had gotten to the point where something needed to be done now and not wait until 2011. Mr. Brown said regardless of what legislature it was, they were always going to have a partisan quagmire, and they were going to have to work through it. He said he believed the people of Montana were not happy with what was going on, and it was not what they voted for. He said if the people got behind what needed to be done, the partisan quagmire would be eliminated and they would get it done.

Councilmember McCall said, in terms of the interim committee, it appeared that the plan for the committee was to have a workgroup and to develop some potential

legislation that would come forward from the committee. Mr. Brown said that was correct, and they were bringing in people from all sides of the issue. He said Mr. Tom Dobare, as well as caregivers and patients, legislatures, and the law and justice committee would be involved. Councilmember McCall suggested that someone from local government, particularly a city or town experiencing the issue, be on the committee. Mr. Brown asked Councilmember McCall if she would like to volunteer.

Councilmember Clark asked what kind of vote the legislature needed to get it put back on the ballot. Mr. Brown said it took a super majority vote, which was not likely to happen. He said it would almost have to be through a referendum with a petition signed by citizens.

Councilmember Ruegamer referenced the list from Mr. Dobare, and said he did not know if he agreed with it or not. He said no one knew what people voted for and they were plowing new ground and trying to find out where to go.

Councilmember Gaghen asked Mr. Brown if he could foresee any problems statewide because of the federal law being different than that of Montana. Mr. Brown said it concerned everyone, and a lot of other cities were dealing with the same problem and had decided because it was against federal law they did not want it in their city.

- **Jerry McDonald, 114 Avenue D**, said he was present to discuss how to legislate medical marijuana. He said he lived in Europe for 18 years and for several years dealt and worked in the Netherlands with several groups of professors that legislated and wrote all of the procedures for marijuana and its distribution in the Netherlands. He said they studied Germany, Italy, and a couple of other countries. He said what he was seeing transpire here was that the licenses were being given and for those not able to get licenses, a group would come in and pay people to get a license or to grow more. He said it created a vacuum of product that was going out illegally and without legislation and that tied the hands of the police. He said there was a great amount of revenue that was flowing out that the municipality was not even seeing. He said it was very detrimental to the municipality in the way that they needed to act now and do something. He said there were people in the Netherlands that could assist. Mr. McDonald said it would be detrimental to ignore the help that was out there and to try to re-invent the wheel.

Councilmember Gaghen asked if the Netherlands had a quota system. Mr. McDonald said they had done away with the pharmaceutical, and marijuana could be purchased in a store or in a café. He said marijuana could not be grown within the city limits, a greenhouse or farm had to be set up outside of the city with fences, and what was taken outside the fence and distributed was regulated.

Councilmember McCall told Councilmember Pitman it would be useful for the ad-hoc committee to speak with Mr. McDonald. Councilmember Pitman said they already had.

- **Bob Hilliard, 2540 Lillis Lane**, said he was representing the Benevolent Protective Order of the Elks and he was the chairman for the State of Montana for the State Elks Association. He said he had been hearing the pros and cons on both sides and received information from different states dealing with the regulation of marijuana. Mr. Hilliard said he really did not have any suggestions, but read the following from their chairman in California, "In the last two years, 117 cities and 8 counties in California have banned pot shops. This number speaks volumes of what happens when

communities see through the smoke screen and are enlightened as to what pot shops really bring into their communities; more illegal drug use, more crimes, and more of our youth being sold marijuana and sometimes other drugs from so-called medical marijuana patients.” Mr. Hillard said the Elks were against any illicit drug in any form, and marijuana fell into that category because it was a Schedule 1 drug, which was the worst because it was a gateway drug that led to other drugs. He said that was proven. Mr. Hillard advised he would move it out of the city. He told the Council they had a big job to do, and he appreciated what they were doing.

- **Laura Lee Needham, 1710 Cobble Creek Trail**, said she was requesting that Council quickly follow the lead of Kalispell and Helena and recognize that federal monies could be at risk for the city. She said, due to the federal laws, caregivers were at risk because banks would not keep their money because they were selling illegal drugs. She said no matter how low key they were, they had money and pot and would attract crime. She gave the example of the crime in Kalispell where two individuals stole money and medical marijuana and beat a man to death. Ms. Needham requested police presence at the front and back of places where caregivers were, especially those close to schools. She said she only had one chance to raise her kids, and the stores normalized illegal drugs and they did not belong in the City.

- **Layne Scheveck, 229 Nash**, said kids in high school would find marijuana if they wanted it and the blame could not be put on medical marijuana. He said it all came out of parenting. He said he thought there was a need for medical marijuana. He said they were all in favor of 1,000-foot school zone and did not want children exposed to it. Mr. Scheveck said there was a needed for medical marijuana medically, economically, and it created jobs. He said the caregivers need controlled with increased regulations. He said a felon or some “shady guy” should not have a license to sell, grow, manufacture, and transport marijuana because it would create crime. He said the businesses needed regulated and punished for violations. He said the number of caregivers should be limited because there should not be one on every corner.

Councilmember Gaghen asked Mr. Scheveck if he was a caregiver or patient. Mr. Scheveck said he was a caregiver as of 10:00 that morning.

Councilmember Ulledalen told Mr. Scheveck that Council did not have the authority to regulate caregivers and only had zoning as a tool as far as where the facilities were located. He asked Mr. Scheveck what kind of criteria he would recommend to Mr. Brown and the legislature to regulate the businesses. Mr. Scheveck said being a caregiver needed to be a prestigious position, so a felon should not be able to become one. He said there needed to be background checks; medical history checks; and possibly education requirements. He said medical marijuana was here and it all depended on how we acted upon it.

Councilmember McFadden asked Mr. Scheveck if he thought the regulation should be lifted on caregivers not being able to sell surplus marijuana to other caregivers, which would help keep surplus marijuana from being sold to someone who was not a caregiver. Mr. Scheveck said if a caregiver had a surplus and another caregiver was in dire need, he could see where that would be beneficial and help deter the selling to someone other than a caregiver.

Councilmember Cimmino asked Mr. Scheveck what his background was and if he had a treatment plan to provide to his patients under the supervision of a licensed

doctor in the State of Montana. Mr. Scheveck said he went in that day because he knew after today it would be heavily regulated. He said he planned to educate himself on how to do it and what not to do. He said it was new to him, and he did not have a plan because it was a step-by-step learning process.

Councilmember Ulledalen asked what strains and varieties of marijuana he planned to prescribe for the variety of illnesses he might see. Mr. Scheveck said he would have to talk to other caregivers who knew more about the business.

Councilmember Gaghen asked if Mr. Scheveck had family members in such chronic pain to motivate him or was it a money-making motivation. Mr. Scheveck said his mother was in social service and leadership, and he had seen there was a need. He said he had seen people “popping pills” day after day and not getting better. He said it might not be for all cases, but the majority felt there was a reason for medical marijuana.

- **Jack Copps, Superintendent of Billings Public Schools**, said it was difficult after all of the testimony to say anything new. He said what ran through his mind was “what a mess; like we’ve been sucked up in a vacuum full of unintended consequences and we don’t know really what to do with it but we know we better pay attention.” Mr. Copps said for the moment, at least, procrastination was not our friend and inaction was not an option. He said something had to happen right away so unintended consequences were not allowed to grow. Mr. Copps said the thing that was more important than anything else was the 1,000-foot rule from the schools. He said it was sacred and everything possible within the law needed to be done to ensure the dispensaries were not within 1,000 feet of a school. He said he goes to the same place every morning at 6:00 for coffee and a moment of quiet; but some people had figured it out. He said it was a place where very good high school kids visited and one of them came to him and asked what the deal was with medical marijuana. He said the student asked him what he thought the City would do and he asked the student what he thought would happen. The student said it was going to be everywhere and easier to secure. Mr. Copps said if it was going to be easier, it would become a bigger problem than what they had now. He said they needed to move slowly but also very quickly to make sure nothing further happened that made the decision more difficult. He said procrastination was not our friend; and he encouraged creation of the moratorium as quickly as possible and then work on the next step.

Councilmember Ulledalen said he thought any anecdotal evidence they could get from the school system was helpful. He said they had received a lot of comments and e-mails, and he heard today there were 75 students at Skyview who had cards. Mr. Copps said he had not actually seen the cards, but they were hearing students were carrying the cards. He said there was a law in place that prevented students from smoking marijuana within 1,000 feet of the school and there were laws in place to allow the school to control the drug when it was on school grounds. Mr. Copps said there were a lot of rumors out there.

