

City Council Work Session

May 3, 2010
5:30 PM
Council Chambers

ATTENDANCE:

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

ADJOURN TIME: 9:50 p.m.

Agenda

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

- **Councilmember Ruegamer** publicly thanked everyone for their prayers, calls, visits and concerns during his recent illness.
- **Kevin Nelson, 4235 Bruce Avenue**, commented on a March, 2010, email from Ms. Volek regarding the N. 27th Street TIF District. He said that according to data he gathered from the County, there was \$240,000 in unaccounted funds in the TIF districts. He added that Ms. Volek's email also referred to postponement of the downtown street light district because of the poor bond market. He said he would like an audit of the TIF account to find out where the funds were. He referred to a June 26, 2006, Council Initiative from Councilmember Jones which directed staff to report on a plan to address noise, especially loud stereos. He said the initiative report indicated the issue had been resolved by City Attorney Brent Brooks and Police Chief Rich St. John, but he did not think it was really resolved.

Councilmember Ruegamer asked Mr. Nelson if he would accept the explanation of how the money was spent or if he would continue to say it was not true. Mr. Nelson said he was not the only person that said that. He referred to issues with a tax increment district in Estes Park, Colorado.

Ms. Volek provided an explanation of the taxable value numbers and the two pools of funds for the downtown lighting district. She stated that the property owners had decided to postpone the downtown lighting project,

- **Rick Reid, 2205 Treasure Dr.**, said he was the Region Manager for Montana Dakota Utilities in Billings. He advised that the methane wells had been drilled at the landfill, gathering lines were being built and equipment had been ordered. He explained that the bid for site preparation, equipment installation and building construction costs came in about 50% more than the engineer's estimate. He said bidders indicated the bids were high because of the tight timeframe, but with more time allowed for the project, the bids would be better. He requested a 90-day extension from the contract provision to have the project on line by August 25.

Mayor Hanel explained that the matter would have to be addressed at a regular Council meeting. Mr. Reid advised that everything else was on schedule or ahead of schedule, and on budget.

Councilmember Cimmino asked about adding the item to the next Council meeting. Ms. Volek explained advertising requirements and the process that had to be followed if Council wanted it on the May 10 agenda. It was Council consensus to present it as an add-on item at the May 10 meeting.

Mr. Reid provided a brief explanation of the project and the anticipated revenue.

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

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| TOPIC #2 | <i>2010-2014 Transportation Improvement Plan (TIP) Update</i> |
| PRESENTER | |
| NOTES/OUTCOME | |

Transportation Planner Scott Walker reviewed the listing of all projects for federal money for FY2011-14. He said the 2010-2014 Transportation Improvement Plan would be presented at the May 24 meeting for a recommendation of approval to the Policy Coordinating Committee. He pointed out that the Technical Advisory Committee reviewed the document the previous week and those revisions were noted in red in the document. He explained that the Federal earmark section on Page 2 was updated. He explained how earmarks supplemented the funding shown in the TIP and how important it was to be able to complete projects. He stated that it amounted to about \$73 million over 10 years. He referred to Table 3 on page 7 that displayed the revenue for the projects. He reviewed Table 4, the list of current prioritized projects. He advised that the next big project was the North Bench Boulevard project that included the bridge over Alkali Creek near Metra. Mr. Walker said the plan was available for public viewing at the Planning Division and would be published on line.

Councilmember McCall asked about the multi-year staging program and Zimmerman Trail. Mr. Walker said the calendar was a best guess on when projects would occur, and 2012 was a guess because money was in hand but it could be a bigger and revised project, so method and cost were uncertain. Councilmember McCall mentioned Public Works Director Dave Mumford's comments at a recent City-County meeting about a possible tunnel rather than reconstruction. Mr. Walker stated that engineering was ongoing on that project.

Councilmember Cimmino asked why there was such a variance in earmarks from year to year. Mr. Walker explained that it was likely due to the timing of projects from year to year.

Councilmember Clark asked if the money was designated for a project before it was received from the Federal Government. Mr. Walker explained that the funds were obtained for specific projects recommended by the Policy Coordinating Committee.

