

# City Council Work Session

5:30 PM  
Council Chambers  
Date: June 16, 2014

## ATTENDANCE:

Mayor/Council (please check) X Hanel, X Cromley, X Yakawich, X Cimmino,  
X Pitman, X McFadden, X Bird, X Swanson, X McCall, X Crouch, X Brown

## Agenda

### TOPIC #1: Non-Discrimination Ordinance

- Tina Volek: This is an Ordinance that was written as instructed by the Council in a January 2014 Initiative. It does prohibit the denial of civil rights or discrimination on the basis of sexual orientation, gender identity, or expression, veteran status, political beliefs, or obesity. This Ordinance covers lesbian, gay, bisexual, transgender, or LGBT individuals, and non-binary individuals. Non-binary individuals are also sometimes referred to as the Q in LBTQ for queer or questioning. Wikipedia has said that non-binary is an acceptable alternative. It is someone who identifies as other than a man or a woman. Germany recently enacted, and Australia for more than a decade has had a law that allows residents to identify themselves as X rather than male or female on their birth certificates and other documents. Non-binary reflects those individuals. It also covers employment, public accommodation, housing discrimination and retaliation. Those are the four categories that are covered under the Ordinance. The proposed Ordinance covers places that cater or offer services, foods or facilities to the general public. Subject only to conditions and limitations established by law. The State Statute includes without limitation, public inns, restaurants, cafes, eating houses, hotels, rest-houses, motels, hospitals, road houses, taverns, nightclubs, or places where food or alcoholic beverage or malt liquor is sold for consumption, soda fountains, ice cream parlors or soft drink parlors, trailer park resorts or campgrounds, trailer park resorts, campgrounds, barbering, cosmetology, electrology, esthetics or manicuring salon or shop, bathrooms, theaters, swimming pools, golf courses, skating rinks, transportation companies, and all other public amusement and business establishments. Again this is according to state law. There also is a provision in this Ordinance which is not included in every ordinance that we reviewed. Which requires in public accommodations where persons appear in the nude that they may be required to use facilities designated for their anatomical sex regardless of gender identity. This includes only acts or incidents occurring within the Billings City limits. It does not include school districts, county, or state government. But it does include the city government. You received some language to the contrary to that earlier today. It also does not apply to distinctly private institutions, clubs or places including lodge and fraternal organizations. Nor to private educational institutions with the curriculum based in whole or in part upon religious faith. Nor to churches or religious associations or corporations unless they are offering goods and services to the general public as opposed to religious services. A faith based organization that operates a cafeteria, for example, the other set rules would apply. The proposed enforcement in Billings is a bit different then it has been in other communities.
- McCall: The question on churches, religious associations or corporations unless offering facilities, goods, or services. What about a church that provides daycare services to the general public.

- Tina Volek: When Mr. Brooks returns I will talk to him. In that case they would not be excluded for that activity.

The proposed enforcement is a bit different than you have seen in other organizations. The first step would be to file a case with the Montana Human Rights Bureau. The Executive Director of the Montana Human Rights Bureau spoke to Mr. Brooks. She has indicated that they would be willing to review these cases. There was an equal rights case they picked up last week involving one of the State universities. If the Montana Human Rights Bureau rejects the case, then an individual may file within 60 days of that notice, and municipal infraction claim with either the Municipal Court or the Billings Police Dept. The City of Billings is among the cities that have looked at this Ordinance in Montana. The only one with a municipal infraction set up in our organization. Mr. Brooks, some of his staff, and I spoke early last week to Judge Kolar, our Municipal Court Judge. Many of the other communities refer to a civil claim, and Judge Kolar because of the immense burden that they are carrying in the court, does not hear civil claims. Even Small Claims Court claims go to the Justice Court across the street. She asked if we would consider a municipal infraction and the staff was more than willing to accommodate her. We would have a process that would call for a police dept. investigation, and then a report. I should hasten to point out that a municipal infraction is a civil offense, and for a proven violation, is civil penalty only. The first violation, a civil penalty of not more than \$300. For subsequent violations, a penalty not to exceed \$500. Seeking a civil penalty does not preclude the City from seeking alternative relief from the court in the same action. We also make provision for the individual involved, filing a civil remedy with the Municipal Court, but not if an infraction claim is made. This is different based on the fact that we are the only ones that handle municipal infractions I believe, among the other cities that have undertaken this Ordinance in the State of Montana.

- Brown: Once this goes to the Human Rights Bureau, then they will look at and see if they will take it on?
- Tina Volek: Yes. If not, then they will give a rejection to the individual who has made the claim, and then they would have 60 days to file with the Municipal Court or the Police Dept.
- Brown: They make no recommendations as to how they would proceed?
- Tina Volek: They would not. Mr. Brooks talked to the Director, and my understanding is they would make a decision yes or no.
- Brent Brooks: The Human Rights Bureau Chief indicated that they would investigate it and issue a Cause Finding, in one of the categories currently covered under State Statutes could be involved, or if they found that one of the categories under State Statute was not involved, they would issue what they call, a no cause finding letter because it involved categories beyond what the State Statute classifications or protections currently provides. There is also a third possibility. It could be that the claim involves one or more of the state categories. But the Human Rights Bureau after investigation determined that the complaint was without merit. Basically they are distinguishing between those categories and protections currently under State Statute versus those under the current ordinances from Missoula, Butte, Helena, Bozeman, Silver Bow, and then potentially Billings. These additional categories that are in your proposed Ordinance right now are not covered by State Statute. Have two different sets of categories of discrimination.
- Brown: The information that I understood is if an ordinance was passed, then the Human Rights Bureau could take on those cases for the NDO?
- Brent Brooks: CM Brown, that is only partially correct in that they will investigate as they have told us, regardless of the allegations. However, they would not pursue anything beyond the investigation stage if it involved categories not within State Statutes. If it was only the categories within the City Ordinance ever involved, they might investigate, but they would issue a no-cause finding letter because it did not involve the categories of discrimination

currently provided for, and State Statute. The Human Rights Bureau will not enforce the City Ordinances in the other four cities and Billings if it only involves these new additional categories – LGBT, gender identity, gender expressions, etc. They may investigate them initially to see if there are State Statute classifications that may also be involved, but they will not enforce purely the categories provided in the City of Billings proposed Ordinance, nor the other 4 cities Ordinances.

- Tina Volek: That's opposed to what happens in some other states where the state has passed some action. For example in Colorado, their Human Right Commission issued a finding a couple of weeks ago. It was not a city, although it was a case involved in business in the City of Denver. Since we do not have a State Statute specifically in regard to the topics covered by the NDO, they are going to simply look to see if there are State Statutes that have been violated.
- McCall: I was under the impression that because Montana does not have statutes in place for non-discrimination against LGBT, that they would not even look at a case. But what you are saying, based on the fact that there are 4 or 5 cities that now have local ordinances that they are willing to investigate.
- Brent Brooks: That is correct. The reason it was expressed to us in this telephone call, was there may be some categories of State Statute recognized discrimination that may be involved in addition to anything under the City's ordinance. They would at least investigate.
- Tina Volek: One example might be harassment of some kind. A matter that they would take into consideration no matter what gender is involved.
- McCall: The other opportunity that this provides is that if the Montana Human Rights Commission is going to at least investigate these cases, they are going to have documentation and a record at the state level. At some point, the Legislature may look at changing the Statue including this. I think it would be helpful information down the road.
- Swanson: At this point we don't know what the other category is that is not covered, or does it vary so much by state and local laws?
- Brent Brooks: In the Ordinance in front of you, there are several categories that are included. In the definition of discrimination, I can't tell you what page that is on. Categories that are in front of you in the City's Ordinance which are not covered by State Statute are, LGBT, sexual orientation, gender identity or gender expression, veteran status, obesity. Those are separate from whatever is recognized under State Statute.
- Cimmino: The discussion including the Human Rights Commission, why couldn't we limit the remedies to the Municipal Court? The commission in Helena was just a state agency. They have no jurisdiction over any local municipality. We are self-government.
- Brent Brooks: CM Cimmino, the other four cities has similar provisions and the thought was, let's let the Montana Human Rights Bureau investigates first, because there may actually be a state covered discrimination involved, and perhaps the complainant incompletely articulated this situation. Let them investigate first as a pre requisite. Quite often there may be conciliation under State Statute that is provided for, that might occur and eliminate a complaint under the City Ordinances. There is several practical reasons why you would direct that person to file a complaint with the Montana Human Rights Commission first, and let them investigate it.
- Cimmino: So whether the NDO is on the books for this municipality or not, they could still do that if there was ever any wrong doing committed by anybody within our jurisdiction.
- Brent Brooks: Our Ordinance directs them, or requires anybody who believes that our Ordinances have been violated, to first present a complaint to the Human Rights Bureau for investigation. Then if they are issued a finding from that bureau that there is nothing on State Statute that justifies their complaint, then they come to the City Ordinance and file their complaint. It is what we refer to as the exhaustion of the administrative remedies in a larger

context. It may weed out some of the baseless complaints. It is wise to include that. I think the other four cities recognize that also.

