

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

October 24, 2011

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 Thomas Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Ruegamer gave the invocation.

PLEDGE OF ALLEGIANCE: Cub Scout Pack #36 from Billings Heights presented the colors and led the Pledge of Allegiance. The leaders and each of the members of Pack #36 introduced themselves.

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

MINUTES: October 11, 2011. Councilmember Cimmino moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

COURTESIES:

- Councilmember Gaghen brought attention to the "Tom-o-lantern" in front of the Mayor. She said it was created by Robin Hanel and donated to the Scottish Rite Hearing and Language Clinic Pumpkins for Kids auction event held the previous week. Councilmember Gaghen said she was the lucky bidder and felt it appropriate that the "Tom-o-lantern" join them that evening.
- Councilmember Gaghen congratulated Karla Ulledalen for being selected the "best in the field" massage therapist by the community for the second year in a row.

PROCLAMATIONS:

- Pink Day in support of Breast Cancer Research, October 27, 2011 - Skyview High School Head Volleyball Coach Vicki Carle thanked everyone, especially Mayor Hanel, for proclaiming "Pink Day". Ms. Carle said they had made some changes and were now a non-profit so the majority of their money stayed in Montana to help women and men who had breast cancer with treatment expenses. She said they still sent some money to the Susan B. Komen Foundation. Ms. Carle introduced three individuals with her who had been instrumental in organizing the "Pack the Place in Pink" event every year. She urged everyone to schedule needed cancer screenings and said there was no cure for cancer, but cancer could be beaten by staying ahead of the game.
- Food Day, October 24, 2011
- Extra Mile Day, November 1, 2011
- Anti-Bullying Awareness Month, October 2011

ADMINISTRATOR REPORTS - TINA VOLEK

City Administrator Tina Volek commented on the following items.

- Two e-mails sent from David Christianson in relation to Items 3 and 4 with excerpts from the White House Drug Policy and a letter from the U.S. Attorney in Rhode Island to the Governor of Rhode Island on the issue of medical marijuana. Copies filed in ex parte notebook.
- Copy of PowerPoint for Agenda Item 2 was filed in ex parte notebook.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 and #2 ONLY.

Speaker sign-in required. (Comments offered here are limited to one (1) minute. 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. For Items not on this agenda, public comment will be taken at the end of the agenda.)

The public comment period was opened.

- **Kelly Fulton, 616 Clark Avenue, Billings, MT**, said he was representing the Yellowstone Rimrunners and was the race director of Run Turkey Run (Agenda Item E). He said he was available to answer any questions concerning the event and road closure. Council had no questions for Mr. Fulton.

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

1. CONSENT AGENDA

A. Bid Awards:

1. Private Contract #631, Infrastructure Construction for Kings Green Subdivision, Phase IV. (Opened 10/11/2011 and delayed until 10/24/2011); Recommend Knife River; \$241,388.30.

B. Amendment #2, W.O. 09-28, Water Treatment Facility Back-up Power, Phase II, Professional Services Contract, HDR Engineering, Inc.; \$82,400.

C. Professional Engineering Services Contract for design and construction administration of W.O. 12-01, 2012 Water and Sanitary Sewer Replacement Projects; Sanderson Stewart; not to exceed \$766,533.

D. Approval of amendments to the Scheduled Airline Operating Agreement and Terminal Building Lease with Horizon Air (dba Alaska Airlines), United Airlines, Delta Air Lines, and Allegiant Air, extending the Agreement expiration date to June 30, 2012.

E. Street Closures:

1. Yellowstone Rimrunners Run Turkey Run 5K and 1-Mile Event. Thursday, November 24, 2011; 8 a.m. to noon; (1) 5K begins on 2nd Ave. N. at N. 30th heading east on 2nd Ave. N. to Broadway, north on Broadway to 3rd Ave. N., west on 3rd Ave. N. to N. 34th, south on N. 34th to 2nd Ave. N., east on 2nd Ave. N., and back to the start. The runners then retrace the same route to Broadway and 3rd Ave. N. but follow 3rd Ave. N. to Division, across Division to Clark Ave., west on Clark Ave. to 4th St. W., south on 4th St. W. to Yellowstone Ave., east on Yellowstone Ave. to Division, across Division to 2nd Ave. N., finishing on 2nd Ave. N. midway between N. 30th and N. 31st. (2) 1-Mile begins at 2nd Ave. N. and N. 31st and follows the same route as the first loop of the 5K.

F. Approval of donation of the 2011 Montana League of Cities and Towns Fun Run/Walk proceeds to BikeNet for the Swords Park Trail Improvement Project; estimated net proceeds and donation - \$400 to \$600.

