

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

January 14, 2019

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 Cole called the meeting to order at 5:30 p.m. and served as the meeting's presiding officer. Mayor Cole gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Cromley, Yakawich, Neese, Ewalt, Joy, Friedel, Gibbs, Ronning, Clark and Brown.

**MINUTES:** December 17, 2018 – Councilmember Joy moved for approval, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

### COURTESIES:

- Councilmember Yakawich welcomed the North Park Task Force leadership. Members of the task force introduced themselves and presented Council with a donation for \$250 for the USS Billings. The task force members challenged the other task forces to donate as well.
- Mayor Cole stated he and Ron Spence, from the Billings Hotel and Convention Center, had attended the commissioning ceremony of the USS Wichita at Naval Station Mayport. He added that it had been a moving experience.
- Councilmember Ronning announced Bill MacIntyre, the owner of Pug Mahon's had passed away. She gave her condolences to his family.

### PROCLAMATIONS:

- There were no proclamations.

### ADMINISTRATOR REPORTS - CHRIS KUKULSKI

- Mr. Kukulski informed Council that Consent Agenda Item 1D needed to be removed from the agenda. The annexation for the property had been indefinitely placed on hold. Council would need to approve removal of the item with a super majority vote of 3/4 members.
- Mr. Kukulski reminded Council that next week's Work Session meeting would be held on Tuesday, January 22, rather than Monday, due to the Martin Luther King, Jr. holiday.
- Mr. Kukulski stated there would be a Special Work Session on Saturday, January 26<sup>th</sup>, at 8:00 am to Noon, at the Community Center, located at 390 N. 23<sup>rd</sup> Street.
- Mr. Kukulski informed Council that Regular Agenda Item 2 would need to be withdrawn, due to a request from the applicant. He added Council would need to approve the withdrawal with a simple majority vote.

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

The public comment period was opened.

The following constituents spoke in favor of Consent Agenda Item M, Zone Change 971:

- **Joshua McIntosh, 5502 Clear Sky Drive, Billings, Montana:** stated the homeowners in the Daybreak Community had met with the builders of the proposed project and all of the residents in attendance had supported the project. Councilmember Neese asked how many homeowners had attended the meeting. Mr. McIntosh stated there had about 50 people in attendance.
- **John Beck, 3486 Mountain Circle, Billings, Montana:** stated a venue like the one proposed could help foster community spirit and supported the proposed plan.
- **Cliff Kirkham, 5505 Sunny Cove, Billings, Montana:** stated he was in support of the microbrewery and looked forward to walking to and from the establishment.
- **Keisha McIntosh, no address given:** stated the microbrewery would be a place to meet neighbors and could help combat urban sprawl.
- **Scott Aspenlieder, Performance Engineering, Billings, Montana:** stated they had met several times with the community and had worked hard to be a good neighbor. He added the proposed business would be a restaurant that served beer and wine, and would not be a bar. He stated he looked forward to the microbrewery.
- **Brian Parkins, 5309 Sundance Mountain Circle, Billings, Montana:** stated he wanted to retract his previous statement about 98% of his neighbors being against the project. He stated it had been directed towards “The Den” and not the proposed business. He added he was in favor of the microbrewery.
- **Ty Schmechel, Agent, Billings, Montana:** stated the proposed development would be an asset to the community. He added there would be green space and bike paths in the plan that would benefit the area. He stated the surrounding neighbors had spoken in favor of the establishment. Councilmember Friedel asked why the developer had not chosen a property that would not need a zone change to become a suitable fit. Mr. Schmechel stated the lot was chosen due to its size and location. He added that by being located further away from arterial streets, it allowed a nicer environment for sitting on the patio and playing outdoor games.
- **Todd Buchanan, 2046 Pryor Lane, Billings, Montana:** stated there was a lack of services on the west end and thanked Council for their due diligence on the project.
- **Steven Wells, 4832 Audubon Way, Billings, Montana:** stated the proposed establishment would be a benefit to the area and the green space, trees, etc. would be an improvement for the surrounding neighbors.

