

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL**  
**April 26, 2010**

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

**ROLL CALL** - Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, Cimmino, McFadden, McCall, Ulledalen, Astle, Clark. Councilmember Ruegamer was excused.

**MINUTES: April 12, 2010** - Approval pending

**COURTESIES**

- Mayor Hanel thanked the MT Nursery & Landscaping Association for the landscaping completed at the Skate Park in observance of Earth Day. He also thanked Sylvan Nursery for their involvement.
- Councilmember Gaghen thanked Bright & Beautiful for their work as part of the Great American Clean-up the past weekend.

**PROCLAMATIONS**

- Public Service Recognition Week, May 3-9, 2010
- Fair Housing Month - April 2010

**ADMINISTRATOR REPORTS - TINA VOLEK**

- Ms. Volek referenced an e-mail Council received from Jeff Bollman on 4/26/10 in support of Agenda Item 1A2, W.O. 03-07, Alkali Creek Multi-Use Path, Segment B - Main Street Tunnel Bid Award. She noted a copy was in the ex-partie notebook in the back of the room.
- Ms. Volek referenced a response letter from Attorney Brooks to Dwight Fischer of Ace Electric regarding a bid protest for Agenda Item 1A6, W.O. 10-09, Wastewater Treatment Plant T-5 Transformer Replacement sent in the Friday packet. She said a copy was in the ex-partie notebook in the back of the room.
- Ms. Volek referenced a memo from Dave Mumford, Public Works Director, sent in the Friday packet regarding Agenda Item 1G1, a request from the owner of Don Luis Restaurant that approval of their street closure include approval of a fire dancer. She said a copy was in the ex-partie notebook in the back of the room.
- Ms. Volek referenced a potential add-on item to the agenda received in the Friday packet from Fire Chief Paul Dextrus regarding the approval of sale of surplus property (one E-one Fire Apparatus) to the Worden Volunteer Fire Department. She said a copy was in the ex-partie notebook in the back of the room.
- Ms. Volek referenced the resolution for Agenda Item 4 that was on the Council's desk that evening that had been omitted from the staff report. She said a copy was also in the ex-partie notebook in the back of the room.

Councilmember Astle moved to add the Fire Department's sale of one E-one Fire Apparatus to the Worden Volunteer Fire Department as Item K to the Consent Agenda, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item 1 ONLY. Speaker sign-in required.** (Please sign up on the clipboard located 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.)

*(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

The Public Comment Period was opened.

- **Nash Emrich, 230 Avenue C**, said he was representing BikeNet and was in support of Item 1A2, the Alkali Creek Multi-Use Path and Main Street Tunnel. He thanked the Council and staff for their patience throughout the process and asked for Council's approval.

There were no other speakers, and the Public Comment Period was closed.

**1. CONSENT AGENDA**

**A. Bid Awards:**

**1. Taxiway A South Rehabilitation Project** (Opened 4/13/2010); Recommend Knife River; \$1,229,034.30.

**2. W.O. 03-07, Alkali Creek Multi-Use Path, Segment 1B (Main Street Tunnel)** (Opened 4/13/2010); Recommend Four Beers, Inc. dba Stillwater Excavating for Schedule 1 (tunnel only) - \$1,472,636; CMG Construction for Schedules 2A and 2B (path segments) - \$203,025.

**3. W.O. 04-12, Phase 3 - Alkali Creek Road Maintenance and Slope Reconstruction, Schedules I and II** (Opened 4/13/2010); Recommend CMG Construction; \$1,336,558.

**4. W.O. 09-08, Wastewater Treatment Plan Water Line Replacement** (Opened 4/13/2010); Recommend delay of award until May 10, 2010.

**5. W.O. 10-01, 2010 Water and Sanitary Sewer Replacement Project, Schedule 3** (Opened 3/30/2010)(Delayed from 4/12/10); Recommend COP Construction; \$2,717,181.

**6. W.O. 10-09, Wastewater Treatment Plant T-5 Transformer Replacement** (Opened 4/13/2010); Recommend Colstrip Electric, Inc.; \$189,000.

**B. Signal Emergency Response Agreement** with Montana Department of Transportation for the City to provide, and be compensated for, emergency work on traffic signals located on designated State routes; term: 7/1/10 through 6/30/11.

**C. Maintenance Agreement** with Montana Department of Transportation for maintenance of state-owned highway routes within Billings City Limits; term: 7/1/2010 through 6/30/2011 with option for second year; revenue - \$439,470, plus contribution to City's Equipment Replacement Program.

**D. Acknowledging Receipt of Petition to Annex #10-02:** A 1.911-acre of vacant cropland described as Tract 2A, Certificate of Survey No. 3364 Amended and located on the west side of Zimmerman Trail and north of Grand Avenue; KZ Bar Limited Partnership, owner and petitioner, and setting a public hearing for May 10, 2010.

**E. Easement** with STAN-FUHR, Inc. for W.O. 09-07, construction of ADA ramps at the northeast corner of 24th Street West and Broadwater Avenue; at no cost to the City.