Councilmember McFadden asked Mr. Copps if he agreed or disagreed that the state law was flawed in allowing minors to be in possession of medical marijuana cards and if he felt minors were mature enough to handle it and not sell it or share it. Mr. Copps said if marijuana had a value for medical reasons, he did not think a minor should have access to a card and an adult should be in charge of making the decision

and securing and monitoring the medication for the minor. Councilmember McFadden asked if Mr. Copps thought there were parents who were not that responsible. Mr. Copps asked if it was okay if he did not comment on that.

Councilmember McCall said given that there were a number of kids carrying the cards, it was obvious some kids may be self-medicating before they got to school. She asked Mr. Copps if they had any incidents or difficulties with kids in the classroom who might be self medicating before getting to school. Mr. Copps said he was not aware of any but they anticipated they would and were watching very closely.

- **Darrel Thompson, 5746 Creek Drive**, said he agreed with the moratorium to allow time to review the processes, procedures, regulations and implementation. He said marijuana was a federally illegal substance. He said someone had asked earlier about litigation and asked if it did go to litigation if the federal law would override the state law. Mr. Thompson said the Netherlands was a nation and Billings, Montana, was a city and state. He said until they figured out as a state what they wanted the legislature to say was right and wrong and how to implement it, he saw no other way but the moratorium.

Mayor Hanel called a 10-minute recess at 10:40 p.m. Mayor Hanel called the meeting back to order at 10:50 p.m.

- **Connie Wardell, 1302 24th Street**, said she was a member of the committee and felt they needed the moratorium. She said she would like to be able to get rid of the places already located within 1,000 feet of a school, but said she did not feel it was realistic to try to do it that evening. Ms. Wardell said she felt very strongly that the committee would address that in the permanent zoning that would be put in place. Ms. Wardell asked Council to enact the straight moratorium and not try to deal with the full issue that evening. She said she thought they could get their arms around it, and she was encouraged by those who testified in front of the committee. She said she was really trying to do it the way people expected it to be done when the law was passed. She said if the zoning and the laws were in place to support them, the rest of it would take care of itself.

- **Jeffrey Hill, 3855 Avenue D**, said he was speaking against the proposed moratorium and on behalf of his wife, who could not be there because of her medical condition. He said two of her healthcare providers had agreed that marijuana was her last possible chance to receive some kind of viable help for her situations. He said she was exhausted and her liver was in danger, and they had exhausted every remedy. He said her primary care physician who was not generally in favor of medical marijuana had signed off on the state paperwork because she felt it would be beneficial. He said they were currently waiting state approval for her card, and the process was long; it required a medical licensed doctor to approve the therapy, the search for the caregiver, and the wait for the state to approve the petition for a medical card. He said she could only get it from the one source she elected as the caregiver. Mr. Hill asked if it sounded like something someone would do for a Saturday night party. Mr. Hill said if the city started restricting the availability of the valuable medicine, a lot of people in need of it would be deprived. He said many were opposed to caregiver locations in certain areas for fear it would send the wrong message to their children; but most of the fear was based on poor information. Mr. Hill said marijuana was not illegal because it was dangerous but dangerous because it was illegal.

- **Fredrick Schweitzer, PO Box 798**, said he was running for Senate District 29 and was present because he had received a lot of calls, e-mails, and had personal conversations regarding this issue. Mr. Schweitzer advised that last year in Montana 121 people died as a result of prescription drug overdoses, and zero people died from medical marijuana. He said if there was a safer alternative to pharmaceuticals, people should have access to it. He said he did not feel it was right for the “carnival clinics” to run around the state and sign up anybody with a hurt toe to get marijuana. He said they needed legislation to restrict the physicians and what the conditions were to allow it. Mr. Schweitzer said he went to Will James and remembered when McDonalds opened and how they would skip school to get french fries and milkshakes. He said obesity was a big problem, and if we were worried about our children, we should worry about obesity more than medical marijuana. Mr. Schweitzer requested the council look into a licensing dispensary program, who was running them, and what qualifications they had. He said he personally would like to see everyone have a college degree in business if they had more than five patients because it was a business. He said some of the dispensaries were dealing with thousands of dollars, and if they did not know how to deal with it, crime problems would crop up.

Councilmember Gaghen asked if Mr. Schweitzer felt that the licensing and restrictions were the role of the City Council and not the legislature. Mr. Schweitzer said he definitely agreed it was the legislature’s role but he could not get to Helena until January. Mr. Schweitzer said he felt Billings should ban the clinic coming up this weekend because Billings should not have the “roving carnivals” that come in and sign everyone up in town. He said there was another Montana Caregiver Network clinic at the Holiday Inn on Sunday where they did not require medical records.

- **Nicole Schellenkamp, no address given**, said she appreciated the Council’s time and efforts. She said she asked Mr. McDonald if there was a mom or parent on the ad-hoc committee because she would like to work with him because of his training and knowledge. She said she was grateful of who she was and where she came from. She said her father grew up smoking pot but chose to stop when he had kids to make sure his kids never partook in illegal substances or other detrimental substances. Ms. Schellenkamp said had she lived in Montana in 2004, she would have voted against the initiative. She said in Boulder, CO, a new medical marijuana license cost \$6,000 with an annual fee of \$2,000. She said Denver had put a moratorium on its 1,100 shops and were kicking out 550 shops that would come to Billings unless the Council banned them. She said she did not want her children raised around marijuana or to think it was normal because it caused destruction.

Councilmember Pitman advised that one of the things he planned to ask for was that two more members at large be added to the ad-hoc committee. Ms. Schellenkamp said she would love to be on the committee.

- **Will Winterholler, 4392 Ridgewood Lane South**, said he was a practicing dentist in Billings, and he was opposed to the medical marijuana situation and in favor of Option C to completely get rid of it for the time being. He said one comment he heard that evening was the fear of litigation, and said he did not feel we made decisions in life based on whether or not we were going to be litigated but instead what was right or wrong. Mr. Winterholler said his concern with medical marijuana being given by someone with no training was just that. He said he went to a lot of school and had to

pass a rigorous set of exams so he could properly care for patients. He said he felt it was important to have some sort of control over it. He said he understood it might not be the Council's role but until there were laws put in place to control the situation, they needed to put a stop to it right now. He said current doctors, chiropractors, and dental assistants could not take x-rays without certification; and doctors had to go to continuing education classes every year to maintain their licensure. He said there were many issues without being able to regulate medical marijuana.

Councilmember McCall asked if Mr. Winterholler would be opposed to medical marijuana if the State of Montana had rigid standards and regulations about education and training for caregivers. Mr. Winterholler said he believed there was a use for it for a small population of people who could benefit from medical marijuana; but he felt it was currently out of control. He said if it was regulated and administered by physicians and pharmacists, it could be a possibility and he could deal with it.

- **Richard Pope, 5046 Woodvine Circle**, said he lived in the county and was a business owner and father of three young children. He said his formal education was in nursing, but he opted to be a business owner instead. Mr. Pope said it was evident that there were a lot of questions and concerns and not a lot of answers; and to proceed and just go with it did not seem like a very responsible decision. He said in business he had to make decisions all of the time, and sometimes the decisions were right and sometimes wrong and cost him in the end big time. He encouraged the Council to look at the situation. He said if it was so clear-cut and understandable, they would not be there and there would not be so many concerned citizens. He said it was not the venue to discuss if dispensing medical marijuana was right or wrong, because he felt there were merits; but they had not had the time or the right dialog to discuss it and the potential outcomes for or against it. He said he was absolutely in favor of Option C because it needed discussed more thoroughly. He said his values and the values he was teaching his children were to abstain from such substances which did not mean he was opposed to it in a medical setting. He said the term 'caregiver' was being used extremely loosely. He said it was a slap in the face to anyone who was a professional caregiver to suggest anyone could go get a license to issue medications to people without proper training. He said it was disgraceful and he wished Council would carefully consider it. Mr. Pope said the forefathers of this country had a lot more on their minds than litigation.