- Pitman: Follow up – Question I keep hearing is, if we don't have this Ordinance and we don't pass it, people can still go to the Human Rights Commission?
- Brent Brooks: That is my understanding from the telephone conversation. Again, you are talking about an investigation versus the merits of discrimination and by State Statute, these new additional supplemental categories that are in your Ordinance, are not in State Statute. But again, sometimes there are forms of discrimination in both categories that may be involved. Yes, they still can and must under our Ordinance go first to the Human Rights Bureau for investigation.
- Pitman: My impression is that up to this point this was not a remedy. They had no action and we were being told they couldn't go to the Human Rights Commission because there was nothing for them to do. Is this a new direction they are heading?
- Brent Brooks: They will still investigate just to make sure it does not involve a State Statute discrimination category. That is a wise course and I think the other 4 cities recognize that too.
- Mayor Hanel: Correct to say that is nothing new. That is something that has been in existence for some time.
- Brent Brooks: As explained to me by the Human Rights, yes. Bonnie Sutherland was also in on that conversation.
- Cromley: Follow up. The advantage of the City going this way is if we did not do this, the City would have to investigate, but by doing it this way, the State will pay for that investigation. They can't do anything in terms of a remedy in the case of a LGBTQ violation but they will investigate, and that will save the City a substantial amount of money.
- Brent Brooks: Yes, there are certain situations where it would save the City some time and effort. For example, if a complaint is made to the Human Rights Commission, and they find that no cause for a State Statute classified area of discrimination occurred and they refer the complainant to the City of Billings, there would still at least if a person takes the municipal infraction fork in the road, there would still have to be some degree of an investigation by the Billings Police Dept. However, I assume that the Human Rights Bureau in the investigation individual would share their information with us as to the interviews, etc.
- Cromley: Follow up – I don't expect that there would be many complaints.
- McFadden: We are talking about enforcement and going into courts. What I saw in front of me, it looked like everything was Municipal Court. Suppose that someone had a problem that they wanted to, for example an employee of the City of Billings thought that their rights were not upheld by their employer (us), and they wanted to sue for a couple of million dollars. Could they do this in Municipal Court or would they have to take this across the street. If so, would this NDO be the capitalist behind that law suit?
- Brent Brooks: It is all fact driven but I will tell you that by Statute (3-11-103) provides that the Municipal Court has exclusive jurisdiction over the enforcement of city ordinances. Separate from that, if an employee of the city believes that their rights have been violated, separate and apart from the Non-Discrimination Ordinance, then they have a choice of going to the Human Rights Bureau in Helena, if it is a recognized state class, or a protected class, if it is purely an employment relation issue, then they would be free to choose their own attorney and go to District Court. Because then you would not be talking about enforcing the City's Ordinance.
- McFadden: In my example, a City employee wanted to bring a lawsuit against the City, the taxpayers, and they wanted to remedy saying I am including a large amount of money, and they have their attorney, and they bring a lawsuit against us in court across the street, would their attorney be able to pull up our NDO and say this is the basis of the law I am using to bring this lawsuit.?

- Brent Brooks: They may be able to do that but I suspect one of the things that court would ask is, this is the City Ordinance you are attempting to enforce and the exclusive remedy of city ordinances is within the jurisdiction of Municipal Court so Mr. and Ms. Attorney, you need to go back to Municipal Court.
- McFadden: Suppose that they were in Municipal Court and they were asking for a sum of money, would there be any limitation on how much money they could ask for in the Municipal Court situation?
- Brent Brooks: Yes there is a jurisdictional amount limit. Couldn't tell you the amount right now of Municipal Court, it is a small amount. \$3,000 (depending on action), \$7,000 or \$9,500. I will check on the amount.
- Tina Volek: The proposed Ordinance was placed in your Friday Packet. What staff is seeking this evening is direction on changes you might to be made to the proposed ordinances we have brought to you. Then direction from Council on scheduling on either future Work Sessions for discussion, or business sessions for action. Reminding the Council that this is an Ordinance which requires two readings at business sessions. The first of those with a public hearing, and then if enacted, the Ordinance becomes effective 30 days after the second approval.
- McCall: In terms of processing this evening, will we be going through the Ordinance itself step by step?
- Tina Volek: That would be my recommendation, yes.
- Brown: We heard from specifically one business person last week. He clearly stated that he does not support pro-gay or anti-gay. Where does this discrimination come in there?
- Brent Brooks: If there is no discrimination, you don't have to support somebody. It is a matter of discriminating against that person. Whether or not somebody supports or believes one way or another is not within the confines of this definition. If you were doing something to discriminate against that person that is what triggers this. That is what triggers the traditional Montana Human Rights Bureau investigation also. Are you discriminating against somebody because of their religion? There are 10 categories in the State Statutes. Religion, gender, etc. It is not a matter of supporting one side or the other or one view point or the other, it is discriminating against that person because of their belief.
- Cimmino: On page 2, Tina explained the use of a term from Wikipedia as Non-Binary. That would be gender identities other than man or woman?
- Brent Brooks: There have been categories across the world where people chose not to identify themselves exclusively as a man or a woman. This term Non-Binary is one of those terms to describe that person.
- Tina Volek: There are individuals who believe they are neither strongly male nor female. Some of it may be a matter of one time was called a hermaphrodite (somebody who has the sexual characteristics of both male and female). Sometimes however, it is someone who, may from the appearance have one predominant sex but chooses, or does not believe that they are predominantly one sex or another. There are 56 varieties of sexual preferences that are recognized. I have read some material and it is acknowledged in Germany, Australia, and at least one other country and has been for some time.
- Cimmino: Follow-up – In Billings, MT if someone came in and applied for a job anywhere within our jurisdiction, there is two boxes. What box would they check?
- Tina Volek: Might check neither, might check both; they might ask that we include another box.
- Bird: There are several Native American tribes that don't limit gender to male or female. We could have individuals in Billings, MT where that is part of their culture.
- Pitman: In regards to process – I am hoping this is just the beginning and that we aren't going to decide this tonight. Now that people have actually seen the document, they might want to comment on it and have a discussion and dialogue back and forth with our community. Hoping

tonight is the first phase, and then maybe another Work Session. The reality is whether we get anywhere with this or end up looking at some Ad Hoc Committee. Not sure as a Council what our intention is. We started the dialogue, we have the document, and not sure we have to hurry with this. We want to be very careful.