**F. W.O. 04-33, Lake Elmo Drive (Hilltop to Wicks Lane) Right-of-Way Acquisition: Parcel #31:** Portion of Tract 1A Amended Tract 1 of Certificate of Survey No. 2241, Scott D Eastlick and Robin E. Eastlick, \$4,350.

**G. Street Closures:**

**1. Cinco de Mayo Celebration**, May 4, 2010, 3 p.m. to 10 p.m.; North 26th Street between Montana Avenue and 1st Avenue North.

**2. Montana Women's Run**, May 8, 2010, 6 a.m. to noon; 2nd and 3rd Avenues from N.10th to Division St.; Clark and Yellowstone Avenues from Division to 7th Street West (8:25-10:00 am only); 2nd Ave. N. from N. 27th St. to N. 30th St.; and Broadway from 1st Ave. N. to 3rd Ave. N.

**H. Grant Application Request** to submit a Recreational Trails Program Grant application for funding of the 25th Street Bicycle/Pedestrian Bridge; \$70,000, with required local match of \$14,000.

**I. Resolution #10-18929** amending Resolution #09-18904 establishing policy for public access to City Council e-mails.

**J. Bills and Payroll:**

**1. March 26, 2010**

**2. April 2, 2010**

**K. Approval** of sale of surplus property; 1990-91 E-One Fire Apparatus to the Worden Volunteer Fire Department, \$1,000.

Councilmember Cimmino separated Consent Agenda Items 1A4, 1A6, 1J1, and 1J2. Councilmember Clark separated Consent Agenda Item 1G1.

Councilmember Pitman moved for approval of the Consent Agenda with the exceptions of Items 1A4, 1A6, 1J1, 1J2, and 1G1, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino advised she would be abstaining from voting on Agenda Items 1A4, 1A6, 1J1, and 1J2 due to possible conflicts of interest with her employer. Councilmember Pitman moved for approval of Item 1A4, seconded by Councilmember Gaghen. On a voice vote, the motion was approved 9 to 0. Councilmember Pitman moved for approval of Item 1A6, seconded by Councilmember Astle. On a voice vote, the motion was approved 9 to 0. Councilmember Pitman moved for approval of Item 1J1, seconded by Councilmember Astle. On

a voice vote the motion was approved 9 to 0. Councilmember Pitman moved for approval of Item 1J2, seconded by Councilmember Ronquillo. On a voice vote the motion was approved 9 to 0.

Councilmember Clark moved for approval of Item 1G1 with the addition of allowing a fire dancer since it had already been approved by the Fire Department, seconded by Councilmember Ronquillo. Councilmember Gaghen asked if the owner of Don Luis would come forward and tell everyone about the fire dancer event. Carmen Salazar, the owner of Don Luis Restaurant, introduced Jonnie Egeland, who would be performing the fire dance. Ms. Egeland said the performance would be right at dusk and last about 10 to 15 minutes. On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. CONTINUED PUBLIC HEARING AND RESOLUTION #10-18930 ordering construction of improvements identified in W.O. 09-02, 2009 Miscellaneous and Developer Related Project. (Continued from 4/12/2010) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Volek advised staff had no additional presentation on the item and was available to answer questions.

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

Councilmember Cimmino moved for approval of Item 2, seconded by Councilmember Gaghen. Councilmember Clark asked Dave Mumford, Public Works Director, if the properties discussed earlier, especially those on Broadwater Avenue, had been taken out of the program. Mr. Mumford advised most were zeroed out because they had side yards; but they were left in the program in case the property owners had other work in front of their property they wanted included in the program. Councilmember Clark asked if the property in the 2300 block of Broadwater had been taken out. Mr. Mumford said it had. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING TO GATHER PUBLIC INPUT ON BUDGET ALLOCATIONS AND THE DRAFTED CONSOLIDATED PLANS; APPROVAL OF THE ALLOCATION OF CDBG AND HOME FUNDING FOR FY2010-2011 AS RECOMMENDED BY THE COMMUNITY DEVELOPMENT BOARD; AND APPROVAL OF THE DRAFTED FY2010-2014 CONSOLIDATED PLAN AND FY2010-2011 ACTION PLAN. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Brenda Beckett, Community

Development Manager, began her PowerPoint presentation on the 5-year Consolidated Plan and 1-year Action Plan explaining that the HUD programs were designed for housing and economic opportunity for low-income residents. She said two of the requirements for funding were low income or living in a low income area. Ms. Beckett advised they used two studies that had been conducted by the Community Development Division and others to study the housing needs for the next five years and the analysis of impediments to Fair Housing Choice. She said Billings was one of few cities in the nation that used the two studies in the planning. Ms. Beckett said at the end of September they were required to report on their Comprehensive Annual Performance Evaluation Report (CAPER), which reported on how they did with their plans. She said the items being presented were basically the applications to HUD to gain entitlement funds for the City. Ms. Beckett listed their Consolidated Plan strategies, as follows:

- **Strategy A.** Promote the preservation of the existing supply of safe, affordable housing in the community.
- **Strategy B.** Promote new affordable housing opportunities.

- **Strategy C.** Work as an active partner with non-profits, neighborhood groups, and others to address housing and community development specific to lower income and special needs households.
- **Strategy D.** Promote the preservation and revitalization of the community's older neighborhoods.
- **Strategy E.** Provide assistance to agencies serving lower income households and special needs populations, particularly the homeless, public service activity funding to assist the homeless, the elderly, and those with disabilities.