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

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| TOPIC #3 | <i>Distracted Driving Ad-Hoc Committee Report</i> |
| PRESENTER | |
| NOTES/OUTCOME | |

Councilmember Gaghen reported there was fine work from an ad-hoc committee on texting and handheld phones. She reviewed the committee membership and acknowledged committee members Charlie Reed and Russell that were present. Councilmember Gaghen advised that since the meeting was expected to be lengthy with other topics, she would provide a limited report. She advised that a proposed ordinance had been sent to the Council for review. She noted that other communities were addressing the issue as well, and 44 nations were also dealing with the same issue. She commented that education was needed and was what the committee was working on.

Ms. Volek advised that Deputy City Attorney Craig Hensel could provide a detailed report if Council wished. She said she discussed with Councilmembers Gaghen and Clark, that given the importance of the issue and medical marijuana, they did not want them to become confused or intertwined, so her suggestion was to delay the item until June so the two pieces would not be conflicted. Councilmember Clark suggested a brief presentation by Mr. Hensel since the item was advertised for that evening's meeting.

Mr. Hensel explained that he drafted the ordinance by looking at various examples. He stated that the ordinance allowed voice activation and anything hands-free. He said the driver could not take his/her hands off the wheel to use the device, and would have to pull over to take or make a call or text. He noted that the ordinance exempted emergency personnel or people reporting emergencies.

Councilmember Astle referred to an email from a cab company about using communication radios. Mr. Hensel advised that he just heard about that concern that afternoon and had not researched it yet. He said the current ordinance did not make any exceptions for that situation. He said it could be possible to craft a narrow exemption, but cautioned it would be difficult to address all the possible situations.

Councilmember McFadden asked if it had ever been discussed that the ordinance could quite easily be misused by the police. Mr. Hensel said it was discussed, but pointed out that an officer would need probable cause to make a stop for violation of that ordinance, and would have to see the violation.

Councilmember McFadden asked if anyone on the committee was opposed to it. Mr. Hensel advised that Mr. Kimmet, from a local cell phone company, was initially opposed to the ordinance, but was satisfied with the hands-free allowance and voted to recommend it. Councilmember Gaghen added that even the students were supportive of the ordinance after it was drafted. Councilmember McFadden asked if it came up that just about every City vehicle had radios used by MET bus drivers and trash collection drivers. Mr. Hensel responded that they would violate the ordinance unless they pulled off the road. Councilmember McFadden stated he felt it was hypocritical that the City used communication equipment but told the public it could not. Mr. Hensel said the ordinance as written did not make any distinction between commercial or private users, but revisions could be made to it before it was presented for approval. Councilmember McFadden stated he was not looking for revisions, but was looking to kill it altogether.

Councilmember McCall asked about signage that would be placed at entrances to the City to alert non-residents of the ordinance. Mr. Hensel reviewed the plan for public awareness.

Councilmember Pitman advised he thought the ad-hoc committee's mission was to deal with texting while driving because he thought there were existing rules that dealt with distracted driving. Mr. Hensel explained that distinguishing cell phone usage from texting was impossible to enforce. He said the committee debated it at length and determined the best solution was to prohibit all use other than hands-free.

The public comment period for that item was opened.

- **Todd Gansel, Worden, MT**, stated he lived in Worden and represented the amateur radio league. He advised there were lots of users in the City and County that were licensed under a Federal regulation. He asked for an exclusion of amateur radio operators. He reviewed past activities of the radio operators, and said their service was an important part of the public safety agencies. He suggested adding a new section that did not apply to federally-licensed amateur radio operators.

Ms. Volek offered to take Mr. Gansel's notes and forward them to the committee. Councilmember Ruegamer asked Mr. Gansel why the radio operators could not pull off the road to use radios or phones. Mr. Gansel advised that it was not always possible or proper.

- **Robert Rightmire, 839 Parkhill Drive**, advised that he was a Federally-licensed radio operator also. He provided an example of the license plate that amateur radio operators purchased for \$5 to be allowed access to emergency situations. He asked for an exemption for FCC licensed radio operators.

