

City Council Work Session

5:30 PM
Council Chambers
Date: July 7, 2014

ATTENDANCE:

Mayor/Council (please check) X Hanel, X Cromley, X Yakawich, X Cimmino, X Pitman, X McFadden, X Bird, X Swanson, X McCall, Crouch, X Brown

Agenda

TOPIC #1: EBURD Annexation

- Tina Volek: In April, the City Council met with the BIRD Board and talked about annexation in the East Billings Urban Renewal District. The Council asked what could be done to assist in that effort. Kelly McCarthy from the BIRD is here this evening to make a presentation on what was concluded after staff and the BIRD staff met.
- Kelly McCarthy - Director for the Billings Industrial Revitalization District (BIRD): Gave presentation on Exposition Gateway Infrastructure Plan. We manage the East Billings TIFD (Tax Increment Finance District). The Exposition Gateway Plan was approved about a year ago. A few different groups came together and looked at the east end of town and asked what could be done with it. There is a lot of opportunity there because of the proximity to the Metra, traffic counts, and coming into the City from two different directions, for a lot of hospitality and more retail, etc. The challenge is largely infrastructure. This is something that this problem has been here for quite a while. This group decided they would be the generation to solve this problem. Working with City Engineering, they have developed an improvement plan that includes delivering sewer water and storm water management to the area. Estimated total cost for the project is about \$3.1M. For funding, there is a County RSID that the County Commissioners have said they will transfer to the City when this occurs. The East Billings TIFD has fund available. We would like to contribute about \$250,000 into the project. Public Works has \$596,000 that they will contribute, leaving us with about \$2M to come up with. Our intent is to use tax increment revenue from the East Billings TIFD to pay down the bond to fund this. Will be about a 25 year bond. Some areas we want to serve are outside the EBURD. They are in the County. This is a challenge because of the dual administrations that are involved. It requires a voluntary annexation because we can't spend those monies outside our TIFD to service all of the people. Will need to update our Urban Renewal Plan which is the beginning of the TIFD and then expand the TIFD to include the former County land. We will have an East Billings TIFD that includes all of the area we want to service with this infrastructure project. At that point, we will come back to you with TIFD revenue bonding to cover that.

- 29 landowners; 47 parcels
 - 11 County landowners in infrastructure area
 - 18 County landowners unaffected by infrastructure
 - 10 City landowners in infrastructure area
- County Area = 33.6 acres
 - BNSF = 8.7 acres
 - Billings White Truck = 4.1 acres
 - Yegen Family = 2.9 acres
 - Service Candy = 1.9 acres

- Keenan Family = 1.3 acres
- Mayor Hanel: If this was to succeed and infrastructures improve, etc., what does BNSF stand to benefit?
- Kelly McCarthy: If BNSF were to come in now, they would be part of the TIFD, which means down the road, they would have access to the funds just like any other member of the district would. Most of BNSF property is already serviced except for the northeast corner. There are two properties that don't have sewer or water - south along 1st Ave. and then north along 6th Ave., they probably already have services. They won't get additional services, but if they don't come in now, they will never be part of the TIFD. It will limit what they are able to do with that property down the road. NOTE: Kelly showed a power point on where new sewer is going in. By 4th Ave. to 7th Ave. down 3rd and then down 9th? Currently do not have access to water. Will be new water infrastructure put in. One of the biggest challenges is flooding. We have some new storm repair going on plus sidewalk, curb, and gutter.
 - BIRD Action Plan for Expo Gateway Project
 - Work with landowners on annexation – Sept. 2014
 - Develop New Urban Renewal Plan – Nov. 2014
 - Expand East Billings TIFD – Jan. 2015
 - TIF Revenue Bond – Feb. 2015
 - Project complete – Dec. 2015

Had a conversation with Candi Millar from Planning. The City of Billings has put together an action plan close to this plan. Maybe as early as next week start putting together a project with the City. Working with the landowners on the annexation. Develop the URP (Urban Renewal Plan), expand the TIFD, and get the revenue bond. Then we are ready to send over to Engineering.

- Charlie Yegen: We are County property owners. There is another piece of County ground that belongs to BNSF right along 6th Ave. There is a great opportunity for the City with regard to this expansion insofar as being able to utilize a piece of property that has not been used for years. This opportunity is rare particularly as it relates to the link between Metra Park and the downtown area. There are some great ideas being discussed right now in terms of collaborative efforts between various groups that are trying to make this area a little more viable. The property owners have a rare opportunity. Appreciate the fact that the City has come to the table and trying to put this together. Really an opportunity for Billings to be able to show itself and have people who come from out of town to come and enjoy our town. As a family, we are in favor of this. Nothing will work until we get the infrastructure and the pipes in the ground. Convinced this area will blossom.
- Swanson: (Inaudible).
- Charlie Yegen: A lot of mixed development that is going on. I think the Master Plan that has been put forward, the multiuse development (restaurants, hotels, gathering places such as a convention center, movie theaters), can support what goes on at Metra Park. I think that would be most appropriate. In terms of being able to tell you a particular zoning type, not sure I am equipped to do that. This is a good plan.
- John Greenberger: I represent Service Candy at 802 4th Ave. N. I am here representing the family that owns the property. My background is real estate. I know that annexing and working with the City would be a great benefit to the City. Great artery running through there. What you can do from an architectural perspective, etc., is only limited by our vision.
- Gayle Berry: Own Berry's Cherries across from the Metra and is in support of annexing into the City.
- Tom Romine: Represent the Johnson Family who owns the Keenan Johnson building on 7th and 4th Ave. Building is in the County and has City services for a number of years. We are very supportive of this entire project.

- Marty Connell: CM Swanson, I would like to answer your question. We put in a new code called EBURD. What we hope to do is to come up with a similar type of form based code that will be specific for that area to foster the things that Mr. Yegen was talking about. CM McFadden brought this up before. What kind of interest are we getting? Many people are interested.
- Kelly McCarthy: Have known the challenges. Looking forward to being the generation that resolves this annexation.
- Cimmino: With \$2,746,000,000 taxpayers along with the \$250,000 in County taxpayers, this is a huge benefit for the land owners. But when those properties are developed, then it is going back on the tax rolls for the City. Looking forward to development.
- Brown: The amount of water causing problems is surge water?
- Kelly McCarthy: The current pipes can't handle the water amount.
- Marty Connell: Public Works spent three years looking at what was underground. The problem is, there are no sidewalks, curbs, and gutters. The pipe being put in on 15th St. is going to take all the water coming from Rocky and MSU-B. We then have water that comes off the Rims. Hoping, this will relieve the problem. We have an unofficial agreement with the County Commissioners, if we don't solve the problem on the corner by the Metra, the County would be willing to give up some land to put in a surge reservoir.
- McFadden: What plans are there for underground pipelines to move the water?
- Marty Connell: There is storm/sewer, sanitary sewer slated, and waterline.
- McFadden: Was Wastewater or Refinery Plant in on this water runoff plan?
- Marty Connell: Refinery not involved to my knowledge because they are on the other side. As far as the Wastewater, one thing in the Master Plan that we addressed for both the EBURD and the east end, we are talking about large areas when there is a big surge of water, we can handle the water on the surface. Trying to stay away from building a reservoir. Engineering may come back and say that we have to build a reservoir.
- Tina Volek: The next step is a petition for annexation that needs to be circulated. No action is needed from the Council at this time other than to make sure there is no objection at the Council level to us proceeding with this project. Very tight time table.
- Council unanimously agreed to proceed.
- Public Comment: None

TOPIC #2: Public Safety Mill Levy

- Tina Volek: Presented and passed out copies of presentation "Family Safety Levy". Will be on the Regular Council Mtg. for July 14. This will begin the process for putting on the ballot November 4. Proposing a Public Hearing and first vote on this Ordinance next Monday, and a Second Reading and approval of a Resolution that will set the language for the ballot on July 28. That material will be transmitted to the election office in time for the August 11 deadline. Then ballots go out October 6.