Ms. Beckett reported their CDBG and HOME budgets totaled \$1,711,031, which did not include the Neighborhood Stabilization Program Funds or the \$323,000 recently received for their homeless projects. She advised the majority of the funding went to the First Time Homebuyers Program, Home Repair Programs, and affordable housing development. Ms. Beckett said they also looked at their Consolidated Plan strategies to determine how the funding allocations would be used and briefly reviewed the requests and the Community Development Board recommendations.

Mayor Hanel thanked Ms. Beckett for her very informative presentation and advised that the same information had been presented to the City Council at their last work session.

Councilmember Clark asked what the length of the awards was for service agencies. Ms. Beckett advised the award for service agencies was three years if they were funded through the public service side on the CDBG, and the Housing Authority had a \$15,000 allocation on the HOME side. Councilmember Clark asked if after the three years it was not to be expected to go beyond that time. Ms. Beckett said that was correct. She said the public services being recommended that evening would not be eligible to apply again this year or the following two fiscal years.

The public hearing was opened.

- **Jim Hartung, 620 Burlington**, said he was the vice chair of the Community Development Board and was available to answer any questions. Councilmember Gaghen said she had served on the Community Development Board years ago and was well aware of the amount of time and effort that went into the whole process. She thanked Mr. Hartung for the Board's commitment.
- **Paul Chinberg, 3113 Stillwater Drive**, said he was the Executive Director of Family Service, Inc. and was present to encourage Council's approval. He said Family Service, Inc. had seen a 25% increase in people asking for assistance; many who were just on the verge of homelessness; and their program was intended to prevent homelessness. He said the additional funding would help them provide for their neighbors in need.
- **Adela Awner, 1123 17<sup>th</sup> Street West**, said she was the Executive Director of Interfaith Hospitality Network, whose mission was to help homeless families achieve and sustain independence. She said she would like to thank the Community Development Board for their work. She said they, too, had seen a significant increase in people coming to them seeking help. Ms. Awner said those who come into their program are having a much more difficult time finding jobs. She said they required their families to find work and save their money for the first month's rent and deposit, but because of the job situation, that was taking much longer to achieve. She said the funding would help the families with their first month's rent and deposit and utility deposits, so they could move families out faster and take in new families. Ms. Awner encouraged council's approval.
- **Mary Lou Affleck, 241 Annandale**, said she was the Vice President of Rebuilding Together Yellowstone County. She said they were a volunteer organization preserving

affordable housing. Ms. Affleck thanked the Community Development staff and asked for Council's approval.

- **Darrell LaMere, 404 Orchard Lane**, said he was a housing services specialist with homeWORD. Mr. LaMere said last year they had served 243 families in Billings with First Time Homebuyer applications and presented a copy of statistics for the record. Mr. LaMere asked for Council's approval. Councilmember Ronquillo asked Mr. LaMere if they continued to meet at Southern Lights and complimented Mr. LaMere on the good job they were doing. Mr. LaMere said they still held their classes at Southern Lights located at 801 South 28<sup>th</sup> Street.
- **Ernan Cortes, 1600 Avenue E**, said he was the Executive Director of the Community Housing Resource Board. He said the Board asked Council to approve the recommendation regarding the disbursement of funds. He thanked Ms. Beckett for being their liaison. He said the Community Housing Resource Board was founded in 1992 and played an integral part in providing fair housing. Mr. Cortes also thanked Council for proclaiming April as Fair Housing Month. He said the Community Housing Resource Board was reaching out to all active partners and non-profits to hopefully consolidate and leverage their ability to seek out funds, and it was his goal to reach out to everyone, including the Human Relations Commission and others, so the Community Housing Resource Board could provide and share the funding that the Community Development Board granted them to those who did not have funding,

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

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

**4. CONTINUED PUBLIC HEARING AND RESOLUTION # 10-18931 approving the sale of Lots 7 & 8, Block 53 Fosters Addition to Stockman Bank for \$220,000, with reversion conditions and a first right of refusal to purchase two lots from Stockman Bank in the future. (Continued from 4/12/10) Library Board and staff recommend approval. (Action: approval or disapproval of Library Board and staff recommendation.**

Bill Cochran, Library Director, said because the item had been presented to Council on two previous occasions, he would like to update them on the revisions and discussions that had occurred since the last regular meeting. Mr. Cochran advised the transaction before them was the sale of the two lots immediately north of the property already owned by Stockman Bank that Stockman Bank wanted to use for parking. Mr. Cochran said the item was presented at the April 5, 2010, work session and then was delayed from the April 12, 2010, regular meeting because they had not been able to arrive at the final language clarifying the terms of the agreement. He added that the consideration was for latitude from the City to allow Stockman the largest possible project, while still securing as many options possible for the Library Facilities Committee to move in whatever direction was needed on the block. He said the Library Facilities Committee was scheduled to bring recommendations to Council by October 1, 2010.

