

City Council Work Session

5:30 PM
Council Chambers
Date: July 21, 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:**
- Brent Brooks: Discussed the changes in NDO Draft #3. See Draft for changes.
- Pitman: Asked Brent if he talked with Judge Kolar to see what her thoughts were?
- Brent Brooks: It was directed more to the jurisdictional amount of \$12,000. After I talked to the City Attorney, he and I made the same conclusion after comparing notes. Have in the past talked to Judge Kolar. She has no problem enforcing this particular Ordinance, and expressed no particular trouble about Municipal Infraction, should a complainant desire to take that particular path.
- McCall: In terms of Section 7-1805 on "Discrimination in Public Accommodations Prohibited", Helena indicates that they are allowing businesses to determine how they are going to respond to this. Would it make sense that we exclude all of the specific language and state that the business may be allowed to use their own methods?
- Brent Brooks: You could do that. The phrase that Helena zeroed in on, in the middle of the highlighted section under 7-1805, is the phrase, "may be required to use the facilities designated", etc. That is where the language that they inserted from Commissioner Thweatt indicated that a business could designate, for example, unisex bathroom where you have occupant at the time. You could say, "The business may designate". That is the history of this section that was inserted by Commissioner Thweatt in Helena. They were leaving it up to the business to designate if they desired to do that.
- McCall: I recognize that it is permissive. What I am wondering, is the language that is there, "However, in any place of public accommodation where users ordinarily appear in the nude", businesses may set up their own requirements, "but users may use facilities designated as family bathroom, or bathrooms for use by either sex". I find that whole language highlighted, to be offensive. I think the idea of having someone have to show what they are anatomically is really offensive.
- Brent Brooks: I don't think that is the intent of this phrase. Again, we are using Helena because the Council liked Helena's version. The idea was expressed to me from the City Attorney in Helena, that it is simply the users may be required to use the facility as designated by the business. I don't think you have to submit proof of what you are. That is not what the City of Helena Attorney said.
- McCall: I think people who have been testifying don't recognize that. I am wondering why this language has to be in there.

- Brent Brooks: That is a version that you have wanted in the past from the Helena version. We are certainly happy to do whatever the Council would like to do with this phrase. It has created an enormous amount of debate and discussion.
- McCall: Council, think about this. My preference is this be fully inclusive, but as we look at this language, I would think that explicit language does not need to be in there.
- Cimmino: Brent, quick question on page 5, bottom of the page where it highlights Alternative 1. “Any damages awarded by the Court to a successful complainant shall be limited to a maximum of Twelve Thousand Dollars (\$12,000) exclusive of fees and costs. Attorney’s fees shall be awarded in the discretion of the Municipal Court and are not mandatory.” Two questions: The \$12,000 seems rather excessive. Tina, have we budgeted this in the FY 2015 in the event that any awards or action made?
- Tina Volek: We have a budget in the Legal Dept. for cases. A complainant may have a complaint against the City, in which case the City Dept. would be responsible for that payment. If there is a case involving an entity other than the City, then the City would not make the payment as I understand it, and the Court would order the individual or business to make that payment. Is that correct Mr. Brooks?
- Brent Brooks: That is correct.
- Cimmino: If you take a look at the Montana Human Rights web page, they have a flow chart going step to step and following their procedure. It is interesting to know that their final determination is that no warrants or damages are given whatsoever in their process. So I am wondering why we are inconsistent here.
- Brent Brooks: The Human Rights Commission often does award damages. That is ultimately appealable to the District Court or the full Commission.
- Cimmino: Paying attorney’s fees, it has been my understanding for a number of years, each Plaintiff and Defendant pays for their own attorney fees unless the judge or the jury believes that they should be awarded. This promises them something that may or may not even happen.
- Brent Brooks: This is based on four of the Ordinances, and more particular, the Helena Ordinance. If the Council would like, you can determine no money damages are appropriate, and you can say that no attorney’s fees are appropriate or you can say each side could bring their own representative attorney if they would like. It is up to the Council as to how you want to do this.
- Bird: 7-1805 and 7-1808 – The Alternates for Compensation. I agree with CM McCall. I think the language added in “Discrimination in Public Accommodations” is inherently discriminatory. My question is if a business does not have a family restroom, or a unisex bathroom, and they are requiring transgender individuals to use the bathroom of their anatomical sex, how is that going to be enforced? If there is not a family bathroom or unisex bathroom, conceivably business would not have facilities for transgender people. I am not only talking about a locker room situation, but if they just have women and men restrooms with this requirement, I think it needs to go. The last sentence, “such requirement does not constitute unlawful discrimination for the purposes of this section”, I think all the language preceding that is discriminatory. My preference would be for the language to go. It keeps it simple and it doesn’t cause business or users any additional anxiety about what to do when things get goofy. Question Mr. Brooks about fines related to discrimination to other protected classes. Do we have anything in the Ordinance that says if you deny housing to someone of color, employment, etc.? What do our City Ordinances say the remedy is for that kind of discrimination?
- Brent Brooks: There is a section on housing 49-2-305 Statute that talks about housing discrimination and some exceptions. That would be covered by the Human Rights Act, it would be getting into an area where in our legal resource, the Council would not have the legal