- Tina Volek: We seek that direction from you. That was the purpose this evening. To do what many people had asked for, which was a document we could all use as a basis. Now that you have this document in front of you, it is yours as a policy instrument to do with what you choose.
- Mayor Hanel: My advice to you as a Council is we move forward and avoid, if at all possible an Ad Hoc Committee simply in the interest of time, and keep this process moving.
- McCall: Agree with you Mayor.
- Cimmino: Agree with CM Dennis Pitman. We need to make a very concerted effort in making sure that this is feasible for our entire community.
- Brown: I agree with CM Pitman and CM Cimmino. Question for Tina or Brent: On page 5, half way down, "The Court in its discretion may allow the prevailing party a reasonable attorney's fee as part of the costs of suit." If either side loses, the other side is able to receive compensation for their legal fees?
- Brent Brooks: That is correct. Most contracts that you will see, although sometimes we change depending on the situation, will say in the contractual disputes, "Prevailing party is entitled to reasonable costs and attorney's fees". Again, that is within the discretion of the Municipal Court. Looking at the Statute, I think the maximum money damages is \$12,000. Let me check with the judge to make sure I am accurate. There are several categories of damages depending on what the issue is, so I want to be accurate. Yes you are right, in the Ordinance the judge would be entitled to award reasonable attorney's fees, but again, you have to prove those attorney's fees, and the person has to be the prevailing party.
- McCall: I had asked about process earlier and I thought we were going to go through the Draft Ordinance.
- Cimmino: How long have you been at the City as our City Attorney?
- Brent Brooks: About 15 ½ going on 16 years.
- Cimmino: In the 15 ½ years that you have been serving as the City Attorney, how many times has the governing board gone through a proposed Ordinance where we actually review it at a Work Session step by step?
- Brent Brooks: There probably was a time. In the past you have taken the Ordinance with you and offered comments to staff via e-mail, or offered comments in the public setting, or offered amendments during a first or second reading. There are many alternative options available to you. We could certainly go through it tonight, paragraph by paragraph if you want.
- Cimmino: Do we have a code section in the Municipal Code that we could take a look at?
- Brent Brooks: I don't believe your Ordinances drill down that specifically as to how you review an Ordinance draft. They do require public hearing at least on your first or second reading. You have chosen in your Ordinances to have public hearing and first reading. I think it is within the Councils discretion how you would like to do it. There is multiple ways of reviewing the Ordinances providing input, comments, suggested amendments.
- Tina Volek: I think what distinguishes this Ordinance from those that would come up through the departments in response to a situation is, that this resulted from Council Initiative. Because it did so, it is probably advisable to get Council comment on the Ordinance, and to make sure that it fulfills what the Council wanted. If there are questions or issues, we can research and come back again.
- Swanson: I wouldn't think it would take too long to review this Draft Ordinance.

- Pitman: So we are clear, if we did this, we have public comment, then discuss and put it up for public comment again? I would prefer to go through so everybody here could listen and then process their questions, make their comment so everybody gets the same information.
- Tina Volek, Brent Brooks and Council reviewed the Draft Ordinance.
- McFadden: Questioned the word obesity. Would this mean that if someone became so heavy that they could not fill their job description? How would we or an employer handle this if someone could not physically fulfill the duties of their job, either on hiring or after they were hired?
- Brent Brooks: In 49-2-3 something, it talks about a bona fide occupational qualification where there are specific requirements, such as somebody's physical ability. If it is an occupational qualification for example, for someone to be within a certain weight category, either too skinny or too heavy, then the employer would be allowed to require a person to have a certain limitation. It is very specific, and it is based on their particular job that is involved. There can be many jobs where you would have that requirement and many where you would not have that.
- McFadden: There might be different qualifications in the entertainment industry.
- Brent Brooks: It is going to be fact driven. What are the qualifications of this particular position? Do they include somebody within a more constricted weight situation? If so, is that a qualification for that position? That is defined by regulations and case laws. Depending on what the job is and what that persons individual situation is who is either applying for it, or has held that job and is now, for whatever reason, does not meet the physical qualifications. The Police and Fire have certain physical qualifications that they have to meet.
- Bird: Follow up with the characteristic of obesity too and perhaps suggests that is the wrong terminology to use in this case. What we are really talking about is discrimination against people based on their general appearance. I would suggest we not use the term obesity, but consider height, weight, or other physical characteristics. There could be a situation where someone is too thin, too heavy, too tall, and too short. Someone that has serious scarring on their body from a fire, that just based on that physical appearance, they would be automatically checked off the list to be considered for employment for housing, etc. That would be my recommendation for you to consider.
- Brown: As the member of the obese community of Billings, I have been here 32 years and I have never been discriminated against. What are the criteria for putting this on the NDO?
- Pitman: Suggestion sent in an e-mail. Instead of his or her, use their.
- Cimmino: Heard from quite a few lawyers in town, and one suggestion was to strike the word obesity. Attorneys thought were covered by the disability laws.
- Cromley: I suggest that too. Have heard no testimony on the need for such an Ordinance. There might be a need down the road it might be considered, but hate to lose site of the principle purpose of this Ordinance.
- Bird: Follow up with Cromley's comments as far as obesity covered under the American Disabilities Act. That may be true if you are obese and disabled. If your weight does not allow you to perform the job. I can't imagine if CM Brown sees himself as disabled. I don't consider myself to be disabled, but I sure don't want to be discriminated against and not even be considered for a job that I know I can do, because of my weight. I don't think anybody wants to be discounted for a job or housing because of height or weight. Obesity and disability, yes it is covered under the ADA if in fact you are disabled, if you can't move. Let's get away from that term obesity, and look at it in terms of height, weight, and physical characteristics. I was not talking about personal appearance. We have numerous little people in the State. How many times have people of shorter stature had to deal with certain issues? Maybe it is different for women than it is for men.
- Cimmino: Had an opportunity to review the original motion back in January, CM Bird, it was your suggestion to put that word in.

- Yakawich: Where do political beliefs come into this?
- Brent Brooks: Mayor, your direction to us was to review the other cities Ordinances. They certainly included those. It could very well be that it is included under the Montana Human Rights Bureau. We knew there would be a lot of questions we wouldn't be able to answer. You are not going to have the final finished product tonight. Political belief is something you may not have unanimity on a lot of things but certainly that is one category you could either keep in or you can delete.
- McCall: The other question I have is on veteran status. I recall when I did the Initiative, CM McFadden recommended veterans. Is that included in the other City Ordinances that already passed?
- Brent Brooks: I don't believe so. I do not believe they included either obesity or veteran status in their definition. We were just acting upon the Council's additional suggestions when the Initiative was originally made.
- McCall: Follow-up – Mr. Brooks, with veterans, we clearly want to make sure that there is no discrimination against veterans. Is that already stated in law?
- Brent Brooks: CM McCall, my list under the State Statutes is race, gender, religions, ethnicity, etc., and it does not specifically state veterans status as far as I can tell. Will make sure.
- McFadden: Veterans already have hiring privileges, and a veteran could be hired over somebody else because of the fact that they were a veteran. I wanted to make sure that the veteran's status was not eliminated. That we would reinforce their privilege if they had that coming, if they qualified for it, but this NDO would not eliminate their preference.
- McCall: Then it would be your preference to keep veterans status in this Ordinance.
- McFadden: I think it could probably be eliminated just to make the Ordinance simpler.
- Brent Brooks: The veteran's preference is State and Federal law, and your Ordinance in the second paragraph of the "Intent and Purpose" statement, the last sentence says, "Nothing in this Ordinance is intended to modify, eliminate, conflict with State and Federal Law. We would not be able to for example, say "Through this Ordinance we are eliminating the veterans preference".
- Pitman: With political beliefs, we really didn't define what that was. Are we talking Republican and Democrat, Liberal, Conservative? What does that actually entail? That is a vague statement that we need to define. I also wanted to talk about the veteran status, whether we were talking to make sure as CM McFadden said that we were not eliminating the preferred status that they are entitled to, because there is other status, whether you are honorably discharged, dishonorably discharged, active, or on reserve. Where are we going with that?
- Brent Brooks: I don't find it in the State Statutes. It may be there. In talking with the other cities that enacted this in Montana, they were talking about if somebody was hired or not hired, particularly not hired if they are a Republican, Democrat, Libertarian, Independent, etc., have they been discriminated against because of what they believe politically?
- Tina Volek: I believe much of the Council Initiative was based on a presentation that was made at a Work Session prior to the Initiative being adopted by the Human Relations Commission. Mr. Dodgenes is the chair of the commission and he has just indicated to me that this was one of the categories that they have recommended. During public comment you may wish to have him address that.
- Pitman: Before we either throw them all out, it would be nice to get them defined so we know the definition of what its purpose is and why it was there.
- Cimmino: What does the political affiliation have to do with talent, skill, a master's degree? At what point do we protect our privacy? Our whole basis was looking at the NDO's that were passed by for Montana Municipalities. I don't see any of this language in any of them.