The following constituents spoke against Consent Agenda Item M, Zone Change 971:

- **Robert Deines, owner of property located at 4915 Grand Avenue, Billings, Montana:** stated he was not against the microbrewery but the business needed to purchase property that did not require a zone change.
- **Pam Purington, 3606 Quimet Circle, Billings, Montana:** stated she was not opposed to the proposed business, but was against the zone change. She added there were other properties that would be sufficient for the proposed establishment.
- **Dennis Ulvestad, 3040 Central Avenue, Billings, Montana:** stated, as a citizen, he was opposed to the zone change and did not think the City should approve it.

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

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **W.O. 17-12, Landfill Drop-Off Facility.** (Opened 12/18/18) Recommend delay of award until January 28, 2019.
2. **W.O. 17-26, Rimrock and 62nd Stormwater Detention Pond.** (Opened 12/18/18) Recommend FirstMark Construction; \$810,888.
3. **W.O. 18-24, WRF Administration Building Improvements.** (Opened 12/18/18) Recommend not awarding a contract.

B. **Professional Services Contract for Coulson Park Master Plan; DHM Design; \$89,876.**

C. **Amendment No. 2, Terminal Building Lease, U.S. Government for the benefit of the TSA; \$33,108.96.**

D. **Development Agreement with Deelen Property Trust, for future infrastructure improvements to Meadowcreek Drive and 58th Street West.**

E. **2018 Domestic Violence Grant for the Police Department for overtime, training and supplies; \$34,000.**

F. **Recreational Trails Program Grant Application for a restroom facility at the Shiloh Conservation Area; up to \$37,000.**

G. **Memorandum of Understanding (MOU) with Beartooth RC&D Economic Development District; \$12,457.09 annual expense.**

H. **Sidewalk Easement with W2K Animal Services, Inc.**

- I. **Donation to the Fire Department from ExxonMobil for emergency response equipment; \$2,500.**
- J. **Grant Application Request** to submit application for AmeriCorps VISTA and authorize City staff to negotiate and finalize the project if awarded.
- K. **Resolution 19-10776** authorizing the issuance and calling for a public bond sale of Series 2019 Solid Waste Revenue Bonds.
- L. **Second/Final Reading Ordinance 19-5721** amending BMCC, Sections 18-300 through 18-309, Nuisance Code.
- M. **Second/Final Reading Ordinance 19-5722 for Zone Change 971:** a zone change from Neighborhood Commercial (NC) to Planned Development (PD) with underlying NC, to allow 1 microbrewery license and 1 restaurant beer and wine license (no gaming) on a 3.6 acre parcel of land described as: Lot 4, Bock 1, MK Subdivision, north of Grand Avenue and west of 54th Street West. MYK Enterprises, owner; Scott Aspenlieder, agent. Zoning Commission has no recommendation on a vote of 1 in favor and 4 opposed to a motion to recommend approval and adoption of the findings of the 10 criteria.

N. **Bills:**

- 1. December 3, 2018
- 2. December 10, 2018

Councilmember Ewalt separated Item 1A3 in order to abstain.

Councilmembers Cromley, Neese and Brown separated Item 1N1 in order to abstain.

Councilmember Neese separated Item 1N2 in order to abstain.

Councilmember Friedel separated Items 1B, 1L and 1M for discussion.

Councilmember Cromley moved to remove Consent Agenda Item 1D from the agenda, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

Councilmember Yakawich moved for approval of the Consent Agenda with the exception of Items 1A3, 1B, 1L, 1M, 1N1 and 1N2, seconded by Councilmember Friedel. On a voice vote, the motion was unanimously approved.

Councilmember Friedel, in reference to Item 1B, asked about the selection process for the project. Mike Whitaker, Parks and Recreation Director, stated the selection committee had included staff from the Parks and Recreation Department, Parks and Recreation Board members, a Planning Department representative and Big Sky Economic Development (BSEDA). He stated the selection committee had interviewed three firms and had chosen DHM Design from Bozeman as the best match.

Councilmember Neese asked if staff would be involved in the project. Mr. Whitaker stated they would have some involvement. Councilmember Neese asked if it was possible to add the cost of staff time to the grant amount for reimbursement. Mr. Whitaker stated they could look into that issue. Councilmember Ronning thanked Mr. Whitaker and staff for taking the time to apply for grants.

Councilmember Ewalt asked if adequate financing was available to ensure completion. Mr. Whitaker stated the State would be providing money and there was a challenge grant to BSEDA for a \$250,000 match. He added there should be adequate funding to move forward.

