

REGULAR MEETING OF THE BILLINGS CITY COUNCIL
August 9, 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. Councilmember Ruegamer gave the invocation.

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

MINUTES -- July 26, 2010, approved as presented

COURTESIES -- none

PROCLAMATIONS -- none

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek advised that two additional street closure requests were received after finalization of the agenda and were sent in the August 6 Friday Packet for: (1) Billings Food Bank Open House, August 21, 2010, 9 a.m. to 9 p.m., closure of North 22nd between 3rd and 4th Avenues North; and (2) Billings Clinic Foundation Classic, 12 a.m. (midnight) August 27 to 5 p.m. August 29, 2010, N. Broadway between 3rd and 4th Avenues North, and alleys at North 27th and North 28th between 3rd and 4th Avenues North and at North 28th and North 29th between 3rd and 4th Avenues North. She asked that those two items be added to the Consent Agenda. Ms. Volek advised that those items were available for public viewing in the ex-parte notebook at the back of the room.
- Ms. Volek referenced Item 1H, the Second/Final Reading Ordinance regulating use of electronic communication devices while driving. She said there were eight emails sent to the Council - two in opposition and six asking for further research. She advised that Councilmember Gaghen, who was chair of the committee, requested postponement of the item to August 23 since she was not able to attend that evening's meeting.
- Ms. Volek referenced Item 3, the Planning mill levy. She said one email was sent to the Council in favor of it.
- Ms. Volek reported there were several items related to Item 5, the medical marijuana zoning code text amendment as follows:
 1. A letter from the South Side Neighborhood Task Force, dated June 18, against medical marijuana in the city limits. The letter was sent to the Council in the July 23 Friday Packet;
 2. A letter from Mort Reid, Kathy Adler and James Haney to Medical Marijuana Providers in favor of medical marijuana in the city limits. She said the letter was faxed to the Mayor and Council and sent in the July 16 Friday Packet;
 3. A July 15 memo from Bruce McCandless with the Medical Marijuana Ad-Hoc Committee's recommended zoning ordinance, moratorium and prohibition. She said the memo was sent in the July 16 Friday Packet;
 4. A July 15 letter from William Mort Reid to Mayor Hanel asking the Mayor to refrain from further public debate and to abstain from voting on the issue;

5. A July 7 letter to Councilmember Pitman from Bill Cole regarding comments and possible changes to the proposed zoning ordinance;
6. Emails sent to the Mayor and Council. She said that as of 3 p.m. that day, there were 34 emails in favor of zoning outside the city limits, two against zoning outside the city limits, and eight miscellaneous emails referencing research and statistics.

Ms. Volek noted that copies of all those items were available for public viewing in the exparte notebook at the back of the room.

Councilmember Clark moved to add the street closure requests from Billings Food Bank and Billings Clinic Foundation Classic to the Consent Agenda as Items 1E6 and 1E7, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

Councilmember Ulledalen moved to postpone Item 1H to August 23, 2010, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, 2 & 5 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. For Items not on this agenda, public comment will be taken at the end of the agenda.)

The public comment period was opened.

- **Janice Linn, Highway 3**, stated that after the first reading of the distracted driving ordinance, the Billings Gazette reported that it had been passed into law effective October 1. She said the story was false since the ordinance had not had its second reading yet, but the problem was that the public did not know that and did not have an opportunity for public comment. She said that the advertisement for the public hearing was in small print in the Billings Times, a publication that had a circulation of 1,200, as opposed to the Billings Gazette readership of 60,000. She said the Council should have issued a press release, but did not. She requested the ordinance timeline be restarted and that the Billings Gazette did not overreach the next time.

Mayor Hanel pointed out that the Council just approved the postponement of Item 1H to August 23, 2010.

- **William Foote, 39 Prairie View Drive**, stated that he had done research on the distracted driving issue, and one thing that came out was that the conversation, not the phone, was the distraction. He said that in his review of the ordinance, he did not see a cost of implementation.
- **Pam Christianson, Billings, MT**, read statements from the proposed zoning regulations of medical marijuana businesses. She said based on those statements, anything but banning those businesses fell short of doing what was right and best for the citizens. She said if that was not done, a 1000' buffer from residential areas should be considered and an amortization should not be more than six months to a year.
- **Brian Kenat, 345 Miles Avenue**, stated that he was a professional CDL driver and wore a hands-free device for his cell-phone because it was safer, but felt it was an insult to his right to choose by having government stick its nose into whether or not he had to wear one.
- **Ken Peterson, 424 48th Street West**, advised he represented House District 46. He explained that a bill to ban cell usage failed in committee during the last Legislative session. Councilmember McFadden asked why the bill failed. Mr. Peterson said Legislators felt it

infringed on people's rights. He noted that texting never came before the Legislature. Councilmember Clark confirmed that it did not go before the entire Legislature. Mr. Peterson said that was correct.

- **Ken Peterson, 424 48th Street West**, stated he wanted to emphasize that marijuana in any form was illegal under Federal law. He referred to a supremacy clause that allowed Federal law to override State law in certain cases. He said the Montana Legislature did not pass a law in respect to medical marijuana; it was passed by an outside group that funded a petition drive to get an initiative on the ballot. He said the only time it had gone before the Legislature was during the last session when an increase was requested, but it was killed. He added that bills to repeal it would be presented in the upcoming Legislature and he would support them.

Councilmember Ulledalen asked Mr. Peterson if he thought the Legislature would be able to fix it. Mr. Peterson said he felt it depended on the structure and who was in charge. He said if the opponents were in charge, it would be repealed. He noted that Senator Shockley had a bill to get rid of it. He commented that he felt a ban was the courageous thing to do.

