

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

August 28, 2017

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

ROLL CALL: Councilmembers present on roll call were: Cromley, Yakawich, Brewster, Cimmino, McFadden, Friedel, Sullivan, Swanson, Clark, and Brown.

MINUTES: August 14, 2017 – Councilmember Brewster moved for approval, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Mayor Hanel praised City staff for their excellence in organizing the "Beat the Heat" 5K Run in which more than 350 participants attended, up from 40 the first year.
- Mayor Hanel recognized members of the Navy crew of the USS Billings. Councilmember Swanson spoke about vessel's christening and launch on July 1, 2017, in Marinette, Wisconsin. Councilmember Swanson donated his lithograph print of the USS Billings to the City for placement at City Hall.

PROCLAMATIONS:

- Mayor Hanel declared August 28, 2017, as Navy Day and outlined a number of events that took place during the week with the Navy crew. Councilmember Sullivan welcomed the ship's sponsor, Sharla Tester, wife of Senator Jon Tester, and presented the Commander, Nathan Rowan, and Navy crew with a plaque to be placed on the USS Billings, a Freedom-class littoral combat ship. The U.S. Navy crew were introduced and gave a presentation about the ship's construction and capabilities, as well as an explanation of the crest that adorns the ship.

ADMINISTRATOR REPORTS - TINA VOLEK

- Ms. Volek stated that in regard to the proclamation for American Indian Heritage Day (September 22, 2017), it had been postponed to the September 11th Regular Council meeting.
- Ms. Volek stated that in reference to Consent Agenda Item K, the public hearing had been changed from September 25th to October 10th.

- Ms. Volek updated Council that a news release had been placed at each Councilmember's desk concerning a Montana Supreme Court decision that reversed and remanded, in part, the Watters, et al. v. City of Billings decision.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 ONLY. Speaker sign-in required. (Comments offered here are limited to one (1) minute for one item, or three (3) minutes for multiple items. Please sign in at the cart located at the back of the council chambers or at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For items not on this agenda, public comment will be taken at the end of the meeting.)

The public comment period was opened.

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

1. CONSENT AGENDA

A. Bid Awards:

1. **W.O. 18-03, Contract No. 1 City Crack Seal.** (Opened 8/15/17) Recommend Wharton Asphalt, LLC, \$199,005.
2. **Winter Traction Material.** (Opened 8/15/17) Recommend Knife River, \$21.00 per ton.
3. **De-Icer / Anti-icer.** (Opened 8/15/17) Recommend Brenntag Pacific, Inc., \$0.94 per gallon.

B. Amendment No. 4, W.O. 14-11: Water Reclamation Facility Nutrient Upgrade, Expansion & Improvements, Professional Engineering Services Contract, HDR Engineering, \$89,800.

C. Perpetual Right-of-Way Easement and License Agreement with Yellowstone County for W.O. 14-11, Water Reclamation Facility Nutrient Upgrade, Expansion and Improvements.

D. Acceptance of Quitclaim Deed for Zimmerman Trail South Park from Yellowstone County.

E. Recommendation of approval to the Policy Coordinating Committee (PCC) of the 2018 Unified Planning Work Program (UPWP).

F. Acceptance of donation to the Billings Police and Fire Departments from Phillips 66 for SRO training and public education/fire safety programs; \$8,000.

- G. **Acceptance** of funds from the Billings Library Foundation for the Senior Outreach Program; \$2,000.
- H. **Resolution 17-10650** authorizing the Change of the Authorized Representative for the Short Term Investment Pool (STIP).
- I. **Resolution 17-10651** relating to \$140,000 special sidewalk, curb, gutter and alley approach bonds, Series 2017; fixing the form and details and providing for the execution, delivery and security.
- J. **Resolution 17-10652** relating to the financing of the landfill construction projects, establishing compliance with Reimbursement Bond Regulations under the Internal Revenue Code.
- K. **Resolution of Intent 17-10653 to De-Annex 17-04:** approximately 49 acres of undeveloped land described as portions of Terrace Estates Subdivision, 3rd Filing; James and Jo Ann Boyer, petitioners; and set a public hearing for September 25, 2017.
- L. **Second/Final Reading Ordinance 17-5692 expanding Ward II (Annexation 17-02)** for an approximate 5.4 acre parcel of land described as Tract 2B-2 of Amended Tract 2B, Corrected C/S 840, Second Amended, generally located west of Hawthorne Lane and north of Kyhl Lane; Richard and Mae Sartorie, owners.
- M. **Second/Final Reading Ordinance 17-5693** amending BMCC, Section 22-231, Sidewalk Repairs.
- N. **Preliminary Subsequent Minor Plat** of Amended Lot 4C, Block 1, Shiloh Crossing Subdivision, generally located between Shiloh Road and Shiloh Crossing Boulevard and South of Montana Sapphire Drive; Western Sky Ventures, LLC, owner; Performance Engineering and Consulting, agent.
- O. **Bills and Payroll:**

1. July 31, 2017
2. August 7, 2017

Councilmember Brewster separated Item 1A3 for discussion.

Councilmember Brown separated Items 1O1 to abstain and 1K for discussion.

Councilmember Yakawich separated Item 1A1 for discussion.

Councilmember Cimmino separated Items 1A2, for discussion and 1B, 1C, 1O1 and 1O2 to abstain.

Councilmember Sullivan moved for approval of the Consent Agenda, with the exception of Items 1A1, 1A2, 1A3, 1B, 1C, 1K, 1O1 and 1O2, seconded by Councilmember Swanson. On a voice vote, the motion was unanimously approved.

Councilmember Sullivan moved for approval of Item 1O1, seconded by Councilmember Brewster. On a voice vote, the motion was approved 9-0, Councilmembers Cimmino and Brown abstained.

Councilmember Sullivan moved for approval of Item 1O2, seconded by Councilmember Brewster. On a voice vote, the motion was approved 10-0, Councilmember Cimmino abstained.

Councilmember Sullivan moved for approval of Item 1B, seconded by Councilmember Brewster. On a voice vote, the motion was approved 10-0, Councilmember Cimmino abstained.

Councilmember Sullivan moved for approval of Item 1C, seconded by Councilmember Brewster. On a voice vote, the motion was approved 10-0, Councilmember Cimmino abstained.