Mr. Cochran said the discussions held with Stockman Bank throughout the process had been to permit the larger building construction and to maintain the latitude for the Library Facilities Committee to move south or north or whatever configuration might take place. He said since the delay, and at the City's request, Stockman Bank was willing to purchase the two lots, and would agree to transfer it back to the City, through 2016, if the City required the property to build a parking structure or for Library construction. He said the City would make it whole with the parking structure by providing Stockman Bank with parking equal to what they would be giving up; and in the case of a new Library, equivalent parking would be provided within 500 feet

of their facility. Mr. Cochran said Council had previously discussed the right of first refusal for the two Underrinner lots north of the Library building. He said the City was interested in improving its position for those two parcels and had secured an option, rather than a right of first refusal, from Stockman Bank. He said if the Council and the Library Facilities Committee decided the best option for the Library would be to start building to the north, the City would acquire that property in exchange for additional property to the south because Stockman's plans were to build as high as a 4-story building, which would require additional commercial parking, and the two lots north of the library were intended to be used as their employee parking. He said the option improved the City's position on the property north of the Library if needed. Mr. Cochran said there was a requirement in the agreement with Stockman Bank to move either north or south, but not in both directions. He said the City had the discretion in which direction to move as the Facilities Committee continued its work under the facilitation of Candi Beaudry.

Mr. Cochran said subsequent to the last meeting, Councilmember Gaghen asked if two realtors who had experience advising the Council and the community on the block in question would be willing to look at the complex agreement. Mr. Cochran advised he and Assistant City Administrator Bruce McCandless met with Charlie Hamwey and Al Swanson the previous week to review the agreement. He said it was his belief that Mr. Hamwey and Mr. Swanson agreed that the document, although complex, protected as many options as possible for the City, Library, and community. He said he did not want to speak on their behalf, but he knew Mr. Swanson was in the audience and could discuss the item further and answer any questions.

Councilmember McCall asked Mr. Cochran to go to the Special Option 2 and 3, and discuss the pros and cons on each of the sections. Mr. Cochran provided a brief review of the following special provisions included in the agreement:

**SPECIAL PROVISIONS:** City, in City's sole discretion, has the right to exercise the following Special Provisions, however City can only exercise paragraph (2) or paragraph (3) not both:

- (1) Stockman agrees to trade the Property back to City, upon City's commitment to build a parking structure (the "Structure") on the Property. This exchange will be referred to as the "Trade".
  - a. Stockman shall transfer the Property back to City upon City advertising bids for construction of the Structure.
  - b. Stockman shall receive parking spaces in the Structure equal to the fair market value of the Property at time of Trade; however, these spaces shall not exceed 10% of the total parking spaces in the Structure. Any spaces owing Stockman due to the Trade, over and above the 10%, shall be purchased by City for cash at fair market value at time of Trade.
  - c. Additionally, Stockman shall have the right to long term leases, with standard terms and conditions, on parking spaces in the Structure equivalent to the number of spaces designated on the Property at time of Trade.
  - d. All parking spaces covered in this Provision shall be located as close to Stockman's building at 402 N. Broadway as possible.
  - e. If City fails to begin construction of the Structure within nine (9) months of the Trade, then City must immediately transfer the Property back to Stockman. Any cash paid to Stockman in the Trade shall immediately be returned to City. Likewise, any agreements executed in furtherance of the Trade shall become null and void after City returns the Property to Stockman.
  - f. This Provision shall be added as a deed restriction and expire on December 31, 2016.

- (2) Stockman agrees to trade the Property back to City if the Property is necessary for expansion of the existing Parmly Billings Library building or construction of a new public library building (the buildings shall collectively be referred to as "the new Library").
  - a. Stockman shall transfer the Property back to City upon City advertising bids for construction of the new Library.
  - b. In return for the Property, Stockman shall receive similar property (the "Replacement Property"), with like improvements, located within five hundred (500) feet of Stockman's building at 402 N. Broadway.
  - c. The term "necessary" is defined as locating any portion of the new Library, reasonable landscape for the new Library, and/or parking adjoining the new Library on the Property.
  - d. If City fails to begin construction of the new Library within nine (9) months of reacquiring the Property, then City must immediately transfer the Property back to Stockman. Stockman shall immediately transfer the Replacement Property back to City. Any cash exchanging hands in furtherance of this transaction shall immediately be returned to the paying party and all further obligations under this Agreement shall be extinguished.
  - e. This Provision shall be added as a deed restriction and expire on December 31, 2016.
  
- (3) Stockman agrees to grant City an option to trade for Stockman's two (2) lots located at 516 North Broadway, more particularly described as Lots 07 and 08, Block 049, of Foster's Addition (collectively the "North Lots").
  - a. If City, in City's sole discretion, exercises this option to trade:
    1. Stockman shall receive Lots 09 and 10, Block 053, of Foster's Addition in return for the North Lots. These lots and the North Lots shall all be free and clear of all liens and encumbrances at time of trade.
    2. To exercise this option City must notify Stockman in writing at least sixty (60) days in advance of the trade of City's intention to exercise this option.
  - b. Stockman agrees that all property acquired under this paragraph (3) shall be subject to the Special Provisions paragraph (1), the same as and in addition to the Property.
  - c. If Stockman offers to sell the North Lots to a third party prior to City exercising its option, and before expiration of this sub-paragraph as set forth in d. below, then City shall have first right of refusal to purchase the North Lots.
  - d. This Provision shall survive closing, and expire on December 31, 2016 or when Stockman sells the North Lots, whichever is earlier.