- **Bob Hilliard, 2540 Lillis Lane**, stated he represented the Elks. He said the Elks had been doing drug awareness work around the United States since 1985 and every time something like medical marijuana came up, it made their job harder. He said their intent was to educate youth about adverse affects of drugs and alcohol. He advised that the Elks organization was number one in drug awareness work in the U.S. He asked for a ban from the city.
- **Laura Needham, 1710 Cobble Creek**, stated that the storefronts sent a message to youth that drugs were acceptable and they provided easy accessibility. She referred to information from California and Colorado regarding increased crime and said Billings did not need to follow that example. She advised that the Council had support of the community to ban medical marijuana. She said in one week's time, 8,717 signatures were gathered in Yellowstone County in support of a ban.

Councilmember McFadden stated that the storefronts had been open for up to a year or more, and he asked how the crime rate had risen and how it was related to those businesses. Ms. Needham referred to the recent break-in at a facility on Montana Avenue, and a murder in Kalispell. She said the people in California knew how it was because they had the medical marijuana longer.

- **Scott Needham, 1710 Cobble Creek**, stated he was a physician at Billings Clinic. He said he had the position paper from the State Board of Medicine, and their number one point was that the mass screenings were outside the doctor/patient relationship and were not right. He said physicians had been censured, fined for that practice, and ran the risk of losing their licenses. He cautioned against allowing those mass screenings. He said the data was clear that the Council had the support of the people in Yellowstone County and throughout the state.

Councilmember Astle asked if the State Board of Medicine fined the doctor from Missoula. Dr. Needham advised that doctors from both Missoula and Kalispell were fined. Councilmember Astle stated that he did the math and if the doctor charged \$200 per patient, she made \$30,000 in one day, and was fined \$2,000, so that was not a detriment. Dr. Needham said he agreed it was not a detriment and that doctors needed to regulate themselves and fines needed to be heftier. Dr. Needham provided a copy of the position paper.

Councilmember McFadden asked if mass clinics were still being held after the State Board of Medicine banned them. Dr. Needham responded that he did not know for sure, and could not speak for the rest of the state.

- **Chuck Barthuly, Better Billings Foundation**, stated he was available to answer questions regarding an item on the Consent Agenda.

Councilmember McFadden asked Mr. Barthuly for an update on the swimming pool project. Mr. Barthuly advised that it was going well and a report would be provided to the Council at the next public hearing.

- **Barbie McClause, 1030 Bluegrass Drive West**, said she had grown children that had indicated they did not want to settle in a state that had followed the pattern of California. She said she had businesses in Wyoming and Montana, and doctors had declined offers to locate here due to medical marijuana. She encouraged the Council to ban it.
- **James Knox, 661 Garnet Avenue**, said he knew the Council feared being sued if medical marijuana was banned, but he believed the City would be in violation of the Interstate Commerce Act. He advised that the fine paid by the doctor was paid on her behalf by the Montana Marijuana Policy Group.
- **Barry Smith, 2702 8th Avenue N**, spoke against medical marijuana and requested a ban in any fashion. He said it was offensive to him as a doctor to call it medical marijuana because there was very little medical to it; it was profiteering from recreational pot.
- **Kevin Nelson, 4235 Bruce Avenue**, said the Legislature and towns were in this situation because the buffoons in Washington allowed violation of a Federal law. He noted that the Government had no problem stepping in and exercising authority in the Arizona immigration case, but refused to intervene into something that was federally illegal. He said that placed people in predicaments they should not be in.
- **Joseph Yates, 417 Lavender**, stated he was opposed to the proposed zoning and felt medical marijuana should be completely banned. He said there was recreational use going on, and the medical benefits were far outweighed by the risk of recreational use. He said if it was not banned, a flawed law was being endorsed. He encouraged a complete ban.
- **William Foote, 39 Prairie View Drive**, stated he thought there was confusion with medical marijuana and recreational use because the stores were not selling to just anyone. He read the Medical Marijuana Act, Title 50-46-201, Section 1.
- **Ann Bustell, 306 Joy Lane**, asked for the preservation of medical marijuana. She explained how the marijuana helped her medical condition and reduced the need for her to take so many other chemical-based drugs.

Councilmember McFadden asked Ms. Bustell if the medical marijuana was easier for her system to assimilate than chemical-based drugs. Ms. Bustell said the marijuana was organic and easier on her kidneys and liver.

- **Mort Reid, 1120 Yale**, advised he was the Assistant Chapter Director of the Billings Chapter of the Montana Medical Growers Association, a caregiver, and a resident of Billings. He said it was time to work with the medical community on the solutions. He requested a three-month extension of the current moratorium. He said that would allow time to work with the Montana Medical Growers Association to develop guidelines and regulations to enable licensed caregivers to continue providing care and medicine. He provided written remarks from local patients.
- **Connie Wardell, Billings**, advised that she was a member of the Medical Marijuana Ad-hoc Committee and wished the people that wanted a ban were at the Council meeting the previous November when she was there to request a moratorium. She said the people that wanted a ban now were not there in November. She said a ban would put the City in the middle of a lawsuit that could bankrupt it. She stated there were many things wrong with the law the way it was written, but a ban was not the responsible thing to do, which was why the committee crafted the proposed zoning regulations. She said that if a moratorium had been put in place the previous November, there would not be 50 shops that were legitimate businesses.

Councilmember McCall asked what Ms. Wardell thought the responsibility was of the Legislature when it came into session January 2011. Ms. Wardell commented that the Legislature ducked the responsibility two years ago and it could do the same again. She said there would be a lot of financial items in front of the Legislature, but she thought some of the things the State had tried to do in regard to medical marijuana could get the attention of the Legislature. She said she thought there were things they could do to make it work the way it was intended. She noted that local entities could address zoning and possible regulations for people that obtained business licenses.

