

Billings City Administrator Weekly Report

July 1, 2021

1. **COVID 19 State of Emergency** – Yesterday afternoon, Governor Gianforte ended the state of emergency in Montana. One of the immediate impacts is that council members will no longer be allowed to participate in a city council meeting by phone or video conference. You must be present during the meeting to participate. We will investigate the impacts of lifting our City state of emergency asap.
2. **Public Safety Mill Levy** – Following the adoption of the ordinance amending the City Charter to add a public safety mill levy, I (City Attorney, Gina Dahl) wanted to take the opportunity to remind all of us of the rules regarding advocacy for or against a ballot measure.

Elected officials may not use any public resources (facilities, equipment, email, computers, letterhead, phone, supplies, etc.) to conduct any activities in support of, or opposition to, a candidate or ballot issue. Elected officials may use their own private resources to solicit support for or opposition to a ballot issue. You may use your title during such advocacy, so long as public resources are not being used.

Personal political speech is not prohibited; rather, it is the use of public time or resources in the presentation or furtherance of political speech that is prohibited. While a public officer or employee is not required to shed her public persona in order to exercise her right to free speech, she may not use public resources when expressing personal political beliefs.

Any materials produced on behalf of the City for educational efforts must contain an appropriate attribute and any expenses associated with such materials must be reported. This attribute must be included on any materials in print or digital format. Please use the following for any materials must read: "Paid for by the City of Billings, P.O. Box 1178, Billings, MT 59103, Andrew Zoeller, Treasurer". If you anticipate participating any of the City's educational efforts, please contact me or Chris for additional information because there are additional requirements for tracking expenses and time spent on such activities.

Attached is a memo prepared and presented to you in June 2020 that provides more detailed information for your review. Also attached is a memo that was provided to city staff providing guidance regarding political activity.

There is also a lot of information on the Commissioner of Political Practices website (politicalpractices.mt.gov) that you may find helpful when navigating what is required of a public official as it relates to political activity. However, please feel free to contact me with any questions and I would be happy to visit with you.

3. **Public Safety Mill Levy (PSML) Presentations** – Chief St John and I presented the PSML to the Past Chamber Board Network Tuesday. We will continue to accept invitations for education sessions; however, we expect to ramp up strong from mid-August through the election. Ballots will be mailed, Wednesday, October 13. Traditionally, between 25%-33% of voters return their ballots immediately. We will continue developing and refining our educational materials and

presentations.

4. **Spirit of Montana Award** – Yesterday, Governor Gianforte presented the Spirit of Montana Award to the Billings Fire Department's Technical Rescue Team for their work in saving the life of a man trapped in a silo at Western Sugar Cooperative in May. Congratulations to a job well done – Thank You!
5. **Utility Payment Processing Software** - Public Works recently participated in a case study with InvoiceCloud, our online payment software. InvoiceCloud, along with WaterSmart was implemented about 18 months ago and has been well-received by both customers and staff for its user-friendly platform that is easy to use. The case study is attached and goes into more detail about the benefits realized since implementing the software. (See attached)
6. **BUILD Grant Update** - The City of Billings was awarded a BUILD grant in September of 2020. To keep the City Council updated on activities and milestones, this update will be provided monthly. Information will be provided by the Public Works Engineering Division, Planning Division and City Administration. To provide as much information on the BUILD grant process, staff has developed a website to house information. This website is still in development and information will be continually added as available if please check back for updated material. [BUILD Grant](#).
 - The draft agreement template has been received by the city. This agreement will be developed with input from the city and FHWA in the next few months. Note: The agreement cannot be submitted until the construction documents are ready. This means the city will need to complete the right-of-way purchase, environmental documents and final construction documents before the agreement is sent to Federal Highways (FHWA) for its review. It is anticipated that the FHWA review and signing could take up to 6 months. This tentatively puts an executed agreement to April 2022; however, staff is doing everything possible to expedite any requirement. Once the city receives the executed agreement, the project can be bid. These tentative dates do not take in account the potential for some back and forth between the city and FHWA on the final agreement.
 - At the June 15 PCC meeting, the city hosted an official kickoff meeting of the BUILD grant. Those in attendance included representatives from Senator Tester, Daines and Congressman Rosendale. Lucia Olivera, FHWA District Administrator, City Council representation and guests. This kickoff officially started the process for developing the Grant Agreement. City staff has been working locally to get our requirements initiated and completed. Those items are outlined further below.
 - There are three active Engineering items occurring.
 - The environmental work is nearly complete, and a draft package will be submitted to FHWA for review this week. The environmental work consists of the noise determination memo, biological resources review, cultural resources review, air quality review, indirect and cumulative effects analysis, and aquatic resources report