- **Sherry Brady, 5032 Poly Drive**, thanked the Council for staying so late to listen to everyone. She said she firmly believed it went far beyond medical marijuana, and she felt everyone else knew that, too. She said every state that had legalized marijuana was not fighting illegal marijuana, and that was where Billings was headed. She said the decisions we made had far-reaching implications, and it was time we took a stand because someone had to have the courage and leadership to say it was not what the voters thought they were getting. She said it was a threat to our kids and when our kids were threatened, our families, communities, state, and nation were threatened; and it had to stop at the community level. Ms. Brady said she knew Montana voted for it but it was a very, very uneducated vote and the ballot was very misleading; if not an outright lie. She said part of the ballot said it would have no extra cost to the State of Montana, and they knew there would be costs and all of the problems. She said the only option was Option C because the 1,000-foot buffer around wherever kids congregated was

sacred. Ms. Brady said it was said people got into the business not knowing it might become illegal, which was not true. She said it was still federally illegal, and they knew what they were doing and there were risks so they could not pretend they did not know. Ms. Brady said good people needed to come forward and take a stand.

- **John Crooks, 906 S. 30th Street**, said he was co-owner of the Billings Cannabis Connection at 221 Grand. He said the purpose of the ad-hoc committee was to study the issue, special zoning for medical marijuana businesses, and to provide answers to the who, what, where, when and why of the issue. He said the what, where, and why were pretty clear as Council considered the ordinances to regulate the business; however, there were still many questions without sufficient answers. He said according to the media, there was a citizen outcry with the zoning of medical marijuana businesses. He said there were approximately 250 people attending the meeting that evening and if everyone stood up and spoke in favor of this moratorium, there would be one-fourth of 1% of the residents of Billings, MT showing concern. Mr. Crooks said he had heard of a petition circulated around the neighborhood of his business when he opened, and he heard there were very few signatures. Mr. Crooks said he had looked in the Gazette and on-line where people had voiced their opinions, and it was a very low number. He urged the Council not to react to the outcry of less than 1% of the population but to instead heed the warnings that there would be litigation should a law forbid it and his entire investment in the business be forfeited because of a few concerned parents who had yet to come up with a concrete reason as to why a medical marijuana business around the schools would have an effect on their children.

- **Hans Schweitzer, PO Box 798**, said he was against the moratorium. He said he agreed it was a moral issue, and a lot of people were struggling. He said it was clear when dealing with people in pain, that nothing should limit their access to treatment. He said a lot of people were wondering why people dealing with pain were turning to medical marijuana instead of pharmaceuticals. He said 7 million people in this country were addicted to pharmaceuticals and 22,000 people died every year from overdoses of pharmaceuticals. Mr. Schweitzer said it was not possible to overdose on cannabis and the worse that could happen would be the patient would take a nap. He said the only health risks anyone had ever found with cannabis were based on the act of smoking it, but that was not the only way to medicate. He said he agreed children having access and using it recreationally was illegal, but the moratorium would not address any of the concerns the parents addressed. He said there was black market marijuana before medical marijuana and it was still around. He said medical marijuana had a long history of use and it was a God-given plant to cure nausea, chronic pain, and muscle spasms; and he did not understand why it was a big issue and people were fighting it.

Mayor Hanel asked Mr. Schweitzer what his credentials were. Mr. Schweitzer said he was just a concerned citizen. Mayor Hanel asked if he was a provider. Mr. Schweitzer said he was. Mayor Hanel asked what type of training he had. Mr. Schweitzer said he went to college for Information Systems. He said he kept track of all the plants; they were all bar-coded. He said he did not go to college for botany. Mayor Hanel asked if he had any medical training. Mr. Schweitzer said he did not prescribe medical marijuana, and was a college graduate. Mayor Hanel asked if they used chemicals to help the marijuana grow since it was a God-given plant. Mr. Schweitzer said he used nutrients like molasses. He said it could be put in dirt and it would grow,

and that was a natural plant. Mayor Hanel asked why the US Government did not approve it if it was safer than pharmaceuticals. Mr. Schweitzer said that was a very good question, and they should approve it.

Councilmember Gaghen asked Mr. Schweitzer if his business was located in Billings or out in the county. Mr. Schweitzer said it was in Billings but he did not want to release the location because of the acts of terrorism that had recently occurred.

- **Janice Linn, 7555 Highway 3**, showed a picture of the store that was fire bombed and said she did not consider the signage at the store to be discreet. She said two weeks ago an article in the Gazette listed the number of cardholders in every county and the caregivers in every county; and there were only two cardholders for every caregiver. She said it was hard to believe a business with only two cardholders could stay in business. Ms. Linn said the medical marijuana act banned the use of medical marijuana while operating a motor vehicle but allowed a passenger to smoke a joint. She said the act banned the use of marijuana on school buses or school grounds, but it was legal for a cardholder to possess it at school. She said the act banned the use of medical marijuana in public parks and youth centers and on public transportation but it was perfectly legal to smoke a joint on the street. She said the City code banned public drinking and public display of alcohol but there was no law against public use or public display of marijuana. Ms. Linn said the Montana Code stated that public intoxication was not a criminal offense but the person who appeared intoxicated may be detained for their own protection; no matter what they were intoxicated with. Ms. Linn said because a marijuana drug test stayed positive for weeks, it could not be used to prove acute intoxication, so whenever a police pulled over an impaired driver or discovered one at the scene of an accident, they would need to use film and a medical exam as evidence.

Mayor Hanel asked Ms. Linn if she was a doctor. Ms. Linn said she was.

- **Tom Zurbuchen, 1747 Wicks Lane**, said Council was aware he was against the moratorium because he had sent them all an e-mail. He said the moratorium solved nothing. He said someone said the City could not regulate caregivers. He said the City issued a caregivers license, and the City had the right to put restrictions on the license. He said the license could be so restrictive as to spell out what it took to get it revoked or what it took to keep that person from ever getting another license. He said it was just an excuse to do nothing. Mr. Zurbuchen told the Council they needed to act now and not sit and let the situation continue to grow and fester. He asked why nobody was crying out about kids with medical marijuana cards and prescriptions for Oxycontin and asked what the difference was. He said they were making a mountain out of a mole hill. Mr. Zurbuchen said the last ten years he had been to approximately two dozen doctors, and he had been prescribed drug after drug; and the drug of choice he could not take it. He said the drug he was currently on allowed him to negotiate but was at his doctor's limit and asked what he was suppose to do now. He said two caregivers told him they felt they could give him a world of relief, but they could not guarantee it. He said he had more faith talking to the caregivers than he did the doctors who demanded he take a drug that did not work.

Councilmember McFadden asked Mr. Zurbuchen if he thought the City was trying to regulate caregivers or where storefront caregivers could operate. Mr. Zurbuchen said what the City was trying to do was say where they could be and refusing to step up and

regulate the actual caregiver. He said they had the authority to regulate the caregivers; but instead, they just wanted to deal with zoning. He asked why did it matter where they were located if they did not act accordingly. He said they needed to regulate with the license so the caregivers would do what they wanted them to do.

- **Dr. Scott Nedum , 1710 Cobble Creek**, said he was a doctor with an unlimited, unrestricted license to practice medicine in the State of Montana. He said he wanted to talk about the aspects of medical marijuana and said when someone went to see their physician, they trusted their physician learned in medical school the relationship between dose, response, and effect. He said all treatments in medicine, whether surgical or medical, had a cause and effect relationship. Dr. Nedum said when someone went to a doctor with a problem, they were seen, treated, and there was a follow-up. He said based on the medical marijuana act, that did not happen as far as he knew. He said under the Federal Controlled Substance Act, marijuana was a Class 1 drug, which meant it was a drug that had risk for addiction and abuse. Dr. Nedum said some would say there were no ill or medical effects from smoking or taking marijuana and he said that was a “brain atrophied, delusional, schizophrenic, compellation by people who utilized marijuana.” He said in addition to addiction, there were some serious mental health issues associated with it and serious cardio-pulmonary issues, such as a 5-time increased risk of a heart attack within the first hour of smoking marijuana. Dr. Nedum said the National Institute of Health and the Institute of Medicine had both labeled marijuana as a gateway drug, and it was well documented. He said the Department of Health and Public Services in Montana reported last month there were 12,081 cards in the State of Montana for use; and 350 were for the originally-intended; but felt those statistics were outdated.

Councilmember McFadden asked Dr. Nedum how long he had been practicing in the State of Montana and if doctors in the state were doing anything at all to make sure marijuana was not prescribed to people who should not have it. Dr. Nedum said he had been practicing in Montana for five years; and there were approximately 14 physicians who had prescribed on the average of 700 medical marijuana certificates. Councilmember McFadden asked if there was nothing going on currently where doctors in Montana were policing their own ranks. Dr. Nedum said not that he was aware of.