Councilmember McFadden asked Ms. Wardell if she thought there would be one lawsuit or several individual ones. Ms. Wardell said she did not know if they would join in on one lawsuit, but said there was case law that showed that if the City tried to zone or ban a legitimate business out of existence, the City would bare a liability. She said that as long as the business was legitimate, the City could only restrict where it was located, and a reasonable amortization period had to be used.

- **Carri Bernard, Westfield Drive**, stated that the woman that just spoke about her medical issues and how she benefitted from medical marijuana was the reason it was approved in 2004, but people were taking advantage of it and making a mockery of the law. She said the law should be made stricter for people that really needed it.
- **Mark Higgins, 814 Ahoy**, said he waited to comment until after hearing all the other testimony because he felt the Council was not hearing the whole story. He reported that doctors from both of the two local hospitals were signing recommendations. He said he knew there were doctors from the two hospitals that were happy to get patients off narcotic medicines. He stated that drug representatives had informed him of a 50% drop in prescription drugs at pharmacies, which was attributed to medical marijuana. He said there were irresponsible caregivers that were ruining it for everyone.

Councilmember McCall asked about the number of physicians from each hospital that were providing recommendations. Mr. Higgins said he did not have the information with him, but had a list at his office of about 20 doctors. He said he could provide that list of names.

Councilmember Astle asked if the 50% drop in prescription drug sales was anecdotal or if he had the actual data. Mr. Higgins said a representative told him about the 50% decrease and that the drug companies attributed it to medical marijuana. Mr. Higgins advised that he could obtain proof of that.

Councilmember Ruegamer stated that the Council had heard both sides of the story. He asked about the decrease in drug sales. Mr. Higgins spoke about medical conditions that were helped with the medical marijuana.

Councilmember McFadden asked Mr. Higgins if he was implying that some of the resistance to medical marijuana was starting to surface because money was no longer changing hands with the pharmaceutical companies. Mr. Higgins said what he was saying was that it was a person's choice. He said he was not a burden to society, his business was not blight, and his patients were respectable people. He said it was the caregivers that needed to be regulated, not the stores.

Mayor Hanel asked how many medical marijuana users there were in Yellowstone County. Mr. Higgins responded that from the last information he saw, there were about 1,200. Mayor Hanel asked how many of those users needed it. Mr. Higgins said 1,200 did because they all had a doctor's recommendation. He added that caregivers had the choice of which patients they accepted.

Councilmember McCall clarified that as of the end of May, 2010, there were 1,559 patients in Yellowstone County, and 336 caregivers. Councilmember Ulledalen commented that the number of patients was closer to 2,000 now.

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

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	08/09/10	12/31/13
2	No Applications	Board of Appeals	08/09/10	12/31/13
3	Kathleen Candelaria	Community Development	08/09/10	12/31/14
4	No Applications	Emergency Medical Services	08/09/10	12/31/10
5	No Applications	Housing Authority	08/09/10	12/31/13
6	No Applications	Human Relations	08/09/10	12/31/10
7	No Applications	Human Relations	08/09/10	12/31/14
8	No Applications	Traffic Control	08/09/10	12/31/10

- 4. Unexpired term of Dr. Peter Light
- 6. Unexpired term of Everall Fox
- 8. Unexpired term of Keith Lang

B. Bid Awards:

- 1. **Airport High Speed Runway Broom.** (Opened 7/27/2010). Recommend Team Eagle, Inc., \$523,000.00.
- 2. **W.O. 08-14 WWTP Storm Drain Modifications.** (Opened 7/27/2010) Recommend Castlerock Excavating, Inc., \$169,062.00

C. Approval of annual Funding Agreement with the Yellowstone County Council on Aging.

D. Memorandum of Understanding (MOU) between the Big Sky Economic Development Authority, City of Billings, and the Billings Industrial Revitalization District, Inc. for implementation of the East Billings Urban Renewal District.

E. Street Closures:

- 1. **Montana Governor's Cup Marathon.** September 6, 2010, 6 a.m. to 3 p.m.; Molt Road to Buffalo Trail, back onto Molt Road, left on 62nd Street West, west on Sam Snead Trail to Walter Hagen, onto 54th St. West, left on Rimrock, right on 46th Street West, left on Rangeview Drive, left on 38th Street West (partial street closure), right on Poly Drive, right on Patricia Lane, left on Colton, right on 17th Street West, left on Parkhill Drive to Virginia, right on 3rd Street West, finishing at Daylis Stadium. Full street closure on 3rd Street West from 6:00 a.m. to 12:00 noon.
- 2. **Don Luis 10-Year Celebration.** Saturday, August 21, 2010, 1:00 p.m. to 9:30 p.m.; North 26th Street between Montana Avenue and 1st Avenue North.
- 3. **Billings Parks and Recreation Department Dash for Dog Parks Fun Run.** Saturday, August 14, 2010, 6 a.m. to noon; beginning at the Skyview High School

Parking Lot, traveling on High Sierra Boulevard, west on West Wicks Lane and ending at High Sierra Park.