(wetland report). A meeting was held with FHWA officials this week to discuss the submittal and review timeline. The initial review is anticipated to take two weeks, upon which comments will be addressed and resubmitted.

- The Skyline Trail portion of the project is proceeding, with the geotechnical borings scheduled for the end of July. The professional services agreement for final design and geotechnical work will be approved at the July 12th City Council meeting. Final design would be started and completed after the soil borings and analysis is completed.
- The city has received the updated appraisals (for 2021) and is now having them reviewed by a separate third-party appraiser per FHWA requirements. The third-party ROW appraisal review will begin in July. On the IBL road design, the engineering division is working with Sanderson Stewart to add the federal requirements into the bidding documents and reviewing the 90 percent construction plans and specifications. In parallel to the design effort, city staff is meeting with individual landowners to discuss development of their property.
- Planning continues to work on setting up the numerous progress reports that will be required FHWA to administer the grant.

Next steps: Continue initial review of the agreement, continue right-of-way procurement and environmental work. Staff will continue with regular meetings and correspondence with our FHWA representative. BUILD website will be continually updated with information as it is available.

- 7. Council Meetings** – The last Council meeting held at the Library Community Center was held on Monday, June 28th. The next meeting, a Work Session, will be held in the Council Chambers at City Hall on Tuesday, July 6th at 5:30 pm. (Council photo below)

Have a wonderful 4th of July weekend!



CITY OF BILLINGS

CITY ATTORNEY'S OFFICE

P.O. BOX 1178

BILLINGS, MONTANA 59103

(406) 657-8205

FAX (406) 657-3067

June 24, 2020

To: Chris Kukulski, City Administrator
Kevin Iffland, Assistant City Administrator
Rich St. John, Police Chief
Bill Rash, Fire Chief
Andy Zoeller, Financial Services Director
Wyeth Friday, Planning and Community Development Director

From: Brent Brooks, City Attorney *BB*
Gina Dahl, Assistant City Attorney

Re: Public Safety Mill Levy Election: Education v. Advocacy Rules and Restrictions for City Staff and Elected Officials

BACKGROUND

On June 22, 2020, The Mayor and Council approved an ordinance and ballot language resolution submitting the Public Safety Mill Levy (PSML) to voters for approval in a special mail ballot election currently scheduled for September 15, 2020. If approved by voters, this mill levy will amend the City Charter by allowing 60 mills to be levied each year indefinitely into future years. The next step in this process concerns the rules and restrictions for City elected officials and City staff members as information is provided to City voters concerning the levy.

PURPOSE of MEMORANDUM

This memorandum addresses the requirements to keep records and report expenses and time incurred regarding the mill levy election as required of Incidental Political Committees as defined by Montana election statutes.

DUTY OF FILING REPORTS OF CONTRIBUTIONS AND EXPENDITURES:

Montana Code Annotated (MCA) §13-1-101(31) defines a political committee broadly:

(31)

(a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) **to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.**

(b) Political committees include ballot issue committees, **incidental committees**, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

(emphasis added). An electioneering communication includes publicly distributed printed materials that do not support or oppose a ballot issue, that can be received by more than 100 recipients in the district that refers to a ballot issue or other question submitted to the voters. MCA § 13-1-101(16)

Section 13-1-101(23), MCA, defines an "incidental committee" as one that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

The Montana Commission on Political Practices (COPP) is a state agency which regulates political campaign practices and enforces Montana election laws. COPP has indicated that the election rules do apply to cities as they relate to ballot issues such as the PSML.