Councilmember Joy moved for approval of Item 1B, seconded by Councilmember Yakawich. On a voice vote, the motion was unanimously approved.

Councilmember Friedel, in reference to Item 1L, requested a separate vote. Councilmember Yakawich moved for approval of Item 1L, seconded by Councilmember Cromley.

Councilmember Neese stated he would like staff to provide a report every 90 days and a yearly status report on any Nuisance Code issues. Mr. Kukulski stated staff could inform Council of issues every 90 days and a yearly report. Councilmember Joy stated many of the issues happened during the summer months, so was uncertain if the yearly report would be necessary, but thought the 90-day update would be good.

Councilmember Brown stated he would not support the amendments due to the intent or interpretation of allowing exceptions.

Councilmember Yakawich stated the various task forces were supportive of the amendments and hoped the changes would help boost the community.

Councilmember Neese asked why the process was being changed from a criminal to a civil infraction. Brent Brooks, City Attorney, stated it would be easier to achieve compliance and would allow the Code Enforcement Department to explain the situation to the judge. He added going to court was the last step for Code Enforcement and the goal was compliance not punishment.

Councilmember Clark stated he had concerns with future staff using their discretion and overstepping people's property rights.

On a roll call vote, the motion was approved 9-2, Councilmembers Friedel and Brown opposed.

Councilmember Friedel, in reference to Item 1M, stated he had spoken with Mr. Schmechel and his son to clarify some details. He asked staff for clarification on the difference between Neighborhood Commercial (NC) and Community Commercial (CC) restrictions. Monica Plecker, Planning Division Manager, stated NC was less intense than CC. She stated Planned Development (PD) with underlying Neighborhood Commercial meant NC rules applied except for items added as an article in the planned development. She added that any changes not included in the PD would need to be approved by the Zoning Commission and by Council.

Councilmember Ewalt moved for approval of Item 1M, seconded by Councilmember Joy. On a voice vote, the motion was approved 10-1, Councilmember Yakawich opposed.

Councilmember Joy moved for approval of Item 1N1, seconded by Councilmember Friedel. On a voice vote, the motion was approved 8-0, Councilmember Cromley, Neese and Brown abstained.

Councilmember Joy moved for approval of Item 1N2, seconded by Councilmember Friedel. On a voice vote, the motion was approved 10-0, Councilmember Neese abstained.

Councilmember Yakawich moved for approval of Item 1A3, seconded by Councilmember Clark. On a voice vote, the motion to not award the contract was approved 10-0, Councilmember Ewalt abstained.

#### **REGULAR AGENDA:**

- 2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 972: a zone change from Residential 7,000 (R-70), Residential Multi-Family Restricted (RMF-R) and Public to RMF-R, Residential Manufactured Home (RMH) and Public on a 29.97 acre parcel of land generally located south of King Ave West and west of South 44th Street West. CK Land, LLC, owner; Propriedad, LLC, agent. Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Councilmember Clark made a motion to withdraw Item 2 from the agenda, seconded by Councilmember Friedel. Councilmember Friedel asked if public comment needed to take place. Mr. Brooks stated opening the public hearing would be at Council's discretion, but it would not be required. On a voice vote, the motion to withdraw Item 2 was unanimously approved.

3. **PUBLIC HEARING AND SPECIAL REVIEW 971: a special review to activate the gaming license to an existing all-beverage liquor license on a 11.179 acre parcel of land generally located at 1801 Majestic Lane. CB Industries, LLC, owner; Carol Brosovich, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Karen Husman, Planner, provided a brief presentation and stated the special review would allow the use of the gaming portion of an already active license at the Big Horn Resort. She added the Zoning Commission had forwarded a 5-0 recommendation for approval.

Councilmember Brown asked for clarification on gaming licenses being included with liquor licenses. Ms. Husman stated gaming licenses were counted as a license, even if they were not currently active. Mr. Kukulski stated staff would be researching if dormant licenses were included in the State gaming license numbers.

Councilmember Gibbs asked for clarification on a moratorium for the numbers of casinos. Wyeth Friday, Planning Director, stated there had been discussion in the past and it had been decided to approach the issue through zoning districts and separation distances. Councilmember Gibbs asked how many licenses were in the City. Mr. Friday stated there were 113, but would clarify whether the number included any dormant licenses. He reminded Council that gaming licenses were attached to all-beverage licenses.