Councilmember Pitman said he had heard that no one had ever died from using marijuana; and asked Dr. Nedum if he knew of anyone who had died of a heart attack with marijuana being a contributing factor. Dr. Nedum referenced his handout and said on the last page in the middle there was a publication from the Institute of Medicine addressing that question; and the answer to whether or not marijuana could kill you was yes.

- **James Knox, 661 Garnet Avenue**, said he was a business owner and candidate for House District 47. He said when going door-to-door, at least 80% of the people had asked him what he was going to do about medical marijuana in the legislature. He told the Council they needed to be swift and strict that evening until the legislature could deal with it. He said as a business owner he has had six businesses contact him for computers and software who said they wanted to be a legitimate business, and they were not personally using marijuana. Mr. Knox said they suggested the business have a card with a picture for each customer they could swipe and track everything sold to that patient. He said every one of the caregivers told him that was not what they wanted and

they did not need to be tracked. Mr. Knox said if they wanted to be legitimate businesses, they would take that on. He told Council they had heard from some caregivers that evening, and that was exactly the type of business they were running. He said if we had medical marijuana businesses in our community, we wanted responsible businesses.

- **Katy Lanier Petersen, 620 N. 12th Street**, referenced a piece of paper she had just found in the restroom about the misuse of prescription drugs killing hundreds of Montanans a year, and that the drugs were coming from friends and family and not drug dealers. She said she was a mother of three girls and a recovering drug addict. She said she had been through almost 13 years of recovery and was a member of Narcotics Anonymous. She said she voted for Initiative 148 because she had seen some of her friends dying from Hepatitis, Aids, and other kinds of viruses they contracted while getting high. She said some pain medications played “hell” on a person’s liver and they just died a little bit quicker. Ms. Petersen said she worked with youth and runaway children in Billings and had been a member of the North Side and South Side Task Forces. She said there were several pharmacists and nurses accused of diverting drugs, and they needed to go to counseling in order to retain their licenses. She said her choice was what she chose to do and if she was causing no harm, it should not bother anyone.

- **Soulchivo Eto, 428 Grand Avenue**, said he was originally from Japan. He said he married an American and had three children. He said the bottom line was that they did not know what was going on when they voted. He said when he attended an American college using English, just because he was from Japan did not mean he did not know when there was a test. He said maybe they did not know what medical marijuana could do or they were depending on 20th Century information. Mr. Eto said we needed more time to study and asked how one issue could be argued before studying it. He said people were talking about it with a stereotyped opinion. He said it was approved and we failed. He said he understood the Council’s position and the worry about lawsuits. He said the people were not smart enough to study it, and it should have been talked about six years ago. He said it was our fault and we needed to study together and educate people from both sides.

- **Joe White, Billings, MT**, said he supported the moratorium, specifically normal public health agencies should be selling it with conditions for storing and dispensing. He agreed there was a lot we did not know about it. He said his family doctor asked him to make remarks that evening.

- **Mike Beatty, 1637 Dickie Road**, said he was the co-owner of Billings Cannabis Connection at 221 Grand. He said he was very disappointed in the group that brought information to the Council. He said the Council was not as educated as they should be, and the Council’s questions should have been answered before it got to this stage. Mr. Beatty said he was disappointed no one had questions for his co-owner who testified earlier and said he was there to answer questions.

Councilmember Ulledalen said they had been told that the City of Billings should impose regulations on caregivers, and asked what kind of qualifications should be put in place for medical marijuana caregivers. Mr. Beatty said he did not have an opinion on what the City should do, but said his qualifications were his patients. He said if he did not do his job correctly, they would find another caregiver. He said patients could

change caregivers, and so if a caregiver did not conduct himself in a legal, professional, appropriate manner, the patients would find someone who did. He said he had spent months moving dirt from his area and made it safer for children to walk back and forth to school, and he conducted himself in a legal manner.

Mayor Hanel asked Mr. Beatty what his qualifications and credentials were. Mr. Beatty said he started it many years ago and stayed hidden. He said the problem now was that there were 80 people doing this in their homes before it ever got to this point. He said they were quietly taking care of their patients. Mr. Beatty said the reality was that unless they had gone to school to become a botanist, they did not have qualifications such as that; but they knew how to take care of their patients in a professional manner. He said every caregiver had to stay on top of their game. Mayor Hanel said he did not question his professionalism and asked what type of training he had. Mr. Beatty said he joined the military on his 18th birthday as a military police officer and served at Fort Leavenworth. He said after the military he moved to Montana and served as a Correctional Supervisor for the Cascade County Sheriff's Office for 6.5 years, and he got out of that line of work to do his current line of work.

Councilmember McFadden asked if there was a supply and demand issue. Mr. Beatty said there was, and many caregivers only had one patient. He said the bar needed to be held high.

Councilmember Ruegamer asked what he would do for him if he came in with a card and asked for dope. Mr. Beatty said he had medical marijuana in his store and not dope. He said if his name was not on the back of the card, he would receive nothing from him. Councilmember Ruegamer asked Mr. Beatty why he could specifically give him marijuana. Mr. Beatty said he could not give him marijuana unless he was a patient registered with the State of Montana. Councilmember Ruegamer asked Mr. Beatty why he could give him marijuana if he was Mr. Beatty's patient and came in with a card and said he was in a lot of pain. Mr. Beatty said they would have a consultation. He said there were people out there with medical marijuana cards that should not have them but there were also people out there with a driver's license that should not have one. Mr. Beatty said he had two younger children. Councilmember Ruegamer told Mr. Beatty he had not answered his question. Mr. Beatty told him to ask him one more time and he would answer it without any bull. Councilmember Ruegamer said he wanted a short answer. He said if he came to Mr. Beatty with chronic back pain and had a card, what qualified him to give him marijuana. Mr. Beatty said the State of Montana. Councilmember Ruegamer asked if that was it, and Mr. Beatty said he believed it was all he needed, as well as the approval of his patients. He said when he started he did not have the qualifications, but he had worked his "butt off" to make certain he was the best in his group. Councilmember Ruegamer said his daughter was a nurse, a caregiver, and she went to college for her qualifications. He said his pharmacist was a caregiver, who went to college and earned qualifications. Mr. Beatty said he had no qualifications to be called a caregiver, because the caregiver name was given by somebody as a blanket cover name. He said he was a caregiver because he took care of his patients, and that was it.

Councilmember Ulledalen asked if the Council petitioned the State of Montana to become caregivers, would it be about their relationship with potential patients that justified how long they stayed in business. Mr. Beatty said that was correct.

Councilmember Ulledalen asked if it really would not matter if they did not know anything about pain or had any training. Mr. Beatty said a person needed an unsuspecting victim qualified to get a card to name them as a caregiver, and it was that simple. Mr. Beatty said you had to have good PR and marketing but you needed a good connection with your patients.

Councilmember Cimmino commented that Mr. Beatty said he was disappointed that Council did not ask any questions of his partner, John Crooks. Mr. Beatty said it may have been the disappointment that Council had gotten tired of asking questions and had not gotten any answers. He said the committee had not supplied them with the information they should have. Councilmember Cimmino told Mr. Beatty she could tell he was very passionate about what he did and wanted to do his job well; but the Council was elected by the people and they had a job they needed to do well. She said they had a responsibility to the community to enact some sort of control and asked Mr. Beatty what he thought a happy medium would be. Mr. Beatty said he understood where people were coming from and said as long as he and the others who had invested in the community, were grandfathered in, he understood the 1,000-foot barrier; but felt 1,000 feet was no different than half a mile. He said if the caregivers were conducting themselves in a legal manner, there should be no issue. He said signing was an issue and everyone had to follow the rules in order to comply with the law. He said some did not make the best decisions.

Councilmember Ronquillo said he was having a hard time understanding and if they passed the ordinance that evening, they would have six months to become more educated. He told Mr. Beatty if he was doing the job as he said he was, it should not harm him in any way. Mr. Beatty said he agreed and said he would help educate. Councilmember Ronquillo asked Mr. Beatty if he would have a problem if Council implemented the ordinance. Mr. Beatty said he would not as long as it took care of the people already in business; and if those places within the 1,000 feet broke the law, it should be taken away from them. Mr. Beatty said those who went through the difficulty of becoming registered as a caregiver would go through the difficulty of remaining legal and wanted nothing more than the black market to disappear.