authority to go into those protected classes of individuals. I think you could argue that yes in those areas that are not LGBT, etc., the State has granted the municipalities in the counties.

- Bird: We are making this a little more complicated than it needs to be. My suggestion for Alternative 3 is “Damages may be awarded to a successful complainant and reasonable attorney’s fees may be awarded at the discretion of the municipal court.”
- Pitman: Note 6 – 7-1805. I think this is important to have in the NDO. We are starting to get tunnel vision and we’re talking gay/lesbian/bi-sexual/ transgender. But when you start addressing heterosexual, we are making it not a special class, but equal for everybody by not having this, then men/women’s locker rooms cease to exist as we know them. Then I have every right to walk into a women’s locker room. I don’t have to prove anything to anybody, and vice versa. The only reason I see this as being an issue, this could be the major policy shift. Do we give up on men and women’s locker rooms or do we still say there is some type of a separation, which might actually be discriminating if discrimination is separating and dividing men from women, etc. Someone mentioned France a couple of weeks ago. We are not in France, and even when we go to Lake Elmo, women have tops on and men don’t. At what point do we draw this line? How could this be misused if we don’t have some of this in place? As a discussion point, it is worth having?
- McFadden: I don’t see how our City Ordinances are going to trump state laws against indecent exposure. It is only going to confuse people. I think we should keep this language in about separate restrooms to avoid confusion, because it is still going to be against the law, as far as I would know. For example, a man going into a ladies restroom and exposes himself to some little girl. I don’t want anyone to commit a crime like that and then try to use this Ordinance as an excuse. Also, how much monetary awards should be awarded? I would say none. Every time someone comes up to this podium and they speak in favor of this NDO, and they are asked “this is about the money, and about suing people”, they have always said “No, this is not about the money or about suing people”, so why don’t we make these damages zero.
- Brent Brooks: Alternative 3 was put in the draft because there did seem to be an overwriting comment from everyone that damages were not the main issue. That is why we provided 3 alternatives.
- Cimmino: On page 1 right under the title of the Ordinance, it immediately says, “Now, therefore, be it ordained by the City Council of the City of Billings, Montana:” However, in some of the other formats that I looked at NDOs in different communities and municipalities, they have listed “whereas”. So they justified it “now therefore”. What happened to the “whereas”?
- Brent Brooks: We will probably add one or two in the usual ordinance format. The other thing that “whereas” clause or clauses normally do, is repeat what is in the current intent and purpose clause. That is why some of the other cities have dispensed with the “whereas” clause. Sometimes the “whereas” clauses are verbose, and so we will likely do one or two “whereas”. But the intent and purpose statement serves as the alternative to that. We can put those in.
- Cimmino: With all due respect, I don’t think traditions in any way are arcadic. I think they are there to protect the community, and we as a governing board need to look at that and specifically communicate as to why this Ordinance is even taking place.
- Brent Brooks: I think that is what the Intent and Purpose statement says. But we can certainly insert that into the Ordinance if the Council would like.
- Pitman: Are we going to have Public Comment and then discuss this again? As far as the details are changing, would that be amended through if we placed this on the regular agenda and discussed it during a regular meeting?
- Brent Brooks: You could give us further direction tonight after public comment, or just voice your opinions. It gives the public some advanced notice. Could place on a first reading and

public hearing and make amendments as you believe are appropriate to the version at that time. Those are the alternatives available to you and either one would work.

