

## **SPECIAL MEETING OF THE BILLINGS CITY COUNCIL**

**July 5, 2011**

The Billings City Council met in special 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 Hanel called the meeting to order at 5:30 p.m. and served as the meeting's presiding officer.

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

### **PUBLIC COMMENT on Agenda Item #1 ONLY. Speaker sign-in required.**

Comments offered here are limited to one (1) minute. Please sign up on the clipboard located at the podium. 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 individuals spoke in favor of the emergency ordinance.

- **Rep. James Knox, 661 Garnet, Billings, MT – HD47**
- **Rep. Ken Peterson, 424 48<sup>th</sup> Street West, Billings, MT - HD46**
- **Pam Christianson, 3916 Bushwood Drive, Billings, MT**
- **Laura Needham, 1710 Cobble Creek Trail, Billings, MT**
- **Susan Smith, 5522 Billy Casper Drive, Billings, MT**
- **Barbi McLaws, 1030 Bluegrass Drive, Billings, MT**
- **Christina Richards, 532 Hurdle Circle, Billings, MT**
- **Cherrie Brady, 5032 Poly Drive, Billings, MT**
- **Janice Linn, Highway 3, Billings, MT**
- **Jason Thomas, 1144 1/2 Harvard, Billings, MT**
- **Terry Dorow, 4374 Hi Line, Billings, MT**
- **Steve Zabawa, 810 Bluegrass Place, Billings, MT**
- **Dennis Scranton, Miles City, MT**
- **Joe White, Billings, MT**

The following individuals spoke in opposition of the emergency ordinance.

- **Jasmine Moen, 5353 Midland, #161, Billings, MT**
- **Janna Johnson, Yellowstone River Road, Billings, MT**
- **Laurie Peterson, PO Box 81315, Billings, MT**
- **Debbie Soelter, 211 N. 34<sup>th</sup> Street, Billings, MT**
- **Matt Knuson, 802 N. 32<sup>nd</sup> Street, Billings, MT**
- **Jared Frickel, 1356 Matador Avenue, Billings, MT**
- **Bob Baker, 2633 S. Bridger Road, Billings, MT**

- **Kathi Miller, 1211 Broadwater, Billings, MT**
- **Mort Reid, Billings, MT**
- **Kathy Adler, 724 Grand Avenue, Billings, MT**
- **Elizabeth Pincolini, 1404 Barrett Road, Billings, MT**
- **Mark Higgins, 116 N. 11<sup>th</sup> Street, Billings, MT**

The following individuals did not speak in favor or in opposition but commented on the emergency ordinance.

- **Paul Matt, 115 Clark Avenue, Billings, MT** – asked where the definition of storefronts came from because he did not find it in SB423.
- **Doug Ruebke, 110 South 31<sup>st</sup>, Billings, MT** – said closing the commercial storefronts would encourage the buyers and sellers to move into residential neighborhoods. He said he felt they should not be allowed in residential.

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

City Administrator Tina Volek advised the following items pertaining to Item #1 were filed in the ex parte notebook in the back of the room.

- E-mails sent since July 2<sup>nd</sup> to Mayor and Council in favor of ban from:
  - Pam Berry
  - Carolyn, John and Tim Soucy
  - Josh Nichols
  - Pam Christianson
  - Lucille Hill
- E-mails sent since July 2<sup>nd</sup> to Mayor and Council in opposition of ban from:
  - Jared Frickel
  - Sandra Post-Barr
  - Elizabeth Pincolini

#### **SPECIAL AGENDA:**

##### **1. EMERGENCY ORDINANCE #11-5537 BANNING MEDICAL MARIJUANA STOREFRONTS in the City of Billings (delayed from 6/27/11). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

City Administrator Tina Volek advised this was the third time in a month the Council had considered a potential ban as allowed in Section 13 of Senate Bill 423 (SB423) on storefronts in the City of Billings. She said the Council had heard many hours of debate and had received two previous staff presentations. Ms. Volek said the definition of a storefront was not included in the state statute and was drafted by the Planning Department. She said staff believed the definition comported as closely as possible with a legitimate explanation of what a storefront was. Ms. Volek noted the staff recommendation until that evening was to postpone action pending the decision of the Lewis and Clark District Court that was made last week, and staff was now recommending approval of the ban on storefronts.