Councilmember Clark asked what the State had specified would be the maximum number of allowed licenses. Mr. Friday stated the City did not have any control of the quota and the law had changed at the State level. Councilmember Clark asked for clarification on what would happen if Council denied the request. Mr. Friday stated it would be very difficult for Council to deny the Special Review based on the criteria. Mr. Brooks stated Council would need to base their decision on the criteria listed.

Councilmember Neese asked for clarification on allowing gambling in the facility since children played there. Mr. Friday stated the current regulations set 600-foot separation guidelines from churches, schools and public parks with playground equipment. He added that a private waterpark would not fall into the separation requirements. Mr. Brooks reminded Council of the special review criteria and the conditions recommended by staff.

The public hearing was opened.

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

Councilmember Friedel moved for approval of Item 3, with the Zoning Commission recommendations, seconded by Councilmember Ewalt. On a voice vote, the motion was approved 9-2, Councilmembers Neese and Gibbs opposed.

4. **PUBLIC HEARING AND SPECIAL REVIEW 972: a special review to allow the installation of a 50-foot tall faux tree as a camouflage wireless facility on a 1.304 acre parcel of land generally located at 2420 13th Street West. Presbyterian Church, owner; Kevin Howell, Verizon Wireless, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 3 criteria. (Action: approval or disapproval of Zoning Commission recommendation.)**

Mayor Cole recused himself from Item 4 and Councilmember Yakawich presided over the proceedings.

Ms. Husman provided a brief overview of the surrounding property and proposed location of the faux tree.

The public hearing was opened.

- **Kevin Howell, Verizon Wireless representative:** stated the area was lacking in cell coverage and the tower would provide better coverage. He added the tree would blend in with the surrounding area. Councilmember Neese asked about the generator noise level and usage times. Mr. Howell stated the "whisper quiet" generator would run when the power went out and 20-30 minutes once per week for exercise. He added the generator was about 63-65 decibels. Councilmember Ewalt asked for clarification on the fencing height. Mr. Howell stated the fence would be 6 feet tall. Councilmember Neese asked for clarification on the ditch location near the proposed site. Mr. Howell indicated the run off should not be an issue according to the map. Councilmember Neese asked if the Billings Water Association (BWA) had been contacted about the tower. Mr. Howell stated they had not since the property was not owned by BWA. Ms. Husman stated the ditch was a right-of-way, therefore, they did not need to contact BWA.
- **Jerry Wolf, 38 Heatherwood Lane, Billings, Montana:** stated the tower was located too close to his house. He was concerned with potential health concerns and noise.
- **Carol Mick, 78 27<sup>th</sup> Street West, Billings, Montana:** stated she was concerned with potential issues for the birds in the area.
- **Kimberly Wolf, 2710 Vigilante Trail, Billings, Montana:** stated it was unacceptable to have a cell tower so close to her parent's home. She added that she was concerned with public safety issues and the location of the tower.
- **Bill Smith, 37 Heatherwood Lane, Billings, Montana:** stated he was concerned with possible health issues and issues with a tower lowering property values.
- **Dr. Bob Wilmouth, 40 Heatherwood Lane, Rocky Mountain College President, Billings, Montana:** stated he was concerned with the safety of future generations and requested that other sites be considered. Councilmember Yakawich asked if Rocky Mountain College had been approached about having

the tower on their property. Dr. Wilmouth stated they had not been approached during the six years he had been president.

- **Jan Wolf, 38 Heatherwood Lane, Billings, Montana:** stated she was concerned about the noise and harmful radiation.
- **Dennis Ulvestad, 3040 Central Avenue, Billings, Montana:** stated Council should support the wishes of the people in the neighborhood and thought the tower would have a negative effect on the value of the surrounding houses.

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

Mayor Pro Tempore Yakawich asked for clarification on the health effects of cell towers. Mr. Kukulski disclosed that federal laws stated that local governments could deny cell tower permits, but it must be based on a reasoned approach, otherwise the FCC would be authorized to pre-empt the local decision and grant the permit. He stated the three key components for local ordinances were:

1. Must not unreasonably discriminate among providers.
2. May not oppose a blanket prohibition against placing telecommunication towers across the city.
3. May not impose more stringent environmental effects limits on radio frequency emissions than those adopted by the FCC.

He added that the proposed tower did not exceed the frequency emissions allowable.