Councilmember McCall asked Mr. Beatty if he believed an out-of-state physician coming to a mass clinic and authorizing cards for hundreds of people was an ethical thing to do. Mr. Beatty said they usually had 400 to 600 people depending on the city and date and there was more than one doctor. He said the doctors were talking to the individuals and making a recommendation for a qualifying condition, not a prescription; which was what the Montanans voted for. Mr. Beatty said no one should have anything to do with what happened between the doctor and the patient.

Councilmember McFadden asked Mr. Beatty if caregivers followed the HIPPA Regulations. Mr. Beatty said they followed regulations and only documents needed for a particular condition were kept and were locked up in a safe in his office.

Councilmember Gaghen said the ad-hoc committee had done a good job of providing Council with information. She said some of their questions were posed to share the content with the viewing audience and people in the chamber who did not have access to materials. She said the past two weeks they had been overwhelmed with all kinds of very worthy sources. Mr. Beatty said the committee may have been passing on information but there was a lot of information missing from it, as well. Mr.

Beatty said everyone worried about children having a card. He said it was a fact and a law that the only way a child could get a card was if their parent or legal guardian was their caregiver; so if the child was carrying it at school and doing something wrong, the parent could be approached and the card removed. He asked Council to focus on the individual and not the industry.

- **Suzanne Streiff, 4636 S. Woodhaven**, said she appreciated the Council's time and would not have missed a minute of it. She said the voters of Montana needed to take responsibility for what they voted for. She mentioned she was strongly in favor of Exhibit C. She said she followed politics a lot and was shocked, horrified, and disappointed about the information that has not been provided. She said Council's questions that evening meant that it needed stopped now in order to figure out what to do next. Ms. Streiff mentioned supply and demand and said there was no way there was a need for that many facilities to supply the chronically-ill patients in Billings. She said she had a son at West High, and she knew cards were there. She said she really appreciated the Superintendent speaking out that evening and she would let him know that. She said she had a daughter who would be attending Will James next year, but she was more concerned about her 4-year-old who would attend Will James in seven years; and asked what the issue would look like then if it did not stop now.

- **James Pennington, 5859 Ironwood Trail**, said it seemed like the people were framing their arguments that they needed it or they would die; and not that they might have to move their businesses. He said it might be an imposition for them and their patients for awhile when they had to move but they would still exist. Mr. Pennington said four years ago he had a little girl with leukemia and he traveled every weekend 750 miles to Salt Lake City to get the care she needed; so he did not buy the argument that it was an imposition to leave Billings city limits if you needed it. Mr. Pennington said he supported the drug if it were prescribed in the proper way. He said they needed to take a step back and take a look at it. He said he was not in favor of a moratorium because it was a weak step that moved it out of the way in hopes it would go away or the legislature would take care of it. He said Billings was the biggest city in Montana, and we needed to set the example. Mr. Pennington said we needed to do the right thing and not just the easiest thing. He said he was in favor of moving it out into the county. He said it was an emotional issue for a lot of people, and he appreciated the Council's work on it.

Councilmember Ruegamer asked Mr. Pennington what he thought the right thing to do was. Mr. Pennington said the right thing to do was to acknowledge that it was a mind altering drug. Mr. Pennington said he felt the right thing to do was follow Kalispell or Helena's example. He said taking six months to study it was just to sweep it under the carpet for a bit and hope it came to a middle ground.

Councilmember McFadden asked whose money we should use to pay the lawsuits. Mr. Pennington said he felt we were a nation who craved doing the right thing. He said we needed to go to the taxpayers and tell them we made a blunder and then go to the State saying we were following Kalispell and Helena and ban together to get it right. He said the State had a big mess and they could not wait for the State to do anything.

Councilmember Ulledalen commented the State had a lot more tools to work with than the City and comparing the City to what the legislature could do was not fair at all.

Mr. Pennington said he was not comparing the City to the legislature and was only asking that we do the right thing and say no.

- **Bill Mercer, PO Box 2118, Billings,** said he had not heard much about a traditional law enforcement analysis of the real risks of failing to act on the moratorium and to take the rest of the recommendation from the ad-hoc committee very seriously. He said he was the federal prosecutor for the state for eight years, and they targeted organizations to minimize supply to drive costs up and minimize access points. He said there were so many unregulated access points in the community. He said he thought the ad-hoc committee's recommendation made sense because there were a lot of risks around the schools, and it was tied to marketing and conversation about what was legal and not legal. Mr. Mercer said part of what was going to happen was that a lot of kids who were 10, 12, and 15 today would be very confused about the risks of marijuana and what they should be doing in terms of their own personal choices. He said he thought the recommendations of the committee were so important because it began to push back and making sure there was clarity of what was acceptable and what was not. Mr. Mercer said he was confident if they surveyed 500 Montana voters, they would say this was not what they voted for. He said he hoped the Council would consider taking testimony from the state judges, municipal judges in Laurel and Billings, and possibly the federal court; and he thought they would consistently say that marijuana served as a gateway drug for other illegal substances.

Councilmember McCall said there were three recommended options, and asked which one, or which combination, he would recommend. Mr. Mercer said he hoped the Council looked carefully at what Kalispell, Great Falls and Helena had done with respect to the immediate term issue. He said he hoped the City looked at Option C. He said the adoption of Option C would be a very useful thing to have on the book.

Councilmember Pitman asked Mr. Mercer for his legal opinion on whether the City would be sued. Mr. Mercer said he had a great deal of confidence in the City's counsel, and he did not want to interfere with his good advice.

Councilmember McFadden asked Mr. Mercer if the City took the wrong option and was sued and lost, would the City not only lose a lot of money, but the judge could say the shop could stay right next to the school. Mr. Mercer said litigation proceeded in a lot of different ways and he would assume there would be an attempt to get a preliminary injunction. Councilmember McFadden said his fear was the City would lose on two levels at once. Mr. Mercer said there were so many stages that would hopefully happen within the next three years. He said some of the energy seen in the room would be seen in Helena, and whatever litigation took place, the State would be saying what was going to be allowed and not allowed in its current form. He said there may be a referendum where people would be given the chance to rescind what they adopted. Mr. Mercer said he would question the litigation risk being suggested.

Councilmember Ruegamer said he was the one who said the City would lose if it tried to mitigate the grandfathering, not Attorney Brooks. He said the City had a few lawsuits since he was on the Council, and the City had not won any of them.

Councilmember Ulledalen said it was a political situation and for whatever reason, the City had reached a tipping point in the last two weeks, as well as a tipping point throughout the state. He said while serving on the Council he had dealt with many issues but none with the kind of response this issue had received. He said the people

who were involved and who were committed were going to take it to the next level. He said they needed to do something at this level because he was questioning if something would happen in the 2011 Legislature. He said the issue he saw was what they were seeing on the streets and in the business districts today was not what the people envisioned in the 2004 initiative. He said it was going to be changed whether it was the State Legislature changing it or an initiative. He said he could not explain whether it was the numbers close to schools, on arterial streets, or at other locations; but something snapped, and this State and this community were going to change completely forever. Councilmember Ulledalen said he felt we would see a political reaction in Billings and in Helena.

Mr. Mercer said there were so many different things happening state-wide that had opened people's eyes, and people were shocked at the overall numbers. He said those people were becoming more aware; and the statistics alone were driving people to conclude this was not what was contemplated by the voters. He said there were so many variables that were hard to understand when the crystal ball was so murky. He said the federal government had taken a different position on enforcement than it had taken previously; and he felt the Council was in a difficult position because it had been given a task that had exploded in the laps of local government in a way that the state and federal governments were on the sidelines and not helping out. He said he thought there were some immediate and long-term steps that could be taken.

Councilmember Ulledalen asked Mr. Mercer what the position of the Bush Administration was. Mr. Mercer said the Federal Narcotics Laws were fully enforced until early 2009; and possession, distribution and receipt of marijuana were illegal under federal law. He said there was never any limitation on what federal law enforcement could do with respect to charging. He said it was just a policy determination that could change later in the current administration as returns were observed nationally or in a future administration. Mr. Mercer said the statute had not changed in any respect.