Councilmember Astle asked if Mr. Rightmire agreed that radio operators should have to have the license plate to be allowed the exemption. Mr. Rightmire said he did.

- **Janice Linn, Highway 3**, stated she thought that there would be data to justify the ordinance. She asked how it started and who was behind it. She stated that the way the ordinance read, just touching the phone was a violation. She asked how repeat offenders would be handled.

Councilmember Gaghen explained that it would be a civil infraction, the same as a speeding ticket, with a fine of \$110.00. She advised that the judge would have the authority to increase the fine for repeated violations.

- **James Knox, 661 Garnet Avenue**, said he did not need the government to be his mother, even though he appreciated concern for his safety. He said pulling over to take or make a call was not always an easy thing to do and caused delays for business operations that depended on phones for dispatching employees. He stated it was common sense to ban texting but not calling.
- **Amy Hanson, 5036 Maple Ridge Circle**, said she thought the Council had good intentions to improve safety, but believed they were misguided. She provided examples of other distractions while people were driving. She reminded Council that the role of government was to preserve liberties, not infringe on them. She said she opposed the ordinance.

Councilmember Gaghen advised that there would be further opportunity for public comment as the process went forward.

Councilmember Astle asked if Ms. Hanson was aware that driving was a privilege, not a right, and a privilege could be restricted. Ms. Hanson responded that she was aware of that.

- **Eric Olsen, 839 S. 64th St. West**, advised that he ran the Tea Party in Billings and was always concerned about government infringement on personal rights. He said he knew phones were a distraction, but felt they were a personal responsibility. He said there were

other distractions in addition to cell phones. He said he did not want police to have the chance to pull people over on a whim. He asked the Council to drop the issue.

- **Sarah Baugh, 943 N. 23rd**, stated she was concerned that people would become paranoid that police were watching and would try to hide their cell phone usage which could be more dangerous.

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

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| TOPIC #4 | <i>Medical Marijuana Ad-Hoc Committee Report</i> |
| PRESENTER | |
| NOTES/OUTCOME | |

Councilmember Pitman advised he would summarize the committee actions, and acknowledged that most of the committee members were present that evening. He reported that the most recent meeting broke ad-hoc committee attendance records. Councilmember Pitman advised that as of that day, there were 89 applicants for medical marijuana businesses, with three to five new applications daily. He said the committee and most of the providers were in favor of protecting school zones, and the committee’s recommendation was a moratorium through an interim zoning ordinance. He said the issue of separation from residential areas was something that needed to be addressed.

Councilmember Clark asked if there was discussion about implementing a moratorium that would get passed during the Montana Legislative session next spring. Councilmember Pitman explained that Representative Smith mentioned it. He said the City needed adequate time for the committee to recommend permanent regulations and for the Legislature to act if needed.

City Attorney Brent Brooks explained that two ordinances were prepared - one a moratorium. He referred to the fact that the U.S. Attorney General declined to enforce marijuana possession in states that legalized it, which probably contributed to the flurry of activity.

Councilmember Ruegamer asked about the complaint about shops near schools. Councilmember Pitman stated that he believed areas of the City were considered off-limits for certain businesses and the public testimony indicated that school zones were considered one of those sacred areas.

Councilmember Ruegamer asked if it was correct that when the issue first came up, the Council was assured there were sufficient ordinances in place that would control the industry. Councilmember Pitman stated that the 1000 foot drug free school zone was what caught the City off guard because they all thought there was protection in place, but it was actually a penalty enhancement.

Planning and Community Services Director Candi Beaudry advised that she said zoning regulations would control the use to certain zoning districts, but there was a desire for further restrictions. Councilmember Astle stated that he thought most of the prior discussion was about keeping those uses away from residential areas. Ms. Beaudry said that was correct, and she told Council that home occupations were allowed as long as they did not use the residence for retail.

Councilmember Astle stated he would like Mr. Brooks to address the recurrent theme of emails about stopping the operations now, without a sunset date and no grandfathering.