Councilmember McCall asked Mr. Cochran if he saw any downside for the City with the revised contract. Mr. Cochran said he was reassured by comments from Mr. Hamwey and Mr. Swanson, and felt that the provisions agreed to by Stockman Bank were in the best interest of the community.

Mayor Hanel commended City staff for their work on the project.

The public hearing was opened.

- **Joe White, 926 N. 30<sup>th</sup>**, said damages owed to him had not been paid. He said he had a valid competing offer that should be given full consideration. He said he would be willing to make a presentation to the Library Board about his idea for that corner, which he felt was a far superior use for it. He stated that compression tests were needed on sewer and electrical for the downtown area. He confirmed he had an interest in the property and wanted an arbitrator involved.

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

Councilmember Clark moved for approval of the resolution and the sale of the property under the conditions included in the contract, seconded by Councilmember Astle. Councilmember Gaghen thanked Al Swanson and Charlie Hamwey for their assistance with the project. She noted that she wished the item could have been voted on after the Library Facilities Committee had identified options for expansion of the Library, but despite that, she would support the sale. On a voice vote, the motion was unanimously approved.

**PUBLIC COMMENT** on Non-Agenda Items -- Speaker Sign-in required. (Restricted to ONLY items not on this printed agenda. Please sign up on the clipboard located at the back of the Council Chambers.)

The Public Comment Period was opened.

- **Gary Lustgarten, Masterson Circle**, stated he was concerned with the medical marijuana facility opening at 2918 Grand Avenue. He said the issue was strictly a zoning error made by the City by not anticipating the possibility of a medical marijuana facility 1000' from a school. He stated there was no City ordinance about it and the City did not recognize the Federal guidelines. He said he had visited with several councilmembers and learned that some of them knew about the facility prior to that evening's meeting. He asked if Council felt it was fit to have a facility like that so near a school. He said he knew that there were other facilities opening near schools, but his primary concern was Magic City Meds. He challenged the City Council about what it was going to do as far as guidelines. He said he did not want the Council to take the easy way out by passing it on to the ad-hoc committee, which would throw it back to the Council.

Mayor Hanel advised that he was going to give Council the opportunity to ask questions, and then staff would provide information about the protocol the City had to follow to address the issue.

Mr. Brooks explained that an interim ordinance was presented in November, 2009, but was tabled indefinitely for further review. He said an ad-hoc committee was formed in February, 2010, and was given direction to report back to the Council by August 23, 2010. He said the committee had met once and was scheduled to meet again later in the week. He explained that staff was in the process of preparing a memo for the ad-hoc committee meeting that answered frequently asked questions and would provide alternative zoning recommendations the committee could consider, and hopefully report back to the Council on May 10. Mr. Brooks noted there was no ordinance in place regarding medical marijuana, but the Council could pass a temporary moratorium to prevent any more medical marijuana facilities from opening. He said he was aware that other Montana cities were dealing with the issue in various ways and that a Legislative interim committee would meet the next day, and medical marijuana was an agenda item. Councilmember McCall noted the committee was the Legislative Child, Family, Health, and Human Services Interim Committee. Mr. Brooks advised that the hearing could be heard via the Internet. He explained that Council could not take action that evening due to public notice requirements. He suggested having the ad-hoc committee present ordinance options at the May 10 meeting.

Mayor Hanel mentioned that he did not want anyone to think the Council was presenting excuses, because the matter was taken seriously, but the City had a legal procedure it had to follow.

Councilmember Clark asked Mr. Brooks how long it would take to enact an interim ordinance. Mr. Brooks explained that it could be adopted at the May 10 meeting, and had to be advertised prior to the meeting. He noted that an interim ordinance could be effective immediately and was only effective for a six-month time period, but could be extended for two additional six-month periods.

Councilmember Ulledalen commented that medical marijuana was passed in 2004, and when it was considered a few months ago, the Council had no idea how much demand was out there. He asked if there was something at the State level that held back the creation of the facilities until the current year. He expressed his frustration that staff had indicated all the necessary regulations were in place to deal with the issue so there was no necessity for an interim ordinance, yet it seemed there was no control. Mr. Brooks explained that the State's focus seemed to be on certifying the caregivers and patients, and it did not provide any guidance to cities or counties regarding zoning for that activity. He noted that cities throughout the country were grappling with the issue also.

Councilmember Astle stated that regardless of any ordinance passed, it could not be retroactive, and the facility already established at Rehberg and Grand was a 'go.' Mr. Brooks explained that it depended on where the business was in the process and the Council could prohibit and allow those businesses in certain zoning districts. He stated that an option was to require an amortization period which would allow the business in the zoning district for a determined length of time.