G. Second/Final Reading Ordinance #11-5542 expanding Ward II (Annexation #11-03) for 14.87 acres legally described as Tract 2D of C/S 2776, Amended; Wayne Laufer, petitioner.

H. Second/Final Reading Ordinance #11-5543 adopting proposed amendments to the City of Billings Subdivision Regulations, Article 23, BMCC, in accordance with State law.

I. Preliminary Minor Subsequent Plat of Amended Block 2, Lot 1, Midland Subdivision, 1st Filing, located on the north side of King Avenue West, just west of 24th Street West on the west end Wal-Mart site; Wal-Mart Real Estate Business Trust, Owner; Premier Food Service, Inc., subdivider; Sanderson Stewart, agent.

J. Preliminary Minor Subsequent Plat of Amended Lots 2A-4-A, 2A-5A, 3A, and 4E, Block 1, Shiloh Crossing Subdivision, located on the east side of South Shiloh Road, south of King Avenue West. Shiloh Crossing, LLC, owner; Sanderson Stewart, agent.

K. Bills and Payroll:

- 1.** September 23, 2011
- 2.** September 29, 2011

Councilmember Cimmino separated Items B and K1. Councilmember Pitman moved for approval of the Consent Agenda with the exception of Items B and K1, seconded by Councilmember Ronquillo. On a voice vote, the motion was unanimously approved.

Councilmember Cimmino referenced Item B and said the contract would be awarded to the consulting firm where she was employed, so she would abstain from the item. Councilmember Pitman moved for approval of Item B, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

Councilmember Cimmino referenced Item K1, Invoice #749008, and said she would abstain from the item due to her employment. Councilmember Pitman moved for approval of Item K1, seconded by Councilmember Ronquillo. On a voice vote, the motion was approved 10 to 0.

REGULAR AGENDA:

2. RESOLUTION #11-19122 granting the City Administrator signature authority to sell Neighborhood Stabilization Program (NSP) properties through the end of the NSP program in March 2013. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Community Development Manager Brenda Beckett began her PowerPoint presentation with a brief background of the NSP application and approval process. She advised that the homes purchased needed to be vacant or foreclosed and provided averages on the prior purchase appraised value, acquisition prices paid, current appraised value, and the value increase for three homes located at 1039 Custer Avenue, 1128 Lynn Avenue, and 3701 Cambridge. She advised each home was inspected by a licensed professional at the time of purchase, each home had a work list approved by the Montana Department of Commerce, and a contractor was chosen for the property rehabs by Request for Proposal. She said each property had to meet all standards and local codes, including energy efficiencies, and all appliances installed were Energy Star appliances. Ms. Becket said the biggest focus of the program was neighborhood stabilization or preservation and another focus was long term affordability. She talked about the improvements made to each property and showed before and after pictures. Ms. Beckett said the sale price of each home was based on the current appraised value or the purchase amount and amount put into the rehab, and they did not anticipate a sale price of any NSP home now or in the future to exceed \$160,000. Ms. Beckett said by federal requirement one of the homes had to be sold to a household making less than 50% of the area median income (AMI), and the remaining two homes could be sold to households making up to 80% of the area median income. Ms. Beckett reviewed the financing structure approved by the Montana Department of Commerce for the mortgages on the homes. She said they had 16 low income households through the First Time Homebuyer program interested in purchasing the homes and who had submitted updated income information. She said four of the households would be considered for one of the homes, and two qualified for the 80% AMI homes. Ms. Beckett said the household size determined the size of home purchased, the household had to be pre-approved for the primary mortgage, the household would be shown the home they were eligible for, and the household would decide if they wanted to proceed with the purchase. She said other requirements were that the homes had to be maintained as the primary residence, an inspection was encouraged, the property would be sold 'as is', all health/safety items had been remedied, additional cosmetic improvements would not be made, the household may not occupy or store belongings on the property until the transaction was completed, and the household must repay the City when the property was resold or refinanced.

City Administrator Volek and the Council commended Ms. Beckett and her staff for their hard work bringing the properties back to market.