4. **Friendship House of Christian Service Neighborhood Event.** Wednesday, August 18, 2010, 4 p.m. to 8 p.m.; 8th Avenue South between South 31st and 32nd Streets.
 5. **Billings Association of Realtors Quality of Life Run.** Saturday, August 21, 2010, 7 a.m. to 11 a.m.; 5-Mile: begins atop the rims near Masterson Circle down N. 27th, west on Rimrock Rd, south on Virginia Lane, through Pioneer Park, north on 3rd Street West, east on Parkhill Drive, south on North 32nd Street ending at Division and Grand; 2-Mile: begins at the MSU-B parking lot, west on Rimrock Road, south on Virginia Lane, through Pioneer Park, north on 3rd Street West, east on Parkhill Drive, south on North 32nd Street ending at Division and Grand.
 6. **Billings Food Bank Open House.** Saturday, August 21, 2010, 9 a.m. to 9 p.m.; North 22nd Street between 3rd and 4th Avenues North.
 7. **Billings Clinic Foundation Classic.** Friday, August 27 to Sunday, August 29, 2010, street closure: N. Broadway between 3rd Avenue North and 4th Avenue North, beginning at 12 a. m. (midnight) August 27 until 5 p.m. August 29; alley closure: North 27th and North 28th alley between 3rd and 4th Avenues North, and the alley on North 28th and North 29th between 3rd and 4th Avenues North, 9 p.m. August 27 through 5 a.m. August 29.
- F. Acceptance of Donation** to the Fire Department for purchase of smoke and carbon monoxide detectors; \$500.
- G. Approval and acceptance** of the Domestic Violence Unit and Victim Witness Assistance Program Grants awarded by the Montana Department of Justice and Board of Crime Control; Domestic Violence grant award \$50,739 with City's cash match of \$36,019; Victim Witness Assistance grant award \$36,739 with City's cash match of \$35,184.
- H. Second/final reading ordinance** regulating the use of electronic communication devices while operating a motor vehicle.
- I. Resolution #10-18974** temporarily suspending Section 24-411, BMCC, Parking for Camping Purposes, in the Shrine Auditorium parking lot, 1125 Broadwater Avenue, during the Big Sky Polka Club's Polkafest, September 3-5. 2010.
- J. Final Plat Approval**
1. Sahara Sands Subdivision, 1st and 2nd Filings, Amended.
 2. Riverfront Pointe Subdivision, Block 10, Amended Lot 16
- K. Bills and Payroll:**
1. July 13, 2010
 2. July 19, 2010.

Councilmember Cimmino separated Item 1K1. She advised she needed to abstain from voting on that item because she was employed by the consulting firm related to Invoice #734193.

Councilmember Astle moved for approval of the Consent Agenda with the exception of Item 1K1, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

Councilmember Astle moved for approval of Item 1K1, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9-0.

REGULAR AGENDA:

2. RESOLUTION #10-18975 AWARDED THE SALE FOR RE-FUNDING SERIES 2010 GENERAL OBLIGATION BONDS. Recommendation to be made at meeting. (Action: approval or disapproval of staff recommendation.) Assistant City Administrator Bruce McCandless reported that bids were opened earlier that day and seven bids were received. He advised that Robert W. Baird and Company was the low bidder at 2.016%. He added that the City received an upgrade in its bond rating on that issue from A1 to Aa2, which resulted in additional savings of about \$50,000. He concluded that staff recommended award of the bid to Robert W. Baird and Company. Councilmember Ulledalen moved for approval of Item 2, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND FIRST READING ORDINANCE AMENDING THE CITY CHARTER TO ADD A 1-MILL PLANNING LEVY TO BE DECIDED BY THE VOTERS AT THE NOVEMBER 2, 2010, GENERAL ELECTION. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Planning Division Manager Wyeth Friday reviewed the process that led to the current proposal to place a 1 mill levy for planning services on the November 2, 2010, ballot. He noted that the consideration was to amend the City Charter to add that mill levy to it. He briefly reported that one mill was estimated to generate about \$158,000 per year for planning services and would increase the tax on a \$200,000 home approximately \$2.82 per year, for a total of \$6.26 per year. Councilmember Pitman asked how much it would cost to promote the levy and where would the funding come from. Mr. Friday advised that there were entities in the community that supported it and would promote it. He noted that City staff could not promote it during work hours.

Mayor Hanel asked City Attorney Brent Brooks or Mr. McCandless to provide an explanation of limit of the mills and why it was necessary to request an additional mill based on the limits of the Charter. He added that he would also like an explanation of the separation of the funds from County taxes versus City, and the application of those funds. Mr. Brooks explained that the Charter, enacted in 1977, put a limit on the maximum number of mills, but the Charter could be amended with a vote of the public. He added that the Charter had been at the limit for some time. Mr. Brooks explained that the Department of Revenue and County Assessor would be able to separate the City and County funds. Ms. Volek explained that the public safety levy was collected from City residents only, so there was precedence for that practice. Ms. Volek advised that a planning levy was founded in 1985 and there had not been an increase since then. She added that there had been significant layoffs in that department already due to a reduction in fee revenue. Mr. Friday explained that the County Commissioners had the discretion to make adjustments for inflation and had done so over the life of the levy, so it was currently at 1.22. Councilmember Clark asked if the funds collected through that levy would be used exclusively for the City. Ms. Volek advised that they would. Councilmember Cimmino commented that when there was a county annexation application with subdivision review, that technically, it was the same department providing the services. Ms. Volek advised that the annexation would generally occur before there was any planning item related to it. She added the County-wide levy would still be collected to pay for the services provided by the County. Councilmember Cimmino asked if the positions eliminated would be re-filled if the levy was approved. Ms. Volek responded that not all would be re-hired. She explained that funds

would be used to match federal transportation dollars that were not being matched due to the lack of funding.

The public hearing was opened.

- **Charles Hamwey, 1010 Grand**, emphasized the importance of the 1 mill. He said the Planning Department was important and had been a passion of his for years. He noted that the department was down to a skeleton crew. He stated that planning was not for today, but for the future. He encouraged the Council to move it forward to get it on the ballot.

Councilmember McFadden asked if Mr. Hamwey considered that mill to be good for the real estate business. Mr. Hamwey stated it was good for everyone and for the benefit of every aspect of the community. Councilmember McFadden said he was actually implying that if real estate was doing good, that Billings was doing good.