Councilmember Ruegamer asked where it was legal to sell medical marijuana. City Attorney Brent Brooks advised in Section 5 of SB423 it stated it was okay from a property owned by a provider or a marijuana-infused products provider; or with written permission of the landlord from a property that was rented or leased by a provider; or from property owned, rented, or leased by a registered cardholder.

City Administrator Volek advised the county had taken the position it did not have the authority to regulate, so there may be new businesses opening in the county. She said the city's own ordinances on home-based businesses limited the number of visitors that could visit those businesses in a given day or week and limited the staff to members of the family operating the home-based business.

Councilmember Astle said it did not preclude a provider from making deliveries and asked for the definition of a storefront. Attorney Brooks advised the definition was found in Section 2 of the emergency ordinance, which stated "*The term 'storefront' shall mean any commercial establishment, structure, vehicle, or building that is accessible from a public right-of-way by the general public or sectors of the public for the purposes of obtaining marijuana or marijuana-infused product.*"

Councilmember McCall asked for the current enforcement measures for home-based businesses. Attorney Brooks advised it would be like any other code enforcement. He said it would be complaint-driven, and a code enforcement officer would investigate and present the findings to the Legal Department. He said if it would be considered a potential felony, it would be shared with the County Attorney's Office and could lead to a search warrant or other criminal investigation beyond a home occupation violation.

Councilmember Clark moved to enact the ordinance banning medical marijuana storefronts effective July 6, 2011, seconded by Councilmember Ronquillo.

Councilmember Ruegamer commented that the judge did not do them any good. He said HB161 would have repealed the medical marijuana law and gotten a re-vote but it was vetoed, so the legislature went with SB423. He said SB423 was partially or fully unconstitutional and the whole thing had been "screwed up" by everybody. He said he would never be convinced that the current 30,000 cardholders in Montana needed it and said most the cardholders were under the age of 30. He said the whole thing was a mess and everybody could look in the mirror and say they "muddled it up". He said what they needed was a simple repeal of the law and a re-vote with restrictions. He said what bothered him was that the legislature, as far as he knew, never contacted any city councils to talk about it and help figure it out.

Councilmember McFadden commented that he would rather keep the storefronts in commercial areas and in view of the public and the regulatory agencies instead of forcing them into residential neighborhoods.

Councilmember Pitman said the discussions started two years ago, and the testimony had been fairly consistent on both sides. He said there was frustration on both sides, and it had gotten to the point that evening where both sides were approaching a level of weariness, inconsistencies, and a lot of issues had not been answered. Councilmember Pitman said he would support the motion from the standpoint that he thought they were at a point where they needed a stand-down and at a point where they needed to take a break from it. He said the voters would be working on petitions and there would be a lot of things going on in the next several months and it would be appropriate at that point to stand down, take a breath, let both sides re-group,

and let the law follow through with how it was proposed and see what happened. He said one of the important things people needed to remember was it was just about the city limits, and they were not preventing people from getting access to medical marijuana. He said it was as blunt as the regulation of fireworks in the city limits. He said if a person wanted access to fireworks, they could obtain them outside the city limits.

Councilmember Ronquillo commented that he would support the motion mainly because a lady who testified said she was buying it on the south side, and he wanted to know where. He said another reason he supported the motion was because Mr. Higgins testified they always gave more marijuana than what was being paid for. Councilmember Ronquillo said Mr. Higgins was contributing more to the issue, and they should have gotten rid of it years ago. He said the stricter the laws, the better control they would have over it.

Councilmember McCall said she would support the motion. She said even though the judge struck down major portions of the law, he did not strike down the ability to have local control. She said she thought the city had been extremely fair in the process over a long period of time, and it was time they took a stand by voting for the ordinance.