Because public monies may be expended in educating the public on the PSML ballot issue, the City must register with the COPP as an Incidental Political Committee and appropriately report expenditures.

INCIDENTAL POLITICAL COMMITTEE REGISTRATION PROCESS

Our office will prepare and file the C-2 Form and then thereafter the C-4 will need to be prepared and filed under the schedule set by the COPP's rules. We suggest that Wynnette Maddox and a staff member primarily shepherd the process and coordinate the reporting, in conjunction with the Finance Department. Someone will need to assist in calendaring and reporting the information which is provided by those City officials or employees who work on the process, similar to that which is involved in lobbying the State Legislature. Attached in this regard is a template to use to track time and expenses that I we have modified for this purpose

In preparing the C-2 Form, I would suggest that Andy Zoeller be designated as the Incidental Committee Treasurer and perhaps Kevin Iffland as Deputy Treasurer, Please let me know your thoughts in this regard.

OTHER APPLICABLE STATUTORY PROVISIONS

1. City Staff Member Restrictions: Education But Not Advocacy

After registering as an Incidental Political Committee, City staff members will be authorized to expend time and public monies that are allowed under the following criteria provided in MCA §2-2-121(2):

(a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to . . . the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), ... [w]ith respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff **related to determining the impact of passage or failure of a ballot issue on state or local government operations;**

(Emphasis added)

2. Elected Officials

The above restriction in bold font is different with an elected official, such as the Mayor or Councilmembers. A 2005 Montana Attorney General's (AG) opinion provides some guidance on such use of public resources:

Although "public time" is not defined, a reasonable construction would be those hours for which an employee receives payment from a public employer. **Elected officials, of course, do not have specific hours of employment nor do they receive vacation leave or other time off duty. They receive annual salaries rather than hourly wages. Thus, they could be considered to be on "public time" at all times. However, as long as public facilities, equipment, supplies, or funds are not involved, elected officials are not restricted in the exercise of political speech by the provisions of Montana law.**

...

The presumption is that free speech rights are protected and only the very specific restrictions in Mont. Code Ann. § 2-2-121 can be invoked to limit a public officer's or public employee's right to political speech.

THEREFORE, IT IS MY OPINION:

A public officer or public employee may engage in political speech so long as his or her speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds.

51 Mont. Op. Atty. Gen. 1 (2005), P. 1 (emphasis added).

This AG opinion is attached here along with a 2002 memo from former Montana Attorney General Joseph Mazurek to a citizen group supporting a state-wide Initiative, for your review. As an example of a restriction, the Mayor and Council would not be authorized to advocate during Council meetings or City advisory board meetings since this is using public resources and staff time.

CONCLUSION:

The City Attorney's Office has been advised of the stated desire to educate and inform the public as to the effects of passage or failure of the Public Safety Mill Levy ballot issue. Therefore, the City should complete the C-2 Form register as an Incidental Political Committee and report the activities, including staff time and costs expended.

As provided in § 2-2-121, City staff **should not** promote or oppose the Public Safety Mill Levy in the education efforts, but instead restrict their incidental activities to those related to determining and communicating to the public the impact of passage or failure of a ballot issue on City operations.

Undoubtedly there will be unpredictable issues and questions not addressed in this brief memorandum that arise as the education process proceeds and we will assist in answering them.

Attachments



P.O. Box 1178
Billings, MT 59103
P 406.657.8433
F 406.657.8390

July 15, 2020



To: All City Employees

From: Chris Kukulski, City Administrator
Brent Brooks, City Attorney

Re: Public Safety Mill Levy Election: Education v. Advocacy Rules and Restrictions for City Staff

On June 22, 2020, the Mayor and Council approved an ordinance and ballot language resolution submitting the Public Safety Mill Levy (PSML) to voters for approval in a special mail ballot election currently scheduled for September 15, 2020. If approved by voters, this mill levy will amend the City Charter by allowing 60 mills to be levied each year indefinitely into future years.

This memo is to provide guidance to City staff about the conduct they may engage in when providing information to City voters concerning the levy.