- **Donna Forbes, 1116 8th Street West**, said she had represented Ward III on the Planning Board for seven years. She spoke about how much was learned by serving on a board. She said cities became chaotic if planning was not done, and she complemented the Billings Planning Department. She said Billings was the largest city in the state, but not the largest planning department. She encouraged support of the mill levy.
- **Joan Hurdle, 210 Nall**, stated she was present as a citizen, a member of the League of Women voters, and as a County Zoning Commissioner. She expressed her disappointment that the County did not put the levy on the ballot, so she urged the City to do it. She said one of the reasons the City was doing well could be attributed to the Planning Department that served as a guide. She said it was a terrible time to let that department continue to shrink, but instead it should be stronger.
- **Joe White, Billings, MT**, said he supported putting it on the ballot. He said a critical problem was not a matter of staff, but of giving serious consideration to the plans. He referred to a massive building downtown. *The remainder of Mr. White's testimony was inaudible.*
- **Rod Wilson, 422 Shamrock Lane**, stated that 80% of Billings citizens were also citizens of Yellowstone County. He expressed his support of the levy. He advised that he had been appointed as Chairman of the Development Process Advisory Review Board, and explained the purpose of the committee. He reviewed a list of functions of the Planning Division.
- **Al Littler, 4704 Burlington**, advised that he served on County Zoning and on City/County Planning. He stated that the hundreds of thousands of transportation dollars that had been left on the table and then went to other communities was disgraceful, and not a result of poor planning, but of poor business. He said the business thing to do was to pass the ordinance.
- **Connie Wardell**, stated she served on the School Board and had previously fussed that the School Board and Planning Department did not work together, but they were starting to. She said she hoped the City would have the staff to allow the groups to continue working together. She commented that elected officials tried to second guess the voters, and she was shocked that the County Commissioners did not want to add the levy to the ballot because they did not want to upset the voters. She said the issue should be put in front of the voters for their decision. She urged the Council to put the levy on the ballot.
- **Kevin Nelson, 4235 Bruce Avenue**, said his concern was that the mill was permanent and Federal funding was not, and the Federal fund carrot was always dangled out there. He said he thought everyone would agree that those funds would be lacking on a state and federal level, and that nobody disputed the fact that the State and country were broke and some hard decisions would have to be made. He asked if they were willing to risk the one mill against Federal funds that may not exist. He said it was ironic that the August Planning Board and the Board of Adjustment meetings were cancelled because there were no agenda items and there were no items for the Planning Department. He said enough land

had been annexed for a new home or business, so nothing would have to be done for years. He commented that hiring employees would mitigate the ability to garner Federal fund matches because all the money would be spent on employees. He stated that it seemed the Council needed intervention, and there was no Betty Ford facility for Councilmembers that were addicted to other people's money.

Mayor Hanel asked Mr. Nelson if he was aware that the levy would be \$2.82 on a \$200,000 home if it passed, which would bring the total to a little over \$6.00 per year. He said he felt some of his testimony was good, but when the long waiting lines at restaurants on a Friday or Saturday night in Billings were taken into consideration, he did not believe that Billings was as destitute as some people thought. He referred to matching funds and the benefits over ten or twenty years as one example of advantages of the mill if it passed. He said that would dispute some of Mr. Nelson's testimony. Mr. Nelson said it was only a few dollars from the City, but it started to add up when there was some to the County and the School District also. Mr. Nelson said some of the problem was that it always fell back on the general population. He explained that a lot of people that would support the levy had automatic cost of living increases in their contract, so they would get an automatic increase, but others did not get to pass it on to their customers and it almost seemed like double taxation for those people. He said some of the City and School employees received the cost of living increase and the taxpayers had to pay that again. Mayor Hanel said Mr. Nelson's comments were well received as far as watching increases, but he thought that could be overcome with more efficient spending in other ways.

- **Jeff Bollman, 619 Lewis**, urged the Council to vote in favor to allow the voters to have the say whether they wanted the increased mill. He said he felt planning was an important function in the City, regardless of whether there were items on the agenda for the Board of Adjustment, for this month or next month. He said with planning, the penalty was not seen today, but the pain was felt later on. He said if funding was increased and the department did not have to be reliant on fees, they would have the flexibility to update long range plans and put some investment into the community so when things picked up, they were ahead of the game, and rather than have to scramble, they had anticipated the growth and were prepared for it. He spoke of the downtown growth, and the trail system which did not just happen, but plans were in place that guided that growth.
- **William Foote, 39 Prairie View Dr.**, said the word 'tax increase' caused a knee-jerk reaction. He said he thought it was important that the levy be put on the ballot for a vote, and felt it was important that it passed. He commented that Billings was growing and it was short-sighted to get a one-mill cost savings in an economic downturn now, when the economy would go back up. He said people had a voracious appetite for building, and trail development. He said he felt it would be important that good information be provided to the public, such why it was needed, and why it was important. He said if the County dropped the ball, the residents should pick it up to keep future development on track.
- **Ron Bachman, 2549 Wyoming**, said he wanted to ask about the cost of free money. He said it was his understanding that the Department of Transportation provided 50% of the funding to the Planning Department, so it was indebted to a remote planning influence that made demands and required expenditures whether the City wanted them or not. He added that many of those plans were not relevant to the City. He said one more percent and the facade of local control over the planning of the community would fall. He stated that the DOT was also a government agency and he asked what their incentive was to fund local planning departments. He asked if the City was so naive to think it was an act of benevolence, or that it would act in the best interest of the people. He said the money came from taxpayers and the Federal government kept enough to fund the \$90 billion bureaucracy and then bought influence with the rest. He said the choice of how the City was run was

given up. Mr. Bachman stated he did not have time to read his entire statement and would email it to the Council.