Councilmember McCall asked Mr. Brooks to further define a moratorium. Mr. Brooks explained that the use could be prohibited for up to six months while the issue was studied further. Planning and Community Services Director Candi Beaudry explained that an ordinance would have to consider all three aspects of medical marijuana – growing, manufacturing and dispensing. She added that the interim ordinance would have to specify whichever aspect of the business was not allowed in certain districts, but not allowing any phase of the process in any district, resulted in a moratorium. Councilmember McFadden suggested using the term 'school' rather than the term 'public school' in the interim ordinance. Mr. Brooks said he did not see any reason to not do that.

Councilmember Pitman asked about the 1000' school zone designation that everyone thought protected that area. Mr. Brooks advised he was aware there was a Federal Drug Free Zone 1000' separation, along with a State Statute that made a violation of it a separate criminal offense under certain guidelines.

Police Chief St. John advised that according to Federal law, marijuana and other drugs were illegal regardless of location, but in State law, the possession or distribution charge had to be in place, and the 1000' was a sentence enhancement. Councilmember Ronquillo asked what the violation would be if a patient was driving after using medical marijuana. Chief St. John said the charge would be driving while under the influence of drugs, even if the person had a patient or caregiver card. Councilmember Clark asked for clarification regarding the 1000' issue. Chief St. John explained that under State law, an underlying charge had to be in place in order for the 1000' rule to kick in. Councilmember Clark stated that meant that as long as the business did not do anything illegal, it could be within 1000' of the school.

Councilmember Gaghen asked about potential problems when State and Federal guidelines conflicted. Chief St. John indicated that it forced law enforcement into a regulatory situation when it was supposed to enforce the law.

Councilmember Ulledalen asked if there was any consideration at the State level about regulation of medical marijuana. Chief St. John said that the Interim Committee was trying to address that and it was a high priority for the Attorney General.

Councilmember Clark asked if a Council Initiative could be passed that evening to have an interim ordinance presented at the May 10 meeting. Mr. Brooks suggested having an ordinance presented in conjunction with a report from the ad-hoc committee. He suggested some specific direction so staff could provide the required public notice.

Mayor Hanel asked audience members in opposition of a medical marijuana facility at the Grand Avenue location or any location to stand. The Clerk counted 26 people standing. Mayor Hanel asked audience members in support of a medical marijuana facility at any location to stand. The Clerk counted 4 people standing. Mayor Hanel stated he felt the issue and legal procedures had been clearly explained by Legal staff.

Councilmember Astle advised that the initiative was passed by 62% in 2004 and it sat in limbo until 2008 because it was illegal based on Federal law. He said President Bush's administration indicated it would not prosecute anyone for use of medical marijuana and President Obama's administration confirmed the same, which resulted in the creation of the establishments. He said nobody realized how fast things would happen. He noted there were 73 licenses issued in the City of Billings and it appeared to be an entrepreneurial venture.

Mayor Hanel announced that public comment would be allowed, but time would be monitored.

- **Pam Christianson, 3916 Bushwood**, stated she came with a prepared statement, but many of her questions had been answered. She said she understood that a moratorium could not be passed that evening. She said she performed a lot of research and was disappointed that she did not learn of the facility until the previous Thursday. She said she was concerned for all schools and students. She stated she knew that some cities enforced the 1000' separation from schools, churches and parks, and hoped the City would consider the same thing. She stated that the intersection on Grand Avenue was already very busy and a medical marijuana business there would increase the traffic even more. She asked the Council to be wise with its decisions.
- **Lance Orner, 5335 Rustic Avenue**, advised that he was Principal of Will James Middle School and was concerned with the location of the facility. He said it was at the only crosswalk students used to cross Grand Avenue from the school and the next nearest crosswalk was about a half-mile away. He said if that facility went in, it would not be a matter of if, but when, something happened that the school district and Police Department would have to deal with.
- **Carrie Bernard, 2177 Westfield Drive**, said she was a parent of a student at Trinity Lutheran School. She stated that medical marijuana had become an entrepreneurial boom and needed to be roped in.

Councilmember McFadden asked Ms. Bernard if she knew how many feet Trinity Lutheran was from the proposed medical marijuana facility. Ms. Bernard said she heard from an audience member that it was about 600 feet. She said she just found out about the issue that day and knew there were many other concerned parents.

- **Liz Maden, 596 Pinon Drive**, stated she taught at Will James Middle School and was concerned for her students. She reminded Council that the students at Will James were 12-14 years old, and had to walk unaccompanied right by that business to get to the crosswalk.

- **Gregg Hein, 2900 block of Belvedere**, encouraged Council to move as quickly as possible to find a way to restrict the location of marijuana businesses. He said it seemed there should be a way to address that even if the State or Federal Government did not have oversight in it.
- **Ross Adams, 2784 Poly Drive**, stated that his son attended Trinity Lutheran. He agreed that the State did not deal with the issue accordingly, but marijuana was an intoxicant, which the state dealt with, and there were laws in place that dealt with driving under the influence. He asked for an interim zoning ordinance, a moratorium right away, and then zoning it so it was away from schools and residential areas.

Councilmember McFadden said he knew some kids from Trinity Lutheran walked to McDonalds each day and wondered if he knew how many kids did that. Mr. Adams said he thought it was a low number because Trinity was primarily a closed campus.

Councilmember Gaghen stated she wanted to commend those in attendance for their public input.