- Mayor Hanel: CM Pitman, for the benefit for all of you, obviously this Work Session, if you feel there is still more work to do on this draft, that you would like to go back to staff, maybe there is a need for more changes. If you don't see a need for any changes, then we will proceed forward. .As far as your question, do we want to provide direction now? Entirely up to you as a Council. I feel it may be a little premature with all these people sitting here, for us to say "Ok, reviewed it, we got our questions answered, lets provide direction, direction has been provided, now let's listen to testimony. These folks may feel as if "Why did I even show up."
- Pitman: We need to have a first reading and then have something formal moving this forward. We need to give the staff is some kind of direction tonight. Other than moving forward on the first reading, would be on the last page where there are three alternatives. The rest of it we can vote "yes" or "no". Not sure we are going to get a lot of consensus on any of this but as far as the penalty; I think that might be a good way to give us some direction. Either that or you are going to have to present all 3 and say pick one for the first reading and go from there.
- Brent Brooks: We could list those.
- McCall: I would agree. It would be my hope that the Council through consensus agrees that we need to put this on the August 11 Regular Council Meeting. I agree with CM Pitman. The vast amount of changes that have already been made tonight, I think everybody is in agreement on. The exclusion "inclusion for public accommodations" is one, and the other is obviously "the damages". I also agree with Mayor Hanel, we need to hear testimony and then provide recommendation.
- Swanson: I would prefer that the highlighted area be taken out on "Public Accommodations". I think it raises more questions. I also think that if you had to, you could live with it and it would just be a lot messier. On the Alternative 2, it does make provision for some damages. I like the idea of having the alternative saying, "Attorney's fees shall be awarded in the discretion of the Municipal Court and are not mandatory."
- Yakawich: Had some conversation about the "private clubs", and I know it is clear about "fraternal" or about a "lodge" or "fraternal organizations". There are other organizations that are private organizations that have their own charter and they do need to make money by selling meals. They can't always rely on their own membership. I am curious, whether it is 10 members or 100 members, these private clubs may have to go against their own charter. Could you address that?
- Brent Brooks: There are times when private organizations do have to yield to certain laws, and that would be the same here. For example, it could be a zoning or health ordinance, so I think you are right. If your private organization has a charter that conflicts with this Ordinance, then the charter would have to be subordinate to this Ordinance so long as the two conflict. The other example is what we call CC&R's Conditions Covenants and Restrictions in a subdivision for example, if those CC&R's conflict with a City Ordinance then the City Ordinance is going to prevail. Those are just some abstract examples. We could try to draft some language, but when you try to start excluding it, it becomes difficult.
- Yakawich: Mayor, any thoughts or suggestions? Will use the Elks Lodge as an example. One of their mottos is you have to believe in God. When we start impacting private organizations that really conflicts with their charter. Is there any way we can address that?
- Brent Brooks: I could certainly discuss that with the other four cities attorneys, and see what issues they deal with historically during their passing this Ordinance, and come back to the Council on August 11. When we had a conference call several months ago. If private organizations offer these services to the general public as opposed to their membership, that was one of the bright lines that the other four cities had drawn. It was a completely closed

organization, for example of membership only, and not offered to the general public. That might be one way we could have some alternative language. We could research that further.

- Cromley: The Elks Club as I understand it, they will still be able to restrict their membership if they wish and not permit members of the LGBTQ community? It is just the public service serving meals.
- Brent Brooks: That is correct.
- Swanson: As stated by Obama on Monday, he intended to sign an NDO today that would apply to all businesses doing business with the Federal Government. Should we be considering that at all?
- Brent Brooks: You could certainly broaden the reach of this Ordinance to include contractors. In almost every contract that I have seen, we do have a Non-Discrimination Clause in our contracts. Could e-mail you some of those phrases from our contracts. They do reference the Montana Human Rights Act if that would be of some help to you. Without having the Federal Governments Executive Order in front of me, it would be hard for me to say. Can think about expanding that to contracts that the City deals with. If you start requiring private contractual parties to do that, then I think you are going to head into some problems. There is a Statute in Self-Governing Section of Title 7 that talks about cannot intrude in private relationships. So I think if you were to order this Ordinance to apply to purely private contractual parties, you would be heading for some problems. If you wanted to say that the City's contractual relationships would mirror that of the Federal Government, we could research that. It might be a possibility.
- Brown: When we are talking a local business that contracts with people that are doing photography, for example, does that fall within that category?
- Brent Brooks: That is going to come within the definition of "Public Accommodation". Particularly Subsection (a) on page 3.
- Cimmino: A business is a business no matter what kind of service they provide. How do we exclude one without the other? How do we make the distinction of what is a business and what isn't?
- Brent Brooks: I think it would be that someone that offers the first sentence under (a) of page 3, under "Public Accommodation: A place that caters or offers its services, goods, or facilities to the general public..."
- Swanson: What it said in the paper was they defined any business that does business with Federal Government, needs to sign the NDO Contract.
- Brent Brooks: I will try to get a draft of that Executive Order if that would be helpful.
- Brown: If everybody agrees, let's skip that.
- All Council Members: Consensus.
- Bird: I agree with CM Brown. It is taking us to a level that has no place at this point. I would like to address CM Cimmino's comments. The issue with the contracting is, "service, goods, or facilities to the general public" which is us. When the City contracts with someone to do business with the City we all benefit. But the businesses between the contractor and the business of the City, that is where the cutoff is. Yes we all benefit, but I think to go to that level is making this much more complicated then we need to be at this point.
- Public Comment:

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

Roberta Zenker	1500 Missoula Ave.	Helena, MT
Eric Porter	607 N. 25 th St.	Billings, MT
Sarah Jetter	414 Quaw's	Belgrade, MT
Mary Hernandez	19 Burlington	Billings, MT

Tom Towe	2739 Gregory Dr. S.	Billings, MT
Alice Lyon	1400 Poly	Billings, MT
Marty Elizabeth Ortiz	707 1 st W. # 6	Billings, MT
Shauna Goubeaux	35 Maier Rd.	Billings, MT
Tamara Barnhart	43 MacArthur	Billings, MT
Dennis Ulvestad	3040 Central Ave.	Billings, MT
Kim Leighton	1315 Knight St.	Helena, MT
Shelley Hayes	820 Wyoming	Billings, MT
Katie Hendrickson	3295 Granger Ave. E.	Billings, MT
Cory Silburnagel	5412 Round Stone Ave.	Billings, MT
Darci Colbrese	3105 Ave. F	Billings, MT
Suzie Eades	3004 Millice Ave.	Billings, MT
Joe Splinter	1034 Yale Ave.	Billings, MT
Svein Newman	300 N. 25 th St.	Billings, MT
Sabrina Currie	421 5 th St. West	Billings, MT
Charles Clark	707 1 st St. W. #6	Billings, MT
Eran Thompson	2405 13 th St.	Billings, MT
Karen Stainton	3004 Millice Ave.	Billings, MT

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

Pat Plowman	PO Box	Joliet, MT
Jean Brown	2043 Constellation Tr.	Billings, MT
Jeff Laszloffy		Laurel, MT
Vicki Holle	659 Bazaar Exchange	Billings, MT
Jordan Work	585 Acorn Pl.	Billings, MT
Cynthia Marble	3131 Harrow Dr.	Billings, MT
Kyndall Miller	1500 1 st Ave. N.	Billings, MT
Lee Llewellyn	1038 N. 30 th St.	Billings, MT
Christy Carlstrom	3139 Poly Dr.	Billings, MT
Pamela Adams	5323 Blue Heron Dr.	Billings, MT
Mae Woo	1727 8 th Ave. N.	Billings, MT
Mark Carlstrom	3139 Poly Dr.	Billings, MT
Dick Pence	4307 Palisades	Billings, MT
Steve Heimbichmer	2 Woodgrain Dr.	Billings, MT
Curtis Hughes	1322 Beartooth Dr.	Billings, MT
Gayle Wentling	1310 Cook Ave.	Billings, MT
Doug Thompson	2850 Colton Blvd.	Billings, MT
Jennifer Strong	411 Glen Dr.	Billings, MT
Tori Bender	2702 Wyoming Ave.	Billings, MT
Joseph Wetherington	3437 N. Tanager Lane	Billings, MT
Joel Zinne	2715 Beth Dr.	Billings, MT

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

Donald Seibert	1112 Delphinium	Billings, MT
Bob Reed	Box 155	Joliet, MT
	Will this affect youth organizations associated with churches?	
Janice Linn	821 N. 27 th St.	Billings, MT
	Should be put to a vote of the people	

TOPIC #2:

- **Council Discussion:**
- Brown: In a quote situation where at any time, when someone comes to them and says “Hey I want you to do this job”, and you quote them a job, as far as I know, you are not obligated to do a quote regardless of sex, gender, etc. Is that correct?
- Brent Brooks: It has been a long standing law that you don’t have to provide a service to anyone as long as you are not discriminating against them based upon a protected class of individuals. You could say “I am too busy”, or “I will get back to you in a month”. Any number of responses that would be appropriate. As long as you are not using a protected class as a basis to refuse a service, then you are going to be ok.
- Pitman: The County Commissioners are asking for some information on Alkali Creek on some drainage issues. I think it is scheduled for August 4. County Commissioner has scheduled two meetings this Tuesday and Thursday at 6:30 in the Yellowstone Room at the Metra. Not sure we are ready to give an answer. I know the City Administrator is preparing something, but wanted to make everybody aware of it. If you get a chance, come and visit about it. It is about the runoff and storm water, etc. There have been a lot of studies going on and I want everyone aware of it. Have had meetings with some of the neighbors, and some of the Council Members have been out there.
- Tina Volek: There was a study done by an engineering firm. Our engineers have some strong concerns about the report from the engineering firm and the potential impact on city property. This is primarily, at this moment, an issue on county land. There are two county streets that have been mentioned. We are very concerned about the outcome of the proposed solution and its impact on city owned land, because it would shift water from county to city land. Can convey the engineering staffs concerns to ask them if they continue to wish to meet with us on August 4.
- Mayor Hanel: The meetings are open to the public. We as a city are in the position, or prepared to make a comment on behalf of our engineering at the meetings until after August 4. Is that correct?
- Tina Volek: The engineering team in the city is prepared to make comment, and have sent me a memo to that effect.
- Yakawich: Have a number of concerned constituents along Alkali Creek. What would be a proper format to voice our concern?
- Mayor Hanel: Attend the meeting.
- Tina Volek: Will forward the staff remarks to the county. They also asked for Council participation in the financing of this project. Public Works did not address that, but we do not have it budgeted.
- McCall: In terms of transparency, when the Mayor mentioned that someone had suggested limiting testimony. That was me thinking that we may have 150 people again that have repeatedly testified. Back to the NDO – The first thing I would like to do is suggest to the Council that on page 3, in terms of the definition for “sexual orientation”, take “transgender” out of that definition based on the testimony that we heard.
- Cimmino: The definition of transgender according to the American Psychological Association. I think it is important to know the language. Permission to read? “What does Transgender mean? Transgender is an umbrella term for persons whose gender identity, gender expression, or behavior does not conform to that typically associated with the sex to which they were assigned at birth. Gender identity refers to a person’s internal sense of being male, female, or something else. Gender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice, or body characteristics.

Trans as sometimes used as short hand for transgender. While transgender is generally a good term to use, not everyone whose appearance or behavior is gender non-conforming, will identify as a transgender person. The ways that transgender people are talked about in popular culture, academia, and science are constantly changing. Particularly as individual's awareness, knowledge, and openness about transgender people and your experiences grow." We had two definitions from two of our participants who said "that transgender is not sexual orientation", and "transgender identity is part of sexual orientation - who you fall in love with and who you are erotically attracted to". I believe words do matter, and we as Council Members are assigned the task of making sure that this NDO does provide equal protections for both. The LGBTQ as well as heterosexual. That is my goal.

- McCall: So CM Cimmino, you are in agreement that we would take transgender out of "sexual orientation"? The definition for transgender works in terms of the definition that you just read. I definitely want to see this Ordinance come to a formal Council Meeting. I would like that to be on August 11th. Going to urge consensus of the Council to direct staff to do that. I think the issue around "inclusion" or "exclusion" is a major one. I don't think we are going to solve that tonight. If we move forward, the language needs to have both options. Having it included and other options for taking that language out of 7-1805. Only other comment that I would make is in terms of the damages. I was inclined to support Alternative 2 which I think is reasonable, although I think CM Bird's suggestion was also good. If we can resolve that tonight, that leaves one less issue.
- Mayor Hanel: If we move forward with the way it is, the Council would have choices. Alternative 1, 2, or 3.
- Brent Brooks: That is correct. You can have a choice of your own. These are just discussion alternatives. As long as you don't exceed the \$12,000 statutory maximum. We could keep this language in and add CM Bird's suggestion as an additional alternative.
- McFadden: Do we vote on line items in this NDO next Monday, July 28th?
- Tina Volek: No. This is a City Ordinance. It requires two public notices of a public hearing 12 days apart. August 11 is the first agenda on which we could make two notices twelve days apart for the public hearing adequate.
- Pitman: CM McCall please clarify. This whole transgender thing has got me confused.
- McCall: Bottom of page 3, "Sexual Orientation: Heterosexuality, bisexuality, transgender, or non-binary." I want to take "transgender" out of the language. That is the only change. We want to remove the word "transgender" out of the definition for "Sexual Orientation" in that part. We can leave "transgender" in the red line below it. That defines "transgender".
- Mayor Hanel: Consensus before we move forward.
- Bird: Fine with Alternative 2 or 3.
- Mayor Hanel: If you leave as is, the Council at the time you vote, would have a choice at that time to leave it or strike out Alternative 2 or 3.
- Brent Brooks: Could relist these three alternatives and could also list CM Bird's Alternative 4, which is very similar to Alternative 3.
- Swanson: Would like to suggest a small change to Alternative 2. Rather than attorney's fees and costs of \$3,000, make it \$12,000. Then under the "Attorney's fees shall be awarded...", change it to "Attorney's fees may be awarded ..."
- Mayor Hanel: Why not \$3,000?
- Swanson: I think it could be substantially more. \$3,000 isn't a lot of money.
- Brent Brooks: Alternative 1 and 2 are almost identical changing "shall" to "may".