Councilmember Brewster asked Dave Mumford, Public Works Director, to address questions concerning Item 1A3. Councilmember Brewster stated he had been contacted by a constituent who had studied the MSDS for the de-icer chemicals and the chemicals contained in the de-icer were hard on concrete. Councilmember Brewster asked whether using the de-icer would cause other problems in the future. Mr. Mumford stated he was not aware of any legal action that could occur and stated the chemicals were better than salts used in the past. He stated the liquid chemical was only used in the downtown area and crushed gravel, mixed with some salt, was used at intersections. He stated the State used a higher concentration of salt on its streets. Mr. Mumford encouraged residents to spray their vehicles with a wax to help prevent erosion. Councilmember Brewster moved for approval of Item 1A3, seconded by Councilmember Cimmino. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich asked Dave Mumford, Public Works Director, to address questions concerning Item 1A1. Councilmember Yakawich asked how certain areas were determined to receive chip and crack seal and whom would one contact. Mr. Mumford stated Public Works utilized a computerized pavement management program. He explained that information such as the number of cracks per foot; the depth of cracks and age of the asphalt were entered into the program and it would determine which streets needed maintenance and when. He explained that crack seal was performed prior to chip sealing. Mr. Mumford stated that there were 500 miles of city streets and not all streets could be crack sealed at the same time. He suggested that residents who found grass growing through cracks in pavement in front of their homes use some de-vegetation product on the growth. Councilmember Yakawich moved for approval of Item

1A1, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino asked Dave Mumford, Public Works Director, to address questions concerning Item 1A2. Councilmember Cimmino stated she had calculated, using the per ton, per year figure given, that the total cost would be \$387,000 for the winter months. She continued that for the same winter months' the deicer bid award was \$507,600. She said for ice and snow removal for the upcoming winter months over a 3-year period was \$894,600. She stated these items were vital, along with snow removal efforts, but was costly. Mr. Mumford agreed that these costs were in addition to the extra snow removal costs. Councilmember Cimmino moved for approval of Item 1A2, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

Councilmember Brown moved for approval of Item K with the revision that the public hearing scheduled for September 25, 2017, be rescheduled to October 10, 2017, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 17-10654 approving and adopting budget amendments for FY2017. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Tina Volek, City Administrator, stated there was no additional presentation, but staff was available for questions.

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

Councilmember Yakawich moved for approval of Item 2, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION 17-10655 setting General Obligation (GO) Debt and Public Safety II (PS II) mill levy rates for FY18. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Tina Volek, City Administrator, stated there was no additional presentation, but staff was available for questions.

Mayor Hanel asked Ms. Volek to explain to the public why this item would be placed on an agenda. Ms. Volek stated the mill levy rate change followed the City's assessed valuation, received on August 7, 2017. She continued that in some cases the mills were actually reduced. Councilmember Sullivan stated that all of the valuations had decreased, with the exception of the streets GO bond. He asked for an explanation.

Ms. Volek stated it was due to the work on the streets. Andy Zoeller, Interim Finance Director, stated the GO debt was set to generate a specific amount of revenue to pay the debt service. He stated that the streets bond was actually increasing slightly, so more revenue needed to be generated. He stated that existing cash balances in the fund were reviewed and the amount of delinquent taxes to be collected. He continued that the City then estimated how much may be collected in the upcoming year and that was how the City established how much would be needed. Ms. Volek stated that while the GO street bonds went from 1.66 to 1.81 mills, the overall mills for the City went from 56.41 mills in FY17 to 54.31 mills in FY18.

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

Councilmember Brewster moved for approval of Item 3, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTION 17-10656 approving the adoption of the Poly Vista Park Master Plan. Staff and PRC Board recommend approval. (Action: approval or disapproval of staff and PRC Board recommendation.)

Mark Jarvis, Parks Planner, gave a presentation. Mr. Jarvis stated the Park Board recommended Council approve and adopt the master plan for Poly Vista Park. He continued that Landon's Legacy contributed \$66,570 toward the master plan. He stated \$27,000 was donated by the Billings Kiwanis Club and the City contributed \$14,600. The total cost for the master plan was \$81,202. Mr. Jarvis introduced Michael Verseman, landscape architect, with Land Design, Incorporated, who provided specifics about the inclusive play design for the park. He spoke of the Miracle League baseball field that would be constructed and the improvements that would be made to the overall park. He stated that a specially designed splash pad, sensory pod, adult exercise pond and shelter that could be rented for parties, etc., would be included in the improvements. He continued that a central memorial plaza area would be included for memorials and recognition of donors. He stated new restrooms and concession facility would be included and all of the trails would be paved for better accessibility for individuals with mobility issues. Mr. Verseman estimated the project to be between \$4.5 million and \$5.5 million.

The Mayor stated he was pleased the park would include special equipment for adults with disabilities, as well as those for children.

Councilmember Cimmino stated this was an excellent example of public and private partnerships. She recognized the Billings Softball Association for their contributions. She asked Mr. Jarvis if the City of Billings would be responsible for ongoing maintenance. Mr. Jarvis responded affirmatively.

Councilmember Sullivan asked for the 5-year development plan. Mr. Jarvis responded stated that Landon's Legacy would raise \$1.5 million for the Miracle League

baseball field and the playground. He continued that the Parks Board would present options to the Council. Councilmember Sullivan stated there had been concerns about Centennial, Castle Rock and Optimist Parks and he supposed Poly Vista would be added to the mix.

Councilmember Brown voiced his concern about enough parking. Mr. Jarvis stated parking needs were considered to make the most efficient use of the space. Councilmember Brown asked if improvements would be made to the existing ball fields. Mr. Jarvis stated the focus would be on the future improvements and that there may be some funding available for improvements to the existing ball fields and restroom facilities.

Councilmember Friedel asked about a strip of grass area in the parking area and whether it could be utilized better for parking. Mr. Jarvis responded that area could be used for overflow parking, but the intent was to provide some shade and keep the area as park-like as possible. Councilmember Friedel asked whether safety from flying, errant baseballs was considered. Mr. Jarvis responded affirmatively.

The public hearing was opened.

- **Greg Kemmis, 2176 Skokie Place, Billings, Montana**, stated he was on the board for Landon's Legacy and supported the park's master plan. He stated the focus was to create inclusive playgrounds throughout the community.
- **Kyle Jordan, 4416 Palisades Park Drive, Billings, Montana**, spoke on behalf of Landon's Legacy Foundation and voiced support for the park's master plan.
- **Kevin Bromenshenk, 3242 Jack Burke Lane, Billings, Montana**, spoke as a parent with a special needs child and stated he was in favor of the park's master plan. He stated he had been a baseball player for the Scarlets and was now a coach for the Cardinals. He continued that it was very important to be able to play baseball with his child in a setting that supported inclusion.
- **Julie Thomason, President, Kiwanis Club, 265 Caravan Avenue, Billings, Montana**, spoke in favor of the park's master plan and the importance of prioritizing this project everyone in the community could participate together. She stated every community should have parks like the one proposed.
- **Amanda Boerboom, Executive Director, Eagle Mount, 427 15th Street West, Billings, Montana**, stated her support for the park's master plan personally, and as a recreation therapist. She emphasized the importance of physical activity, especially for those with physical limitations.
- **Patrick Olp, 1416 Avenue D, Billings, Montana**, thanked the Council for their consideration and stated his support for the park's master plan.
- **Dusty Eaton, 906 North 32nd Street, Billings, Montana**, stated he had a special needs child that would benefit from a play area like the one proposed. He supported the park's master plan.
- **Jeana McClusky, 3144 Aviemore Court, Billings, Montana**, stated she is a special education teacher and that the community needed a facility as the one

proposed. She stated that Billings was behind the times for such a facility and she was supportive of the master plan for the park.