Mr. Brooks explained the grandfathering process for nonconforming uses. He said it was his recommendation to not go back to the existing businesses and require them to close. He

advised that one ordinance allowed existing businesses to remain in business, and the other to allowed all businesses to exist, but only in certain zoning districts. Councilmember Clark mentioned that amortization had been done in the past which required certain businesses to relocate to the appropriate zoning district within a set period of time.

Ms. Volek added she had received emails regarding the City of Los Angeles's ordinance that currently had 1000 medical marijuana businesses and they proposed to reduce that number to 70, probably through an amortization process.

The public comment period for that item was opened.

- **Tom Zurbuchen, 1747 Wicks Lane**, urged Council to read the zoning ordinance proposals and picture a map of the allowed locations. He said the ordinance would allow medical marijuana uses in very few places. He pointed out that the voters passed the initiative to allow medical marijuana, and doing anything contrary to the majority was a dictatorship. He said the moratorium would not stop the businesses because patients and caregivers would still operate underground. He stated that the caregivers that would be allowed to operate would not be able to control their business and keep up with the cardholders. He said it seemed there was an enforcement problem. He suggested increasing the licenses by 5000%, which should generate enough revenue to allow the Police Department to hire an officer to patrol it. He said the issue needed to be regulated locally instead of pushing it off onto the Legislature. He recommended the City charge big money for the licenses and put the money where it was needed for enforcement of the law.

Councilmember McFadden stated that the focus had been on storefront businesses, not on caregivers that grew plants in their homes. Mr. Zurbuchen said the caregivers opened stores to service their patients. Councilmember McFadden said State law was different for caregivers and people that operated a storefront.

- **Connie Wardell**, stated that she was a member of the ad-hoc committee and wanted to make three points. She advised that landlords needed the moratorium because they were reluctant to rent to a tenant that could be an illegal tenant in six or eight months. She said the time was needed to develop the zoning. Ms. Wardell said the school issue was a little different to her than just the possibility of kids wandering into the shop, but more of a safety factor, such as the recent situation in Kalispell where a caregiver was murdered. She said the City could only address the zoning and everything else would have to be addressed on a state level.
- **Sarah Baugh, 943 N. 23rd**, reported that she would also read testimony for someone else that could not be present that evening. She stated that she was a medical marijuana patient and opposed the moratorium, because she felt there was a better solution. She advised her caregiver was in Bozeman and had immediate plans to move to Billings, but could not if the moratorium was approved. She noted that her residential area contained several dispensaries and there were no problems because they were discreet. She explained how stores in the South were not allowed to advertise that they sold alcohol, but had to display a red dot on the outside to signify that alcohol was sold there. She suggested a similar procedure for medical marijuana. She said the discreet practice would not impact property values. She said some zoning limitations were acceptable to her, but she did not know what effect a nearby medical marijuana dispensary would have on some of the areas that would be protected by the zoning, such as churches, cemeteries, and child care centers. She said she found it ludicrous that she would be forced to change her caregiver if the moratorium was put into effect because every

time a person changed caregivers, it was an expense to the State. Ms. Baugh read testimony from Russell Morris, another advocate that could not be present. He said he was not a patient, but had visited with a number of them and felt they just wanted to have the freedom to do what was legal under Montana law. He stated that the main concern for patients seemed to be able to have a constant supply of their medication, because some caregivers were not able to provide a constant supply. He said the moratorium would prevent that and would result in a black market and would give more power to drug dealers. He referred to recent violence in Kalispell, and said illegal drug dealers and users did not care about safety of the community. He said that even though he understood it was a temporary solution, there had to be a priority to serve the patients and their caregivers.

Councilmember Astle asked Ms. Baugh where she was from because she listed an out-of-state phone number. Ms. Baugh said she was from South Carolina but moved here two years ago, specifically for the medical marijuana laws.

Councilmember Ronquillo asked if Ms. Baugh's insurance paid for her medical marijuana. She explained that she did not have insurance and had to pay for the medication herself. She said that she was healthy enough to work now that she was no longer on pharmaceutical medication. She explained how her medical condition was assisted with the medical marijuana.