Councilmember Astle moved for approval of the resolution granting the City Administrator signature authority to sell the NSP Program properties, seconded by Councilmember Clark. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING FOR INTERIM ZONING ORDINANCE #11-5544 extending the moratorium enacted by Ordinance #10-5512 and extended by Ordinance #10-5523, continuing the prohibition on the opening of any new establishments that grow, sell, or distribute medical marijuana for an additional 12-month period. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

City Attorney Brent Brooks said they were recommending the final, allowed extension for another year for two reasons. He said SB423 was passed by the 2011 Legislature and was being challenged in Helena District Court. He said the challenge resulted in the district judge indicating that selling for profit, which was prohibited by SB423, would be enjoined, among other important aspects of the bill. He said the judge's ruling had been appealed to the Montana Supreme Court by the Attorney General's Office, and the appeal was pending. He said based on the historical past with the Supreme Court, they did not anticipate a decision until late this year or next year. Attorney Brooks said the second reason for recommendation of the moratorium extension was there had been enough signatures gathered statewide to place a citizens' referendum on the 2012 statewide ballot; and if approved by the voters, the 2004 Medical Marijuana Act would be put back into effect and SB423 would be repealed. Attorney Brooks said the information showed the evolving nature of the issue and the need for staff to study and present to Council at the time the Supreme Court issued its opinion the new alternatives that would be available.

The public hearing was opened.

- **Chris Lindsey, 116 Burlington Avenue, Missoula, MT**, said he was in full support of the regulations and wanted to point out that since March of 2011 the number of licensed providers had been reduced by 92%. He said not long ago in Billings over 80 licenses had been issued and according to the current DPHHS website, there were only 37 providers currently registered for all of Yellowstone County. Mr. Lindsey said he felt there was some "oddities" in the way the moratorium functioned. He said he was aware of at least one provider who wanted to relocate because he felt he was too close to a school and asked if he relocated, would he completely lose his operating license. Mr. Lindsey said it might be worth evaluating and considering a cap on the total number allowed to operate instead of trying to freeze things as they were.
- **Kevin Nelson, 4235 Bruce Avenue, Billings, MT**, said he did not have an opinion one way or another. He read the side effects of medical marijuana and the side effects of the muscle builder Creatine and asked why the Creatine side effects were not worthy of discussion because they were just as bad, if not worse. Mr. Nelson said every mall had stores that sold muscle builders and maybe the stores should be closed down. He said Council should wait to see what the Supreme Court decided to do.

- **Representative Cary Smith, House District 55, 5522 Billy Casper Drive, Billings, MT**, said he served on the City's ad-hoc committee that took a look at regulating and zoning medical marijuana, the Legislature's Health and Human Services Committee, and the Legislature's Free Conference Committee to resolve all the issues in SB423 and put together a regulation bill. Mr. Smith encouraged Council to extend the moratorium. He said one of the things they tried to make clear in the Legislature was that SB423 was designed to allow people with debilitating diseases to continue to grow their own marijuana and be supervised by physicians to make sure the marijuana was being used properly, or allow people with debilitating diseases to obtain medical marijuana from a provider. He said they were also careful in the Legislature to make sure it did not become a business. Mr. Smith said when the initiative was passed in 2004, one of the reasons the cities and towns had struggled so much with it was because there were attempts to make businesses to supply medical marijuana and the initiative was never designed to create an industry or businesses. He said during the past couple of years, a lot of people thought, based upon what the Federal law was doing, there would be no prosecutions for business; however, in the past year, it had been made clear by the Federal Government they intended to prosecute people selling marijuana and conducting businesses with it. Mr. Smith said he had attended many medical marijuana hearings and had a good understanding of the current court cases and what was happening in other states and said he would be happy to answer any questions.
- **Mort Reid, 1120 Yale Avenue, Billings, MT**, thanked Attorney Brooks and his legal team for putting together a set of regulations that addressed the concerns of the community and for including members of the community who would otherwise be excluded by an all-out prohibition. He said prohibition did not work. Mr. Reid asked that Council give consideration to adopting the ordinance, but said he had questions about extending the moratorium as it related to current members of the industry and business location. He said some of the current providers who would like to relocate their businesses away from schools and other sensitive areas of the community had concerns over what impact the moratorium would have on their ability to do so. Mr. Reid said there were only a small percentage of providers who continued to operate and there were still a great number of patients without providers. He said in order to be sensitive to those still requiring the medication, he asked Council to give consideration to allowing existing businesses operating under the terms of SB423 to relocate in order to address the concerns of the community. Mr. Reid thanked the Council for giving consideration to the issue.

Attorney Brooks said it was his understanding if an existing business relocated a new business license would be triggered and asked Planning Director Candi Beaudry to respond. Ms. Beaudry explained that when licensed businesses moved to a new location, a new business license was required. She said it was a policy and not a regulation. She said business licenses required that the location of the business be listed, so if the business moved, a new license would be necessary. She said the policy applied to any license-holding business and not just medical marijuana businesses. Attorney Brooks added that an

amendment could be made to the ordinance allowing existing businesses to relocate, but without knowing what effect it would have, he would be hesitant to say it would be an easy fix. He said they were up against a time limit with extending the moratorium, but they could come back to amend the moratorium at a later time.