- **Marcie Smith, 3025 Lloyd Mangrum, Billings, Montana**, stated she was Landon's mother and gave an emotional testimony about how much a facility like the one proposed would have been enjoyed by her son. She thanked everyone for their support.
- **Rick DeVore, President, Parks Board, 2614 Park Ridge Lane North, Billings, Montana**, stated the project was a great example of public and private entities partnering together to create a much needed facility for the entire community to utilize. He stated the Parks Board had voted unanimously to approve the master plan.
- **Connie Wardell, P.O. Box 21432, Billings, Montana**, stated she knew Landon and knew his love of baseball. She stated the Miracle League baseball field would be a wonderful tribute to him. She stated that at a baseball field like that, children with disabilities, as well as children without them, could play together on the same field. She continued that the field was not exclusive of anyone and she supported the park's master plan.
- **Steve Zabawa, SafeMontana, 3045 King Avenue West, Billings, Montana**, stated he supported the master plan as it supported healthy, drug-free families and stated it should be a priority for the City's funding and development.

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

Councilmember Cimmino moved for approval of Item 4, seconded by Councilmember Friedel. Councilmember Sullivan stated Poly Vista Park would become a jewel in Ward 4 and for the entire community. He stated that fundraising efforts for the project were certain to be successful and voiced his support of the motion.

Councilmember Friedel asked the designer if the ball field could be utilized by the Special Olympics. Mr. Verseman stated he could not speak with authority as to the regulations Special Olympics may have, but did explain more about the Miracle League organization's criteria for the ball field.

Councilmember Yakawich stated he appreciated that the facility would allow better networking opportunities for families in similar situations and supported the motion.

Councilmember Clark stated he was interested in learning from the Parks Department the possible funding options to get Poly Vista Park and the other parks' projects moving forward.

Councilmember Brewster stated he supported any project that brought children of all abilities together to participate in sports and share common interests.

Mayor Hanel stated there was nothing more special than a child and stated it had been his privilege to know Landon Smith. He honored Mr. and Mrs. Smith and voiced his support of the motion.

On a voice vote, the motion was approved 10-0, Councilmember Cromley abstained.

5. PUBLIC HEARING AND RESOLUTION 17-10657 authorizing the sale of City-owned property described as a .248 acre lot located in Heritage Walk Townhomes Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Administrator, Tina Volek, stated that the property was one of 38 properties recommended for disposal by the Parks and Cemetery Board. She stated that Holling Drain ran under the parcel. She continued that the recommendation was that the land be sold to the highest bidder and that the minimum acceptable bid not be less than \$5,000.

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

Councilmember Sullivan made a motion to approve Item 5, including that the land be sold to the highest bidder and that the minimum acceptable bid be \$5,000, seconded by Councilmember Clark. On voice vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTION 17-10658 FOR ANNEXATION 17-05: property described as a portion of Tract A, Certificate of Survey 1651; Tract 1, Certificate of Survey 1871; a portion of Tract 1, Certificate of Survey 2465; Tract 2A, Certificate of Survey 2465; and a portion of the north 30 feet of the NW1/4, NW1/4 of Section 36, T1N, R24E adjacent to Tract 1, Certificate of Survey 2465, generally located at the northwest corner of the intersection of Rimrock Road and 70th Street West and bordering the south side of the Burlington Northern and Santa Fe Railroad corridor. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)

Wyeth Friday, Planning Department Director, gave a brief PowerPoint presentation and provided information about the property, the City's annexation policy and the recommended conditions. He stated it was the intention of the owners to subdivide the property. He explained the flood plain area and policy.

Councilmember Yakawich asked if the railroad tracks near the area were actively utilized. Mr. Friday responded that the Signal Peak mine north of Billings used it for transporting its coal on a daily basis. Councilmember Yakawich asked if it was a fast moving train. Mr. Friday responded the tracks were on a slight uphill grade so trains would not move at a great speed, but he was uncertain of the exact speed.

Councilmember Yakawich asked if the neighbors had expressed concerns about the train traffic. Mr. Friday stated that during the subdivision review process for other subdivisions in the area there had not been a lot of complaints, to his knowledge, about the train traffic.

The public hearing was opened.

- **Mark Underwood, 24 70th Street, Billings, Montana**, stated he was concerned about how the development on the property would impact future flooding to existing homes and traffic congestion. He stated it was a county-maintained dirt road that received over 200 vehicles per day at an average of 47 miles per hour. He stated there were significant dust and safety issues. He asked that something be done to address those issues.

Councilmember Sullivan asked whether Mr. Underwood and his neighbors would be willing to give right of way so the road could be paved. Mr. Underwood stated he could not speak for his neighbors, but for himself it was a possibility. He continued that pavement would be ideal.

- **Mac Fogelsong, Sanderson Stewart, 1300 North Transtech Way, Billings, Montana**, stated he was the agent for the property and addressed the three-legged process to development of the property. He explained that traffic studies would be conducted and the agents would work with Public Works concerning onsite storm water retention and storage.

Mayor Hanel confirmed with Mr. Fogelsong that storm water retention would be required for any newly developed subdivision. Mayor Hanel sked about the traffic impacts. Mr. Fogelsong stated that traffic studies would continue to be conducted and ways to mitigate impacts were being researched.

- **Gary Oakland, Oakland and Company, 175 North 27th Street, Suite 900, Billings, Montana**, introduced himself and asked for the Council's support in approving the annexation.

Councilmember McFadden asked about the construction schedule. Mr. Oakland stated that should all the planning pieces move forward as scheduled, ground scraping would begin during the winter to start infrastructure installation.

Councilmember Brown asked for a timeline for the development to be fully completed. Mr. Oakland stated it was difficult to predict, but compared Copper Ridge Subdivision's development to taking approximately 10 years to complete. He stated that a real estate meltdown occurred during that development that significantly impacted its completion. He continued that should the rate of development continue at the pace it was currently, the subdivision could be completed within 6 or 7 years.

Mayor Hanel asked about alternative routes to and from the proposed subdivision. Mr. Oakland stated that the road had been paved from Rimrock Road to 52nd Street West to the entrance of Copper Ridge Subdivision. He continued that development of Rimrock would continue west. He stated that as more development occurred on 62nd Street West and so on, he anticipated that traffic would diminish on 70th Street West.

Councilmember Swanson voiced his concerns about the railroad traffic and noise from it. Mr. Oakland stated that nearly 400 homes in the Copper Ridge Subdivision had been completed and several of them were near the railroad tracks. He stated railroad traffic moved slowly through that area due to the uphill grade. He continued that horns did not blow and many of the residents that lived in the area actually enjoyed trains and watching them go by. He stated that soundproofing and extra insulation had been added into the walls of the homes most closely located to the tracks. Councilmember Swanson asked if earthen berms were installed between the homes and the railroad tracks. Mr. Oakland responded that there were not.