- Mayor Hanel: To answer part of your question that was just stated moments ago, this language did come up in a Work Session previous to the Initiative in January 27. Doesn't mean we need to keep it.
- McCall: I agree with CM Cimmino on this particular item. I don't think political beliefs are an innate characteristic. Like all the other issues we are looking at, this is a choice. When we are looking at disability, gender, and so forth, we are not thinking.
- McFadden: Not sure you could define it in such a way as to include it in the City Ordinance.
- Tina Volek: Again, Section 7-1802 is definitions, including those for discrimination, employee and employer, employment agency, gender identity or expression, housing accommodation, labor organization, non-binary person, political, subdivisions, public accommodation, which is quite extensive, and sexual orientation. Many of these are held in common with the other ordinances that were approved. I would note that non-binary is one that I explained previously, is an alternative to the Q in LGBTQ, and may or may not be a description that Council chooses to use.
- Pitman: It says "Because of their actual or perceived sexual orientation (under the word discrimination)", is perceived an appropriate word to have there?
- Brent Brooks: "Perceived" is something that I am not aware of that is defined by State Statute. We could put the definition of perceived in the Ordinance or just leave it out. "Do I perceive somebody" is a member of one of these classes of people that are prohibited from being discriminated against. I think that is the intent of including that word "perceived" in there as explained by the other City Attorneys in the other four cities.
- Tina Volek: For example, someone who is perhaps male and feminine, or a woman who is perhaps not very feminine but still genetically and physiologically a female, might experience some problem or some unfair treatment as a result of that when it may not be the case in fact that they are someone who is acting inappropriately for their gender.
- Pitman: Follow-up. What is "perceived" and what is really happening? Some people say perception is reality, but the fact is, once you get into court and you get into laws you get into ordinances, we have to be very specific. Anybody who has been into court, everything gets pushed to an extreme or gets questioned.
- Cimmino: I say we strike the word "perceived". Our primary focus is to develop what we are elected to do, and that is representing the City of Billings.
- Brown: The LGBT community is not inherently like a black or fat person, who is readily recognizable. How is this going to come about so we don't discriminate or we don't get accused of discrimination whether that was the intent or not? How are they identified?
- Bird: "Perceived" is an important word in the document because looks can be deceiving.
- McCall: I would agree that "perceived" is objective, and I would recommend taking it out.
- Cromley: I agree with CM Bird. As CM Pitman said, what we are trying to get rid of is perception, and we can't get rid of perception if we take out the word. The example is there. If you are fired or you lose a promotion because you are perceived to be gay, that is discrimination. If in fact your employer can somehow prove you are not gay, then the employer is guilty of no violation even though you did discriminate on the basis of what you thought he/she was (inaudible).
- Brown: How do you enforce that?
- Cromley: All of this is very difficult to enforce as with any discrimination Ordinance because if you refused housing, because of what you say is obesity, or because of your sexual orientation, you have to prove it. Having an Ordinance like this does tend to detour the fact. Not only do you have to prove that you were discriminated against because of your protected class, which may or may not be clear in this case, the employer, or the landlord, you have to prove that the landlord actually acted with intent to discriminate against you. Would it be because of obesity, race, color, sexual orientation, very difficult to prove. You are not going to

have a lot of successful complaints. The fact that it is on the books will indicate that the City does not like discriminating.

- Cimmino: CM Cromley, you are saying that burden of proof is on the plaintiff or the claimant to prove their case.
- Tina Volek: Are there any other definitions that the Council questions or items that you would care to see added in this category?
- Brown: A lot of that is going to depend on whether obesity stays in there. Obviously we need to define what obese it.
- Tina Volek: There are some medical scales we could reference. We've discussed veteran's status in the prior section. If the Council is willing to eliminate veteran's status we certainly can. After the Council hears public comment this evening, this may change. Are there any other changes that the Council wishes in this section?
- McFadden: I am looking at housing accommodation. This is way too complicated when you go on to how many people would be sleeping in the house, or its occupants. Could this be simplified?
- Tina Volek: What we may do is lift from page 4 that section in regard to the rental of sleeping rooms and move it to Item F.
- Bird: Comment on CM McFadden's concern. If there is going to be a change to identify rather the property owner lives on site or not, we do have to consider keeping it to living on site in a single family dwelling. If you have a property manager or owner that has a duplex or a 50 unit building, just because he or she lives in that building, should not give them the right to discriminate. The other issue I want to bring up for consideration, seems to me that the very last statement does include dormitories or other sleeping quarters provided by universities, colleges, or other post-secondary schools. That is a bit of a reach for a City Ordinance, because colleges and universities already have very well defined and constructive housing policies.
- McCall: I agree with CM Bird to delete that sentence.
- Brent Brooks: It does not include dormitories, etc. We had this discussion with the Helena City Attorney, and it was his belief too that 7-1-111 excludes self-governing charter based cities from doing a lot of things with the school system. The Montana University system would be excluded from this Ordinance. He also advised us that the University system does have a very advanced non-discrimination policy that does include what was just discussed. The definition was meant to say, "It does not include". There is some fair housing statutes, and I would like to check on those in terms of, can you distinguish between an off and an on premise landlord and whether or not uncertain circumstances there can be discriminated or not. I would be very cautious about that.
- Pitman: We list the "Non-binary" as a definition, but for legal purposes, do we need to list out all of them and their definitions?
- Tina Volek: We did under "Sexual Orientation". "Non-binary" intended to be a broader base than some of the others. We could look at and see if we could find definitions. We consulted with Riverstone Health on some terms and definitions.
- Pitman: Defining becomes very important.
- Bird: CM Pitman has a very good point. However, I think the "Non-binary" is the other category for things we couldn't even think of. Your concern is when a complaint is filed, and it is investigated, and the people who are doing that work, looking into whether it is an actual discriminatory expression or not. Back to what CM McFadden is saying, trying to keep it as simple as possible, and other can be just the catch all. Otherwise we are going to be micro managing our Ordinance. If so, it will be addressed by the Human Rights Commission, or Municipal Court.

- McFadden: Is there already in place in equal housing, and fair housing laws, any kind of definition for a commercial landlord vs. a non-commercial landlord? Maybe depending on how many units you are renting out to the public? If someone who is renting out 100 units is under strict regulations than somebody who is renting out 2 or 3 units? There might be some guidelines in the equal and fair housing laws that we could use in our own Ordinance to make distinction between them.
- Brent Brooks: My answer is no, but we will check on that. In the Statute is 49-2-305 entitled Discrimination in Housing and Exemptions. That Statute is lengthy. The numerical quantity of units would not allow a person with a large number of units to discriminate again based on the protective classes vs. somebody with a smaller number, or vice versa.
- Yakawich: On Public accommodations (b) it says, "Public accommodations does not include an institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members". Why is there a limitation on that?
- Brent Brooks: This was vetted by the other four cities and 100 seemed to be the factor. If you want to change to another number, again the fair housing statutes are very important to consult. Will check on that. It may not be considered as private if it has more than 100. The smaller the group, the more distinctly private it is likely going to be considered under this particular Ordinance. The concern that I have is to make sure that no matter what you do in this Ordinance, you are in compliance with the Fair Housing Statutes.
- Tina Volek: Have had some preliminary discussions with Ms. Beckett who was aware of some federal requirements. She brought these to our attention late Friday after the Ordinance was already in your hands. We told her we would come back and consult with her. She may be another source as she is very familiar with the Federal Statutes.
- Cimmino: When we talk about club or institution, fraternal organizations, are we talking about Rotary, Lion, Masons, Kiwanis Club? How do we define clubs?
- Tina Volek: Again, if you have "more than 100 members provides regular food service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business." I would suggest that a college fraternity is likely to fall into the definition of those that are not included. On the other hand, an organization that has a hall that it rents out to people that does catered events at the hall, that is open to anyone who wishes to walk into it and participate, is more likely to require the public accommodation part.
- Brent Brooks: In the definition, "Public accommodation", one of the key phrases close to the last sentence, "from or on behalf of nonmembers". You are talking about the more public nature that a particular organization provides to nonmembers. I know there are some organizations that fall into that category.
- Yakawich: I am concerned where we are stepping over to organizations that are threatened by their freedom and their rights.
- Brent Brooks: Last sentence indicates that "any lodge of a recognized national fraternal organization is considered by its nature, distinctly private". I think that would encompass many organizations that you might be thinking of.
- Tina Volek: Next item 7-1803: Prohibited Discrimination – Jurisdiction and Exclusions: Applies to incidents only occurring within the boundaries of the City of Billings. Does not apply to acts or incidents involving political subdivisions. We might add other than the City of Billings because it is our intent that the City would be liable for this, as well as any private institution.
- Brown: In 7-1803, how is County property within the City limits dealt with?
- Tina Volek: Technically it is not within the boundaries of the City of Billings. They are what we call an island.
- Brent Brooks: If it hasn't been annexed, it does not fall within the confines of this Ordinance in this definition.