Councilmember Ruegamer asked what stance the Federal Government was taking. Attorney Brooks said a memo in November 2009 from the Department of Justice suggested that medical marijuana in the 14 states where it was allowed would be given a lower prosecution priority; however, earlier this year the Cole memo indicated the Federal Government was becoming more aggressive in prosecuting those who possessed or sold medical marijuana as a Schedule I prohibited substance. Attorney Brooks said the Federal Government had increased their investigation and prosecution of larger medical marijuana operations, which was one of the reasons the number of medical marijuana providers had dwindled to about one-third of what it had been. Councilmember Ruegamer said he had heard the operations were being raided because they were not paying taxes. He said he was confused about the positions of the Courts and the Federal Government. Attorney Brooks said he could double check with the local U.S. Attorney's Office for additional clarity.

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

Councilmember Clark moved to extend the moratorium as enacted with the licensing, seconded by Councilmember Gaghen.

Councilmember Astle asked if there was good reason since it was just policy and not law that location could be considered by Planning, Zoning and Legal. Ms. Volek said they would need to talk to Finance since they issued business licenses and to Legal. Attorney Brooks pointed out that Section 4 of the ordinance indicated that the moratorium would not apply to a licensed Billings medical marijuana provider who was in operation at their designated commercial location at the time of the original moratorium enacted in 2010.

Councilmember Ruegamer said he would support the moratorium. He said the individual from Missoula said there were only 37 dealers. He said they had gone from caregivers to providers to dealers. He said they were dealers, and they could call themselves whatever they wanted; but it was dealer and they were dealing medical marijuana. He said he complained about caregivers because his daughter was a nurse and a caregiver. He said providers were health care providers. Councilmember Ruegamer said they were dealers, and asked why not just call themselves dealers. He said if they were selling medical marijuana, they were dealers. He said 37 people in Billings selling medical marijuana was a lot to him and asked how many people needed it. He said he did not think there were 3,700 people in the state that needed medical marijuana. Councilmember Ruegamer said the Legislature never contacted anyone from the cities and towns about how they felt it should be dealt with. He said he felt it was fine with relocating the businesses, but there was a certain amount of people selling medical marijuana that were given an inch and took a mile, so he was concerned

about relocation for that reason. He said he felt it would need to be done on a case-by-case basis.

On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE for a permanent ordinance defining medical marijuana "storefront" businesses and prohibiting the operation of medical marijuana storefronts in the City of Billings. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Attorney Brent Brooks referenced SB423 passed by the 2011 Legislature. He said Section 13(2) allowed local cities and counties to provide a prohibition of storefronts; however, the bill did not define what a storefront would be. He said the permanent ordinance would prohibit the physical display of marijuana visible to the general public; prohibit any depiction, caricature, or artistic rendition of a marijuana plant or leaf on windows or doors; and allow access to only medical marijuana cardholders registered with the particular provider or other cardholders who had made an appointment and desired to have a particular medical marijuana provider be their medical marijuana source. He said the permanent ordinance would still allow advertising, which was allowed as part of Judge Reynolds' enjoining of SB423 mentioned in Agenda Item 3. Attorney Brooks advised the emergency storefront ordinance was passed by Council on July 5, 2011, and expired on October 5, 2011. He said they anticipated within the next few days there would be a motion to dismiss by the plaintiff in the case as a result of (1) it was likely mute because the emergency ordinance had expired; and (2) the Council's consideration and hopeful passage of the new permanent ordinance prohibiting storefronts. He said it was their best attempt at defining what a storefront was and noted the County had taken a different and more complex approach. He said it was always subject to the evolving nature of the issue, the Supreme Court, the Legislature in 2013, and what the voters would do in 2012.

The public hearing was opened.

- **Joe White, Billings, MT**, said he supported the permanent ordinance and said that medical marijuana should be distributed through the medical and pharmaceutical industries.
- **Josh Daniels, 1002 Toole Circle, Billings, MT**, referenced the two ex-parte items and said both letters had been sued by the ACLU and were ridiculous. He asked if pharmacies that sold oxycodone or oxycotin should be referred to as dealers. Mr. Daniels asked what the bill was for the outside lawyer the City hired for the lawsuit and what fund it was paid from. Attorney Brooks advised attorney fees were always a matter of public record and if Mr. Daniels would fill out the Public Records Request city staff would provide him with the requested information.
- **Chris Lindsey, 116 Burlington Avenue, Missoula, MT**, said bans were famously ineffective, but a world without rules was not much better. He said operating standards were critical for everyone involved. He said the communities in the United States that had successfully integrated medical marijuana on some level had local regulations on how they operated. He said the proposed