Councilmember Gaghen said they had a long time to try to digest and understand the issue from both sides. She said it was initially flawed to be just tossed out to the communities to deal with because it made for irregularities as far as how it was constructed locally and the kinds of things allowed that gave too much latitude to the physicians who could travel and do unethical things. She said hopefully the voting public had learned from it because many of them voted to help people who were in desperate need and who found relief from medical marijuana. She said instead it had become all too consuming for many, and it was time to sit back and see how it worked out. Councilmember Gaghen said she would also support the motion.

Mayor Hanel advised he had never denied the fact that medical marijuana, under the proper conditions, by the proper provider, with proper amounts, may help someone who had a need. He said the needs could vary from glaucoma, chronic disease, or cancer; and he never stated it would not help. He said he was not an expert and not one to say. Mayor Hanel said the situation as it was, and passed by the voters, had gotten totally out of control. He said it was an embarrassment for the State of Montana and the City of Billings, and he strongly favored passage of the motion. He said his decision was also based on the fact it was illegal within the accordance of the law, and under Section 13 of SB423 the closure of storefronts was legal and enforceable.

City Attorney Brooks advised, under MCA 75-104, eight members were needed to approve the emergency ordinance.

On a roll call vote, the motion was approved 9 to 1. Councilmembers Ronquillo, Gaghen, Pitman, Ruegamer, McCall, Ulledalen, Astle, Clark and Mayor Hanel voted in favor. Councilmember McFadden voted in opposition.

**PUBLIC COMMENT on Non-Agenda Items. Speaker sign-in required.** Comments offered here are limited to three (3) minutes and restricted to ONLY items not on this printed agenda. Please sign up on the clipboard located at the podium.

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

Councilmember Ruegamer moved to add the reconsideration of the FY2012 budget approval to the agenda that evening, seconded by Councilmember Gaghen. He said it would require a 3/4 majority vote. He said it was a two-step process. He said the first motion would put the item on the agenda that evening, so he could then make another motion to place the item on the July 11 agenda.

Councilmember Ulledalen asked what date the budget had been delayed to at the last meeting. City Attorney Brooks advised it was delayed on June 27 to the August 8 meeting.

On a roll call vote, the motion to add reconsideration of the budget to the current agenda was approved 8 to 2. Councilmembers Gaghen, Pitman, McFadden, Ruegamer, McCall, Ulledalen, Astle and Mayor Hanel voted in favor. Councilmembers Ronquillo and Clark voted 'no'.

**2. RECONSIDERATION OF RESOLUTION approving and adopting the Fiscal Year 2012 City of Billings Budget. Public Hearing held on 6/13/2011. (Postponed on June 27, 2011, to August 8, 2011). Staff recommends approval and adoption. (Action: approval or disapproval of staff recommendation.)**

Councilmember Ruegamer moved to reconsider the postponement of the FY2012 budget and place it on the July 11 regular meeting agenda for discussion, seconded by Councilmember McFadden.

Councilmember Ruegamer said it did not necessarily mean Council would vote to accept the budget. He said he felt they needed to discuss it further. He commented they had just spent an hour and a half talking about medical marijuana, which was longer than they spent last week talking about the budget. He said approval of the budget was Council's job, and they had very little control over medical marijuana. He said they needed to spend time on the budget and talk about why they did what they did and if they were going to continue to delay it.

Councilmember Ulledalen asked if they would still discuss Item 5 on the agenda of the work session that followed the special meeting. Councilmember Ruegamer said they would still discuss it at the work session.

Attorney Brooks advised by voting on the motion, Council would be voting to reconsider the August 8 date and move the item to July 11, at which time Council would start over again with the budget approval process.

(Councilmember Pitman disclosed he had been texting trying to manage a crisis that was currently going on at his business.)

On a voice vote, the motion to add the reconsideration of the FY2012 Budget to the July 11 meeting was unanimously approved.

There was no further business, and the meeting adjourned at 6:58 p.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin  
Cari Martin, City Clerk