Councilmember McFadden stated that the issue that caregivers could not keep adequate product and could not obtain it from other caregivers was something that had to be addressed at a State level. He asked why some patients grew their own marijuana and others relied on caregivers to get their marijuana. Ms. Baugh explained that it was usually because landlords would not allow it, and the expense and lack of knowledge about growing it themselves.

Councilmember Gagen asked if Ms. Baugh would still feel the need to go to Bozeman to get marijuana when there were about 89 caregivers in Billings. Ms. Baugh said it was a matter of quality control and personal comfort, similar to a personal physician.

- **Pam Christianson, 3916 Bushwood Drive**, expressed support for an emergency ordinance and moratorium to keep the medical marijuana businesses 1000 feet away from schools. She said she did not think that the people of Montana voted to have businesses when they voted to legalize medical marijuana. She asked that when the permanent ordinance was put in place, there would not be any grandfathering or a sunshine period. She suggested an amortization period should not be years, but a much shorter time period.

Councilmember Ulledalen suggested staying engaged with the Council and with State legislature candidates.

Councilmember McFadden asked Ms. Christianson what the Council should do with medical marijuana caregivers that had legal rights also. Ms. Christianson stated that the Council started looking at it last November and knew it was a legal right. She said she was asking the Council to continue with what it started in November. She said she was not asking for anything that was not considered months ago.

- **Cherrie Brady, 5032 Poly Drive**, said she was relatively new to issue and was alarmed at what she heard and saw regarding the issue. She said she had made countless phone calls and sent numerous emails. She stated that the responses were typically that people were shocked about it and there was a lot of anger about it. She added that another concern was the poor image for the community and the type of people that image would attract. She said a third concern was about children and their exposure to the drug. She noted that marijuana was still an illegal drug. She said she wanted at least a 1000 foot buffer zone from any place

that had minors or children. She said she agreed with Ms. Christianson's comments about the vote on the issue and felt if the time was taken to educate the public, it might be overturned. She said voters had a right to challenge and change laws.

- **Meredith Daniels, 3945 Palisades Park**, stated she agreed that a zoning ordinance was needed, but the proposals were too restrictive. She said the dispensaries should be out in the open, because caregivers were trying to provide a safe and convenient location for their patients. She said she hoped to open her own dispensary on Grand Avenue and felt it was a safe environment. She said she hoped the dispensaries would not be pushed into dark corners and unsafe places. She stated that dispensaries were locating in properties that had been vacant for years and the looks of them were improved and would not reduce property values. She advised that her business license was under review and if an emergency moratorium was put into effect, it was possible that her business license would not be allowed.

Councilmember Ulledalen asked Ms. Daniels what type of background and training she had to pursue to become a caregiver. Ms. Daniels said she was a compassionate person that had seen people suffer with illnesses. She said she thought it was important for people to have the option to try an herbal remedy.

Councilmember Astle asked where Ms. Daniels intended to open her business. Ms. Daniels said it was at 1739 Grand Avenue, and that she had talked with the neighboring businesses that were supportive, so they knew what was going on.

Councilmember Ruegamer asked Ms. Daniels what medical training she had to be able to give people medical marijuana. Ms. Daniels said it was no different than selling vegetables from her vegetable garden. Councilmember Ruegamer asked what the difference was between her and a dealer. Ms. Daniels said she was setting up a business to serve patients with a medicine legally, and was paying taxes. She said she would have a relationship with her patients. Councilmember Ruegamer asked about the process for a patient to get marijuana from her. Ms. Daniels explained that she would have consultations with the patients.

Councilmember Gaghen stated she thought preparation would be needed to hold a consultation to guide someone with a pain medication. Ms. Daniels said she was able to prepare by hearing from personal experiences of other people that had illnesses. Councilmember Gaghen how long it would take to start making a profit on the business. Ms. Daniels stated that depended on how long it took to build up the client base. She said it was not that costly to operate a business of that type.

Councilmember McFadden confirmed that patients received a recommendation from a licensed doctor, so the patient was not coming into the business without any medical experience behind the decision to use the product. He asked if the caregiver ever had any communication with the doctor after the recommendation was signed off for the state. Ms. Daniels said she did not have a client base yet. She advised that she could communicate with physicians that provided recommendations.