- McCall: Example of County property surrounded by the City would be private golf courses correct?
- Tina Volek: Yes. Golf courses (country club), or an industrial area, the City cannot force in under state law.  
Next category is 7-1804. This covers Employment Discrimination.
- Cimmino: Do we compare some of these phrases with what is already in the Equal Opportunity Commissions documentation?
- Brent Brooks: Yes. Under the Human Rights Acts Statute, 49-2-303, it is a broad Statute that talks about discrimination and employment. We are talking about the classes being considered under your particular ordinance verses those classifications and State Statute. In employment situations, the Human Rights and the EEOC have concurrent jurisdiction.
- Tina Volek: 7-1805 Discrimination In Public Accommodations Prohibited.
- Brown: Can we add the verbiage that the business decides rather that is appropriate in those particular situations? The 7-1805, is that for situations where people are typically in the nude, then users may be required to use the facilities designated for their anatomical okay? Who is making that decision, the business?
- Brent Brooks: We could make that clear, the business would decide.
- Tina Volek: For example, an organization that runs a locker room could post that notice. This is not in all of the other cities ordinances. It was very much remarked upon in our previous hearing. I view this as this portion of the Ordinance is applying not only to individuals who are LGBT, but also making it very clear that someone who would pose as a person who is of one of those categories trying to insert themselves into a situation.
- Brent Brooks: I believe this was an amendment that was proposed and adopted in Helena.
- Cimmino: Where it says “Any place or public accommodations where users ordinarily appear in the nude”, would that refer to places like saunas, tanning salons, gym showers, medical exam rooms, etc?
- Tina Volek: Medical exam rooms, because by their nature they tend to be individual. Thinking sauna, locker room, etc. It really applies to public settings.
- Cromley: On the “public accommodation”, isn’t that the same as the State Statute?
- Brent Brooks: It is very close. The State Statute included those so there wouldn’t be any lack of clarity as to what it concerns.
- McCall: This is a hot issue around the whole Ordinance. I am really interested in hearing public opinion. Could we have a representative from each side to respond with their thoughts?
- Bird: I find it hard to believe that we don’t have transgender individuals using public accommodations, just like the rest of us and the people that use public accommodation have no clue because they are not flaunting themselves. Can’t imagine that a transgender man would go into a men’s locker room and disrobe and show themselves either as an anatomically reworked man, or the female that they were. That could be very dangerous. I also think the same would go for a transgender woman who would go into a woman’s locker room. We have to not be too insulting of the population to assume that if someone is transgender, that there is no level of discretion that they bring into the public or that they are going to intentionally go in to cause trouble.
- McCall: I agree with CM Bird. We have to remember that physical and sexual assault already is against the law. That can occur whether a person is heterosexual, homosexual, etc.
- Brent Brooks: The definition of “public accommodation” in the Ordinance vs. the State Statute. It is identical to 49-2-101 subsection 20 of the State Statutes.
- Tina Volek: Next item is 7-1806 Housing Discrimination Prohibited. This applies to those whose business includes residential, real estate, transactions, and prohibits discrimination in terms, conditions, maintenance improvement, or repair of any housing facility. This also includes the rental of sleeping rooms and private residences which we understand the Council

wishes us to move forward to the other section. Would be a section of the Ordinance that would prohibit a business engaging in residential, real estate transactions to discriminate. 7-1807 Retaliation Prohibited. This is in line with most other rights, discussions in which someone who has opposed a practice prohibited by this Ordinance, or assisted in an investigation, could not be subject to retaliation for that participation or complaint.

- Cimmino: That seems vague and ambiguous. Nobody has any control how another person is going to react.
- Tina Volek: There is fairly clear case law in this.
- Brent Brooks: CM Cimmino, this is very similar to 49-2-301 in the State Statutes regarding prohibited retaliation. Common to have retaliation as a prohibited violation of any discrimination Statutes. If somebody has been retaliated against for example, reporting a violation of something.
- Brown: If someone goes in and sues and they lose, is there any protection that they can't go and retaliate against the business owner?
- Tina Volek: Goes toward an individual. You filed a complaint, the complaint is found to not be valid, and you are fired the next day. Or someone else in the organization was called upon to testify. They testified and the case resolved in favor of the other employee. That employee is fired. Those kinds of retaliations would be prohibited.
- Brent Brooks: This will be very fact dependent and fact specific. Certainly an employee could not be discharged simply because they brought a discrimination claim, and they did not prevail. There would have to be more than that for termination to occur.
- Brown: So we don't need to define any of that?
- Brent Brooks: I would suggest not.
- Pitman: The employer who is accused of something, and is found not to have done what he was accused of, are they protected from that person going out and threatening, black listing, or otherwise retaliating again that business/business owner?
- Brent Brooks: I don't believe so under this ordinance. There are some other State Statutes that could very well be triggered. Will check on that.
- Cimmino: At the end of the day, the complaint or the legal cause of action had no merit, and the Judge doesn't have the right to come back and file a cross-complaint?
- Brent Brooks: In this particular ordinance, I don't see the procedure for doing that, but can investigate. One of the protections is that the prevailing party can get their attorney's fees. That may be after the fact, but that is the way it is in traditional civil litigation. Anybody can sue anybody else for anything, but that doesn't mean they are going to prevail. That does mean that any smart person is going to have legal representation, and at the end of the day depending on what the subject matter is, they may or may not be entitled to their attorney's fees. We have that in there as a measure of protection for meritless or unsuccessful claimants who come in and force a business, for example, to hire an attorney and pursue a defense for the case.
- Tina Volek: Item 7-1808 – Violation – Civil Remedy – Exhaustion of Human Rights Bureau Remedy: This section was outlined previously in discussion with the Council. The first is to file with the Montana Human Rights Bureau within the time frame step forward in the State Statute alleging discrimination and employment public accommodation housing or retaliation. If there is a written disposition from the Montana Human Rights Bureau, or any Montana court indicating the acts of alleged discrimination or retaliation underlying the complaint, do not fall within the scope of the Montana Human Rights Act. (2) Within ninety (90) days of receipt of the written disposition from the Montana Human Rights Bureau as referenced in (1) (b), a person claiming a violation of this Article may either file a petition with the Billings Municipal Court or file a complaint requesting the investigation of an alleged municipal infraction by the Billings Police Dept. The Police Dept. has looked at a process that may include some attempt at mediation

before the final filing. We will be working on this in the future. But, what this does is go on to allow that individual to seek civil remedies, including injunctive relief. The court may allow the prevailing party, a reasonable attorney's fee. Then should a person claim a violation, choose the option of filing a municipal infraction, the procedure in the civil penalties exclusively apply. This is the part that is somewhat unique to the City of Billings. Again, our other communities do not have municipal infractions. This allows a defined set of steps that a person can undertake, whereas in the other communities, with the exception of Missoula which allows three civil violations and the fourth becomes criminal. This is in no way criminal. All civil with no record with the individual involved, or for the person who is the defendant.