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

Councilmember Cimmino moved to approve the first reading ordinance amending the City Charter to add a one-mill planning levy to be decided by the City voters at the November 2, 2010, general election, seconded by Councilmember McCall. Councilmember Ronquillo said he appreciated the public testimony. He said the majority of the people in the department planned for the City's future and it was unfortunate that a year ago, staff from that department had to be laid off. He stated he thought it was good issue because it was for the whole city, not just one part of town.

Councilmember Astle stated that prior to 1985, there had not been any planning that he could tell. He said the City would be in a mess without good planning.

Councilmember McCall stated she strongly supported the motion and was disappointed that the County did not go forward to take it to a vote of the people. She said it was critically important to support the Planning Department and she urged the Council's support.

Councilmember Ruegamer stated he would underline Councilmember McCall's comments. He pointed out that they were just passing an ordinance to put the issue on the ballot and the voters would decide on the levy.

Councilmember Ulledalen stated he felt good planning was more the City's responsibility than the County's, because if the City did not do a good job, they ended up inheriting problems that were created in the County. He said even in Ward IV, he was tired of dealing with things that were not done right 30 or 40 years ago. He said good planning was good for the community as a whole. He expressed his support for the item.

Councilmember Pitman stated he supported taking it to the voters because he thought it was important. He said the inner belt loop would be started the next year and it would be critical to have the resources to plan it and not just let it become an event.

Councilmember Cimmino asked staff to reiterate the action taken by the Council in an April resolution. Ms. Volek advised that in April the City Council unanimously approved a letter to the Yellowstone County Commissioners in support of placing an item on the ballot. She explained that at that time, staff had not researched the concept of a City-only ballot, but research had since been done, which allowed the item to move forward in that way. Mr. Brooks suggested, for the record, that the motion included approval of the resolution also attached to the staff report, which translated the ballot language to the election administrator. Councilmember Cimmino clarified that her motion was to adopt the staff recommendation which was, 'Staff recommends the City Council approve on first reading the ordinance amending the City Charter to add a 1 mill planning levy. Staff also recommends that the City Council adopt the Resolution that refers the Charter amendment to city voters at the November 2, 2010, General Election.' On a voice vote, the motion was unanimously approved.

A 10 minute recess was taken at 8:20 p.m.

4. PUBLIC HEARING AND RESOLUTION #10-18976 TO EXCLUDE PROPERTY TO DE-ANNEX A PORTION OF BROADWATER AVENUE LOCATED BETWEEN 56TH AND 58TH STREETS WEST IN TRAILS WEST SUBDIVISION. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Ms. Volek advised that staff did not have a presentation, but was available to answer questions.

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

Councilmember McCall moved for approval of Item #4, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

5. MEDICAL MARIJUANA ZONING CODE TEXT AMENDMENT. Ad-Hoc Committee and staff recommend initiating a zoning text amendment and referring the "restrictive" ordinance to the Zoning Commission for review and recommendation. (Action: approval or disapproval of Ad-Hoc Committee and staff recommendation.)

Planning Manager Wyeth Friday summarized the recommendations from the ad-hoc committee. He reminded the Council that a detailed review was presented at the July 19, 2010, work session. Mr. Friday's PowerPoint presentation reviewed the key features of the proposals that addressed the three areas of the business, the separation from certain activities, the four-year amortization, and the signage regulations. He reviewed maps which illustrated the allowed and restricted areas. He pointed out that the recommended ordinance included a 1000' separation from churches, schools, parks, and playgrounds; a 300' separation from residential zones; a four-year amortization for businesses to comply with the zoning; and signage regulations. Mr. Friday reviewed the alternatives and said staff recommended initiating a zoning text amendment to the Zoning Commission to limit medical marijuana businesses to a few commercial and industrial zones, to provide a separation from residential zones, schools, and public places, to require special review for some businesses, to amortize legal non-conforming uses over four years and to limit signage.

Councilmember Ulledalen asked Mr. Friday if he had the map that illustrated a 1000' separation from residential areas. Mr. Friday advised he did not think he had the map. Councilmember Ulledalen stated that there was not much difference between the 300 and 1000' separation, except in an industrial area in Ward V. He expressed his concern with what was not showing with the 300' separation and stated that he wondered if it a 1000' separation would be safer.

Councilmember McFadden asked if a one-year extension of the moratorium would be helpful for the Zoning Commission. Mr. Friday explained the Zoning Commission's process if the zoning code text amendment was approved.

Councilmember Pitman asked if the Zoning Commission's recommendation expired after a length of time. Mr. Friday stated that the Council had the opportunity to take action after the Zoning Commission's recommendation. Mr. Brooks added that if the Zoning Commission came back with a recommended ordinance, the Council had the option to approve it, modify it, or table it indefinitely or to a date certain. He said an extension of the moratorium would also extend the text amendment process.

Councilmember McCall asked if the moratorium could be extended if it looked like the Zoning Commission would not be finished with its work prior to the expiration. Mr. Brooks said the Council could do that, and suggested starting that process in early September to provide ample time for the required publication and public comment.

Councilmember Ulledalen said he thought the moratorium should be extended regardless of what was adopted. He asked if the Council's action should be put on hold until after the Legislative session. Mr. Brooks said it could be tabled, but suggested tabling it to a date certain to preserve the work that was done on the issue.

Councilmember Clark stated that if the moratorium was extended for a year, it would, in essence, provide a five-year amortization. Mr. Brooks said it could be looked at that way because the amortization period would begin with the adoption of the ordinance.