- **Nicole Schallenkamp**, said she had lived in Billings for a short time. She said she had researched the issue in California. She pointed out that medical marijuana was not a cure, but alleviated pain. She said it was entrepreneurial and did not require training, which differed from oncologists she knew that had 16-18 years of training. She referred to what occurred in Kalispell when a provider was killed and commented that too much marijuana or drugs could result in schizophrenic actions. She said she felt it would be problematic if two-thirds of the city residents found it necessary to use medical marijuana and children would

not be safe if it was not regulated, monitored or zoned. She said there had been discussions about people driving while using cell phones, but asked about people driving too soon after using their medical marijuana. She noted that other states had regulations regarding that. She said she was certain the Police Department would like to have additional officers to help enforce the current laws, without the current storm that nobody saw coming. She said she went to college in Boulder, Colorado, and knew that junior high students there were aware of marijuana and used it, which was what happened when a lot of people that lived in a place used pot. She said it was an issue that hit people at home. She referred to zoning in Rochester, Minnesota, and a community in California. She suggested being clear and concise with zoning and keeping the businesses in one area rather than scattered throughout the community. She said she did not know if the City had the infrastructure to deal with the influx of people that would come to the community for medical marijuana.

- **Laura Needham, 1719 Cobble Creek**, said she thought the property value of the entire city was at stake. She stated that the City of Billings was referred to as “rough” when her husband interviewed for a position with Billings Clinic, but they decided Billings would be a safe community. She said that if she had seen even one medical marijuana storefront, they would have chosen to live elsewhere. She stated that allowing medical marijuana would lose future talent in schools, hospitals, banks, specialized professions, and the City would be hurt economically. She stated that a pot grower or distributor should not be in any neighborhood even if they had the deceptive title of caregiver, nor should they be located within 1000 feet of minors. She said there was nothing about the business that would enhance the quality of life and asked that the drug not be normalized. She said she would not stay in a city that was a drug culture. She said she found it interesting that the marijuana people had a website named ‘Normal.’ She said she wanted an emergency ordinance with a 1000 foot buffer from wherever a child may be, no grandfathering or sunshine period, and if that was a problem, litigate. She said if it cost that kind of money to put an end to it, so be it.

Councilmember Gaghen asked Ms. Needham if she was aware that voters approved allowing medical marijuana, even though they probably did not expect it would end up like it was. Ms. Needham said she felt the public outcry was huge and the people she had spoken with agreed with her thoughts and feelings. She said people wanted compassionate care when they voted for medical marijuana, but the way it was going felt like organized crime.

Councilmember Astle advised that he called Billings Clinic and St. Vincent’s to inquire about their stance on the topic and did not get an answer to his inquiry. Ms. Needham said she was a wife of a physician and did not claim to represent their position on the matter. Councilmember Astle said he understood she was willing to go through litigation, but what the City heard was that it was sued too often, and when it lost, the City paid a lot in damages and the store would stay where it was because it was protected by the law. He said the moratorium would stop any more from opening, but passing a law took time.

Councilmember McFadden asked Ms. Needham if she realized that everyone that had a medical marijuana card was first approved by a licensed physician. He asked if she had talked about that with her husband’s doctor friends. Ms. Needham said most physicians would not touch it because it was still against Federal law. She said she could only assume that fringe doctors were doing it.

Councilmember Ruegamer explained that Mr. Brooks said that if the Council tried to override the grandfather option, a lawsuit would be guaranteed. He said he could go a step

further and say that the City would not win. He said there were people all over that grew their own marijuana and used it.

Councilmember Cimmino asked where Ms. Needham relocated from. Ms. Needham explained that they were military and lived in many communities, but came directly from New Mexico.