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

Councilmember Sullivan moved for approval of Item 6, seconded by Councilmember McFadden. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
960: a zone change from un-zoned to Residential 7,000 (R-70) and Residential 5,000 (R-50) on Tract 2A of C/S 2465 (R-70) and Tract 1 of C/S 1871 (R-50), a 116.18 acre parcel of land, generally located north of Rimrock Road and west of Copper Ridge Subdivision. Gary Oakland, owner; Mac Folgelsong, agent. Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Zoning Coordinator, gave a brief PowerPoint presentation and stated the Council had just approved the annexation of the property in Item 6 and would not consider zoning for the newly annexed property. She explained the proposed zoning and the 10 criteria recommended by the Zoning Commission. She stated the Zoning Commission had unanimously approved the recommendation. She continued that the plan allowed for a variety of housing options and varying lot sizes.

Councilmember Cimmino asked whether the developer had considered a planned unit development for the project. Ms. Cromwell stated she did not believe so because there were so many options. Councilmember Cimmino followed by asking about fire service for the area. Ms. Cromwell stated that Fire Station 7 would provide fire service to the subdivision.

Councilmember Brown asked if R-7000-R zoning had been created for this particular situation. Ms. Cromwell stated that R-7-R and R-6-R were created about the same time and had been supported by Mr. Oakland and the Copper Ridge development

to allow for single family homes. Councilmember Brown asked if that zoning allowed for more density. Ms. Cromwell responded affirmatively.

The public hearing was opened.

- **Gary Oakland, Oakland and Company, 175 North 27th Street, Suite 900, Billings, Montana**, introduced himself and asked for the Council's support in approving the zoning.

Councilmember Yakawich stated he appreciated Mr. Oakland's creativity in developing an area where few others would. He asked whether Mr. Oakland ever considered infill projects within the City. Mr. Oakland stated he has considered properties within the City, however, most of the properties were not suitable for residential, suburban development or is not available for sale or workforce housing. He stated that some properties were priced too high to develop affordable housing. He continued that his company specialized in large scale, suburban developments. He stated that there was a need for workforce housing, particularly on the west end of Billings.

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

Councilmember Swanson moved for approval of Item 7, seconded by Councilmember Sullivan. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward III to include recently annexed property in Annexation 17-03: approximately 18 acres of land, generally located at the southeast corner of the intersection of Santiago Boulevard and Blue Creek Road south of the Yellowstone River. Jamey Eisenbath, owner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)

City Administrator, Tina Volek, stated that staff did not have a presentation on this matter, however, was available for questions.

Councilmember Friedel asked what the conditions were for Ward III expansion. Ms. Volek stated this was a misprint. Wyeth Friday reiterated that there were no conditions for ward boundary expansions.

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

Councilmember McFadden moved for approval of Item 8, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

Mayor Hanel called for recess at 9:05 pm.

Mayor Hanel called the meeting back to order at 9:25 pm.

9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE
957: a zone change from Community Commercial (CC), Residential Multi-Family-Restricted (RMF-R), Residential 5,000 (R-50), Residential 7,000 (R-70), Residential 9,600 (R-96) and Public (P) to Planned Development (PD) on an approximate 66 acre parcel of land described as: Lots 3 and 4, Western Sky Subdivision. Mont Vista, LLC, owner; KLJ Engineering, agent. The Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Zoning Coordinator, gave a brief PowerPoint presentation and explained the process for zoning one parcel of land. She explained that the existing zoning had occurred for a plan that never was developed. She continued that the property had new owners that wished to develop the property differently and thus the zone change was needed. She stated the proposed plan would allow for some community commercial zoning, personal storage warehousing, residential multi-family housing and residential manufactured home zoning with specific management implications. She explained that the manufactured home park may become a gated community. She stated the Zoning Commission had unanimously recommended approval.

The public hearing was opened.

- **Forrest Sanderson, KLJ Engineering, 2611 Gabel Road, Billings, Montana,** stated he was the agent for the project and explained the plan for the property. He continued that the plan would meet many neighborhood and housing needs.

Councilmember Clark asked if the manufactured home would be placed on foundations. Mr. Sanderson stated there were five variations proposed and he was not certain which of those would be chosen.

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

Councilmember Brown moved for approval of Item 9, seconded by Councilmember Clark.

Councilmember Sullivan voiced his concern about residential manufactured home parks and would not be supportive of creating additional manufactured home parks.

Councilmember McFadden stated there were similar developments in the area and it appeared the community supported manufactured home parks. He stated he would support the motion.

Councilmember Brown stated he would support the motion and supported housing choice diversity and multi-use options. He continued that the existing manufactured home parks in the area were well maintained.

Councilmember Friedel stated he would support the motion and encouraged ownership versus rentals for quality maintenance.

Councilmember Brewster stated there was nothing wrong with residential manufactured housing and that problems lay with poor management of the properties.

On a voice vote, the motion was approved 10-1, Councilmember Sullivan voting in opposition.

10. ORDINANCES PROHIBITING MEDICAL MARIJUANA STOREFRONTS:

- a. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 959: a text amendment to Section 27-304, Billings, Montana City Code (BMCC), prohibiting land uses contrary to local, state or federal law. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)**

Brent Brooks, City Attorney, gave a presentation with history of medical marijuana businesses in Billings and explained that the presentation would cover the issues in both Items 10(a) and 10(b). He stated that the topic was really about dispensaries as storefronts had been prohibited since 2012. Mr. Brooks stated that during a work session in March 2017, Council had asked that staff begin review and revision of Ordinances that were not up-to-date with State and Federal laws. He continued that the approval of CI-182 had generated Senate Bill 333, which had made changes to the Montana Medical Marijuana Act -- providing local governments the ability to regulate and/or prohibit dispensaries. He stated that currently, under City ordinance, no business licenses were to be issued to medical marijuana dispensaries. Mr. Brooks advised Council what the other large Montana municipalities had for zoning concerning medical marijuana. He reminded Council that marijuana is still considered by the Federal government as a Schedule 1, controlled substance that is illegal.

Councilmember McFadden asked for definition of the differences between storefronts and dispensaries. Mr. Brooks stated that storefronts are defined as having a sign or some indication that medical marijuana is being distributed from a certain location. He continued that dispensaries, per State statute, were defined as registered premises from which a provider is approved by the Department of Public Health and Human Services (DPHHS) to dispense medical marijuana to a cardholder. Mr. Brooks continued that the Council would not be addressing the personal use or relationship between physicians who certified that an individual was entitled to be a cardholder. Councilmember McFadden followed by asking whether someone who grew a few plants to provide marijuana as a caregiver would be considered a dispensary. Mr. Brooks quoted an exemption from Section 50-46-319(1) for one ounce of marijuana, four

mature plants or 12 seedlings. He stated the Council would not be addressing any of the exemptions. He advised that DPHHS heavily regulated and monitored the dispensing and Council would be addressing the commercial nature of dispensaries. Mr. Brooks stated that Council may consider to limit the number of dispensaries in the City.