- McCall: Think this is a good section and accommodates well what we already have with our Municipal Court within our City Government. So with the municipal infraction, there would potentially be a fine and that fine would increase over time?
- Tina Volek: Yes. It is up to \$300 for the first offense, up to \$500 for the second, and subsequent.
- Mayor Hanel: Ms. Volek some people may be questioning what we mean by Municipal Court Infractions. Could you briefly explain for the public's benefit what that is?
- Tina Volek: There are several other categories of activities in the City that in prior years would have been a criminal offense. Some involving code enforcement issues, dog issues, etc. Several years ago, because of the overloading of our Municipal Court, the City Council authorized us to turn into municipal infraction. A person may represent themselves in court if they choose to do so. There is no criminal record or history that attaches to these kinds of offense. It is very often in those types of cases, that an individual will simply pay the fine rather than choosing to come into court.
- Brent Brooks: One of the definitions says that municipality made by Ordinance provided a criminal offense under state law that is punishable only by a fine, is a municipal infraction. It is limited to those state offenses that are not punishable by some degree of incarceration. If the public would like to look at the State of Statutes definition, this is found at Montana Code Annotated 7-1-4150. Also mentioned in our City Code.
- Mayor Hanel: One of the main reasons this was mentioned was because of the growing demand on our City Court system, the caseload and expedited matters, which has proven to be very successful.
- Tina Volek: It has worked very well in those types of cases, and when we talked to Judge Kolar a week ago, she was the one who suggested that the case load in the Court has not abated. I was very concerned because the other codes in the State except Missoula's, talk about, it's a civil case. Our Municipal Court does not handle civil cases for the most part. Even sending small claims court cases over to the Justice Court. We considered this to be a good solution. It provides a defined expectation for those on both sides, and yet it does not carry criminal offenses or over burden the system. Based on the history in other communities, we do not anticipate we will have extensive use of this. It is clearly laid out what individuals on both sides of these cases can expect.
- McFadden: I don't see anything in the Ordinance where the burden of proof is lying. Assuming it would be going with our traditional legal system, and put upon the plaintiff?
- Brent Brooks: Yes. In fact the municipal infraction Burden of Proof by Statute is what they call "Clear and Convincing Evidence". That is a phrase within the Statute. If it is the traditional civil track, it is called Preponderance of the Evidence.
- McFadden: This could in theory lead to someone having a jury.
- Brent Brooks: Under Municipal Infractions, they are not entitled to (inaudible). The traditional civil approach, there could be a jury. Can check with the Judge.
- Tina Volek: Remaining two sections are Section 2 – Severability and Section 3 – Repealer are both standard legal documents or parts of legal documents that basically says, "If any

provision of this Ordinance of the application is invalid, it shall not affect the other provisions of this ordinance, and that inconsistent sections of the City Code are repealed. Section 4 - Effective Date. An Ordinance is traditionally read twice at the Public City Council Meetings, usually attached to the first reading as a public hearing. The second reading often accomplished by the Consent Agenda, followed by it becoming effective 30 days later.

- Cimmino: On Section 3 Repealer, can we identify which sections of the City Code? Seems like we need to pinpoint as a cross-reference what the resolution numbers are.
- Brent Brooks: This is common to have this in State bills before the Legislature also. Sometimes it is almost impossible to identify every single one that may be in conflict. Sometimes that arises on a case by case basis. This is a very common section to have both on the local level and the State Legislative level just to make sure that the intent is that anything that is in contradiction of this particular Ordinance is going to prevail in terms of discrimination.
- Pitman: Can an Ordinance be put before the people for a vote? Would that be something that we would address in this section?
- Tina Volek: There is a process for a referendum on this issue. Will let Mr. Brooks address this, but I do want to add one other item in regard to this. If the Council remembers, part of the early Initiative was for us to address other administrative rules. I did talk to HR and other Legal Depts. and their feeling is, that those Administrative Orders, which are signed by the Administrator and are not voted on by the Council, but includes things like our EEOC Ruling and so forth. Will be revised. Compiling a list of those. Will be revised again by Administrative Order if this Ordinance is adopted.
- Brent Brooks: Issue of ballot – CM Pitman, there is a statutory section that allows for citizens themselves to either propose an Ordinance or repeal an Ordinance. Also in that same section of State Statutes the opportunity for the Council to pass an ordinance and put it to the vote of the people, or pass a referendum and ask the citizens to consider repealing the Ordinance. There is a procedure vote in which that can be accomplished.
- Mayor Hanel: Ms. Volek, could you explain for the citizen's benefit, the approximate cost involved in that process?
- Tina Volek: I spoke today to Mr. Rutherford and he indicated it is approximately \$1.00 per individual, and we have some 66,000 registered voters. That is roughly what it would cost the City for a special election. We would pay a portion of that depending upon what portion of the ballot. That would be for the ballot in November. The deadline for submitting items for that ballot is, August 11. The next set of elections that would occur in which this ordinance could be included, would be in Sept. 2015 when there are potentially Council elections, and then again November 2015.
- Brown: Cost would be \$16,000 to put on November?
- Tina Volek: Don't have exact figure. Not sure anyone could tell us right now because there are 15 or 16 potential initiatives still has not been decided and the deadline has not been reached.
- Brown: Substantially less to put it on the November ballot then if the public comes back and says "We want this on the ballot", and we have to do a special election.
- Tina Volek: Other factor that is included here is that we have been discussing a Public Safety Levy. I would not recommend that you put both items on a single ballot. The ballot is becoming lengthy.
- Cimmino: After we approved the \$277M budget last Monday, it was noted that we have enough reserves to get by until 2016 on the Public Safety Mill Levy.
- Tina Volek: That is correct.
- Cimmino: Have you had an opportunity to talk to your Dept. Heads from Municipal Court, Community Development, Human Resources, Police Dept., and Legal Dept. to find out how

much money we have to set aside in the budget in order to pay for all these services, in the event this goes through?

- Tina Volek: Based on what we have been told, there have been absolutely no filings in those communities. Mr. Brooks has heard that from the Legal Depts. I have checked with the managers and have been told the same thing. Based on that situation, it is difficult to determine what the load would be until we have a first year of experience. We may, because of the nature of our City being the largest City in the State, have a heavier load than some of those communities. Missoula has had their Ordinance in place for 4 years and Helena for a couple of years, and there have been no cases filed in either of those cities. Budgeting for that would be very difficult.
- Cimmino: Our population is double the size of those cities.
- Yakawich: Received a number of calls about this issue being put on the ballot. What is the process?
- Brent Brooks: It is under 7-5-131 through 137. If the Council wanted to put this on the ballot, you would approve the Ordinance, and then you would have specific ballot language that you would transmit to the Elections Administrator. In coordination with him, and yourselves, you would decide when that issue is going to be presented to the public. We are fast approaching the deadline for an Ordinance to have two readings and then the effective date, 30 days after the second reading, to meet the ballot deadline. Another way is if the citizens themselves wanted to propose that this be placed on the ballot. There are a percentage of signatures that have to be gathered from the registered voters within the City limits. Believe that is under 7-5-131 or 132. Either the Council can initiate an Ordinance to be placed on the ballot, or the citizens can do that. The citizens can repeal an Ordinance also, if they want to. There is a State Statute that says, "Whatever the voters decide, if it is presented to them, the governing body cannot do anything with that decision for two years. If the will of the voters is different from the will of the Council, we don't go back and forth. That Statute I believe is 7-5-137.
- Cimmino: Some of the residents have suggested that. Someone thought you would only need 9,900 signatures.
- Brent Brooks: The State Statute says 15%. Almost 11,000 signatures of registered voters.
- Brown: That has happened before here?
- Tina Volek: There was one such referendum initiative when the last Public Safety Levy was approved to reconsider. It is not unheard of.
- Mayor Hanel: Is the Council in a position where you would like to provide direction, or do you now wish to hear from the citizens?
- Pitman: We have given them a lot to work on and I think the direction is to come back with defining that in another work session.
- Tina Volek: As you know, we have had a month now where we have held off other matters for the Work Session Agenda, because we were working solely on the budget, followed immediately by this Work Session. We will begin to take up the deferred business. When this comes back again, do you wish us to clear a calendar date in order to hear it? If so, we will need to make arrangements to move some of the other items. Direction on that before we leave would be appreciated.
- Public Comment:

The following testified in **favor** of the Non Discrimination Ordinance:

Walt Donges  
Carol A. Mick  
Donald Seibert  
Eric Porter

941 Constitution Ave.  
2902 Ramada Dr.  
1112 Delphinium  
607 N 25<sup>th</sup> St.

Billings, MT  
Billings, MT  
Billings, MT  
Billings, MT

Jill Gliko	2130 Whitewater	Billings, MT
Rev. Susan Barnes	412 Gay Place	Billings, MT
Judy Burnam	1701 Stirrup Rd.	Billings, MT
Ronald Burnam	1701 Stirrup Rd.	Billings, MT
Karen Stainton	3004 Millis Ave.	Billings, MT
Marta Elizabeth Ortiz	707 1 <sup>st</sup> St. W. #6	Billings, MT
Tammy Mehlhaff	744 Wyoming Ave.	Billings, MT
Todd Garlock	951 Aronson Ave.	Billings, MT
Woody Henry	15 Cheyenne Lane	Laurel, MT
Cole Kortum	1414 3 <sup>rd</sup> Ave. N.	Billings, MT
Marian Bradley	PO Box 81	Pryor, MT
Courtney Nelson	4411 Jansma Ave.	Billings, MT
Rob Kirby	408 Alderson	Billings, MT
Ronald Bernhart	2800 4 <sup>th</sup> Ave. N.	Billings, MT
Jerry Nordstrom	2475 Village Lane	Billings, MT
Sabrina Currie	421 5 <sup>th</sup> St. West	Billings, MT
Shauna Goubeaux	35 Maier Rd	Billings, MT
Liz Welch	225 Ave. D.	Billings, MT

The following testified in **opposition** of the Non Discrimination Ordinance:

Kindall Miller	1500 1 <sup>st</sup> Ave. N.	Billings, MT
Tori Benders	2702 Wyoming Ave.	Billings, MT
Laura Pivonka	3411 Prestwick Rd.	Billings, MT
Carl Pivonka	3411 Prestwick Rd.	Billings, MT
John Klier	2514 Meadow Creek Dr.	Billings, MT
Abraham Madinger	226 Terry Ave.	Billings, MT
Bob Reed (Did not sign in)	No address given	Joliet, MT
Pat Plowman	PO Box 173	Boyd, MT
Michael Mattson	2942 Howard Ave.	Billings, MT
Donna Braun	333 S. 38 <sup>th</sup> St. W.	Billings, MT
Alisen Turner	PO Box 23704	Billings, MT
Linda Nelson	3709 Poly Dr.	Billings, MT
Meg Burvainis	384 W. Daffodil	Billings, MT
Ray Neese	2323 Constellation Tr.	Billings, MT
Jennifer Strong	411 Glen Dr.	Billings, MT
Mae Woo	1727 8 <sup>th</sup> Ave. N.	Billings, MT
Gayla Neese	2323 Constellation Trail	Billings, MT
John Van Norman	2501 Keel Dr.	Billings, MT
Shawn Farr	3516 Miles	Billings, MT
Mark Klein	3365 Dover Lane	Billings, MT
Keri Beebe	712 ½ N. 26 <sup>th</sup>	Billings, MT
Lee Llewellyn	1038 N. 30 <sup>th</sup> St.	Billings, MT
Rodney Garcia (Did not sign in)	No address given	Billings, MT
Charles Clark	707 1 <sup>st</sup> St. W.	Billings, MT
Daniel Robertson	627 Mattson Ln	Billings, MT
Gayle Wentling	1310 Cook Ave.	Billings, MT
Dick Pence	4307 Palisades Pk Dr.	Billings, MT

The following people suggested that this should be put on the ballot and let the citizens decide:

Curt Hughes	1322 Beartooth	Billings, MT
Jennifer Strong	411 Glen Dr.	Billings, MT
Cindy Inman	1503 Redwing Cir.	Billings, MT
Paul Schoemer	1223 Princeton Ave.	Billings, MT
Scot Miller	2226 Fairway Dr.	Billings, MT

The following people suggested **edits** to the Non Discrimination Ordinance:

Donald Seibert	1112 Delphinium	Billings, MT
Janice Linn	821 N. 27 <sup>th</sup> St.	Billings, MT

The following suggested and invited people to attend more informational meetings:

Linda Nelson	1228 Ave. F	Billings, MT
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- Mayor Hanel: Any further direction other than what has been provided up to this point? We need several clarifications on legal and definitions.
- Swanson: It has been suggested that we run this past the Attorney General of the State. Can you comment on that?
- Brent Brooks: Has always been available to you. I have mentioned that in previous meetings. There is a huge distinction between those two. I am more than happy to present that to the Attorney General's office for an opinion. The issue is going to be, "Does the City of Billings, as a self-governing entity based on a charter, have the authority to enact this ordinance?" My suspicion is that this will take several months. Can do at the direction of the Council. What is does require is for the entity that is requesting the opinion; provide the AG with not only the issue and the question, but their analysis of the issue. The AG may or may not agree. In Montana, the AG opinion is law unless it is overturned by legislation or by district court opinion. That is an option.
- Bird: Brent, in your conversation with attorneys from other communities, was there ever any discussion about running it by the Attorney General for legal clarification?
- Brent Brooks: There was a conference call about 6 – 8 weeks ago to the Attorney in Missoula, Helena, Bozeman, Butte, & Silver Box; all four of them felt they were a self-governing entities had the authority, and did not consider going to the Attorney General for a second opinion. Typically in the times we do submit a formal opinion request, we call and warn it is coming. There is an alternative that is less formal and it is typically non-binding. It is called "A Letter of Advisory Request". It is directed more to the just the entity that requests the opinion. It does not carry the force of law that a formal Attorney General opinion carries. The goal is that it typically takes the Attorney General's office a less amount of time to issue a particular "Letter of Advice" to that particular entity. In years past, the Attorney General could take anywhere from 3 or 4 months, or up to a year. "Letters of Advice" sometimes takes anywhere from a couple of months to 4 or 5 months.
- Bird: If a request is made to the Attorney General, are they bound to have to take the request and actually review and analyze it, or could they push it back and say we are not going to get into that?
- Brent Brooks: Typically there are certain categories that they are not going to provide an opinion about. One of them is the constitutionality of an issue. The second one is, if there is actual pending litigation. The Attorney General opinions are limited to some kind of political

subdivision agency. A private person or group is not authorized to submit an opinion request to the Attorney General.

- McFadden: They wouldn't mind giving us an estimate on how long it is going to take to render an opinion?
- Brent Brooks: Can ask, but may not want to commit to an answer. They could give me a time range. In this particular case, they may be more familiar with it.
- Crouch: When a person wants to start a business, and they need to get a license from the City, are there requirements that come along with that?
- Brent Brooks: Usually the business license involves an inspection.
- Crouch: Are there other requirements because you are a public business that you must be open to everybody?
- Brent Brooks: You are going to be governed by the State Statutes about discrimination; you would be covered under this Ordinance just as you are from the other four cities that have enacted a similar Ordinance. If it is purely a private business. Just like a private religious organization for example, there are some exclusions and exemptions there. Because this has never been litigated in any of the cities in Montana, you are dealing with a significant and substantial amount of unknowns that I cannot possibly tell you what I think the outcome would be.
- Cromley: If anyone in the four cities that has passed the Ordinance, some of them as old as four years, seriously questioned whether or not the city had the authority of passing the Ordinance, they could have brought suit for \$200 and filed a complaint, correct?
- Brent Brooks: Yes, one avenue is to file a declaratory judgment petition in the District Court, for example, challenging upon one or more basis, the constitutionality or rather legality of the Ordinance. That is probably a more common procedural device that would be available.
- Cromley: Are you aware of anyone having seriously questioned the authority enough to actually file suit?
- Brent Brooks: No.
- Cromley: Are you aware of any lawsuits that have set aside those Ordinances?
- Brent Brooks: I suspect there was, but some of what I have seen is the authority to enact it verses the policy decision in the constitutionality of it. Have been on the electronic data base. Rather difficult to get anything real definitive across the country. There are cases that have successfully defended an Ordinance, or has successfully overturned an Ordinance. It is a random, specific based on a particular states law, or other peculiarities based on that particular states statutory system, particularly in terms of a state controlled items over municipalities and local government. In Montana, a self-governing charter has a broad and liberal authority to enact local laws.
- Pitman: Received an e-mail that said a city in Nebraska lacked the authority to go beyond the state law. Should we take that question off the table? If we did that, does this need to be put on hold?
- Brent Brooks: That is possible. There is a possibility for the other competing interests to file a declaratory judgment in District Court for example. If somebody disagreed with the Attorney General's opinion. Could file an action in District Court. Some ways a never ending process. In terms of, should you delay and ask for an Attorney General's opinion, that is ultimately your decision. The State Legislature sometimes will enact a Statute and then say it has a delayed effective date, or it is effective unless it is overturned by court. This can get complicated and confusing. Not something I would recommend.