- **Pam Christianson** (second testimony) stated that she did not think the voters considered that physicians would come from out-of-state to provide medical marijuana recommendations. She said the law indicated there was a bona fide relationship with a physician. She said the physician on the medical marijuana ad hoc committee had written about 200 recommendations, so she questioned that he was retired if he continued to use his license for profit.
- **Marv McCann, Shepherd**, advised that he was a candidate for County Attorney and visited with numerous people as part of his campaign. He said medical marijuana was a very important issue with residents. He encouraged the Council to act aggressively to regulate it as aggressively as possible. He referred to the regulation in Helena that a business could not operate in the City if it violated Federal law and suggested something similar in Billings. He said it was a dangerous drug and difficult to keep from the young people of the community. He commented that he did not disagree there were legitimate needs, but believed it should be handled under the guidance of professionals. He said it seemed ridiculous that people would be licensed to sell a dangerous drug in the community. He recommended involvement of medical professionals if the medical marijuana process continued. He said the City needed the moratorium until regulations were in place.

Mr. Brooks commented that his office had always presented options to the Council and in his nearly 30 years of practicing law, this was the fastest moving target he had seen. He said the Council could accept or reject the options presented and had the ultimate decision-making authority. He advised that there were cities that had considered outright bans and another city decided not to do anything. He confirmed that his staff was trying to present a range of options and the potential best way to predict the consequences of those options.

- **Donald Harr**, said he was a long-time Billings resident. He said if the Council had attended the previous week's Legislative Interim Committee on Children, Families and Health and Human Services session, they would have obtained information that could help determine their approach to the moratorium and zoning aspects. He advised that he was not representing any organization, even though he was affiliated with numerous medical organizations. He referred to the green cards that were signed by physicians, and noted that a good number of those cards were signed by physicians that did not live in the State, had not seen the individual, nor had they examined them to determine reasonable cause for a chronic pain situation. He said that fact was being investigated by agents of the state. He said that as a psychiatrist, he knew that children were very involved in knowing what was going on and saw situations that made it appear things were acceptable when they were not. He noted that one problem was that parents could get cards for their children. He said the members of that legislative interim committee were very concerned and would establish regulations that would make it easier for the Council to determine what was best for the community. He urged the councilmembers to educate themselves about what the Health and Human Services Committee would be working on.
- **Gary Lustgarten, Masterson Circle**, stated he applauded the Council for considering a moratorium. He said his issue was that children should not be forgotten. He asked the

Council to focus on the moratorium, even though the issues raised during discussion were also very important. He said he questioned whether the caregivers were qualified to discuss the use and whether medication should be continued with the patients.

Councilmember Ulledalen commented that it was a political process and it had been quiet up until word got out about the facility opening near Will James Middle School. Mr. Lustgarten agreed that it was political. Councilmember Ulledalen said people were now saying that was not what they believed they voted for. Mr. Lustgarten asked if Councilmember Astle knew how many of the green cards had been issued by Billings Clinic or St. Vincent's Hospital. Councilmember Astle said he did not ask that question when he contacted Billings Clinic. He said the information relayed to him was that they did not restrict doctors from issuing those recommendations, but were taking a 'wait and see' attitude before taking a position on the issue. He added that he believed it was an entrepreneurial situation because the providers were not medical professionals, but in the business to make money. Councilmember Astle stated that the moratorium would be helpful to allow time to see what the State did with the issue. Mr. Lustgarten said he had spent years in the medical administration field and his issue was that patients were being counseled by people that did not have training or background in the medical field.

Councilmember McFadden asked Mr. Lustgarten if he knew that the Council had authority over zoning issues, but was limited in its scope, and could not interfere with a person's medical condition or doctor/patient relationship. Mr. Lustgarten said he realized the limitations related to the medical part, but asked the Council to consider all it had learned that evening to put a moratorium in place and continue work on related zoning.

- **Susan Smith, 5522 Billy Casper**, stated she supported the views expressed related to a moratorium. She said she had been a caregiver for family members over the years, but would never consider herself qualified to make decisions regarding the medications of those individuals. She related information about the community her family lived in prior to moving to Billings 17 years ago and said she knew what happened when drugs were in the community. She said she knew things came quickly and took over, and wanted to emphasize that it came down to a moral issue.
- **Austin Kaufman, 2111 Main**, said he had resided at that location since 1988 and had worked several jobs to save money to buy his residence. He said a medical marijuana facility had opened next door to him and a real estate agent informed him that it would probably lower his property value, which was all he got for all the taxes he paid over the years. He said he was concerned for his safety and the safety of his neighbors. He said he had a lengthy visit with Chief St. John about the facility and Police officers had been at that facility as well. He asked if it should be the Police Department's job to keep every home in Billings safe.