Councilmember Cromley moved for approval of Item 4, seconded by Councilmember Joy.

Councilmember Friedel asked for clarification on other locations options, such as Rocky Mountain College or a nearby park. Mr. Howell stated he had been working on the Verizon Wireless capacity issue since December 2010 and Rocky Mountain College had been approached multiple times about placing the tower on their property. He added they had refused the requests. Mr. Howell stated there had been many options considered but none of the locations had worked out. He added that according to the Telecommunications Act of 1996 "local jurisdictions were not allowed to use health effects as part of their decision making process". Councilmember Friedel asked about the option of moving it closer to the church. Mr. Howell stated the Presbyterian Church had not wanted the tower closer to the church.

Councilmember Neese asked if the tower had red lights at the top of it. Mr. Howell stated a 50-foot tower should not need red lights on the top of it.

Councilmember Ronning asked about possible nearby alternate locations. Mr. Howell stated zoning was not appropriate at many of the nearby locations.

Mr. Brooks reminded Council that United States Code Section 332 stated the placement of personal wireless service facilities could not be denied on the basis of environmental effects of radio frequency emissions, if emissions met FCC regulations.

Councilmember Neese asked for clarification on the statement that Rocky Mountain College had denied a request for the tower to be placed on their property. Dr. Wilmouth stated he had recently found out there had been discussion about the placement of the tower on Rocky Mountain College property. He added that he was previously unaware that any discussions had taken place.

Councilmember Brown stated he would be opposing the tower due to its proposed location.

Councilmember Neese made a substitute motion to delay Item 4, in order to give Verizon Wireless and Rocky Mountain College time for discussion. The motion died due to lack of a second.

Councilmember Ronning stated she would be opposing the motion and was angry with staff regarding the pictures that had been presented. She stated the pictures needed to be taken from the exact location of the proposed item. She stated she protested the code for not allowing local governments the ability to make decisions for the constituents.

Councilmember Joy stated Council had not heard any facts regarding the tower affecting property values.

On a roll call vote, the motion for approval failed 3-7, Councilmembers Yakawich, Neese, Ewalt, Gibbs, Ronning, Clark, and Brown opposed. Mayor Cole abstained from the vote.

Councilmember Gibbs made a motion to deny the tower application due to aesthetics, location, noise and incompatibility of the neighborhood, seconded by Councilmember Ronning.

Councilmember Friedel asked for clarification on the noise limits in the area. Nicole Cromwell, Planner and Code Enforcement Supervisor, stated the residential noise limit at property lines during the day was 65 decibels and 55 decibels during the evening.

On a roll call vote, Councilmember Gibbs motion of denial was approved 6-4, Councilmembers Cromley, Neese, Joy and Friedel opposed. Mayor Cole abstained from the vote.

**PUBLIC COMMENT on “NON-AGENDA ITEMS”. Speaker Sign-in required.**  
*(Restricted to ONLY items not on this printed agenda. Comments are limited to 3*

minutes. Please sign the roster at the cart located at the back of the Council chambers or at the podium.)

The public comment period was opened.

- **Ken Crouch, 1642 Wembly Place, Billings, Montana:** encouraged Council to approve a non-discrimination ordinance for the City. He invited Council to come to a meeting on Saturday, January 19th at 1:00 pm at Grace United Methodist Church.
- **Carol Mick, 78 27<sup>th</sup> Street West, Billings, Montana:** stated the City could do more to make everyone feel accepted. She encouraged Council to support a non-discrimination ordinance.
- **John Baber, 1745 Avenue C, Billings, Montana:** encouraged Council to research an aerial tramway connecting the airport with the hospitals, colleges and downtown Billings.
- **Dennis Ulvestad, 3040 Central Avenue, Billings, Montana:** encouraged Council to research changing the speed limit from 25 to 35 mph on 8<sup>th</sup> Street West between Central and Broadwater. Councilmember Joy asked staff to look at the speed limit in the area to see if it was an appropriate speed.

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

#### COUNCIL INITIATIVES:

There were no Council Initiatives.

There was no further business, and the meeting adjourned at 8:50 p.m.



CITY OF BILLINGS

BY:

*William A. Cole*

William A. Cole, Mayor

ATTEST:

BY:

*Denise R. Bohlman*  
Denise R. Bohlman, City Clerk