ordinance provided those types of regulations by reducing inappropriate signage and display, denying access to the facilities by minors or other individuals who did not have business at the location, increasing security, and preserving a dignified environment for patients. Mr. Lindsey thanked Attorney Brooks and his team for making it clear where the lines were, what was important, and he was willing to engage in dialogue. He said the proposed ordinance was smart regulation and something they could live with. He said he was happy to announce as a result they expected to dismiss the claim against the City. Mr. Lindsey urged the Council to adopt the ordinance and said the folks involved would also like medical marijuana to be treated like medicine. He said only recently had the Federal Government gotten the pressure to start doing the testing on it to be treated that way, and if it were treated as prescription medication, there would be no talk about distances to schools and other regulations.

Councilmember McFadden said a year before there was discussion of internal regulations and standards and asked if there had been any progress. He asked if the scales used were certified by the State of Montana Standard Weights and Measures. Mr. Lindsey said it was appropriate that scales be standardized, and the Montana Cannabis Industry Association (MTCIA) was developing rules to provide as recommendations to the members of the organization. He said everything from signage to hours of operation was important, and one solution would be smarter regulation than what SB423 offered.

Councilmember Gaghen asked Mr. Lindsey if he was legal counsel or a consultant. Mr. Lindsey said he was a member of the board of the MTCIA and an attorney who worked with medical marijuana individuals.

- **Representative Cary Smith, House District 55, 5522 Billy Casper Drive, Billings, MT**, said one thing that was clear to him while serving on the ad-hoc committee was that there was a lot of frustration in Billings and other cities on how to regulate medical marijuana. He said members from the Billings City Council, the Mayor, City Attorney, and the city's lobbyist had come to Helena to talk to the Legislature about it. Mr. Smith said during the legislation a letter was received from the Department of Justice stating that any dispensaries being authorized by the state would be looked at very severely, and that government organizations would be in violation of the federal law if state laws were passed allowing dispensaries. He said that became part of the reason why SB423 was designed the way it was. Mr. Smith said when the initiative was passed in 2004, it was designed to take care of compassion and not create businesses, which was what the Legislature tried to continue.
- **Kristen Trang, 1223 Cortez, Billings, MT**, said she was a nurse who slipped and fell on an operating room floor and had two back surgeries. She said prior to the accident, she was addicted to painkillers. She said she worked closely with her surgeon and her doctor, and they could not supervise medical marijuana patients as Mr. Smith had indicated because it was not an FDA-approved drug. She said she saw people every day that genuinely needed the medication.

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

Councilmember Clark moved to approve the ordinance on first reading for the permanent ordinance defining medical marijuana storefront businesses, seconded by Councilmember Astle. 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. Comments here are limited to 3 minutes. Please sign up on the clipboard located at the podium.*)

The public comment period was opened.

- **Joe White, Billings, MT**, asked if a definite decision had been made that the library would be located on 6th Avenue North as had been discussed. Mayor Hanel advised if the new library was approved, the location would be adjacent to the existing library.

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

COUNCIL INITIATIVES

- **Ronquillo**: Said the building that burned at 309-1/2 S. 28th had been boarded up in front and the blue tarp on the top had been removed and asked if the building would be torn down because it was completely destroyed. Ms. Volek advised she would have Planning Director Candi Beaudry report back on it. Attorney Brooks advised Deputy Attorney Craig Hensel was working with the code enforcement officer to mitigate the problem.
- **Ruegamer**: Said his church was cited by the Fire Department for not having an occupancy sign posted. He said he went to the Building Department and the building permit indicated how many people could be in the church. He said his question was - who was counting? He asked if it was a complaint-driven ordinance or if the Fire Department was just going church to church. Ms. Volek said she was not certain but would check into it.
- **Mayor Hanel**: Asked Ms. Volek to briefly talk about the progress being made at the former Dairy Queen building on Grand Avenue. Ms. Volek said she spoke with Public Works Director Dave Mumford that day. She said there was an accident involving the building, and the City was currently pursuing a settlement from the individual involved in the accident. She said there was a party interested in the property and very shortly the City would be tearing the building down and holding a public hearing on the sale of the property. She said the property had no self sufficient use short of a coffee kiosk drive-through but it was valuable to adjoining properties for parking.

There was no further business, and the meeting adjourned at 8:03 p.m.



CITY OF BILLINGS

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

ATTEST:

BY: Cari Martin
Cari Martin, City Clerk