Councilmember Sullivan inquired how many dispensaries were in the City limits. Mr. Brooks stated staff was aware of two. Councilmember Sullivan asked for clarification about business licenses and where were the discrepancies. Mr. Brooks stated that there were disclaimers on the business license and renewal forms that indicated a business must be in compliance with all local, state and federal laws. Mr. Brooks stated that the two dispensaries currently operating within the City had received their business licenses prior to the passing of SB-423 of the 2011 legislative session, which allowed the City to prohibit storefronts. He stated that after SB-423 was enacted, Council changed the ordinance prohibiting storefronts. He stated that there is no grandfathering of businesses who are violating federal law.

Councilmember Brown questioned whether dispensaries grew and processed marijuana or simply sold it. Mr. Brooks stated he could not provide an answer, but redirected the Council for a determination as to whether they wished to have dispensaries in the City or not, and to have some regulation on dispensaries.

Councilmember Clark asked if dispensaries were restricted to certain zoning, i.e. commercial. Mr. Brooks stated he did not believe that to be true at the present time, but Council could consider that for regulation. Nicole Cromwell, Zoning Coordinator, added that an ad-hoc committee had been organized in 2010 when there was a flood tide of business license applications for medical marijuana businesses. She stated the ad-hoc committee considered a variety of schemes for medical marijuana regulations. She continued that a temporary moratorium was adopted on new medical marijuana businesses to await the 2011 legislature outcomes before addressing zoning regulations. Ms. Cromwell stated that the legislative outcomes caused the Council to amend its ordinance to prohibit storefronts and placed a business licensing rule that those medical marijuana businesses that held a business license had 2 years to cease operations, because to have such a business was in violation of federal law. Mr. Brooks illustrated to the Council that under Section 13-438, BMCC, the 2-year amortization was struck through because it was no longer relevant. He stated the 2-year business licensing rule had been in place since 2012 and any medical marijuana business that had been in operation since 2012 would have had until 2014 to cease operation.

Councilmember Yakawich asked if the words, "no land use" would be added the zone change. Mr. Brooks responded affirmatively.

Councilmember Sullivan asked if medical marijuana businesses were required to show a business license to DPHHS. Mr. Brooks stated it was his understanding that DPHHS would not authorize a provider in a locale that prohibited its existence. Councilmember Sullivan voiced his concerns about existing business licenses. Mr. Brooks stated that if the City had erroneously issued business license renewals, that

would not have given a "pass" to those businesses per Section 13-438(a). Mr. Brooks confirmed with the Assistant City Attorney, Gina Dahl, that DPHHS did not require proof of a business license.

Chief Rich St. John, Police Department, gave a unique perspective to the issues. He stated that as law enforcement, it was the department's duty to enforce local, state and federal laws, detection and prevention. He stated that not every dispensary was engaged in criminal activity. He stated the typical problems are drug dealing, sales to minors, diversions to parcels, loitering, heavy foot and vehicle traffic, increased noise, robberies of customers and complaints about dispensaries, in general. He supported the recommendations.

The public hearing was opened.

- **Richard Abromeit, Montana Advanced Caregivers, 1101 Maggie Lane, Billings, Montana**, stated he has maintained a current business license with the City for the past 9 years with the most recent one received in January 2017. He stated code enforcement performed an inspection of the business in February with no violations. He stated that the Fire Department inspected April 13, 2017, with no violations. He continued that his business has been allowed to operate since the ordinance amendments of 2012. He stated the Councilmember Sullivan had visited his facility. He stated that the Police Department was allowed to tour the facility in 2010 and took photos, etc., to show that his business was operating the right way. He stated the business served over 460 Montana patients. He spoke in opposition to the zone change.
- **Dick Pence, 4307 Palisades Park Drive, Billings, Montana**, stated there was a significant drug problem in the Billings area and that approximately 85% of the children in foster care had parents with drug addictions. He spoke in favor of the zone change.
- **Jeff Laszloffy, 102 First Avenue South, Laurel, Montana**, introduced himself as representing the Montana Family Foundation. He stated that he had a friend with a business in Bozeman who had tried to sell his building. He stated the space shared a common wall with a marijuana dispensary and because the odor from the marijuana permeated the building, he found selling the property difficult. He stated dispensaries did not have the right to devalue others properties. He was supportive of the zone change.
- **Jeff Hill, 3855 Avenue D, Billings, Montana**, stated his wife found relief with medical marijuana use that she could not get from opiates. He spoke against the zone change.
- **Elizabeth Pincolini, 1404 Barrett Road, Billings, Montana**, spoke against the zone change. She stated that cannabis was good for the City's economy and gave examples. She suggested limits and regulations be placed on the business.
- **Frank Hartman, Billings, Montana**, stated he was against the zone change.
- **John Lister, P.O. Box 3273, Bozeman, Montana**, stated he was a patient relations facilitator and provided information about beneficial uses of medical marijuana. He was opposed to the proposed zone change.

- **Nancy Moore, 3 Broadwater, Billings, Montana**, stated she had found relief from symptoms of MS with the use of medical marijuana. She encouraged the Council to disapprove the zone change because for some people, travelling further to reach their dispensary was a burden. She spoke against the zone change. Councilmember Cimmino asked Ms. Moore if she was under a physician's care and if the physician had prescribed medical marijuana. Ms. Moore replied that was under the care of a physician who had prescribed to her.
- **Susan Sullivan, SafeMontana, 3045 King Avenue West, Billings, Montana**, read a letter from Dr. James Burke, a hematologist/oncologist, with the Billings Clinic who was for the zone change.
- **Jason Smith, Montana Advanced Caregivers, 4515 Palisades Park Drive, Billings, Montana**, gave testimony about the many people his business helps and spoke against the zone change. Councilmember Cromley asked how many states allowed dispensaries. Mr. Smith responded 27 states allowed and the number was growing.
- **Heather Watts, 1105 Parkhill Drive, Billings, Montana**, provided her opposition to the proposed zone change and stated there were too many casinos in Billings for which concern should be directed.
- **Lillian McBride, 3137 Peregrine Lane, Billings, Montana**, stated she worked in the admissions office of Rimrock Foundation until her retirement. She provided a historical recollection of the medical marijuana movement in Billings. She voiced her concern about abuses by storefronts and dispensaries. She stated her support for the zone change.
- **Mason Simmons, 2545 Phyllis Lane, Billings, Montana**, stated he was a volunteer for SafeMontana. He voiced his concern for the family unit and stated that drugs were an issue and a threat to families. He encouraged the Council to approve the zone change. Councilmember Cimmino asked if Mr. Simmons was aware of specific illegal activities the dispensaries were involved. Mr. Simmons stated he had personal knowledge due to his occupation of abuse issues. Councilmember Cimmino stated that responsibility did not lie with the dispensary, but with the medical marijuana patient. He agreed and stated the physicians prescribing needed to use more precaution to whom and for what conditions they prescribed.
- **Eric Simmons, 25 Vista Drive, Billings, Montana**, stated he has worked as a safety officer for companies in North and South Americas, a medical oxygen home supplier and monitored individuals released on bail. He stated that people who used could not obtain employment due to drug testing and the effects were dangerous for those people to operate machinery and equipment. He stated that traffic fatalities had increased in the states that had legalized recreational marijuana use. He supported the zone change.
- **Dustin Williams, 1118 Howard Avenue, Billings, Montana**, stated it was not practical to move dispensaries further away from the people who needed their services. He was opposed to the zone change.
- **Matt Rich, 2545 Phyllis Lane, Billings, Montana**, stated he supported the City being a family-oriented City and encouraged the Council to approve the zone change.