There has been a significant increase in the number of calls that we have had in the City of Billings. Yesterday's events which ended well, thanks to the officer involved, are among things we are concerned about. Some of the statistics show the number of police and fire calls have risen more than 32%. From FY09 - 69,174, to FY13 - 91,519. Currently have 9 police beats. When the Mayor came to the City in 1976, we had 9 police beats. We are a growing city and anticipate that our population should be approximately 128,000 in 2024. Our land area is expected to grow 1 ½ to 2 sq. miles in the next five years. We are a growing community with growing needs. At this time we have been five years without an increase in our Mill Levy for Public Safety. We continue to put significant amounts of the GF to support the Public Safety Levies that are being collected as well. Currently 58% of the City's General Fund, which also

pays for Municipal Court, for your division, for my division, for the City Clerk's Office, for Parks & Rec., which comes from property taxes, goes to Public Safety in addition to the two levies. We lost one position in the Fire Dept. because we transitioned the fire truck maintenance from the Dept. to the City's shop. Have added 3 officers in the Police Dept. These are very specific officers. One is a School Resource Officer who is used predominantly by the School District. The other two are the downtown officers that are paid for by the BID. A ten year period since the last bond was approved and a five year period since we sent any increase in revenue from that bond. It has been capped out. We have a significant increase in calls. What you saw in your Friday Packet were three options. Pat Weber will present.

- Pat Weber:

Reduced Staffing, No Levy					
	Estimate FY 16	Estimate FY 17	Estimate FY 18	Estimate FY 19	Estimate FY 20
<u>Scenario 1 - Reduced Staffing, No Levy</u>					
Reduce Public Safety Expenditures	\$ -	\$ 1,100,000	\$ 3,000,000	\$ 1,200,000	\$ 2,400,000
Public Safety FTE Reductions	-	14	36	15	30
<u>Scenario 1 - Reduced Staffing, No Levy</u>					
	Estimate FY 21	Estimate FY 22	Estimate FY 23	Estimate FY 24	Estimate FY 25
Reduce Public Safety Expenditures	\$ -	\$ 1,800,000	\$ 1,400,000	\$ 1,600,000	\$ 1,600,000
Public Safety FTE Reductions	-	23	18	20	20

Status Quo					
	Estimate FY 16	Estimate FY 17	Estimate FY 18	Estimate FY 19	Estimate FY 20
<u>Scenario 2 - Status Quo</u>					
Levied Dollars	\$ 1,500,000	\$ 1,500,000	\$ 2,400,000	\$ 5,500,000	\$ 8,700,000
Estimated Mills	9.00	9.00	14.00	32.00	50.00
Estimated Annual Tax on \$200k house	\$ 23.00	\$ 23.00	\$ 36.00	\$ 83.00	\$ 130.00
Estimated Annual Tax on \$100k house	\$ 11.50	\$ 11.50	\$ 18.00	\$ 41.50	\$ 65.00
<u>Scenario 2 - Status Quo</u>					
	Estimate FY 21	Estimate FY 22	Estimate FY 23	Estimate FY 24	Estimate FY 25
Levied Dollars	\$ 11,100,000	\$ 13,200,000	\$ 15,300,000	\$ 17,600,000	\$ 20,000,000
Estimated Mills	63.00	75.00	86.00	98.00	110.00
Estimated Annual Tax on \$200k house	\$ 163.00	\$ 194.00	\$ 223.00	\$ 255.00	\$ 286.00
Estimated Annual Tax on \$100k house	\$ 81.50	\$ 97.00	\$ 111.50	\$ 127.50	\$ 143.00

Community Growth

Scenario 3 - Community Growth	Estimate FY 16	Estimate FY 17	Estimate FY 18	Estimate FY 19	Estimate FY 20
Levied Dollars	\$ 2,000,000	\$ 2,500,000	\$ 4,000,000	\$ 7,900,000	\$ 11,200,000
Estimated Mills	12.00	15.00	24.00	46.00	65.00
Estimated Annual Tax on \$200k house	\$ 31.00	\$ 39.00	\$ 62.00	\$ 119.00	\$ 168.00
Estimated Annual Tax on \$100k house	\$ 15.50	\$ 19.50	\$ 31.00	\$ 59.50	\$ 84.00
Scenario 3 - Community Growth	Estimate FY 21	Estimate FY 22	Estimate FY 23	Estimate FY 24	Estimate FY 25
Levied Dollars	\$ 13,400,000	\$ 15,600,000	\$ 18,000,000	\$ 20,200,000	\$ 22,800,000
Estimated Mills	77.00	88.00	101.00	112.00	125.00
Estimated Annual Tax on \$200k house	\$ 199.00	\$ 228.00	\$ 262.00	\$ 291.00	\$ 325.00
Estimated Annual Tax on \$100k house	\$ 99.50	\$ 114.00	\$ 131.00	\$ 145.50	\$ 162.50

- Tina Volek: The Ordinance that we will be presenting to you is based on our recommendation, which is that you go to Community Growth option. The difference at the very top and for home of \$200,000 is less than \$20. We think this is a significant opportunity for us. We do not need any action or recommendation from the Council tonight. Todd Buchanan is part of a group that has agreed to help us with assistance in working on the Levy as we go along.
- Todd Buchanan: We are in a very unique situation as a business owner and a family member, with the prospect of growing and thriving in Billings, MT. To perpetuate that, we are going to have to make some investments to keep the services and infrastructure. As Mayor Hanel pointed out, 10 years ago, the Council at that time, and the community had the forethought to prepare for a change in community, its growth, and economic prosperity we are seeing. Our perception as we visit with business owners and family members at this stage, we need to be prepared. We are well served by our Police and Fire Depts. and we think it is because we have made these investments in a proactive way. To see it on the Agenda is encouraging. I suggest the Council take a hard look at these proposals. I stand ready to support you with the direction you choose to move forward.
- Yakawich: Mr. Buchanan, how do you feel about Scenario 3?
- Todd Buchanan: It is a lot of money. The way I look at it, is an investment. Two things resonate as I think about how we as a community are going to pay for these issues. We can be proactive and make an investment to continue to prepare the Police and Fire Dept. to be prepared to handle the change and needs this community has, or you can look at where some other communities have gone, where they decided that number is too big, or not the right approach. Then you are paying for those issues in arrears. We have a lot of issues right now with the crowded jail and court system. This proposal encompasses investments in all of these areas. My encouragement to the Council is to spend the time needed to make sure it is the right investment, and to be somewhat specific how those dollars would be used addressing the issues that we predict will be coming.
- Mayor Hanel: I am in support for this. It is interesting to look at the numbers under Status Quo, the \$286 under FY25, and \$325 under Scenario 3 over a period of time. It is an investment. We have to look out for our citizens. Public safety is an absolute priority.