- McCall: If we can narrow it down to 2 options, or even is we have some consensus around 1. It would be a good thing for us to do. If we go with 3 or 4 option with one word difference, it is very confusing.
- Cimmino: I think we should change that one word “shall” to the word “may”.
- Cromley: Are we good on Alternative 2? Changing the word “shall” to “may”.
- Cimmino: As you review Draft 3, you indicated Alternative 1 that \$12,000 was the damages that State Statute would allow up to \$12,000. Then you indicated that \$3,000 was the old Small Claims Court amount.
- Brent Brooks: Correct. It is \$7,000 now. I put \$3,000 in there as a point of reference.
- Cimmino: The way Alternative 3 is written now; it says “No damages shall be awarded to a successful complainant however reasonable attorney’s fees may be awarded in the discretion of the Municipal Court”. I like the way that CM Bird suggested to take off the word “No, damages may be awarded to a successful complainant, and reasonable attorney’s fees may be awarded at the discretion of the Municipal Court.” Are we in agreement with these minor edits?”
- Brent Brooks: Would be happy to replace Alternative 3 with CM Bird’s language.
- Brown: So all we are doing on Alternative 3 is taking out the amount. So they can go to \$12,000 or they can go \$1.00 which is the same as Alternative 1 correct?
- Brent Brooks: That is why I put in Alternative 3. I was trying to make a distinction between the wording damages up to the maximum, or no damages. Again, this is purely policy making at its basic level for the Council. As long as you don’t exceed the statutory maximum (inaudible) anything you want.
- Mayor Hanel: The only difference CM Brown, you’ve got the language of “mandatory”.
- Cromley: So going with Alternative 3 but it would say, “No damages may be awarded...” So we have one Alternative. We have reached a consensus that we will use the Alternative 3 and take out the word “No”, so it reads “Damages may be awarded to a successful complainant, and reasonable attorney’s fees may be awarded in the discretion of the Municipal Court”.
- Brown: I am opposed to moving forward with a vote when we don’t even have the language down. Let’s pick one and move forward with this. Same with the text. Is it in or is it out?
- Pitman: Can we make amendments on the second reading?
- Brent Brooks: Yes, as long as you don’t (inaudible) change the Ordinance. In the State Legislature, if you make a whole new set of amendments that pretty much eliminates the substance of the first draft, then you are going to start over again.
- Cromley: Am I correct that we have got the final Ordinance? If we decide tonight, the only issue is if we go with 7-1805 with the highlighted part, or without it to begin with, there might be an amendment either way. I would like to see it without it.
- Pitman: It is easier to leave it in and take it out later, then to be having something that is not there the public can’t read, and then add it in later. We might miss something. It would be easier to leave it the way it is and have that debate, and then if we want to move it or not during the vote.
- Cimmino: A compromise to make everybody happy. I like what CM McCall said. She wants the highlighted portion removed. But if it stays in, “However, in any place of public accommodation where users ordinarily appear in the nude, users may be required to use the facilities designated...” And you insert the words “... as family bathroom or unisex bathroom” but take out the words “for their anatomical sex”. Because that is private. I don’t want to know what is under his/her pair of shorts. But, we are responsible for public safety.