- **Amber Eubank, 5522 Forest Hill Drive, Billings, Montana**, stated that patients should not have to travel further to obtain their medical marijuana. She was opposed to the zone change.
- **Dr. Lance Parks, 1851 W M Road, Worden, Montana**, stated he had practiced medicine in Billings for 40 years and had help start the cardiac surgery program at St. Vincent's Hospital in 1989. He stated that doctors could not prescribe marijuana. He stated they evaluated the medical records of a patient and determine whether they meet one of the ten criteria established by the State of Montana. He continued that anyone using marijuana was committing a federal crime. Dr. Parks stated the medical marijuana movement was evolving quickly and he encouraged Council to delay their vote as the issue was very complex.
- **Josh Thill, 1029 Avenue D, Billings, Montana**, gave examples of the policing that was conducted at his establishment. He stated the establishment was very safe and that medical marijuana provided a better quality of life to his patients. He voiced his opposition to the zone change.
- **Dusty Watts, 1118 Howard Avenue, Billings, Montana**, stated that it took him over 2 years to obtain a medical marijuana card and that marijuana had helped him with his conditions. He would not support the proposed zone change.
- **Bart Grant, 261 Windcave Circle, Billings, Montana**, stated he was chiropractor and encouraged patients to take responsibility for their health. He continued that there were huge abuses of the dispensaries. He state that the zone change should occur to not allow dispensaries in the City limits because it could always be changed later. He stated the Council should monitor what occurs in the cities that have allowed dispensaries, before joining those communities. He was supportive of the zone change.
- **Steve Zabawa, SafeMontana, 3045 King Avenue West, Billings, Montana**, voiced concerns about green card issuances, medical criteria and dispensary qualifications. He stated more policing needed to occur. He supported the zone change.
- **Lisa Hepler, 1256 Patriot Street, Billings, Montana**, stated medical marijuana had improved her quality of life and had reduced her pain so she no longer had to take multiple harsh medications. She stated it was not fair to her or other medical marijuana patients to more dispensaries further away from them as transportation was an issue. She stated she was opposed to the zone change.
- **Cherrie Brady, 5032 Poly Drive, Billings, Montana**, stated she supported moving dispensaries out of the City's limits. She offered suggestions to patients who were concerned about added distances to the dispensaries and voiced her support for the zone change.
Councilmember Sullivan stated he was concerned that by moving the dispensaries into the County, the potential problems would be less likely to be monitored and would increase.
- **Gerald Kindsfater, 635 Custer Avenue, Billings, Montana**, stated suicide numbers in Billings was very high. He stated seeing a loved one helped by medical marijuana actually strengthens a family. He asked Council to consider taverns and other establishments that served alcohol. He asked whether the location of those establishments was the cause for alcohol abuse in Billings. He

stated the location of the establishments had nothing to do with abuse. He continued that Council should not wait for the federal government to get their act together, but rather the Council should lead and do what was right and hope the federal government would follow. He stated his opposition to the zone change.

- **Jean Lucas, 2705 Sage Springs Circle, Billings, Montana**, stated she had been a registered pharmacist in three other states, but was now in the medical marijuana business. She suggested Council create a zone for medical marijuana businesses to operate and monitor and control them that way. She was opposed to the zone change to remove the dispensaries from the city limits.
- **Steve MacKey, Attorney for Montana Advanced Caregivers, 24 Yellowstone Avenue, Billings, Montana**, spoke in opposition to the zone change. He testified that Montana Advanced Caregivers had confiscated many fake green cards and provided them to DPHHS.
- **Dennis Ulvestad, 3040 Central Avenue, A102, Billings, Montana**, stated he was a member of the zoning commission, but he was not representing the zoning commission, only his own opinion. He stated the Council should approve the zone change and try it out.
- **Sean Brady, 5032 Poly Drive, Billings, Montana**, stated he was an owner of apartment rentals and had had issues with tenants using and selling marijuana. He supported the zone change to move the dispensaries outside the city limits.
- **Jeff Eubank, 5522 Forest Hill Drive, Billings, Montana**, stated he opposed the zone change and supported creating a zoning district for medical marijuana establishments.
- **Tina Walker, 4100 Murphy Avenue, Billings, Montana**, stated she opposed the zone change and that by moving dispensaries further away would not fix family values or abuses, but penalize patients.
- **Adam Smith, 4100 Murphy Avenue, Billings, Montana**, voiced his opposition to the zone change.
- **Connie Wardell, P.O. Box 21432, Billings, Montana**, stated she had served on the ad-hoc committee and provided some history about the actions of the committee. She stated the committee had agreed to restrict the location of any medical marijuana business to a distance of 1,000 feet from any school, park or church. She referred to a map that located every school, park and church and stated it was very difficult to locate an area 1,000 feet away from those where a marijuana business could be located. She spoke about the businesses operating in warehouse-types of facilities to reduce the odor that occurred when the plants were blooming. She stated the zone change was appropriate and she supported it.
- **Vicki Eubank, 5522 Forest Hill Drive, Billings, Montana**, stated she agreed that restrictions needed to be in place, but stated she was opposed to removing dispensaries from the City to the County via the proposed zone change. She had questions about the future separation of the City/County zoning code.

Mayor Hanel invited Wyeth Friday, Planning Director, to address the zoning code separation concerns. Mr. Friday stated the Planning Department was reviewing the zoning code and the first step was to separate the City and County codes

that were currently unified. He stated there was no specific discussion about medical marijuana zoning codes.

There were no further speakers and the public hearing was closed.

Councilmember Cimmino moved to delay a decision for 30-days to review the 2010 ad-hoc committee findings, seconded by Councilmember Sullivan.

Councilmember Brown spoke in opposition and stated the committee's findings would not address the matter at before the Council presently. He stated the City was either going to ban dispensaries from the City or not ban them from the City. Councilmember Brewster stated he was comfortable that he understood what had been decided in 2010 and was prepared to vote in opposition of the motion. Councilmember Cromley stated he, too, was opposed to the motion. The motion failed 1 to 10, Councilmembers Cromley, Yakawich, Brewster, McFadden, Friedel, Sullivan, Swanson, Clark, Brown and Mayor Hanel voted in opposition.