- Pitman: Is this just another 10 year fix or is this a perpetual levy that will continue on?
- Tina Volek: The Mill Levy is a perpetual levy. It will go forward after that. It will be needed to support the Depts. as they grow. Until we know what the growth of the City is going to be, hard to predict what we will need in the future beyond that. If we as a City continue to grow, then I can't guarantee that ten years from now, another Administrator won't be here asking for another Mill Levy. I want to point out that we have not been back for ten years. We have kept our pledge and managed that money and have provided folks with the service to the best of our ability.
- Pitman: With employee negotiations and these dollar amounts, does this have a restriction so that we are not getting requests for 5% raises, etc.?
- Pat Weber: It has costs built in as far as costs for health insurance to go up.
- Pitman: In all the Scenarios we have seen we eat up our reserves?
- Tina Volek: We keep down the cost of the Mill Levy in the early years by using unbudgeted reserves to meet our emergencies.
- Pitman: How far do we want to run those down to the point where we are living on the edge all the time? Or, is there a point where we want to take it down to \$5M and adjust.
- Tina Volek: Your budgeted reserves do contemplate those things. They contemplate things like closing sell of the landfill, covering payroll, etc. Do include some numbers for (29%) for the General Fund. We continue to have, build, and hold that. It is the excess we put in that knowing again we were coming to a point where our Mill Levy had reached its ultimate capacity and we needed to move forward.
- Pitman: Pat, do you have a recommendation on how much we should have in the unbudgeted reserves? Seems we should have a safety net on top of that.
- Pat Weber: Right now with the 29%, it is about \$10M. The way the plan is set up is where we get to when we get through this spending it to pay for public safety. If you want more than \$10M worth of reserves, I would have to go back and redo projections. Then the Levy would go up.
- Tina Volek: We did not have this kind of an unbudgeted reserve 10 years ago. Have been extremely cautious with the idea that we would need to fund some of these programs for a while.
- Pitman: Concern is that we are taking the \$10M and directing all of it to Public Safety, and part of our job is to look at all of the Departments.
- Brown: How far does Option 3 take down our reserve?
- Tina Volek: Will still have a 29% budgeted reserve in the General Fund. What we use up in the first 4 years, we will use the \$10M in unbudgeted reserves to help keep the cost of the Mills down early in the program.
- Brown: For example, we have rocks on the Rims that need to be taken care of.
- Tina Volek: You have budgeted reserves which includes some monies for catastrophes. This dedicates money to go on and staff your Public Safety material. Otherwise, down the road you are either going to be cutting staff or you are going to be taking more money out of other places if you want to go on funding Public Safety. It is a tradeoff. We are told constantly by the public that Public Safety is the most important function the City of Billings offers. We have found other sources of revenue when necessary. Sometimes we defer projects and do other things like removal of rocks. We are doing that with our Parks Dept. It is a matter of balancing funds.

- Bird: I would agree with CM Pitman in terms of at least looking at. If we have \$10M unbudgeted reserves, what would the numbers look like if we kept \$5M in unbudgeted reserves? I would be more inclined to want something in an unbudgeted reserve category.
- Tina Volek: What portion of that \$10M would you like to keep? We have a very brief time to put those numbers together.
- Swanson: 29% budgeted reserves?
- Tina Volek: Budgeted reserves in addition to the \$10M. That is for the GF only. Each fund has a separate reserve amount that is set by Council policy. The 29% would equal \$10M.
- Pitman: If we had an idea of what non-budgeted reserve would be.
- Pat Weber: Looking at just leaving \$1M, \$2M, \$3M?
- Pitman: Would like \$2M in reserve so we have a cushion, and see what that changes as far as numbers.
- Pat Weber: Can have a comparison for the meeting on July 14 showing the year.
- Pitman: Really think going to the community growth is the other responsible part of this. How far can this population grow on this amount? Are we looking up to 200,000 people?
- Tina Volek: Looking at about 1.5 - 1.8% (128,000 people by 2024) which has been the City's average. This would handle the community growth for that percentage.
- Public Comment: None

TOPIC #3: 2014 Long Range Transportation Plan

- Scott Walker: The Plan (handout) has a lot of good information about where we are today. We have engaged the community for the last 14-15 months on this. When we had our interactive website up, we received about 600 comments.

2014 LRTP Overview

- 2014 Billings Urban Area Long Range Transportation Plan

What Is a Long Range Transportation Plan?

- Plan for the next 20 years
- Engage the community
- Assess transportation modes
- Identify needs, projects, and funding
- Update required every 4 years

We are looking at all modes of transportation, and we have identified the projects and associated funding. We go through this process of an update every 4 years.

Who Is Involved?

- Project Oversight Committee
- Technical Advisory Committee
- Elected Officials, Resource Agencies, Public Involvement
- Consultant Team (Kittelson & Associates, Inc. and DOWL HKM)

What Topics are addressed in the LRTP?

- Goals and Objectives
- Public and Interagency Involvement
- 2035 Population/Employment Forecasts
- Inventory of Needs and Opportunities
 - Streets and highways

- Public transit and transportation
- Freight (truck and rail)
- Pedestrians, bicyclists, and trails
- Project Recommendations

Funding Sources and Projected Revenue

Scott showed a map: Our study area is an urban area that is larger than our City. Obviously a lot smaller than our County. That is where most of the people live, around our community.

Chapter 1 – Introduction

- **Goals**
 - Goal 1: Safe, Efficient, Effective
 - Goal 2: Function Integrity
 - Goal 3: Prioritized Improvements
 - Goal 4: Environmental
 - Goal 5: Multimodal
 - Goal 6: Economic Vitality
- **Schedule**

Chapter 2 – Interagency and Public Involvement Program

- Building Awareness of the Plan
 - Project Oversight Committee
 - Stakeholder Interviews
 - Neighborhood Meetings
 - Commissions, Councils, and TAC

Utilizing Various Outreach Methods

- Email updates
- “Notify Me” list
- Interactive Survey
- Public Meetings
 - September 2013
 - March 2014
- Project Website at: www.billingsirtp.com
- Flyers
- News Articles

Scott displayed an Interactive Web Map Survey that he discussed.

Chapter 4 – Streets and Highways

- Functional Classification
- Existing and Future Year 2035 Conditions
 - Inventory
 - Safety
 - Operations
- Deficiencies and Needs
- Project List

Chapter 5 – Public Transit and Transportation

- Existing Public Transit Services
 - Public Transit
 - Public Paratransit
 - Private Operators

- Existing Airport facilities
- Deficiencies and needs
- Project list and strategies

Chapter 6 – Truck Services and Facilities

- Existing Conditions
 - Facilities
 - Major truck activity centers
 - Safety
- Existing / Future Demand
- Needs and Deficiencies
- Project List
 - 11 projects (projects identified in Chapter 4)

Chapter 7 – Rail Services and Facilities

- Literature Review
- Existing Conditions
 - Rail facilities / operators
 - Rail Crossings
 - Train frequency
 - Safety
- Existing / Future demand
- Needs and deficiencies
- Project list

There is an issue with railroad traffic in our downtown.

Chapter 8 – Pedestrian and Bicycle Facilities

- Literature Review
- Existing Conditions
 - Mode share
 - Pedestrian facilities
 - Bicycle facilities
 - Trail facilities
 - Crash history
- Needs and Deficiencies
- Project List

Chapter 9 – Safety

- Background
 - Federal Requirements
 - State Plans
 - Local Plans
- Safety Considerations
 - 5 “E” Approach to Safety
 - Safety Analysis
- Recommended Strategies

Chapter 10 – Security

- Background
 - Federal Requirements
 - State Plans
 - Local Plans

- Security Considerations
 - Coordination
 - Critical Infrastructure
 - Community Priorities

Chapter 11 – Recommended Plan

- A Toolbox of Transportation Strategies
 - Congestion Management
 - Public Transportation System Operation
 - Connecting People
 - Alternative Intersections and Interchanges
 - Safety
- Transportation Projects to Address the Future Vision
 - Streets and Highways
 - Pedestrian, Bicycle, and Multiuse Trails
 - Public Transportation

Chapter 12 – Financial Plan

- Funding Sources
 - Federal
 - State
 - Local
- Spending and Revenue Plan

Fiscal Constraint Met

Project Category	Committed	Recommended	2015 LRTP Total	Estimated Available Revenue	Fiscal Constraint Met
Streets and Highways, Pedestrian, Bicycle, and Multiuse Trail	\$239.4	\$36.5	\$275.9	\$281.7	Yes
Public Transportation (Capital Only)	\$0.8	\$9.0	\$9.8	\$15.5	Yes
System Operations and Maintenance	\$28.1	\$0	\$28.1	\$28.1	Yes



All costs reported in million dollars

Chapter 13 – Conformity Analysis / Determination

- Background
- Conformity Determination
 - Interagency Consultation
 - Public, Stakeholder, and Interagency Involvement
 - Latest Planning Assumptions and Regional Emissions Analysis