- Bird: I would like to see the language removed.
- Cimmino: We want to simplify it.
- Tina Volek: I am not certain that we can mandate that a business install a family bathroom or a bathroom for use by any sex.
- Brent Brooks: I would be very hesitant to say that the Council has the authority to dictate that. We could research. I seriously doubt that the City through an Ordinance can dictate the type of bathroom that a business must construct.
- Cimmino: Can we just delete the words “designated for their anatomical sex”? They can use the facilities.
- Bird: Basically is the same as removing the language.
- Cimmino: Remove the 5 words but you still keep the protection in there.
- Mayor Hanel: I think we leave it the way it is and move forward with the changes we agreed upon, take it to the August 11 meeting, and get a vote so we can keep this moving forward.
- Bird: If we leave it in there, we are attempting to sanction discrimination.
- Mayor Hanel: It can be on August 11, which is another opportunity as would be the next public reading also. We can make changes then again.
- McCall: Update on the Montana League of Cities in Town? The League has been very busy. You all know that Alec Hansen, who has been the Executive Director for 33 years, is leaving August 1. We have interviewed 3 candidates for an Interim Director. We have selected Dave Nielsen. He is from Helena. He was a City Attorney for 16 years. He was an Attorney for The Department of Revenue, and he has been an Interim City Attorney for Great Falls, as well as for the City of Dillon. He has great background experience. He does not want to apply for the full-time Executive position. We thought he would be an excellent fit. He is a great guy. We are also working with Dennis Taylor who is doing our executive search, and we will begin advertising the first of August for the full-time Executive Director. The timeline that we have chosen is to have a decision made before the end of November. We will keep you posted. Dennis was at our recent board meeting. We had an excellent strategic planning session with lots of good discussion.
- Bird: CM McCall, when is the State Conference?
- McCall: The Conference will be the first full week in October (8, 9, & 10). Hope to honor Alec and his wife Colleen for all of their years of service.

TOPIC #3:

- **Public Comment on Items not on the Agenda:**
- Kevin Nelson – 4235 Bruce Ave.: Section 2-222 in the City Code, Rules of Procedures for Work Sessions, Number 3 says “Motions will be entertained and votes taken only for the purpose of giving City Staff direction on the matters that will be presented for final action at a future City Council Meeting.” Rather than winks, nods, and consensus, maybe we should take votes. That is what your law states that you should or can do. You have said on numerous times Mr. Mayor, “This is a Work Session and we have to be careful what we do.” Your City Code gives you the law to make motions and take votes. Not on final action, but on future action. As you and your Council well know, you have always taken winks, nods, and elbows in the chest, in the ribs in your Work Sessions, trying to get direction to the staff, when you actually should be voting on these things and giving staff clearer direction, and making votes. This is what you do. I would argue that you could clean up a lot of this this evening by making motion and taking votes.
- Mayor Hanel: You are right. The key word is can!

Kevin Nelson: I think you have understood that maybe you can't do this, or you can't take the motions and make motions and take votes in your Work Session, but you can.

- Swanson: There is such a thing as straw votes. It is a vote that indicates when people are leaning. I think it is a very good system. It is basically what you are suggesting.
- Kevin Nelson: You are getting straw votes in the Work Session when you actually could be making motions and raising your hand to give staff direction by voting on this for future Council items. Not final action, but future items.
- Hans Abbey – 3512 Windmill Cir.: Would like to invite the Council to come Friday night at dusk, to the Movies in the Parks with Billings Kiwanis, Park Dept., and Firefly Productions Movie Company. This week's is "The Nut Job" at Rose Park.
- Lee Llewelyn – 1038 N. 30th St.: Mayor Hanel, a couple of weeks ago, I missed the last Council Meeting. I was lead hoe operator for COP Construction on Rimrock Road, and you had questions on the manholes and where they are placed. Knife River does leave the manholes down so when it is snow plowed, the snow plows don't hang up on the edges. So there is a slight dip there. We were expanding the road so when it originally had utilities put in, which we replaced in the original spot; they wound up being in the driving lanes and other places that they weren't originally. That was out of our control. We did add storm drains, and they have manholes too, collector manholes. Those may have been in the driving lane also. But with the other existing utilities, there was limited space. Some of the storm drain manholes that weren't originally there were substantial being that the side streets were on the hill of Rimrock Road, and they collected a lot of water. So they needed to be substantial.

ADDITIONAL INFORMATION:

ADJOURN TIME: 9:37pm