City Attorney, Brent Brooks, advised Council that whatever action was taken on Item 10(a), should be taken on Item 10(b), after the public hearing was held and testimony heard on Item 10(b). Councilmember Brewster moved to delay the vote until after the public hearing on Item 10(b) was held, seconded by Councilmember Brown. The motion was unanimously approved.

Councilmember Cromley asked the City Attorney for advice on whether it would be legal to incorporate the testimony given during 10(a) with 10(b). Mr. Brooks responded that it was possible if Council wished to ask proponents to 10(b) to stand and identify themselves and then opponents to 10(b) to do the same.

(*) After the public hearing was closed on Item 10(b) below, Councilmember Brewster made a motion to approve Item 10(a), seconded by Councilmember Clark. Councilmember Sullivan stated he moved to Billings from Denver, Colorado, due in part to the marijuana business. He continued that he did not want that kind of environment in Billings. He stated that during his campaign, he stopped by for an impromptu tour of one of the dispensaries. He stated it was nothing like Denver businesses and the patrons whom he observed entering the dispensary appeared to be people with medical needs. He encouraged Council to vote against the motion because he wished to keep control on the business. He stated if the dispensaries were removed from the city limits, the greater Billings area would see increased dispensaries and referred to it as the "wild west" in the County, where the City could not control the expansion.

Councilmember Brewster stated he wanted to clear the air about any possible campaign contributions that he may have received from SafeMontana, Steve Zabawa or Rimrock Auto Group. He stated he has never received any money from any of them and had spoken with Steve Zabawa twice in his life, maybe. He recalled the environment about 10 years ago when the storefronts and dispensaries were abundant and armed guards were in place. He acknowledged that it was not like that any longer and he

sympathized with the people who needed medical marijuana for relief from their conditions. He supported having a specific zone established for these businesses and special reviews. He supported giving the item additional time to gather more information.

Mayor Hanel stated that delaying the decision would lend to additional hearings and more off topic testimony that would not be helpful to the Council's decision making process. He stated he supported the motion. He also added that he had not received any money from anyone during his campaign and that he had declined any offers for contributions.

Councilmember Brown asked Brent Brooks, City Attorney, if there was any law that prohibited a dispensary in the County from making deliveries in the City. Mr. Brooks stated he was not aware of any, but would prefer to research the matter. Assistant City Attorney, Gina Dahl, stated that if any business provided a service in the City, even a delivery service, then that business needed to have a business license. She stated that in this case, it was against Federal law to do anything with medical marijuana, therefore, a business license would not be issued.

Councilmember Cromley asked whether Amazon had a Billings business license as he had items delivered via courier from them. Ms. Dahl responded that they probably did not, but the courier should.

Councilmember Friedel stated it was unfortunate that medical marijuana had an identity issue because of illicit, criminal uses of marijuana and other illegal drugs. He gave a perspective from his experience as someone who worked with individuals in the criminal justice system. He stated that most of his clientele had drug problems that lead them into other criminal activity such as thefts, assaults, etc.

Councilmember Clark asked Nicole Cromwell what would happen if the zoning code ordinance passed. Ms. Cromwell stated the current code was outdated as it referred to an old Senate bill that was no longer in effect, SB-423. She stated that the ordinances in Items 10(a) and 10(b) affected each other. She continued that if the zoning amendment was not passed and if the ordinance for Item 10(b) was not passed then the City was left with outdated code that the City would try to enforce. Ms. Cromwell stated if the zoning amendment was passed, but the ordinance for Item 10(b) was not, she believed code enforcement could work with that. She stated that the current zoning code did not mention anything about medical marijuana at all. Councilmember Clark stated zoning could be created specifically to address medical marijuana businesses. Ms. Cromwell stated Council could revisit the 2010 work that the ad-hoc committee had done.

Councilmember Brown stated there was no way to determine the number of dispensaries in the city limits since business licenses could not be issued. Ms. Cromwell stated that Google indicated there were 2 in the county and 2 in the city, but it was difficult to determine if there were more dispensaries. Ms. Cromwell gave a history of

what had happened in the City between 2010 and present day as the laws were changed and its effects on the City.

Wyeth Friday, Planning Director, advised the Council that currently a medical marijuana dispensary could not obtain a business license because it would be illegal per state and federal law to do so. He stated that storefronts were prohibited. He continued that if ones business operated against local, state and federal laws, then it was operating unlawfully. City Attorney, Brent Brooks, then addressed the Council and gave options, including review ordinances from other cities. He stated it was important that whatever changes were made to the ordinances were done with consideration to each other so they would not contradict each other.

Councilmember Clark asked if dispensaries could not obtain business licenses in the City now, then why were there two in the City. Mr. Brooks stated that at least of the businesses had been notified.

Councilmember Brewster asked about grandfathering options. Mr. Brooks stated grandfathering could not be considered for a business that was operating illegally.

On a roll call vote, the motion was approved 7-4 with Councilmembers Cromley, Cimmino, Sullivan and Brown voting in opposition.

At this point in the meeting Council returned to take action on 10(b), see (**) below.

Mayor Hanel called for recess at 12:15 am, Tuesday, August 29, 2017.

Mayor Hanel called the meeting back to order at 12:30 am, Tuesday, August 29, 2017.

b. **PUBLIC HEARING AND FIRST READING ORDINANCE amending Section 7-1700, BMCC, relating to medical marijuana dispensaries and storefronts, updating the City Code to remove inconsistencies with state and federal laws. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Tina Volek, City Administrator, stated staff did not have any additional presentations, but would be available to answer any questions.

Councilmember Brewster asked if Item 10(b) was reaffirming Item 10(a). City Attorney, Brent Brooks, responded that 10(b) was adding the prohibition of medical marijuana dispensaries and storefronts and addressed some housekeeping of outdated language.

Councilmember Cromley confirmed that Item 10(b) had nothing to do with zoning. Mr. Brooks responded affirmatively, and stated Item 10(b) had to do with the

non-issuance of business licenses. Councilmember Cromley stated it appeared the ordinance in Item 10(b) had to do with definitions. Mr. Brooks responded that it certainly contained many definitions, but it also removed outdated language from Senate Bill 423 from the 2011 legislative session. He stated that Item 10(b) prohibited dispensaries and Item 10(a) prohibited anything that violated federal law, that being a schedule 1 substance. Councilmember Cromley then asked what would happen if Item 10(a) failed and Item 10(b) was passed, what would be the effect on medical marijuana distribution. Mr. Brooks stated that should Item 10(b) pass, then dispensaries would be prohibited as a business entity. He continued that under Section 4 of the ordinance, Section 13-438, BMCC, that any business license issued to a business that violates federal law could not occur within the city limits. He continued that if dispensaries were prohibited, regardless of the status of Item 10(a), there would be an enforcement issue within the City's limits.