- Scott Walker: This document goes through our County Commission for recommendation of PCC tomorrow. It goes to our Planning Board for recommendation tomorrow evening. It is on Council's Agenda for July 14. PCC meets July 15.
- Yakawich: Page 6 is basically imploring how important the MET is, and how we need to get public participation as well as public commitment (funding). It is a very important part of our City. Could you talk about Public Transportation Systems Operations.
- Scott Walker: That is the funding to operate our system. We have a very fine transit system. It functions well, and is clean and efficient. We should be very happy as a community to have a system like this. We need a few more people riding.
- Yakawich: Will there be more discussion on this? Were there new ideas that came up?
- Scott Walker: Yes. We got over 600 comments, and they range from everything from a crosswalk at a school to an intersection that has maybe more accidents than the property owners around there think it should have. We took that information and we ran it by staff. There are a lot of projects that are now on a list. We as staff are listening. We take this information and we try to incorporate it in such a way that if we have a problem in any part of our City, we can address it. As part of this, we will have all those comments listed. There will be quite a large appendix attached to this that will be listed on what the public had to say.
- Pitman: Important to point out, this isn't just a document for us to put on the shelf. This is a community document that is vital to the growth of our community. For Council members it is a great reference. Also for citizens to look at. Want to applaud Kittelson and Associates. An incredible group to work with.
- Cimmino: This was an excellent process. The consultants that were chosen were so organized. You were organized and kept us on task.
- Public Comment: Larry Bean – 2905 Harrow Dr.: I am here as a representative of the Yellowstone Valley Citizens Council. I have a comment that is specific to Chapter 7 of the plan that deals with rail traffic. We would like to request that you recommend that the plan have a little more robust scenario of what the future might look like for rail traffic. When you look into the plan, you will see that it is really a crystal clear view of the future with just one scenario. That was based on a much earlier federal study. That federal study didn't even foresee that there was going to be a big increase in oil, gas and coal on the rails. The Western Organization Resource Council has funded a plan and it says "Heavy Traffic Still Ahead". It shows much higher numbers than what the plan shows. How important it is to have a wider range of scenarios to respond to.
- McFadden: Where did these numbers come from in your study?
- Larry Bean: The study was prepared by Terry Whiteside. He is a consultant primarily for rail traffic. He has had decades of experience consulting locally. He is a Billings resident.
- McFadden: So these numbers originate with the industry where they were telling you what their projection was for the future or did he estimate this?
- Larry Bean: A good academic report and well substantiated all of the numbers that are in there.
- Brown: With your document, do you make recommendations as well?
- Larry Bean: The main recommendation is we need to be having more conversations with the people that are creating rail traffic to really understand what the problems are and what the solutions are.
- Brown: Are there any other solutions?
- Larry Bean: Not specific as you would see in this transportation plan. It is just laying out the problem. The problems are well recognized all the way to Longview Washington. There is an environmental impact statement being prepared based on the belief and the numbers in the "Heavy Traffic Still Ahead" report.

TOPIC #4: Non-Discrimination Ordinance

- Tina Volek: The City Council received in the Friday Packet, a revised Ordinance (second version). First version was rebuked by Council on June 16. We have included the directions that we received at the time from the Council. We are cognizant that there have been comments on both sides about the language in the Ordinance. We take our direction from the City Council, and as such, we will go through the changes that we would propose. There are some questions relating to two of those items that we have seen, but we are waiting your direction on how to proceed. Mr. Brooks who did a great deal of work and produced the final document. There are thirteen items we will go through.

First item: Section 7-1801: In that section, we had a recommendation at the last meeting that we use a neutral pronoun. We have deleted ~~his or her~~ and made it their. Next item is under 7-1802: We have a new definition for **bisexuality** which is: “**of, relating to, or characterized by a tendency to direct sexual desire toward both sexes**”. Is that acceptable to the Council?

On the second page, the definition of discrimination. The wording “actual or **perceived** sexual orientation”. There was some discussion of “perceived” at the last meeting. We did not get a clear direction on that and would appreciate some from the Council about whether it stays in or comes out. In addition to that, we did strike as noted earlier in the title, “~~Veteran's status, political beliefs, obesity...~~” Because there are employment preferences addressed in the State Code, Section 49-2-405, “Is employment sufficient in regard to Veteran's status.” That is one question we had for you. The ADA covers “obesity”, and the State Code, 49-2-308 “The political belief” appears to be covered elsewhere. There is coverage of those items, it is the staff's belief in other Statutes or Codes. We would recommend the deletion of that item, and then referring back to the Title as CM Cimmino noted earlier.

Item #4 has to do with the definition of Heterosexuality and Homosexuality. These definitions come from Merriam Webster online. It becomes a choice of which definition you choose to use. There are some who have suggested that sexually attracted to people of the opposite sex, under Heterosexuality, should be reflected in Homosexuality, as sexually attracted to people of the same sex.

Note 5 is the Housing Accommodation section: Has to do with private residence. This had previously been under the “Housing Discrimination Prohibited” section, and we discussed moving forward to this section.

Note 6: Public Accommodation – The language in this paragraph is identical to that in State Code 49-2-101 subparagraph.

Note 7 is a new definition. Has been inserted for “**Transgender: of, relating to, or being a person (as a transsexual or transvestite) who identifies with or expresses a gender identity that differs from the one which corresponds to the person's sex at birth.**” There has been some question about the use of the term “Transvestite”. We again seek Council direction on whether you wish to have that in or out. It is a definition for Merriam Webster online. Alternate definitions are available.

Item #8 is to clarify that this applies to the City of Billings. There was never any other intention from the staff. We do not cover schools and universities. They have their own anti-discrimination traditions, and is self- governing under State Law.

7-1805: Discrimination in Public Accommodations Prohibited – the highlighted segment, “**However, in any place of public accommodation where users ordinarily appear in the nude, users may be required to use the facilities designated for their anatomical sex, regardless of their gender identity, but may use facilities designated as a family bathroom or bathrooms for use by any sex. Such requirement does not constitute unlawful discrimination for purposes of this Section.**” This has been a subject of some discussion online. An alternative to the above could be to use MCA 49-2-404 which states: “Separate lavatory, bathing, or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy.”

Item #10: This is where we moved the material that went forward to Note 4 previously under the Housing Accommodation.

7-1807: Retaliation Prohibited. There was some question. This does require that retaliation be prohibited. This was in the first draft. Some have asked where it originated. It was adopted by Helena based on Montana Code Annotated Section 49-2-301 and was carried forward to our Ordinance.

Note 12 talks about “civil remedies, injunctive relief, costs, or other equitable relief incurred in the bringing of said claim and within the jurisdiction of Municipal Court.” There have been some questions about this, and the City’s capacity to do this. We would remind the Council that we are the only city in the state that has considered adopting this code that has civil infractions. This is reflected in this section of the Ordinance.

Note 13: “No jury trial is allowed in the Municipal Infraction Ordinance procedures”. The Council could do that and place some kind of a limit on the amount that could be awarded in a jury trial.

- Brent Brooks: Under Note 12, there was some e-mails about whether or not the rules of civil procedure in District Court applied to Municipal Court in MCA 25-30-101 subsection 2, provides that the proceedings and practice of Municipal Court must be the same as in District Court. It lists some exclusions that would not apply here. The only other thing that I would note is in this particular section, the Council can certainly limit damages if they want to, or eliminate them all together. The main important part of this Ordinance would be to halt or stop discriminatory practices. One of the ways to do that would simply get a court order that says “Henceforth in the future, such as an injunction, do not do this in the future”. The Council is not bound by some statutory jurisdictional damage limit.
- Tina Volek: Those are the changes that have resulted from the last meeting. We invite the Council’s comment.
- Cromley: Maybe make homosexuality and heterosexuality consistent with the language and taking out the word “transvestite” under the definitions Public Accommodations.
- Brent Brooks: Have asked Judge Kolar to provide us with what she believes is her jurisdictional limits. She is going to do that tomorrow. Her activity as far as a civil document is very minimal. To be on the safe side, you should limit the damages at 12,000 or below. The Judge will be the final say on what her jurisdiction is. In terms of whether or not we are in violation of any tort statute, not that I am aware of. This is something that the Council within its discretion could set a small amount for a civil recovery. That might be mented by which you could limit the damages, and focus more on the relief through an injunction or something like that. There is nothing that I know of that would be a limiting factor on this, except for the Municipal Court’s jurisdictional limit. The Statutes are not a model of clarity.
- Mayor Hanel: Question about Note 13 – no jury trial is allowed under the Municipal Infraction Ordinance procedures. We are the only City that has that. No jury trial is allowed.
- Brent Brooks: That is correct. If the Municipal Infraction enforcement method is adopted, yes. The Ordinance was adopted by the Council about 2 ½ years ago. There is no right to a jury trial.
- McCall: Could you give the Infraction fines?
- Brent Brooks: The Judge will impose \$110 plus any court costs for the first offense. Second offense is up to \$300 or \$330. I will check and e-mail you. There is a limit on what the Judge can impose in terms of a fine. It is civil and there is no criminal case or incarceration.
- Swanson: I have a problem with “Discrimination in Public Accommodations Prohibited”. This anticipates a case where it’s nude users of a locker room. You say that if that happens, activities designated for their anatomical sex. I can’t imagine anyone ever using it that way, so why set it up so it is possible? I would suggest that the words “anatomical sex” be taken out.