- **Tyler Atwood, 304 Mountain View Lane, Laurel, MT**, said what compelled him to speak that evening were certain pieces of information he felt were presented out of context. He said a statement had been made earlier by a doctor that the pharmacology on marijuana was somewhat undeveloped. Mr. Atwood said it was a result of the demonization of the plant in the public perception of our country for the last 70 years. He said he did not think we should ignore the historical implications and context. Mr. Atwood said a side benefit of the illegalization of marijuana was the subsequent illegalization of hemp, which was in the interests of many of the corporate entities that supported the public perception battle against marijuana at the time. Mr. Atwood said he was not suggesting those were the true reasons and there may have been alternate economic possibilities for the initial illegalization of marijuana. He said he felt a moratorium would continue the demonization, because it made a very strong statement about the nature of the plant. He said he felt once the potential alternate causalities as to why the drug was initially illegalized, any discussion of the federal schedule could be equally misleading. He said once the federal schedule was established, the American Medical Association and the National Institute of Health had no economic or any other type of incentive to do anything but study the detrimental effects of the plant. He said a moratorium would continue the biased perception, and more information would be beneficial.

Mayor Hanel asked Mr. Atwood if the reason he drove over from Laurel was because he had a business here or was a provider. Mr. Atwood said he was speaking as a concerned citizen and as an individual who believed in the rights of individuals.

- **Tom Maxwell, 3418 Gallatin Place**, said he was a student at Billings West. He said we were here today to pursue our religious freedoms and felt it was disrespectful and should be removed and enforced with zoning restrictions. He said it was like spitting on our flag by allowing medical marijuana in front of a church.

- **Michael Kuchera, 910 Broadwater**, said he ran a horticulture store and saw a lot of caregivers come in to his business. He said a lot of the issue was due to ignorance as far as lack of education on both sides because a lot of people did not know the true benefits and facts. Mr. Kuchera said he agreed with the 1,000-foot barrier within schools and thought more time was needed to look at all the facts. Mr. Kuchera said, whether medical or not, no one could stop the marijuana movement because the ball was rolling too hard and too fast. He said all they could do now was regulate it, monitor it, and get their cut to help pay for schools and roads.

Councilmember Ronquillo asked Mr. Kuchera if clients would be lost if Option C was passed and businesses had to move to the county. Mr. Kuchera said it was possible, depending on where the business had to move, where the patient lived, and how expensive it was for the patient to travel 30 minutes to get the medicine. He said a lot of people spent half their social security on it. He said he thought it would have a negative effect, and there was enough ignorance right now that made people scared and that had nothing to do with the medical part of it. He said people were always scared of change, and he did not think it was right to totally wipe out the whole city and force out the businesses who had been set up for six months or more and who had not caused any problems. Mr. Kuchera said more time was needed to think about it before everybody was wiped off the slate.

Councilmember Ulledalen said caregivers claimed they did it out of compassion and to ease the pain and suffering, and asked why the compassionate people did not sell it cheaper instead of charging \$300 an ounce. Mr. Kuchera said there were people who did and some who did it for free. He said some caregivers just asked for an amount to help pay their costs, and some charged more than the illegal street prices. He said there were all sides to it. Mr. Kuchera said he could see the positives of both sides. He said there was enough technology in the world that no one should have to suffer.

Councilmember Gaghen asked Mr. Kuchera if he was a provider of the equipment to grow marijuana. Mr. Kuchera said he sold horticulture equipment supplies. Councilmember Gaghen asked Mr. Kuchera if he was a caregiver. Mr. Kuchera said he was a caregiver but he did not run it out of his business. Councilmember Gaghen asked if he ran it out of his home. Mr. Kuchera said he started a couple of months ago running it out of his home. He said all he was doing currently was growing plants and had not given patients anything yet. He said he was still in the process of feeling things out. He said he started his business over a year ago and could have jumped into it right away, but he did not because he saw this coming. He said most of his patients were unhappy with their previous caregivers. Councilmember Gaghen asked if he supported a quota system in the local community. Mr. Kuchera said that was tough to say but said it definitely needed to slow down because it had gone crazy the past couple of months.

He said there needed to be more education for caregivers because a lot of them had no idea what they were doing and a lot of them were in it just for the money.

- **Scott Krabler, 4374 Brookside Lane, Bozeman, MT**, said he was a patient and a caregiver, and a group of caregivers he worked with had an office in Billings. He said the AMA had ordered a review of the Schedule 1 status of marijuana, which was on their website. He said there were a lot of people talking about a lot of things and there was a lack of education. He said marijuana was made illegal a long, long time ago, and there had been no way to study it in this country. He said he heard the comment that the Netherlands was not a viable comparative, which it was not, but that was where the research was being done. Mr. Krabler said people would find it worked for individuals who were bi-polar but it would not work for schizophrenic people. He said the Washington state laws did not acknowledge bi-polar disorder or half of the things cannabis worked for. Mr. Krabler said he just signed up a 75-year-old patient who slept and was pain free for the first time in 18 years because nothing else worked for him. He said if he had a choice between what he considered a natural alternative resource and a chemically-synthetic manufactured drug prescribed by someone in the industry where 77% of the diagnoses were wrong, why would he choose to go with the drug. Mr. Krabler said if a caregiver did not know what he was doing, there was no way he could produce quality cannabis. Mr. Krabler said he was in favor of the moratorium because everyone needed education.

Councilmember Gaghen asked for the status in Bozeman. Mr. Krabler said the City Council was in moratorium until July or August. He said there was a 1,000 foot moratorium in place, which was done for political reasons. He said the general sense was that it would ultimately result in a 500-foot limitation around schools; not daycares or cemeteries; and the parks had already been considered. Mr. Krabler said the thing that had not been addressed in the moratorium was public use.

Councilmember McCall asked Mr. Krabler if he was in favor of imposing the 1,000-foot now or study it through the moratorium and then make the decision. Mr. Krabler said people had been told that marijuana was a bad thing for years, and it helped so many people in so many different ways they could not all be pinpointed. He said he was in favor of the moratorium because the required education to make decisions had to happen. He said neither the cities nor the state had the right education, and they were willing to work with them. Mr. Krabler said he did not support the 1,000-foot because they were dealing with a substance that had been in a subculture for decades, and the subculture and stigmas that went along with it were what everyone feared. He said they proposed having an accounting trail to track plants from the time they were cloned or bred from seed until the time they met the patient's hands to show accountability. He said the product was very difficult to get prime, and to get quality cannabis, it needed tender care.

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

Councilmember Pitman moved for approval of Item 8, Exhibit A, the moratorium option with a possible consideration amendment to prohibit 1,000 feet around the schools, seconded by Councilmember Ruegamer.

Councilmember Clark said he understood the first part of the motion but did not understand the second part. Councilmember Pitman said he did not want to put it all together because he did not want it to die for people not wanting to do the 1,000 feet around the schools. He said if they were going to do the moratorium and that was where they wanted to leave it and refer it back to the ad hoc committee, that was fine with him; but if they wanted to add on the 1,000 feet around the schools at this point, that would be a separate amendment that would be offered by someone else on the Council.

Mayor Hanel asked Councilmember Pitman to restate his motion.

Councilmember Pitman moved for approval of Item 8, Exhibit A, the moratorium option, with the possible consideration of an amendment to prohibit the marijuana businesses within 1,000 feet of the schools.

City Administrator Volek asked that Council consider the first part of the motion and then see if there was an amendment to take up the second part.

Mayor Hanel asked Councilmember Pitman if he was in agreement with it, and said he thought the variance of the motion and the word "possible" would be a concern. Mayor Hanel asked Councilmember Pitman if he was willing to amend his motion or leave it as is.

Councilmember Pitman moved for approval of Item 8, Exhibit A, the moratorium option, seconded by Councilmember Ruegamer.

Mayor Hanel asked if everyone understood the motion and asked Attorney Brooks if he had anything to add. Attorney Brooks said right now with Exhibit A as the motion on the floor, he did not have anything to add.

Councilmember Clark moved to amend the motion to include the 1,000-foot from schools, seconded by Councilmember Gaghen.

Councilmember Gaghen asked Attorney Brooks if the motion was to fail with the amendment, would they have the possibility of just voting for the moratorium. Attorney Brooks said that was correct. He said if they were interested in a 1,000-foot separation, they needed to be very, very specific.

Mayor Hanel asked Councilmember Clark to restate his amended motion.

Councilmember Clark moved to amend the motion to include the 1,000-foot separation from schools. He said they needed to discuss if it needed to be retroactive or if it just pertained to new or moving businesses.

Councilmember Ulledalen asked Councilmember Clark what the point was if they were going to have a moratorium that stopped any new marijuana businesses at this point because that was what they were concerned about. He said if they stopped with a moratorium they could discuss what their responses were to the existing ones within the moratorium period. Councilmember Clark said it would allow those that were already in business to move within 1,000 feet of schools if they wanted to. He said the moratorium did not allow new licenses but allowed them to move anywhere in the City they wanted to.