- **Tom Zurbuchen, 1747 Wicks Lane**, stated he was trying to understand what was so bad about medical marijuana, and what was so good about the narcotics dispensed at the Walgreens store located near Lewis & Clark Middle School. He said that when he was in middle school, he could walk across the street to a drug store for lunch and the narcotics dispensed there were stronger than medical marijuana. He said if Walgreens dispensed a narcotic illegally, the 1000' rule would be enforced. He noted that voters voted in favor of medical marijuana, but did not vote to not have it in their own back yard. He added that he voted against it.

Councilmember Gaghen asked Mr. Zurbuchen about his reference to Walgreens and said the people that obtained those drugs had prescriptions from a doctor. Mr. Zurbuchen stated that would be the case with medical marijuana patients and he did not see the difference.

- **Mark Copps, 2161 Eldorado**, advised he was the leasee of 2918 Grand Avenue and it was his business that would go in there if he was allowed. He said he was a business owner, a church-going, upstanding citizen, and an entrepreneur. He said the main reason he wanted to get into the business was to help people. He advised that when the store opened, minors would not be allowed to enter the store, there would be no depiction of marijuana on the outside of the building, and marijuana would not be consumed on the premises. He said he did not see the problems coming because he saw other medical marijuana businesses open. He explained that he was turned down by other property owners and when he had the opportunity to lease the building, he took it, without knowing that Will James was right around the corner. He said that according to his calculation, Will James was 1742.4 feet from his front door. He stated he wanted to work with the City and the school district, and he would operate his business within the law.

Councilmember Astle asked if Mr. Copps knew the distance between his building and the nearby LDS church. Mr. Copps responded that he did not.

Councilmember McFadden asked Mr. Copps to describe the outside signage and appearance of the building. Mr. Copps explained a sign would be placed on the outside of the building. He added that it could not be considered a dispensary under the definition of one, but he was a provider. Councilmember McFadden said that he was a private pharmacy then. Mr. Copps said he could not comment about that.

Councilmember Ulledalen asked Mr. Copps where he would get his supply. Mr. Copps said he would grow it like all providers did.

Councilmember Gaghen asked how many patients Mr. Copps needed to have to make business sense. Mr. Copps said he thought there were 12,000 patients in

Montana, and he would service as many patients as he was allowed. Councilmember Gaghen commented that the amount of traffic to a business made a difference. Mr. Copps advised that he would have top-notch security in his store to protect his investment and the community. He explained that the product was not displayed, so if a child walked into the business, marijuana would not be seen.

Councilmember Ulledalen commented it was a political situation and the community did not understand what it voted for. He said there was a rising ire in the community and there would probably be additional regulations. He asked how the community could be assured that everything sold was legal. Mr. Copps stated that it would be along the same guidelines of how the sale of alcohol was regulated.

Mayor Hanel shared that during the past week, he had personally received over 60 e-mails, phone calls and personal visits, one with staff from Will James Middle School regarding Mr. Copps' proposed location. He said there was a lot of concern among citizens that a patient could end up selling the marijuana to one of the middle school students. Mr. Copps stated that was his concern as well. Mayor Hanel asked if Mr. Copps would consider continuing a search for an alternate location if assistance was provided by citizens that opposed his selected location. Mr. Copps advised he would consider that, even though he had signed a one-year lease. He explained that he searched extensively for a location that was willing to allow his business. He stated that he had scheduled a meeting with personnel from the school district to address concerns. He advised he was willing to set his hours of operation so that the business was not open before school started or during the time when students would pass by after school. He said he was willing to work with the community to find a happy medium.

Councilmember Ulledalen asked if Mr. Copps had criteria regarding proximity to schools and residential neighborhoods when he was searching for a location. Mr. Copps said it was not an issue to him because he knew that kids could not walk in and obtain the substance. He said he was not concerned that there was a facility close to his daughter's elementary school because he knew she could not walk in there and be serviced.

Councilmember Ronquillo asked how much the marijuana cost. Mr. Copps said it varied, but an average price was \$300.00 per ounce. Councilmember Gaghen asked about dosage amounts. Mr. Copps explained that a patient was allowed up to one ounce, and how long it lasted depended on how it was used.

- **Mark Higgins, 814 Ahoy**, said he was a member of the ad-hoc committee that was diving into the issue to come up with a sensible approach. He stated he approached the Council in November, 2009, for a moratorium so he would not have to worry about his kids passing a marijuana business on their way to school. He said the caregivers he talked with did not feel that 1000' from parks and schools was unreasonable, and they just wanted to have the ability to run their business unharmed by public comment. He said they needed to find a way to address the concerns so everyone was satisfied. He said concerns mentioned that evening were legitimate, but the people who did the wrong things with medical marijuana would eventually weed themselves out of the business. He said the committee was focused on addressing those issues and making the right decisions.

Councilmember Clark asked Mr. Higgins how often a patient could come to his shop. Mr. Higgins advised that patients could come every day they wanted, but a responsible caregiver would limit the amount of marijuana given to a patient. He explained the different ways patients used the substance and how the different uses might require them to obtain their allowable amount more often.