Mayor Hanel asked Mr. Brooks if it would be correct to state that the zone change ordinance in Item 10(a) was a companion to the ordinance in Item 10(b). Mr. Brooks responded affirmatively.

The public hearing was opened.

- **Connie Wardell, P.O. Box 21432, Billings, Montana**, suggested that testimony be limited to whether the City should change its code to comply with state and federal laws.
- **Jason Smith, Montana Advanced Caregivers, 4515 Palisades Park Drive, Billings, Montana**, began questioning Councilmembers as to whether funds had been accepted by their campaigns from SafeMontana or Rimrock Auto Group. Councilmember Friedel responded that it was illegal per state law to accept campaign contributions from any business. He continued that all contributions must be made by an individual from an individual. Mr. Smith extended an invitation for the Mayor and Councilmembers to tour his business. He was opposed to the proposed ordinance.
- **Richard Abromeit, Montana Advanced Caregivers, 1101 Maggie Lane, Billings, Montana**, stated he was opposed to prohibiting dispensaries in the city limits and urged the Council to not make it a zoning issue. He stressed that Billings, as the largest city in Montana, should be a progressive leader for other cities and towns.
- **Jeff Eubank, 5522 Forest Hill Drive, Billings, Montana**, stated big politics should not play a part with patients obtaining their medical marijuana. He continued that the current dispensaries should not be forced to close their doors. He stated dispensaries employed people and provided valuable services and contributions to the community. He stated that the patients, business owners and their employees all mattered.
- **Heather Watts, 1105 Parkhill Drive, Billings, Montana**, stated that she did not feel the Council was taking this seriously and had made up their minds, no matter the testimony from their constituents.

- **Steve Zabawa, SafeMontana, 3045 King Avenue West, Billings, Montana**, stated the state law had items missing from I-182 and left a lot of room for bad actors. He stated physicians could prescribe pill forms of marijuana from a local pharmacy. He continued that he favored amending the ordinance. Councilmembers Brown and Sullivan asked about whether Mr. Zabawa would support stricter regulations for dispensaries to which Mr. Zabawa stated he would not. Councilmember Sullivan stated he would rather have two dispensaries in the City, than to have 10 more pop up in the County later. He stated it would be easier to police two. Mr. Zabawa stated the City would basically provide a monopoly to the two dispensaries by limiting business to just them. He continued that if there were going to be more, they would already be here.
- **Josh Thill, 1029 Avenue D, Billings, Montana**, stated he supported safe access for patients of medical marijuana. He opposed amending the ordinance.
- **Dustin Williams, 1118 Howard, Billings, Montana**, stated his opposition to the amending the ordinance. Councilmember Friedel asked Assistant City Attorney, Gina Dahl, whether medical doctors could prescribe medical marijuana to patients and could that prescription be filled at a pharmacy. Ms. Dahl responded that medical doctors do not prescribe, but do evaluate a patient who may meet the criteria to receive a medical marijuana card. She stated the physician would write a certification for the patient to provide to DPHHS. She continued that the patient would take the certification to DPHHS to receive a card to take to a dispensary. She also stated that there was a pill form that contained the active substance from medical marijuana known as Marinol that was available through pharmacies and could be prescribed by a physician.
- **John Lister, P.O. Box 3273, Bozeman, Montana**, addressed the questions of Councilmember Friedel concerning prescriptions and pharmacies. He explained the growing and usage process of marijuana for medical purposes.
- **Susan Sullivan, SafeMontana, 3045 King Avenue West, Billings, Montana**, stated that property owners have the right to have odor free property surrounding their homes and dispensaries should not be allowed in the city limits. She supported amending the ordinance.
- **Dick Pence, 4307 Palisades Park Drive, Billings, Montana**, stated his support for amending the ordinance.
- **Adam Smith, 4100 Murphy Avenue, Billings, Montana**, stated he wanted to stay living in Billings and needed his dispensary to stay in the city limits. Councilmember Brown asked him why he would need to move if dispensaries were not in the city limits. Mr. Smith responded that he could not provide to people if dispensaries were closed in the city.
- **Tina Walker, 4100 Murphy Avenue, Billings, Montana**, provided many reasons for the necessity of people needing accessibility to medical marijuana. She opposed amending the ordinance that would prohibit dispensaries in the city limits.

- **Steve MacKey, Attorney for Montana Advanced Caregivers, 24 Yellowstone Avenue, Billings, Montana**, stated there were only two dispensaries in the city limits and he did not believe they were a problem or caused property values to decline. He stated that property values in Bozeman and Missoula have not declined in any way. He added that Marinol (Dronabinol) was very different from the medical marijuana that was distributed through dispensaries.
- **Matt Rich, 2545 Phyllis Lane, Billings, Montana**, stated that moving dispensaries to the County would create immediate issues.
- **Vicki Eubank, 5522 Forest Hill Drive, Billings, Montana**, stated states that had legalize recreational marijuana had experienced rapid rises in property values. She continued that growing marijuana was not an option to all medical marijuana patients because they may rent and it is not allowed. She stated that would victimize poor patients. Councilmember Brown asked if supplies could be delivered. Ms. Eubank responded she thought they could be delivered.

There were no further speakers and the public hearing was closed.

(*) That this point in the meeting Council revisited Item 10(a) to vote on Councilmember Brewster's motion to approve Item 10(a).

(**) Councilmember Brewster moved for approval of Item 10(b), seconded by Councilmember Clark. On a roll call vote, the motion was approved 7-4 Cromley, Cimmino, Sullivan and Brown voting in opposition.

PUBLIC COMMENT on Non-Agenda Items -- Speaker Sign-in required. (Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign in at the cart located at the back of the council chambers or at the podium.)

- **Connie Wardell, P.O. Box 21432, Billings, Montana**, stated she found humor in how things change over time. She gave examples of a time when Council meeting topics mainly involved curbs, gutters and sidewalks. She stated those days were long past and new issues replace them.

COUNCIL INITIATIVES:

- Councilmember Brown moved to direct staff to conduct a feasibility study regarding donating decommissioned police vehicles to non-profit, probation-type agencies, seconded by Councilmember Brewster. That was met by opposition from some on the Councilmembers who stated the vehicles should be sold, not donated. Councilmember Brown withdrew his motion and Councilmember Brewster withdrew his second. Councilmember Brown then made a substitute motion to direct staff to conduct a feasibility study regarding donating or selling decommissioned police vehicles to non-profit, probation-type agencies,

seconded by Councilmember Brewster. On a voice vote, the motion was approved 8-3, with Councilmembers Cromley, Friedel and Cimmino voting in opposition.

There was no further business, and the meeting adjourned at 2:05 AM, Tuesday, August 29, 2017.



ATTEST:

BY:

Denise R. Bohlman
Denise R. Bohlman, City Clerk

CITY OF BILLINGS

BY: *Thomas W. Hanel*
Thomas W. Hanel, Mayor