City Staff Restrictions: Education But Not Advocacy

City staff members may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to the passage of a ballot issue unless the use is:

- (i) authorized by law; or
- (ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

"Properly incidental activities" are restricted to the activities of a public officer, the public officer's staff, or legislative staff **related to determining the impact of passage or failure of a ballot issue on state or local government operations.**

City staff may prepare educational and informational items, fliers, presentations, etc. and distribute those materials to the public regarding the impact of the passage or failure of the PSML. Any staff time must be tracked and provided to Wynnette Maddox, Executive Secretary in Administration, and any expenses incurred must be reported to Andy Zoeller, Finance Director. Contact your supervisor for reporting/tracking forms.

Examples/FAQs

During work hours, employees may not advocate for or against a ballot issue (PSML) and may **only** engage in educational activities.

For example, during work hours, you may remind someone to vote, "Don't forget to vote!" But, you MAY NOT remind someone to vote **for** the PSML, "Don't forget to vote *for* the PSML!"

Any educational activities are OK during work hours if it is "related to determining the impact of passage or failure of a ballot issue on state or local government operations." (MCA 2-2-121(2)(b)(i)). This may include gathering statistics and data; preparing graphs, tables, or other materials; presenting or distributing material to the public; or various other tasks. However, you **MUST TRACK ANY TIME** spent on such activities so it can be properly reported by the City.

Any fliers, handouts, brochures or other materials prepared for educational efforts must contain an appropriate attribute and any expenses associated with such must be reported. Any expenses must be reported as they are incurred, not when they are paid. You should contact your supervisor for details about proper procedures.

Outside of work hours, on your own time, you may advocate for or against a ballot issue and may identify yourself as a City employee on Facebook, in letters to the editor, or speaking with others in support of PSML.

You may advocate for or against the PSML on your own time as long as you are not using ANY City resources, supplies, or equipment. For example, you should not wear a city-issued uniform while advocating on your own time but you may wear department "schwag," like t-shirts, are OK (a shirt the employee is not allowed to wear to work). Additionally, you should not use a city-issued cell phone, laptop/computer, or email system when advocating for or against any ballot issue.

CONCLUSION:

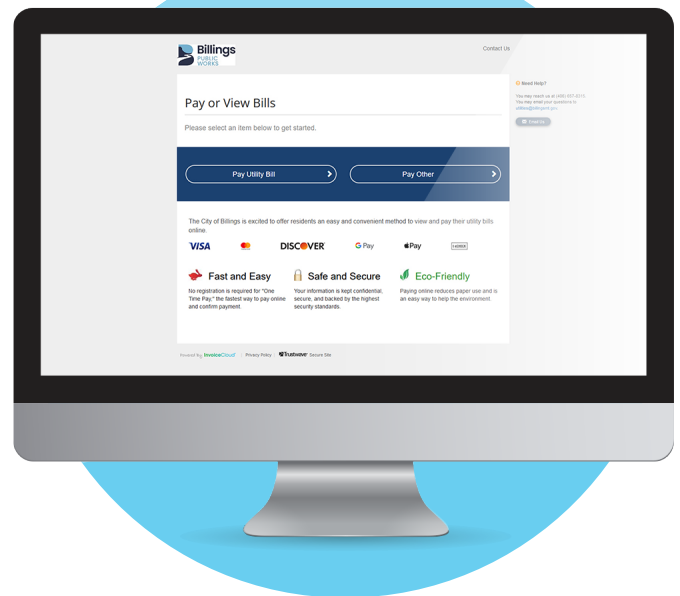
City staff **should not** promote or oppose the Public Safety Mill Levy in any education efforts, but instead restrict their activities to those related to determining and communicating to the public the impact of passage or failure of a ballot issue on City operations.

Undoubtedly there will be unpredictable issues and questions not addressed in this brief memorandum that arise as the education process proceeds so please feel free to contact us with questions. You may also refer to Commissioner of Political Practices website at <http://politicalpractices.mt.gov/> for more information.