Councilmember McFadden asked if extension of the moratorium would be beneficial to the City and the Legal Department. Mr. Brooks responded that it probably would be. He said it would provide time to appear before the Legislature to articulate the Council's position. Councilmember Ulledalen commented that the Council did not have to wait until the moratorium expired to approve an ordinance. He said it could depend on what the Legislature was doing.

Councilmember Astle stated he wanted to ask Mr. Peterson about his previous testimony. Councilmember Clark stated that the public comment period was over. Councilmember Astle stated he wanted to ask a question about his testimony. Councilmember

Astle referred to Mr. Peterson's testimony about a supremacy law and asked if he thought the City would prevail in asking for a declaratory judgment based upon the Federal law. Mr. Peterson said the City would be asking a court if the supremacy clause that was contained in the U.S. Constitution trumped State law. Mr. Peterson said he thought one could be fashioned to do that, but cautioned that it took a good deal of time to get it through.

Councilmember Pitman moved to initiative a zoning text amendment and refer the restrictive ordinance to the Zoning Commission for review and recommendation, seconded by Councilmember Cimmino.

Councilmember Clark made a substitute motion to ban anything illegal, federally, within the City limits, seconded by Councilmember Astle. Councilmember Pitman expressed his concern that a ban from the City pushed everything to the County and created problems for outlying communities and the County. He said he felt it was almost irresponsible for the City to ban it so others had to deal with it.

Councilmember Astle stated that he seconded Councilmember Clark's action because he wanted to file a declaratory judgment. He advised he was told by a medical marijuana provider that they intended to file multiple lawsuits that would tie the issue up in court. He said he thought the declaratory action would be the proper way to solve the problem once and for all.

Councilmember Ulledalen stated he would rather not do that until there was guidance from legal staff about how to proceed. He said he thought it was a knee-jerk reaction that would result in problems. He noted that it could be packaged with what was done going forward if Mr. Brooks came back with suggestions in a month or two. He stated he would not support the substitute motion.

Mr. Brooks advised that a declaratory judgment option had been discussed back in the fall. He said it had advantages and disadvantages and he could provide an expanded memo outlining them. He stated that he talked briefly with the MMIA CEO Alan Hulse who indicated that a declaratory judgment would not be the most favorable approach for the City. He said the City would be the plaintiff for the petitioner and would be pursuing it on its own, but if it was engaged in litigation, the MMIA would provide coverage because it would be a land-use issue. He said his gut feeling was that it had more disadvantages than advantages at that point.

Councilmember McCall stated she agreed with Councilmember Ulledalen and that a good assessment was needed. She stated they needed to work with the Zoning Commission, but at the same time, she was concerned with continuing the moratorium so the City was protected and no additional businesses could open until the Legislative session, and the opinion was obtained regarding a declaratory judgment. She asked if there could be two motions that evening – one to move it on to the Zoning Commission and the other to extend the moratorium. Mr. Brooks advised that direction could be given to administration and staff to prepare for extension of the moratorium, but it was not an item on the agenda that evening, and would have to be advertised for a public hearing. Ms. Volek added that a Council initiative could be proposed to direct staff to prepare an agenda item for a future meeting.

Councilmember Pitman confirmed that the current moratorium would stay in place until November 11. Mr. Brooks advised that was correct, and if a zoning ordinance was adopted prior to the expiration, the moratorium would have to be repealed or something so there were not two existing ordinances contradicting each other.

Councilmember Pitman clarified that as long as they dealt with zoning, they had coverage and backup of MMIA, but if they dealt with policy, the City was on its own. He asked if he was correct that his motion concerned zoning and Councilmember Clark's motion was more about policy. Mr. Brooks stated that legal staff would defend any action, but at that point, a declaratory judgment was a procedural device. He said he was not sure if it was really a collision between policy and legal strategy, but the text amendment could be referred to the Zoning Commission, the moratorium could be extended, and legal staff could be allowed to provide legal options all at the same time, with separate timelines.

Councilmember McFadden advised that he felt the most prudent course of action was to extend the moratorium for up to a year and he would not support the substitute motion because he felt it would put the City into an adversarial position with the medical marijuana providers. He said he thought their duty to the public was to be fair and lawful, and proceed with caution and prudence.

Councilmember Clark commented that the moratorium could be extended, but either motion would likely subject the City to a lawsuit. He added that extending the moratorium would require a public hearing on something they had already had a lot of public comment on. Councilmember Clark asked if his motion would have to go to the Zoning Commission. Mr. Brooks advised that the substitute motion had to be voted on first and if it passed, a request would be sent to the Zoning Commission for a text amendment that prohibited medical marijuana businesses in the City limits, and the Zoning Commission would hold a public hearing and forward a recommendation to the Council. Councilmember Clark stated he still thought his motion was the way to go rather than zoning them to a small area.

Mayor Hanel stated that he felt they were teasing people in the business if the Council continued dealing with the issue. He explained that the businesses would become more established, and if the decision was ever made to ban them, it would affect them even more than now. He referred to the tremendous amount of testimony that had been heard and asked how much further it could be drug on. He said legislative action might or might not occur and then the Council would be right back to where they were. He said he did not believe they were appropriate businesses to have in the City and sooner or later there would be a tragedy that would affect a lot of people and would cost a lot of money, lawsuits or not. He said they were just stringing people along.

Councilmember Ulledalen stated that a ban put them into a difficult position legally and he would not support it even though he felt there was merit to banning it. He mentioned that the Montana Constitution gave them a lot of latitude for managing the City. He said he felt sending a zoning amendment through the Zoning Commission was a better way to handle it. He referred to the Bozeman ordinance and said there was more that could be considered.

Councilmember McCall stated that she supported Councilmember Ulledalen's comments and also thought the Legislature had the responsibility to make some policy. She suggested waiting and letting the Legislature do its job. She said she would not support the substitute motion.