- Mayor Hanel: We allow staff to complete their presentation of the revisions, ask questions of those revisions, and then we allow public comment before get to a point of suggesting changes.
- McCall: Question I have on the last statement, “Separate lavatory, bathing, or dressing facilities”. When you talk about lavatory, that is really public bathrooms, and I would suggest that not be included.
- Brent Brooks: That was just an alternative language to the highlighted area that CM Swanson just mentioned. That is why we said an alternative could be the statutory definition that is in the Montana Human Rights Act. I believe that the highlighted yellow area came from the Helena version.
- McFadden: In 7-1805: “Discrimination in Public Accommodations Prohibited” It was my understanding that when this draft Ordinance came out, it was to not only prohibit discrimination, but to protect other people who might misuse this Ordinance, such as men going into the ladies room, etc. Thought this was to protect both sides of the issue.
- Brent Brooks: This section is one that has been controversial. Any public comment, etc., certainly this discrimination should be neutral. This is probably the most problematic section. Do you leave it to a business owner to decide for example, which is really what 49-2-404 contemplates as the alternative language? It is something that we could confer with the other cities that have passed the Ordinance? Helena indicated that this was an Amendment made by one of its commission members towards the end of the nine month discussion on the Helena Ordinance. Can double check and see if there is some additional background concerning that.
- Cromley: Helena uses language similar to what is in the yellow?
- Brent Brooks: Yes. I will confirm that is verbatim from the Helena version. Did talk with the City Attorney, and have had no issues with their Ordinance with this particular section.
- Cromley: The substitute language you have below from the Statute, is that in another city in Montana?
- Brent Brooks: I don't believe so. I think that was just based on some public comment on our own research further into the Human Rights Act Title 49-2. We saw that Statute and that is just an alternative. There may be others that are preferable to you and the public that do not include either one of these.
- Cimmino: You just stated that it took Helena nine months to deliberate on one issue?
- Brent Brooks: On their Ordinance. If you believe the Helena Independent Record, there was a reference in one of the articles. We have looked at a lot of news articles. We have looked at a lot of sources. There was a passing reference by the reporter who offered the article that took about nine months.
- McCall: Follow up on CM McFadden's statement. It does seem to me that in order to be neutral and fair, probably ending the 7-1805 would be best to end it right before the yellow highlighted section begins, and move that.
- Cimmino: Last time we reviewed the first draft on June 16, we talked about deleting the word “obesity”. We talked about deleting the reference of “veteran status”. That is covered under Federal Law, and also (inaudible) was eliminated. We also talked about the word “perception”. The second page, first paragraph, the word “perceived”. I felt that was being subjective and nonobjective at our last meeting. CM McCall backed me up. CM Bird indicated that “perception is reality”. “It is based on what we see, and don't instantly label or judge”. CM Cromley said that “We should keep it in”. However, CM Brown said, “How do you enforce perception?” and CM Cromley responded, “It is very difficult, you have to prove it”. “The burden of proof is on the plaintiff”. Coming back full circle on this one word, I see that it is highlighted in yellow on page 2. Since we have had an opportunity to review this, I am wondering what the sentiment is on that particular word. Wondering if my colleagues have any feelings on that at this time.

- Brown: Personally I think it is way too subjective. You can't do anything with "perceived". That is my opinion. On the other side of that, not only can this person discriminate because he "perceived" someone to be some way. The flip side is, you could be hauled into court because they "perceive" that you believe that they were LGBT or otherwise. This whole thing is going to be about "perceived". If this passes, I am not hiring you because you are LGBT. They will come up with a different reason. Just fact. I think "perceived" has to go.
- McFadden: Generally "perceived" in our legal system, your thoughts are your own private property and you cannot be incriminated.
- Bird: Discrimination first and foremost is based on perception. Whether someone is tall, short, what you see if how you are going to react. So you may be LGBT and you may not be, but if someone thinks you are, that is how they will respond to you based on what their thoughts are. "Perception" in my mind absolutely has to be in there. We are not about monitoring the people's thoughts; we are talking about action in the Ordinance.
- Brown: You can't prove "perception".
- Bird: You can't always prove action. That is beside the point. It is the action based on the perception.
- Mayor Hanel: I think some words are missing. You mentioned action. There must be an action for someone to "perceive" that something did or did not take place.
- Pitman: That proves the point that I think we are making on "perception". If action happens that is provable but "perception" isn't. I think it has to be removed.
- Mayor Hanel: As a Council, it is difficult for you to provide direction at this point and time without hearing what the public has to say. Then we will complete with providing direction to staff.
- Tina Volek: An ordinance requires a public hearing, two readings, and then 30 days to become law before the Council takes final action. It is a city law. Suggestions tonight will result in a third version.
- McCall: Based on what we come up with tonight, we might be able to take it to a first public hearing. That is another option. Brent, what if we were to take out "actual or perceived" and say (page 2 at the top) "because of their sexual orientation" and left both of those options out. It simplifies it.
- Brent Brooks: Yes, we will debrief tomorrow while it is fresh on our minds. Could check with the other four cities to see if they have an opinion on that too.
- Public Comment:

The following testified in **favor** of the Non-Discrimination Ordinance:

Tina Postel (Did not sign in)	3423 Prestwick Rd.	Billings, MT
Walt Donges	941 Constitution Ave.	Billings, MT
Donald Seibert	1112 Delphinium	Billings, MT
Steve Gordon	3316 Laredo Pl.	Billings, MT
Sarah Rossi		Helena, MT
Jaq Quanbeck	1446 Norman Park. Dr.	Billings, MT
Martha Stahl	2211 Oak St.	Billings, MT
Pat Plowman		Joliet, MT
Penny Ronning	3014 Glacier Dr.	Billings, MT
Marty Elizabeth Ortiz	707 1 st St. W. Apt. 6	Billings, MT
Sarah Jetter	414 Quaw	Belgrade, MT
Janice Linn	821 N. 27 th St.	Billings, MT
Paul Hanson	3333 38 th St. W.	Billings, MT
Amy Hauschild	1215 6 th St. W.	Billings, MT

Tammy Rea	1328 Quartz Pl.	Billings, MT
Robert Brown	3145 Old Hardin Rd.	Billings, MT
Aaron Wallace	527 St. Johns Ave.	Billings, MT
Barry Ivanoff	1400 Granite Ave.	Billings, MT
Craig Lancaster	137 Ave. B	Billings, MT
Kristi Grob	639 N. 26 th	Billings, MT
Charlene Schoffeman	1921 Yellowstone Ave.	Billings, MT
Lynn Currie	440 Freedom	Billings, MT
Debbie Shank	143 Grapevine Rd	Joliet, MT
Eran Thompson	2405 13 th St. W.	Billings, MT
Sabrina Currie	421 5 th St. W.	Billings, MT
Mariah Welch	225 Ave. D	Billings, MT
Randy Hyvanen	1237 Poly Dr.	Billings, MT

The following testified in **opposition** of the Non-Discrimination Ordinance:

Ben Uselman	4615 Palisades Park Dr.	Billings, MT
Nancy Pence	4307 Palisades Park Dr.	Billings, MT
Larry Beneker	518 Jemstone Dr.	Billings, MT
Mark Klein	3365 Dover Lane	Billings, MT
Pam Adams	5323 Blue Heron Dr.	Billings, MT
Clifton Berglee, DVM	PO Box 508	Laurel, MT
Lee Llewellyn	1038 N. 30 th St.	Billings, MT
Mae Woo	1727 8 th Ave. N.	Billings, MT
Meg Burvainis	384 W. Daffodil Dr.	Billings, MT
Joel Dugan	23 Prairieview Dr.	Billings, MT
Bethany Dugan	1811 Wyoming Ave.	Billings, MT
Jennifer Strong	411 Glen Dr.	Billings, MT
Dick Pence	4307 Palisades Park Dr.	Billings, MT
Paul Burroughs	3914 Victory Cir. Apt. #121	Billings, MT
Mitch Harmen	504 Santa Fe Dr.	Billings, MT
Shawn Parr	3516 Miles Ave.	Billings, MT
April Mayberry	710 N 22 nd St.	Billings, MT
Mark Hall	3952 Chamberlain Dr.	Billings, MT
Alex Chai	8204 Angus Circle	Billings, MT
Daniel Robertson	627 Mattson Lane	Billings, MT
Kari Beebe	4404 Huntington Hills	Billings, MT
Tori Benders	2702 Wyoming Ave.	Billings, MT
Alisen Turner	PO Box 23704	Billings, MT
Paul Schoemer	1223 Princeton Ave.	Billings, MT

Chuck Dugan	1811 Wyoming Ave.	Billings, MT
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Question for Legal: If a business owner objected or refused to obey the NDO if it passes, because of religious beliefs, if it was multiple offenses, what would be the issue with that?

John Suchan	4657 Corrall Dr.	Billings, MT
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Wanted to know if Mayor knows how he will vote for the NDO? What criteria will Mayor use to make that determination?

Curtis Hughes	1322 Beartooth Dr.	Billings, MT
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Sexual orientation is a term without clinical or legal definition. No resolution or draft law should be considered by any government unless it contains a clear definition of this term. If the proponent of sexual orientation refused to define the term, know then that their intent is less than forthright that they are not being honest about a simplification, unintended consequences and their purpose is not simply to prevent discrimination.

The following people suggested **edits** to the Non-Discrimination Ordinance:

Janice Linn 821 N. 27th St.

821 N. 27th St.

Billings, MT

Richard Schwartz 2701 Terry Ave.

Billings, MT

TOPIC #5: Council Discussion

- Cromley: Two major issues on the Non-Discrimination Ordinance we need to discuss. First, I think it is important to leave “perceived” in. Alternative would be to take out both “actual or perceived”, the whole section.
Second issue, under 7-1805 highlighted in yellow “Discrimination in Public Accommodations Prohibited”. Would encourage taking out that language. People that use the same bathrooms before the Ordinance is passed, will use the same bathrooms after the Ordinance is passed.
- McCall: This draft has given us a good place to be right now. Two items to discuss: 1) Definitions of “discrimination”; 2) If there is an issue with “perceived” by some on the Council, I think a solution would be to take out “actual or perceived”. “Public Accommodations” should be fully inclusive. We should just keep it with the first statement and remove the highlighted yellow portion.
- McFadden: Make a recommendation in “Housing Accommodations”. It looks like the only time you can choose who is going to be on your property is if you are running an actual boarding house. Would really like to see it read “if the landlord lives on the property” (could even say 5 or less units). If it was a duplex or if they are renting out a separate basement, a garage apartment, or even a guest house in back, the landlord will have complete freedom to choose who is going to live at their residence and their address. If the landlord has 100 apartments, they can’t discriminate, but if the landlord lives on the property, and they are renting out the other side of their duplex, or triplex, etc., I believe that should be included and the wording should reflect that so they can choose who is going to be there on the property with them. So for the non-commercial landlords, I would like to have some exemption, especially if they are living on the premises.
- McCall: It seems the language actually fits for what you have described except like a duplex.
- McFadden: This language makes it look like they are a bunch of roommates in a house. Would like to make it fit so if there are real partitions, this non-commercial landlord right there on the premises, would be exempt from the Ordinance.
- McCall: Seems reasonable. Have to think this through.
- Brown: Question for CM McFadden. Where do we draw the line?
- McFadden: Have it say that if it was “his premises plus up to three others”. That would be fair. If it was anything else it would be more like a commercial operation. The basement, the cottage in back, and over the garage.
- Brown: All would have to be on the same lot?
- McFadden: Yes. For him to choose who was on his own property would be fair for what we could call a non-commercial landlord.
- Bird: CM McFadden, given your request, are we also going to allow landlords to make that same determination of the basis of age, race, color, national origin, ancestry, religion, creed, sex, pregnancy, marital status, familial status, and/or physical and mental disability, and allow the non-commercial landlord to also deny housing to those folks as well?
- McFadden: You used the word “we” and my answer to that is no. There are already laws in place that would govern that sort of thing. This would only include this one specific Non-Discrimination Ordinance that we are working on this evening. I am not pretending that we would extend this to bypass any state or federal law, or any other existing city ordinance.
- Bird: I don’t understand how there is any difference between LGBT and anybody else that is a protective class.

- McFadden: I would think that there would be a great amount of difference because this person who owns this property, and pays taxes to the City, and makes the mortgage payment, etc., they should have some property rights. I am not asking for somebody who has 100 apartments around town to be able to bypass this. I am just asking for this one exception for small non-commercial landlords who actually live on the property that he is renting out.
- Swanson: How is that different than what is written here?
- McFadden: What is written here, if they are all living in the same house, like a bunch of frat brothers, this would be different if let's say the other side of the duplex is completely closed off, or the guest cottage on the back lot is partitioned off where people have even their own gas meter, etc., on the same property with the landlord, and up to three other units. Give that small non-commercial landlord a right to choose his own lifestyle right there on his own property. I think that would only be fair.
- Swanson: Mr. Brooks, can you see a difference here?
- Brent Brooks: This sleeping room language that is underlined in this section comes from 49-2-305 subsection 2. That is part of the Discrimination and Housing and Exemptions. What I would like to do is look at that Statute and make sure that that language does not conflict with State Statute. Quite a lengthy Statute. What CM McFadden is saying, can we have an exemption from someone who has two or three separate living quarters that he/she leases to somebody? I don't know if that is allowed under State Statute without researching.
- Mayor Hanel: Is there a consensus that we can allow Legal to look into this?
- Council Members: Unanimous
- Pitman: 7-1805: The portion that is in yellow that we were talking about eliminating, I think we got this confused. We started mixing one thing with another. I think it assures some people of some protections. It also says you can use a family bathroom, a bathroom used by any sex. The key part is in the first sentence. I think that is what we were looking at, kind of some discretion. If somebody is "ordinarily appearing in the nude". That is addressing a difference between a bathroom and a locker room. There is a lot of discretion within a bathroom. I wouldn't know the difference if they were in a bathroom. Locker rooms become a whole other situation, and there is a lot more vulnerability. I really think when you read through this in its entirety, it is pretty important as far as an assurance to the public that there is some kind of discretion involved. I am noticing that the restrooms have both the male and female sign on them. I think when you start getting into locker room situations, there is a distinction. I know it is easy to get distracted in the bathroom. I think this section has more to do with the locker rooms.
- Bird: I understand what you are saying CM Pitman. However, I think that we have to give some level of consideration for discretion with transgender individuals who are expressing what they believe is their actual gender even though their anatomical might be the other gender, that any person like that going into a locker room of their expressed gender is going to be either very discreet about it, or dress at home to go to the gym. I think again, we are creating a situation that is ultimately going to discriminate against people. We need to be very careful.
- Pitman: One of the other things we have to be very careful about, we keep doing the LGBT. The fact is, we are talking in HLBTQ. I have no issues that people are going to be discreet, but how can it be manipulated. A heterosexual person that wants to manipulate this law can do that. That is the point I am trying to make. Everybody takes it personally. All of a sudden, it is about "me". An example, somebody was asked to leave, or their groceries were being thrown. That person might have just received some really bad news, when you perceive it as something else and move on. Reality is, other people can use this. When you include all as a sexuality and sexual orientation, you do open up to predators. You could probably get just as many people testifying that the predators could use this law as well. That is not referring to the LGBT. It is just people. You go to any sexual offenders program or anything like that; you are

going to find the spectrum. There is not one of these groups that are excluded from that. It can be misused and I think that is when people start talking about the unintended consequences of laws. How can it be manipulated and abused? That is a concern we have to pay attention to as well.