Councilmember Pitman asked Mr. Kaufman what his thoughts were about the zoning. Mr. Kaufman responded that a moratorium was needed. He said he could not believe what he had heard that evening.

- **Representative Cary Smith, 5522 Billy Casper Drive**, said he represented the legislative district of the proposed facility near Will James. He said he had many discussions with residents, served on the medical marijuana ad hoc committee, and served on the Human Services Committee during the legislative session. He said he did not have anything to add to concerns, but cautioned the Council that it could not wait for the Legislature to do something. He explained that five bills related to medical marijuana were introduced during

the last session, but they all died in the process. He said citizens and cities needed to be heard or it would get tied up in the process. He said the people that were heard when the bills were introduced were proponents to increase the industry, and there were very few people suggesting restraints. He suggested early involvement and education about the voting records of the representatives.

Councilmember Ruegamer asked if the Legislature had the ability to attach regulations to bills when they passed by referendum, which was the case with the medical marijuana. Representative Smith explained the legislative process to make changes and adjustments, and stated that cities and counties were usually needed to push the process through. Councilmember Ruegamer stated that every county and city would have its own regulations. He asked if the City had the ability to charge different fees for certain businesses. Ms. Volek advised that the license ordinance allowed amendments to charge different fees. Councilmember Ruegamer asked how it would ever be monitored if every city had its own ordinances. Representative Smith responded that he believed the legislation should be at the city/county level. He added that citizens had not considered how the industry would be regulated. Councilmember Ruegamer commented that there were inconsistencies because when Billings wanted to implement a local option tax, the Legislature said it could not do that, but when the medical marijuana issue came up, the Legislature said the cities had to establish their own regulations.

Mayor Hanel asked Representative Smith if he expected further study and debate on the issue. Representative Smith said he talked with other legislators and believed it would come up, but legislators were not experts and would need help and coordination crafting a bill.

Councilmember Gaghen asked if the previous proposed legislation included training for the people dispensing the marijuana. Representative Smith said he was not aware of that.

Councilmember Clark asked if the Legislature could put the item back on the ballot. Representative Smith responded that he would have to check on that because he was not sure. He noted that there were a lot of options and they needed to be discussed.

Councilmember Pitman commented that there had been a deafening silence, and in the past, the only side heard from was the providers. He asked if Representative Smith saw that changing. Representative Smith said legislators had been trying to address it, and the tipping point had been reached. He noted that legislators needed support of local governments.

- **Mark Higgins, 814 Ahoy**, said he served on the ad hoc committee, was a caregiver, and had a store. He said he was also the person that came to the Council requesting regulations because he knew it was coming and wanted to stop it before it started. He said the Council decided it was not prudent to talk with him at that point, and this was what happened when the Council did not talk with people. He said he agreed a moratorium was needed because he did not think facilities should open next to schools and day cares. He said he suggested the moratorium before he opened his facility in an industrial section of downtown. He stated that parents or opponents had never stopped at his store to see how he conducted business. He said he had maintained his composure at Council meetings and was in the media, so nobody could say they did not know about the issue a year ago. He said the people were in an uproar because it was in their neighborhood, but limiting locations too much would create an underground network. He said the moratorium should provide the time to examine the issue.

Mayor Hanel asked Mr. Higgins about his offer to the person that was going to open the facility near Will James to go into his business. Mr. Higgins said he had not heard from him.

He said there were people in the business that were not doing things the right way. He stated that there were things the Police Department could do about what was happening.

The electronic recording was stopped at this point due to technical issues and no further notes were available.

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| TOPIC #5 | <i>Budget Overview</i> |
| PRESENTER | |
| NOTES/OUTCOME | |

Ms. Volek provided a brief overview of the FY 2011 budget. She explained that budget presentations would be made at the work sessions for the rest of the month of May and into June.

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| Additional Information: |
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