Mayor Hanel asked for clarification from staff. City Administrator Volek said Section 7 said that existing medical marijuana providers already licensed by the City of Billings and in operation at their designated commercial business location on the date of this ordinance would be permitted to continue operations at that location during the period of the interim ordinance. Attorney Brooks said they could say "only at that location" if it gave the Council greater comfort. Councilmember Clark asked if a person

had already gotten a license from the City but had not established the business yet, what happened then. Attorney Brooks said it took two things; a license to be approved and a specific business location where they were actually operating. Councilmember Clark asked if they had not dropped into a location yet, if they could drop in next to a school.

Planning Director Candi Beaudry said they had to meet two conditions. She said they had to have a license, which could be under review, and they had to be operating right now and they could not change locations. Ms. Beaudry said if they did not have a place of operation open, they did not meet both of the conditions, so they could not open. Councilmember Clark verified that the guy who just got his license that morning would not be able to open. Ms. Beaudry said that was correct, but there were probably loopholes and it would be difficult to identify all of them. She said an example of a loophole would be if they said they were operating out of their home. She said if they did not have a place of business that identified a storefront, and they gave their home address and said they were operating out of their home as a home occupation, which was legal, they met the conditions of being licensed and having a place of operation. Councilmember Clark asked if they could have customers come to their home. Ms. Beaudry said they could consult in the home, but not sell it out of the home.

City Administrator Volek said it had been tradition, rather than holding the business owner up until the City could get in to do inspections, once the business owners had gotten their business licenses, they could open up for business taking the risk that when the City did inspect the business, they may not meet all of the qualifications. She said it generally took seven or eight weeks to get through the process unless it was a home occupation.

Councilmember McCall said they had two complex issues – the moratorium and the 1,000-foot barrier. She asked Attorney Brooks if it would be better to separate the two motions and vote separately. Attorney Brooks said he thought it would be because the more structured and separated it was, the better off it would be so everyone was clear as to what the main motion was and what the amended motion was. Councilmember McCall asked Councilmember Clark if he would consider withdrawing.

Mayor Hanel said he was going to speak from his conscience. He said he sympathized with people suffering from chronic illness and respected the fact there were certain things that did help, whether it was medical marijuana or prescribed medicine. Mayor Hanel said he was a former 20-year law enforcement officer and 18 of the 20 years he spent working with children. He said for 18 years he lectured children, young adults, high-school age and on down about the dangers of drugs, legal drugs and illegal drugs; one of which was marijuana. He said all of the training he had locally and on the national level, he learned that marijuana was a mind-altering, gateway drug that could lead to other dangerous drugs in life. He said it could be harmful, effect a person's life and loved ones. He said with that in mind and with respect for everyone who testified for and against it, he was having a very difficult time agreeing with the initial motion or the second motion. He said it would be his idea that the State Legislature still did not know what it was going to do and until they did, the City should not do anything but select Option C and not allow it until the legislature had figured it out and there had been sufficient education so they knew what they were doing. He said there were too

many unanswered questions and too much information that had not been shared. He said he would have a difficult time supporting the motion.

Councilmember Ulledalen asked Mayor Hanel if Option C was adopted that evening, what he proposed to do with the existing businesses. Mayor Hanel said he would close them until the legislative session had met and formed a direction. He said it had been exercised in other communities and it was difficult. He said he was not convinced they had qualified persons distributing marijuana to persons in need. He said he did not argue the fact that it was needed or the fact that it worked; he was just not convinced it was the right thing to have in Billings at the present time.

Councilmember Clark said selection C would have been his preference, too, but he did not think he had the votes from the Council. He said if he thought he had, he would have made that motion instead of amendment to the first motion.

Mayor Hanel said he expected there may be legal ramifications, and in all due respect to Councilmember Ruegamer's comment earlier, he did not think the City had lost all the lawsuits and was represented professionally enough that if it had to take on another battle, they would take it on.

Councilmember Ronquillo made a substitute motion to adopt Option C, seconded by Councilmember Clark.

Attorney Brooks said he would not be doing his job if he did not make comments and said he was not trying to tell Council how to vote. He said they had done their best to provide them with the options that were available to them. Attorney Brooks said Option C was basically similar to Kalispell where it said if it was a violation of federal law, the activity could not occur within the city limits. He said Helena's ordinance was passed on October 4, 1926, so it was obviously not in response to anything currently going on in Helena in terms of marijuana. Attorney Brooks read Helena's ordinance that said, "No provision herein contained shall be construed so as to license any trade, business, occupation, vocation, pursuit, profession, or entertainment prohibited by the law of the United States or this state or any provision of this code." Attorney Brooks said when Kalispell passed its version, it either had no or very few known established marijuana businesses. He said Missoula was treating the businesses as regular retail businesses and zoning them accordingly. He also said Option C in its current form would need to be drafted to indicate it was a 6-month interim ordinance.

Councilmember Gaghen asked Attorney Brooks what the timeframe for businesses currently in operation would be to cease operation if Option C were adopted. Attorney Brooks said the ordinance would consider it a zoning violation, and the City would have to take code enforcement action to enforce a misdemeanor zoning violation. Attorney Brooks said Option C would have an increased litigation risk over Options A and B. He said the City could also go to district court and ask for an injunction to not allow the businesses to further operate.

City Administrator Volek reminded the Council that one member of the Code Enforcement team was quite ill, and they were down to two officers. She said enforcement would be a very challenging aspect for the City. She also pointed out the financial situation that had been discussed at last Monday night's meeting which would lead the City to a point where reserves no longer existed by 2016 at the latest and in a position where the City would not be able to cover payroll without borrowing. As far as

litigation, she said Attorney Brooks could speak to MMIA's position; but they would perhaps cover the act of litigation but not likely cover the outcome.

Councilmember Ulledalen said he did not think it made sense to jump to Option C that evening. He said if they voted in the moratorium, it stopped the clock on any additional new businesses and it gave them time to work on some common-sense resolutions, and they could adopt Option C later. He said adopting Option C at this point would be a problem.

Councilmember McCall said she agreed with Councilmember Ulledalen. She said they would be jumping the gun if they went with Option C at that point. She said they needed to use some discretion with the moratorium and get it all figured out. She said it would be passing the buck, as well, because it would become an issue in the County, and they needed to keep that in mind.

Councilmember Ulledalen said they needed to craft a solution because he did not think they could count on the legislature. He said the probability was that they were going to get wrapped around so many different axles, they would have a hard time getting anything out of committee.

Councilmember Pitman said, as chair of the ad-hoc committee, they got as far as the moratorium and did not get a chance to discuss Options B or C. He said they were hoping for the time to actually be able to look at them. He said he did not feel they would be swimming upstream any longer with the moratorium and maybe the compromise was the 1,000 feet around the schools at that point.

Councilmember McFadden said he agreed with Councilmember Ruegamer that we would probably get sued and would probably lose. He said he was representing a lot of people who worked really hard for their money and would rather keep it in their own pockets. He said he would hate to see Ms. Volek have to tell City employees they were laid off because the City screwed up and was sued. He said he thought they should take the financially-safe option. He said his heart was with the Mayor but his pocketbook was with Councilmember Ruegamer.

Mayor Hanel said he attended an elected officials workshop in Billings the previous week, and the general conception was that this particular matter was out of control. He said it was mentioned that evening that it was a ball in fast motion. He said he was not going to argue because he did not have the expertise; however, he would argue that there were unqualified persons distributing marijuana to others. He said it was mentioned there were loopholes in the proposal. He said they could incorporate a moratorium and asked if that would stop it. He said he was concerned that it was not going to, and it was hard to swallow the fact that the federal government said it was a federal offense so he could not accept it.

Councilmember Ruegamer said he agreed with Councilmembers Ulledalen and McCall. He said he was not taking the position because he was afraid the City would get sued. He said the City was sued over almost everything it did. He said he was not going to pick a fight when he thought the City would lose. He said in the past he had voted for things that he thought were right, and the City was sued and lost. He said this time he did not think the City was right. He said if the City was sued and had to go to court, would the judge say the federal law was being broken or would the judge say 62% of the people of the state voted for it. Councilmember Ruegamer said he did not think the City would win, and if the City told the businesses they had to close up, he could see

the handwriting on the wall and he did not think a judge would have any real sympathy for the City. Councilmember Ruegamer said he would support Option A.