- Brown: Going back to before other cities adopted this. This is the verbiage from one of those other cities. I think they probably struggled with this very issue as much as we are struggling with this.
- McFadden: I believe that we have a duty to protect the rest of the heterosexual community even if we are trying to create an ordinance that does not discriminate against the gay/lesbian community. I think we could strike a balance. I don't think that would be considered discrimination. As CM Pitman said, people might take advantage of this. If listening to the testimonies of people coming up from the gay community, I did not get the impression that they wanted to be totally unreasonable with the rest of society. We have to consider what the definition of discrimination is. We don't have to be totally unreasonable to be non-discriminatory.
- Cimmino: Brent, I have a copy of the Helena Ordinance in front of me. This particular paragraph that everyone is talking about, is verbatim with what was passed December 3, 2012. Have heard a lot of testimony from quite a few groups of people, whether they oppose it or support this Ordinance, that Helena never had a problem. The consensus is that we should remove the yellow highlighted paragraph?
- Brent Brooks: We highlighted it because this probably has developed into the most controversial provision of the Ordinance. Don't think Missoula, Butte, Silver Bowl, or Bozeman have similar Ordinances. However, in my opinion, their versions of this Ordinance leave rather ambiguous and merky as to what happens with public facilities. Made a note to myself to recheck their Ordinances. The reason we included this from the Helena version, is because a lot of this Ordinance is based on either Bozeman or Helena. It is up to the Council if you feel comfortable including, or modifying the highlighted portion, or excluding it all together. That is why we also offer the alternative statutory language under 49-23-404. This was a late amendment according to the City Attorney in Helena. This was an Amendment proposed by one of the Helena Commission Members. We could get the minutes from the meeting where this was suggested, and see if there is anything of value from the CM who proposed this in Helena, and see if there is some discussion that might be helpful and e-mail them to you.
- Bird: If we include the highlighted portion in our Non-Discrimination Ordinance, and we have a member of the transgender community who is not comfortable going into the bathroom of the anatomical sex, we actually have discriminated against them because they will not have a bathroom to use. The last statement in that is "such requirement does not constitute unlawful discrimination for purposes of this section". Maybe not for that section, but it is blatant discrimination.
- Cromley: The language as it is presented has never caused much problem. As a matter of fact, people are going to use the same restrooms they are using now. It is not going to come up. Nobody is going to be asked to go to a different bathroom. A person who looks like a male and uses the male bathroom will not be disturbed. My preference would be to take it out.
- Brown: This section is not for just going to the restroom. This is for locker rooms that people use. I think this highlighted area is better than nothing.
- McFadden: Comment on the word I heard a moment ago, "not comfortable with". I realize that sometimes someone might not be comfortable with this situation or that situation, but the real purpose of the Ordinance was to give us all some reasonable guidelines, and to prevent outright blatant discrimination. Don't think it is the purpose of such an Ordinance to actually get right down to making people comfortable. Think we can only do so much. It is not our job to make everybody comfortable. It might be perceived as our job to prevent people from being

unduly discriminated against. That doesn't mean that everybody has to be totally comfortable because you can't please everybody. We just have to take a shot at pleasing the majority of the people that would be dealing with such an issue.

- Bird: Then I should retract my statement and say it is not about making people comfortable, it is about making people safe. That is our job. If we have any citizen in this community who does not feel safe because of the language we have passed, we are in fact discriminating against members of our own community who we should have a duty to protect. Comfortable isn't the right word. If we have a member of the community who does not feel safe going into a bathroom or a locker room, we have created an unsafe situation for them if we include this kind of language.
- Mayor Hanel: Do you think CM Bird, put aside the NDO, there are situations presently that people don't feel safe in the restrooms? Women in a womens restroom, men in a mens restroom, or in their locker rooms?
- Bird: Any given day, anybody can be concerned about a locker room or a bathroom. We are not going to prevent and create a utopia. We have a responsibility to take a stand for the people who live in this community, regardless of whatever they are or how they choose to live. I see us failing in that department.
- Pitman: I have an 8 year old daughter that has been watching this. I go home and get grilled on this all the time. She comes up with a question, "What happens when a guy follows me into the bathroom?" "How am I safe?" This isn't France. How do I tell her it is safe? Who is safer than another? I don't have the answer for an 8 year old.
- Bird: CM Pitman, I don't want to come across as insensitive, and it is probably going to be taken that way by some people. Remove the highlighted language in this NDO? To me, what I hear you saying, bathroom danger is predicated on the LGBT or the transgender community. They are two different issues. With or without this, a pervert could follow anyone of us into the bathroom and hurt us. It is not an LGBT isolated situation and that is how it is being brought up. That really bothers me because we are making assumptions or we are insinuating that there is something inherently perverted about LBGT people that we should all be afraid of. That is what it sounds like.
- Yakawich: This is a really complex issue. I want to support the idea of leaving this in. It is more discretion. Think we are dealing with a minority of people. A person who is transgender can either have an operation and be completely the other way or not. I guess they could be both. If we are talking about someone who had an operation, it is a mute point. In a locker room, my family is very discreet. I don't see as a big issue. They will be discreet. Leaving this wording in, keeps it clear for both sides.
- Swanson: To me it is just the opposite. The first sentence covers everything. It gets complex and falls apart on the highlighted part.
- Pitman: It goes back to the original premise of this whole thing. If you are going to have this Ordinance, it has to be equal, not special. No I am not referring to anything that regards specifically that in the LGBTQ community. I am saying, when you introduce this, and you put in Heterosexual to protect everybody, Right now the interesting part is, if you are heterosexual, the same protections are not there for you. You can be fired for being heterosexual. You can be denied services, employment, etc. There are a lot of things because it is not in law. How do we make it equal for everybody, and fair and safe? Every aspect of every community, every group has people that will manipulate a law or a rule, push it to its limits. We keep saying this whole thing is about LGBTQ, but it is not. It is about the heterosexual and everybody else. It is all of our sexualities. We have to keep that in perspective if we are going to say this is about equality. We have to look at the big picture.