City of Billings Increases E-Payments with User-Friendly Solutions from Invoice Cloud and VertexOne WaterSmart

With a population of 110,000, the city of Billings, Montana needed an efficient way to process payments for the City's water, sewer, and garbage accounts. While looking for a billing platform, the City was also implementing VertexOne WaterSmart™—an engagement and data analytics platform that delivers outbound communication solutions, automated self-service, and water usage insights. Together with Invoice Cloud and VertexOne WaterSmart™, the City was able to provide its citizens with an easy-to-use payment solution that resulted in several benefits including:

- Increased e-adoption rates and online payments
- Decreased payment-related issues and customer complaints
- Increased staff productivity



"The power of this joint solution has drastically reduced our time spent on the phones. With the time saved, we have been able to focus on other critical projects, utilize more time for training, and overall, there is a more positive working environment."

Christina Fox
Utility Business Manager
City of Billings, MT

BY THE NUMBERS:

City of Billings saw:



262%
increase in
e- payments



46%
electronic
payment adoption



Decrease in
payment-related
calls

1—THE CHALLENGE

Billing's previous payment platform not only offered low-level online payment options but was also difficult to use for both the City's residents and staff. With a diverse range of digital savviness among the City, Billings needed a payment platform that would make paying bills online as easy as possible. Other challenges and concerns included:

- Transitioning to a new platform and technology changes
- Finding a solution that was intuitive and user-friendly for both staff and residents
- Reducing customer complaints about payments
- Simultaneously implementing VertexOne WaterSmart™

2—THE SOLUTION

As a reliable and trusted name in the billing and payment industry, Billings was confident that Invoice Cloud was a natural fit. Invoice Cloud was able to offer Billings everything they were looking for in a solution including:

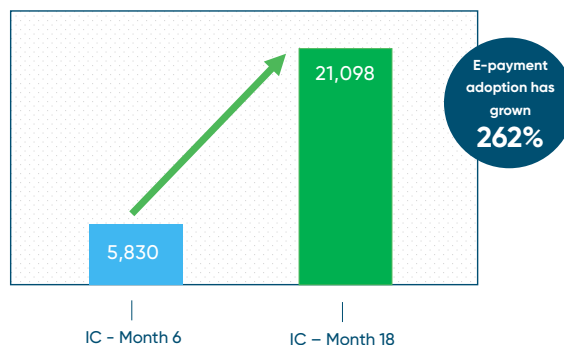
- Proper training and guidance to implement the new platform
- Seamless integration with Billing's other systems including their VertexOne WaterSmart™ Engagement Platform
- User-friendly payment platform that is easy to use for both residents and staff
- Quick and efficient customer service to assist with any post-implementation questions

3—THE RESULTS

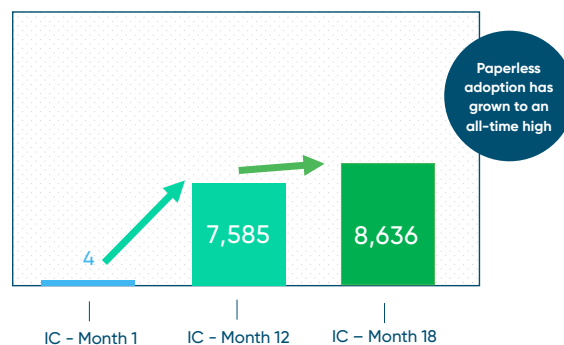
Since implementing Invoice Cloud and VertexOne WaterSmart™, the City of Billings has seen a number of improvements including:

- **Increased online payments and higher e-adoption rates** thanks to a simple and intuitive user-friendly billing platform
- **Easier reconciliations** with seamless integrations across other systems including the VertexOne WaterSmart™ Customer Self-Service Portal
- **Increased productivity among staff** as they spend less time on the phone for customer inquiries and spend more time on critical projects
- An overall more **positive work environment** with customer complaints declining and a decrease in payment issues

Monthly E-Payments



Paperless Enrollment



ABOUT CITY OF BILLINGS

The City of Billings is located in the state of Montana with a population of nearly 110,000. Its Public Works department processes payments for the City's water, sewer and garbage accounts.

ABOUT INVOICE CLOUD

Invoice Cloud® provides trusted, secure e-payments and the highest adopting Electronic Bill Presentment and Payment (EBPP) solution.

To learn more, visit invoicecloud.com

InvoiceCloud®