Councilmember Ulledalen said by 2015 there was a \$2 million deficit projected, which meant the loss of 40 to 60 positions regardless of what was done that day.

Mayor Hanel commented that if they proceeded, they would have to add additional law enforcement to handle the related crimes that would also be expensive. He said it was a double-edged sword.

Councilmember Cimmino said she wanted to go on the record of saying they appreciated all of the individuals who came up to the podium that evening to state their opinion on the three options being considered. She said she agreed with Councilmembers Ulledalen and McCall and did not agree with supporting the motion for Exhibit C because she felt it was pretty drastic. She said she would like to negotiate a happy compromise and she liked the thought of the moratorium and with the 1,000 foot separation they would be getting their cake and their pie. She said the "horse was out of the barn" and it was time for them to step up to the plate and show some leadership. Councilmember Cimmino said Exhibit C was too drastic, and she would not support it.

Councilmember Gaghen said her heart was with C, but she did need to have reservations of enforcement because she knew how well the code enforcement team worked, and their jobs were one of the hardest in the City. She said the City was far understaffed in that area, and considering the immediacy of what Option C would require, she had real concerns about the City's ability. She asked Attorney Brooks if the moratorium and 1,000 feet were enacted, and if the committee came back with greater education for everyone, would they be required to wait the full six months to change the moratorium. Attorney Brooks said the answer was no. He said they would just need to come back and amend or repeal the interim ordinance and pass a permanent ordinance.

Councilmember Ulledalen said he wanted to go on record as saying that he thought Option C was an item they could adopt. He said he was not opposed to it; but at this point the most logical thing was the moratorium which would give them more time to study and work on options, particularly with what they should do with the existing businesses. He said he wanted to make it clear he was not totally opposed to Option C and was just thinking in terms of procedure, and how they operated at that point in time. He said a moratorium would stop the clock on any new additional businesses and what they had in place would stay in place; and they would not get anything new, any place, nobody moves, nobody moves in close to a school period. He said it would stop the clock on any new businesses which gave them the time to work on solutions.

Councilmember Clark said he would like to call for the vote on the substitution motion. Mayor Hanel asked all those in favor of calling for the vote to signify by saying aye. Call for the vote was unanimously approved.

The substitute motion failed 7 to 3. Councilmembers Gaghen, Pitman, McFadden, Ruegamer, McCall, Ulledalen, and Cimmino voted against the substitute motion. Councilmembers Clark, Ronquillo, and Mayor Hanel voted in favor of the substitute motion.

Councilmember Clark said his amended motion was to reinstate the 1,000 feet from schools but staff was telling them they did not need it unless they decided to make it retroactive. Attorney Brooks said Option A as stated said that no new business would

be allowed in Billings, but the existing businesses could stay where they were regardless of where they were located. He said if Council added a 1,000-foot separation, it would need to be clarified if they intended for the businesses to move beyond 1,000 feet within the six month effective date or how else you would like it handled. Attorney Brooks said amortizations that they could find were not usually used in interim, temporary ordinances. He said they could always do an amortization in a more permanent ordinance. He also said they needed to know if it was just schools they were talking about or if they were including parks, churches, etc.

Councilmember Gaghen asked Councilmember Clark if it was only the schools he was thinking about and not parks, daycares, cemeteries, etc. City Administrator Volek said the original motion was geared specifically to schools.

Councilmember Ulledalen asked Councilmember Clark if the motion passed, what he wanted to do with the businesses that were currently located within the 1,000 feet.

Councilmember McCall asked how many businesses were currently located within the 1,000 foot distance. Attorney Brooks said he thought Ms. Beaudry's staff was looking in to that, but he was not sure if it was readily available.

Councilmember Ulledalen said the point was that they could move forward with the moratorium and then they could talk about what they wanted to do about things that did not conform with whatever regulation they passed, so they still had time to work on that. He said they would have the time to proceed in a reasonable matter rather than jumping in that evening.

Councilmember Clark withdrew his amended motion. Councilmember Gaghen withdrew her second and said she felt they needed to move forward with a reasonable approach.

On a voice vote, the original motion was approved 8 to 2. Councilmembers Gaghen, Pitman, Cimmino, McFadden, Ruegamer, McCall, Ulledalen, and Clark voted 'yes'. Councilmember Ronquillo and Mayor Hanel voted 'no'.

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

The public comment period was opened.

- **Sarah Baugh, 943 N. 23rd Street**, asked if there were any openings on the Medical Marijuana Ad Hoc Committee because she would be interested in joining the committee. Councilmember Pitman advised there were currently no openings, but it would be a consideration to add a couple more positions. Ms. Baugh said a lot of people felt there was not enough patient representation. Councilmember Pitman advised they had a provider, who was also a patient, and also another patient. Mayor Hanel recommended that Ms. Baugh fill out an application from the website and have it available. Councilmember Pitman said they took public comment throughout the ad hoc committee meetings and everyone was encouraged to attend and work with the members. Councilmember McCall said she felt the ad-hoc committee should make

recommendations about adding people because they had a better sense of additional needs. Councilmember Pitman said he would do that during the initiatives process.

Councilmember McCall commented she had received a call from a constituent that morning who indicated she had heard on the news about the fire bombs in the two stores and even though she was totally opposed to medical marijuana but she was more opposed to violence. Councilmember McCall said she thought everyone there would agree.

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

COUNCIL INITIATIVES

- **Pitman:** Moved to have the Medical Marijuana Ad-Hoc Committee continue its work as directed by Council and add two at-large members, seconded by Councilmember McFadden. City Administrator Volek advised there was a resolution setting a deadline of August 23, 2010, for the committee to report to the Council, as well as setting the number of members. She said staff was recommending a revised resolution be brought before Council the first meeting in June. Councilmember Ulledalen asked if it made sense to add new people since the committee had already started working. Councilmember Pitman said at the first meeting they had just set some ground rules and then hit the ground running. He said he thought it would be fine. Councilmember Ruegamer asked how many members were currently on the committee. Councilmember Pitman said there were eight. Councilmember Ruegamer said the meetings were lasting a long time, and the more people, the longer the meetings would last. Councilmember Pitman said the reason the meetings lasted so long was because of public comment. He said the committee itself worked very quickly and efficiently and did a very good job in a short amount of time. Councilmember Ulledalen asked what they would gain by adding two more people. Councilmember Pitman said they would gain the average citizen's input. Councilmember Ulledalen suggested someone from the schools. Councilmember Pitman said that was a good idea; maybe someone from the school and a parent. Councilmember McCall said she felt it should be left to the discretion of the committee. On a voice vote, the motion was approved 9 to 1. Councilmembers Ronquillo, Gaghen, Pitman, Cimmino, McFadden, McCall, Ulledalen and Clark, and Mayor Tussing voted in favor of the motion. Councilmember Ruegamer voted against the motion.

- **Ulledalen:** Moved to direct the Medical Marijuana Ad-Hoc Committee to advise staff on regulating caregivers, seconded by Councilmember Ronquillo. Councilmember Ulledalen said he felt they were in a position where the legislature would do nothing. Attorney Brooks advised the statute did provide somewhat of a regulatory plan for caregivers and qualifying patients; however, a lot was left unsaid particularly about the caregivers. Councilmember Ulledalen said if the legislature and state were looking for leadership that may be a place for them to create it. On a voice vote, the motion was unanimously approved.

- **Ronquillo:** Moved to direct staff to look at the zoning regulations to allow emergency vehicles to park in residential zones, seconded by Mayor Hanel. Planning Director Candi Beaudry asked Councilmember Ronquillo to explain what he meant by

an emergency vehicle. Councilmember Ronquillo said a towing truck was classified as an emergency vehicle. Councilmember Ulledalen said he would not support it. He said they did not want tow trucks parked in residential neighborhoods and there was a reason for the ordinance. Councilmember Cimmino said when she initially heard emergency vehicles, she thought it meant police, fire, or emergency vehicles. She said she agreed with Councilmember Ulledalen. Councilmember Ulledalen asked how it would be okay to allow a tow truck and not a semi. On a voice vote, the motion failed 6 to 4. Councilmembers Pitman, Ronquillo, McFadden, and Mayor Hanel voted in favor of the motion. Councilmembers Gaghan, Cimmino, Ulledalen, McCall, Ruegamer, and Clark voted against the motion.

ADJOURN - The meeting adjourned at 1:55 a.m.

Additional information on any of these items is available in the City Clerk's Office.

Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please notify Cari Martin, City Clerk, at 657-8210.