Mayor Hanel asked Mr. Higgins to comment about the possibility of a patient selling their medication. Mr. Higgins said if that happened, the patient was dropped from

his service. He explained how he tested his patients to determine their usage. He commented that it all depended on how ethical the caregivers were.

Councilmember McFadden asked Mr. Higgins to describe the traffic at a typical location. Mr. Higgins explained how the medicine left his facility and the amount of traffic at his business.

Councilmember Ronquillo asked if anyone checked on his business to make sure he was within the limits of plants and patients. Mr. Higgins said nobody checked on him, but if anyone had submitted a complaint to the Police Department, Police would check into the complaint. Councilmember Ronquillo suggested taxing the medical marijuana to help cover potential public safety needs. Mr. Higgins stated that he brought that possibility up previously and found out that the Legislature had to approve a local option tax. Mr. Higgins stated he did not believe Mr. Coppers should locate his facility on Grand and would visit with him about possibly leasing space from him at his location on N. 11<sup>th</sup> Street.

Councilmember Cimmino asked Mr. Higgins how the price was determined. Mr. Higgins explained it was based on costs to grow the marijuana. Councilmember Cimmino asked if it was cultivated on the property. Mr. Higgins said it was.

Councilmember Pitman stated that he was disheartened to learn that some people believed he was involved in the medical marijuana business. He explained how he met Mr. Higgins when he was looking for property to lease and noted that he had no financial investment in the business. He said the ad-hoc committee was trying to resolve the issue and was on track for its upcoming meeting. He commented that medical marijuana was a citizen initiative and if they were not happy with it, legislators should be contacted. Mr. Higgins confirmed that he came to know Councilmember Pitman because he was a Heights councilmember.

Councilmember Ulledalen commented that it was an issue in other communities as well. He said he heard that the medical community was frustrated because there was not always coordination between primary caregivers and caregivers that issued the medical marijuana recommendations. He asked about any efforts to work with the medical community. Mr. Higgins explained that two physicians worked closely with the caregivers, but there was not a process in place to coordinate care with primary physicians. He said they were working with doctors to educate them on the process because medical marijuana was not prescribed, but recommended by physicians.

Councilmember McCall asked how many new physicians were contacting him. Mr. Higgins said he was contacted by about one physician each week, from all over the State of Montana.

Councilmember Gaghen asked Mr. Higgins if he had been getting about 40 new patients each month since he opened in 2008. Mr. Higgins explained that it was slow until he opened his new facility.

There were no other speakers, and the Public Comment Period was closed.

## **COUNCIL INITIATIVES**

**Councilmember Astle:** Moved to direct staff to bring back an interim ordinance, with two or three options, including a moratorium, to the May 10, 2010, agenda regarding retail locations for the sale of medical marijuana, seconded by Councilmember Gaghen. Councilmember Pitman asked if the Council wanted several options or just a moratorium. Councilmember Cimmino asked if the ordinance presented in November, 2009, could be modified and presented again since so much work was put into it. Mr. Brooks advised that was an option, and other options included a complete moratorium, or a limited ordinance that allowed the activity in certain

districts and included an amortization. He said staff and the ad-hoc committee would work on an ordinance. Councilmember Ulledalen said a 'time out' was needed to figure out what to do. He commented that had they known in November that there would be 70 facilities by now, an interim ordinance would probably have been implemented. He said taking a 'time out' from additional facilities would allow the Council time to determine what to do. Councilmember Clark stated he felt a moratorium was the way to go. He said the moratorium would be in effect until after the Legislative session, and there could be some new legislation related to the issue. Councilmember Gaghen agreed and said the Council needed to know how to proceed on the issue and to be able to see how other cities were handling it. Councilmember Astle said current providers should be happy with the potential of a moratorium because it would prevent further competition for clients and they would be able to build their businesses. Councilmember McCall said she agreed with comments by Councilmembers Clark, Gaghen and Astle. Mr. Brooks commented that staff would work with the ad-hoc committee to develop two or three options. He reminded Council that it was a risk because it was unknown, but from his research, this was a reasonable approach. Councilmember McCall provided the information about getting audio or video access to the Legislature's Interim Committee proceedings. She said she would listen to the next day's session and would provide an update. Ms. Volek added that medical marijuana was scheduled to be heard by the Committee at 9:45 a.m. the next day. She advised that the City's lobbyist Ed Bartlett would be monitoring that as well. Councilmember Cimmino asked if a replacement was needed for Councilmember Ruegamer on the ad-hoc committee while he was absent. Ms. Volek explained the process for appointments and said it was likely he would be back before action could be taken. Councilmember Ulledalen stated that Councilmember Ruegamer indicated he would be back for the next meeting. Councilmember Clark pointed out that the ad-hoc committee meeting was open to the public and public comment would be allowed. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo commented that the median was being mowed on S. 27<sup>th</sup> Street earlier that day with a mower that could be unsafe because it did not have a bag attached. Ms. Volek advised she would check into that.

**ADJOURN** - The meeting adjourned at 9:08 p.m.

*Additional information on any of these items is available  
in the City Clerk's Office.*

*Reasonable accommodations will be made to enable individuals with disabilities to attend this  
meeting. Please notify Cari Martin, City Clerk, at 657-8210.*