- Brown: We would then pass the Ordinance that would be in effect, that someone would go challenge that for the \$200? How long does that take to get back?
- Brent Brooks: Cromley was talking about the District Court filing fee. Depending on the litigation, 6 months to a year. This one would be somewhat compressed and shorten the time frame because it would come down to a legal issue that would be appropriate for what we call summary judgment. I don't think there would be a lot of discovery, or fact finding. There would potentially be the possibility of either or all sides to lawyer up and have other lawyers say, they want to intervene in this case.
- Bird: As the City's Attorney, given our charter, do you believe we have the authority to enact this ordinance?
- Brent Brooks: Yes. Sent out a brief memo to you and it included some additional information from some of the other City Attorneys. Primarily legislative immunity from Jim Nugent's memo. The other four cities have also indicated that they felt the same way. Obviously there is a difference of opinion. This is a two issue situation. Do you have the legal authority to do it and should you do it?
- Brown: Difference between we should, or we could? Confused. So we go to the State Attorney and we ask "Should we do it"? What is that going to be based on?
- Brent Brooks: You would not be asking the Attorney General "Should you do it"; you would be asking the Attorney General "Can you do it legally based on Statues and case law in Montana? If you were to ask me to ask the Attorney General, "Should you do it?" He would decline to answer that particular question and limit his response to "Can you do it legally?"
- Brown: Where does "should" come into this? This is just saying that we are not going to get an answer as to whether we should do it?
- Brent Brooks: The "should do it" is a policy decision for the Council. The legal authority to do it, is something that if you would like for me to ask the Attorney General.
- McCall: It is my opinion that we need to move forward with this. Four other cities have done so. No law suits have been filed. Our Attorney clearly says that we have the authority legally to do this.
- Yakawich: There is a balance for me to listen to my City Council, to listen to our Attorney, and to listen to the citizens. I know in many of our laws, we follow State law before City law. We are not Butte, Missoula, or Bozeman, and maybe it gives us an opportunity to be clear if we are going to go forward with this and it is not effective on a state level, we should know it now. My understanding is that we ask the Attorney General and then it is clear.
- Swanson: I think the opposite. You have got four cities that have gone through this process. Missoula has had it now for four years. I think we need to move on with this.
- Cromley: I sympathize with you on the Council that struggle with this decision. For me, it has been the easiest decision I have ever had to make. It is tough to be a Legislator. At some point we have to stand up and say how we feel. If you are opposed to it, vote no. If you are in favor of it, vote yes. Let's not dodge the bullet by trying to table it, ask for the Attorney General's opinion, or other excuses we can come up with. Let's just vote on it.
- Mayor Hanel: In the interest of time, earlier during the presentation, we left staff with several questions, etc. At this time, it would be wise if the Council so decides to, provide direction for Staff, and put this back on another Work Session to at least get answers to the questions that you have.
- Swanson: Could we ask the staff to get the language on these various issues done?
- Mayor Hanel: Council do I have a consensus to provide that direction to staff?
- Council Members: Yes

- Tina Volek: We have been holding off on a number of issues and at least one Council Member has indicated that he will not be here July 7. We have the EBURD Annexation which has a time element to it. They need to get that decision made. This is to talk about taxation regulations to encourage annexation. We have the tree pest report which I believe could be put off. The software conversion status report. The 2014 long range transportation plan. I do not know if there is a time component to that?
- Bruce McCandless: Yes there is.
- Tina Volek: Those are the items that are on the Agenda. We do have on the 21<sup>st</sup>, BSEDA and Council Discussion.
- Pitman: I don't think we need to have another whole night for NDO. Leave NDO for July 7.
- Mayor Hanel: Will leave NDO on the Agenda for July 7<sup>th</sup>.
- Pitman: If we want to get an Attorney General's opinion, would that have to happen through an Initiative process?
- Brent Brooks: You would probably want to coordinate with Tina. Whatever direction the Council and Tina agrees on, I could certainly submit that.
- Tina Volek: I would suggest that we have Mr. Brooks check on the timing. If it is several months, that may factor into your decision. We could report back to you after we have the answer.
- Brent Brooks: It is a matter of getting to the right person at the General Attorney's office that handles the opinion request.
- Tina Volek: The real issue is do we have the authority? The Ordinance has not been challenged in other communities.
- Cimmino: Can we provide that direction to our City Attorney who is our legal authority to make such a request?
- Mayor Hanel: The proper step at this time is to determine a time frame but the actual request should be of public record at a business meeting in a form of an Initiative with a vote.
- Cimmino: I understand your viewpoint, but this is a public meeting and everybody knew about it. I think we are making progress and we want to work on this as much as possible.
- Mayor Hanel: Mr. Brooks, do you feel that would be better?
- Brent Brooks: I think it would be wiser to have it through an initiative process, and at some point allow public comment. Another comment, if the AG accepts this as an issue for him to determine or to issue an opinion about the legality of a self-governing entity such as Billings to do this, he will undoubtedly circulate a draft opinion to the other cities that have enacted such an ordinance. He may very well circulate it to other larger cities and counties.
- Tina Volek: I think the issue at hand is not whether it is advisable, but whether you have the authority. You have had two legal opinions and four existing Ordinances that haven't been challenged. It does take time to get an Attorney General's opinion.
- Brown: What happens if after we vote this in, it is challenged and they say we don't have the right to do that?
- Brent Brooks: The challenge would likely come in some kind of District Court filing.
- Brown: What happens if after we vote this, it is challenged, and they tell us we don't have the right to do that?
- Brent Brooks: The challenge would come in some kind of District Court filing and then it is up to the Council to decide. Orderly process to challenge or confirm this ordinance through the court system. In Montana, it would be the District Court and then the Supreme Court.

- Brown: We could go ahead next week, could still adopt and vote on it. If it passes, they come back and say “no”. We could move forward one way or the other.
- Brent Brooks: Yes. They meaning somebody who would want to challenge it in District Court. Attorney General will not be as anxious or motivated to look at the legality of an Ordinance in terms of your authority to approve that ordinance after you have approved it. He would want to look at it before you do that.
- Bird: I think to request an AG opinion when we know we have the authority, is a waste of time to go that route. As far as consensus or providing a directive as opposed to an initiative, a consensus to me is everybody agrees. I am not sure everybody tonight would agree. I would recommend we must do it through an Initiative.

- **TOPIC #2: Council Discussion**

- Cimmino: I was offered an invitation for the ground breaking ceremony for the Navy Seal Bo Reichenbach this Saturday, June 21<sup>st</sup>, from 2-4 pm at 2731 Sage Creek Rd.
- Yakawich: Thank you Mayor for your support for the March Against Violence. City of Billings put a lot of effort into this. Had around 300 to 400 participants.
- Bird: This weekend starting Friday is the 20<sup>th</sup> Anniversary for NIOT which will be taking place in Billings Friday, Saturday, and Sunday. Billings’s residents are offered a significant discount at registration.
- Cimmino: Part of the 20<sup>th</sup> Anniversary of NIOT is going to celebrate with an exhibit at the Western Heritage Center. It has to do with the exhibits that are going to be displayed by the West High School. Handed out invitations to Council.
- Mayor Hanel: This Saturday is the Relay for Life Walk/Run, Saturday at 8:00 am. Begins on Shiloh Road. Rimrock Motors is the sponsor. Would be great to see you there.

**TOPIC #3: Public Comment on Items not on the Agenda**

- None

**ADDITIONAL INFORMATION:**

**ADJOURN TIME:** 11:35 pm