Councilmember Ronquillo stated he supported everything, but did not like the zoning because a majority of it was in Wards I, III, and V, and there were already enough problems in Ward I. He said he agreed with the ban. He said he felt there was a better chance of letting the Legislature clean up the mess if the moratorium was extended beyond November.

Councilmember Pitman stated that, as testified earlier, they needed to remember the City was part of the County and the County was part of the City. He said the map looked overwhelming, but there were still land masses around that were freely open. He said he thought the zoning was the appropriate way to go and it was about legally defending it and protecting the City's finances. He noted that it was not the final solution and there were other items that needed to be addressed. He said he felt the Council needed to move forward.

Councilmember Clark stated that according to the proposal, only one caregiver would be legal and the rest would have to move within four years. He asked what the difference was between the zoning and a ban. He said the providers would have the whole County with either of the motions. Councilmember Pitman explained that the recommendation was as restrictive as possible, but, legally, there had to be some options within the City. He said a complete ban would result in more legal issues. Mr. Brooks confirmed that Councilmember Pitman's statement was true. Councilmember Astle asked if that applied only to legal businesses and pointed out that Federal law banned medical marijuana businesses. Mr. Brooks referred to the U. S. Attorney General's statement that it would not prosecute violations. Councilmember Astle

responded that under Federal law, they were illegal businesses. Mr. Brooks said that was true, but if they followed the State law, violations of Federal law would not be prosecuted.

Mr. Brooks confirmed that the substitute motion on the floor was to recommend a complete prohibition to the Zoning Commission and if it did not pass, the Council would have to consider Councilmember Pitman's motion to recommend the restrictive zoning ordinance. Councilmember Clark amended his substitute motion to add a three-year amortization, seconded by Councilmember Astle. Mr. Brooks confirmed that that the substitute motion was recommendation of a complete prohibition of medical marijuana in Billings with a three-year amortization. Councilmember Ulledalen requested a roll-call vote. On a roll-call vote, the motion failed 6-4. Councilmembers Pitman, Cimmino, McFadden, Ruegamer, McCall and Ulledalen voted 'no.' Councilmembers Ronquillo, Astle, Clark and Mayor Hanel voted 'yes.'

Councilmember Ulledalen asked Mr. Friday to display the map that showed the Community Commercial zones. Councilmember Ulledalen stated he would like to eliminate the Community Commercial use and would like the residential separation increased to 1000'. Mr. Brooks explained that the changes could be made now before a recommendation was sent to the Zoning Commission, or the Council could wait until the Zoning Commission made its recommendation back to the Council.

Councilmember Ulledalen moved to amend the original motion to remove Community Commercial as an option and to add 1000' separation from residential areas, seconded by Councilmember McCall. Councilmember Pitman stated he would support the amendment because it was a fair thing to do for the Zoning Commission. On a voice vote, the amendment was unanimously approved. Mr. Friday explained that without Community Commercial, the two allowed zoning areas for retail businesses would be Highway Commercial and Industrial. On a voice vote, the amended motion was unanimously approved.

Mayor Hanel thanked the people that testified and provided input on the matter. He stressed that the Council did not make a knee-jerk decision. He said the Council had received a lot of public comment in various forms and a great deal of thought was put into the decision.

Councilmember Pitman asked if the work of the ad-hoc committee was finished. Mr. Brooks referred to the termination date of August 23, 2010, that was contained in the resolution that created the committee and explained that it could reach the expiration date or Council could request that the resolution be repealed.

Councilmember McFadden reminded the public that the ordinance did not just specify zoning, but included restrictive signage regulations. He asked the businesses to be discreet and respectful of the public. Councilmember Clark added that the moratorium was still in effect.

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 podium.*)

- **Kevin Nelson, 4235 Bruce, Billings**, spoke about the EBURD Master Plan regarding the Downtown Billings Partnership that was being funded by reserves from the initial TIF District that should have been liquidated. He referred to Downtown Billings Partnership meeting minutes regarding GSA funds that were remitted from GSA to the City and said those were TIF dollars initially. He said both the City and the Downtown Billings Partnership thought the funds were theirs, and a GSA fund-holding account letter was mentioned in another meeting's minutes. He said he did not know where those funds were. He said his biggest concern was that it was seconded by Councilmember Ruegamer, and he asked where his priorities were. Councilmember Ruegamer stated he was not a member of the Downtown Billings Partnership. Mayor Hanel advised that Mr. Nelson could make comment, but should not expect dialogue with Councilmembers. Mr. Nelson said he understood and asked if he could be told where the GSA funds were.

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

COUNCIL INITIATIVES

Councilmember McCall moved to direct staff to bring a one-year extension of the medical marijuana moratorium as a future agenda item, seconded by Councilmember Cimmino. Ms. Volek explained that the Council could extend the moratorium for up to one year, and subsequent to that, another year. Councilmember McCall said she wanted a one-year extension. Mr. Brooks advised that the moratorium extension would begin when it was approved, but language could be included in the ordinance that it continued from the expiration of the first moratorium. Councilmember Clark agreed it should start when the current moratorium expired in November. Councilmember Ulledalen stated after reading the Bozeman ordinance, it was clear there were still items that needed consideration. He asked if staff would assemble feedback from various associations regarding other options. Mr. Brooks advised that he would distribute copies of the Bozeman ordinance at the end of the meeting. He commented that in October, as part of the Montana League of Cities and Towns Conference, there would be a City Attorney seminar and he predicted considerable discussion of medical marijuana. Councilmember Ulledalen stated he would forward information from the Legislative Interim Committee. On a voice vote, the motion was unanimously approved.

ADJOURN – The meeting adjourned at 9:31 p.m.