- Mayor Hanel: With that thought and all of your other comments, what direction if anybody is willing to step up, can we provide the staff so they can continue doing what they are doing and not talk about it all night long.
- Cromley: I would say we leave in the highlighted portion and we take out under the definition of “discrimination”, the words “actual or perceived” and send it to the first public hearing.
- Mayor Hanel: 7-1805 – You have heard recommendation from CM Cromley. Do we have a consensus to provide direction?
- Bird: No. I want to take it out. It is discriminatory. I would make one concession. We have previously asked Mr. Brooks to look into it to see if it is even legal. I would be willing to hear from Brent.
- Mayor Hanel: So leave it in but with added to the fact that you have our Council verify the legality of the language?
- Brent Brooks: We could have 2 alternatives on this particular section showing you how it reads with and without the highlighted portion.
- Cromley: Leave it like it is.
- Mayor Hanel: We will leave it like it is.
- Pitman: If we go into a first reading too fast, we are going to start throwing amendments and then last minute start changing it. I think we should come back to another Work Session with a draft. It gives us one more chance to informally tweak it.
- Mayor Hanel: Consensus is direction for staff to leave it in.
- Cromley: 7-1802 – I would suggest we take out the words “actual or perceived”.
- Mayor Hanel: We have had quite a bit of discussion on that. Is there any objection?
- Brown: Question for CM Cromley. In your example, I walk in and they say, “I am not going to sell to you because you are Native American”. Let’s flip that around and say “I am not selling to you because you are gay”. Can I turn around and sue the business owner because he thought I was gay but I wasn’t?
- Cromley: I think there is a good reason to have it in. But I am comfortable taking it out.
- Brent Brooks: This is included in the Bozeman Ordinance.
- Brown: I would concede to taking out the two phrases
- Swanson: That would be my preference too.
- Mayor Hanel: Do we have a consensus for direction?
- Bird: 7-1802 – Under the definition of “bisexuality” where it says “a tendency to direct sexual desire toward both sexes”. Seems to be inappropriate. Perhaps a better word is “to direct sexual” or to “have a sexual attraction toward both sexes”. There is a huge difference in the meaning between an attraction and a desire.
- McCall: What we are looking at is to be consistent with the language. On the second page, “heterosexuality” and “homosexuality” we use the terms “sexually attracted” for consistency.
- Pitman: Someone mentioned a legal definition versus the Webster’s definition. Do you have a legal dictionary?
- Brent Brooks: There is a huge dictionary that Lawyers rarely refer to. It is an ancient document, but it is called Black’s Law Dictionary. There is a current edition. We can look and see if these terms are defined. Perhaps one thing to say for example is, “Heterosexual - attracted to the person of the opposite sex;” “Homosexual - a person attracted to the same sex;” “Bisexual - a person attracted to either sex”.
- Cimmino: Are we keeping in “sexually attracted”, or are we just going to say “attracted”?
- Tina Volek: We say “sexually attracted” in heterosexuality, and I understood the Council to say we were also doing that with homosexuality. So the language would be consistent if we were to use “sexually attracted to both sexes”. So the three are handled in identical fashion.

- Brown: Perfectly comfortable with all 3 of those. That is almost identical to what you are saying.
- Cimmino: We see people in the audience shaking their heads. We are trying to do the best we can to accommodate everybody. What is one more step?
- Brent Brooks: I think we have direction from the Council on these 3 to make them uniform and civil.
- Yakawich: 7-1802 – Under “Discrimination”. We have “discriminatory means any act, policy, or practice that has the effect of unfavorable subjecting any person to different or gender identity or expression, or association with a person or group of people so identified, or on the belief that a person has a particular sexual orientation, or gender identity or expression, even if that belief is incorrect.” Are we including all of that? The quandary I face with this, if I hire someone who is gay and a year later they change and say they are heterosexual. I find that very confusing.
- Mayor Hanel: You are not alone.
- McFadden: Maybe there should be some exemption clause in this.
- Cromley: I think you are both talking about discrimination on the basis of sex and that is not included here. That is included under state law.
- Yakawich: We heard testimony where one was lesbian and she changed and got married. We heard people who were married and then they changed and became lesbian. In a case where you are trying to create an ordinance and the employer is trying to figure it out. When their employees change gender, that is hard.
- McCall: Why would you be hiring someone because they are gay, or care if they switch? You are hiring them because they are skilled and they have the qualifications to do the job.
- Yakawich: For example, at the swimming pool, a girl lifeguard goes into the women’s area; a boy lifeguard goes into the women’s area. There are issues. What are times when people want to hire someone because of their orientation, or more simply heterosexual?
- McCall: You are thinking that the lifeguard has to be heterosexual in order to do that?
- Mayor Hanel: Just using an example.
- McCall: Couldn’t a lesbian lifeguard go into the women’s locker room? Or if she changed to heterosexual, couldn’t she do the same thing?
- Yakawich: In that case, the fluidity of the situation. An ordinance that I think of where it is clear. This is not clear. One can change from one gender to another. This could be complicated for an employer.
- Mayor Hanel: If you could give it some thought, it would be a good discussion to pick up on the next Work Session on that particular matter.
- Tina Volek: I understood the Council to say that the use of “their” while it may not be grammatically correct, is acceptable as a neutral reference to individuals. And we dealt with the “bisexuality”. We are okay with the other coverage of “veterans”, “obesity” and “political beliefs” in other sections striking it from the title and the text. Note 5 was a response that was when we transferred the sleeping room location. We have had the discussion, and is it the Council consensus that we are going to do something on a single property owner with up to 4 units on a single property?
- McFadden: Say it is a complex with 50 apartments and the owner lives in one of those apartments. It would be a misuse of the ordinance for him to enforce that.
- Tina Volek: You can’t have more than 2 unrelated persons in a bedroom. That is federal and the requirement. We will investigate and report back.

Note 6 which is on the third page. This had to do with “public accommodation”. There was some discussion of that but it does mirror the State Code.

- Bird: One clarification on the definition of “Transgender: of, relating to or being a person (as a transsexual or transvestite) who identifies with or expresses a gender identity that differs from

the one which corresponds to the person's sex at birth". We are crossing out everything in parenthesis, correct? "A person who identifies with or expresses a gender identity"?

- Tina Volek: That was my understanding.

Next Work Session is July 21. We have been postponing items because, first of all, we had budget all during the month of May. We have been moving items back. We did clear everything so we could do the June 16 item (NDO). On July 21st, we have a report from BSEDA (Big Sky Economic Development Authority), we have a tree pest report, have the status of software conversion in the organization, we have a livability partnership discussion, and we have handicapped parking. I am pretty sure the tree pest report and the software conversion status could be postponed. In August the 4th, we have a discussion with the County Commissioners on BUFSAs. They have made a request to us to add another section to the BUFSAs Contract and Alkali Creek, and quarterly reports. Handicapped parking needs to be addressed. We could keep the BSEDA, Livability Partners, Handicapped Parking, and add NDO to that. Or we could add it after the County Commission and Alkali Quarterly Reports go quickly, or we could reschedule Quarterly Reports for the 18th of August.

- Mayor Hanel: Caution Council, you saw the testimony this evening. I would expect they will fill the room up again. We have important meetings coming up with a full agenda. Keep in mind we may be here late. You will have some full agendas for the Work Sessions.
- Cromley: I prefer to set it for the first public hearing. Second to that I would go with July 21st.
- McCall: I agree. I think it should go to a Public Hearing, I think it is close and I think we could make those decisions at a Public Hearing, if not, I think we need to place it on July 21st.
- Cimmino: I agree with the Mayor. I don't think we should postpone anything. People have been waiting. We have a job to do. We can't discriminate against other priorities.
- Swanson: Status of getting a recommendation from the Attorney General?
- Brent Brooks: We are redrafting it, narrowing the question down, hope to have it accomplished as soon as possible. It is something that takes some thought, and it isn't something where send the memo that we have done. Yes, we are proceeding and will try to get it done as soon as possible. When we devote time to this Ordinance, it takes away time from the AG Draft.
- Tina Volek: We don't just send them a request and they write one. We provide them with the background information that leads to them saying, and usually have to consult with other communities, then that is delivered to them and the AG reviews it and makes a call one way or the other.
- McCall: What is your opinion of the Gazette, that this vote should be null and void, and publicly noticed, and back on the Agenda?
- Brent Brooks: Reasonable minds can differ. Certainly the Council could move to reconsider and/or place this on a future agenda. There is a Statute that allows for City or County Attorneys to make an AG opinion request without direction from the governing body. However, given our charter I would always consult with the City Administrator and the Council before I would submit something like that. But there is a separate Statute that allows for that to be pursued independently of the governing body. There are differences of opinion. We will certainly respond if there is a petition to wait the Council's June 21st decision to refer the issue to the AG. I am confident with the other 4 cities research on the issue, and confident of mine. Sometimes if you ask for an opinion, you may not be aware of the broader consequences as Tina indicated earlier. However, in terms of the Gazette editorials, they are obviously entitled to say what they believe. Litigation always has a component of reasonable minds can differ. I would hate to see this Ordinance be sidetracked into a courtroom battle. The older you get, the more trials and hearings you have been in to, it is like an old soldier going into battle. Is it really worth it to pick and choose your battles? I would hope that whatever happens within the next week or two does not distract from the goal of deciding yes or no as assisted by us. Certainly Council has some options concerning them.

- McCall: I agree with you. The one thing that I would say is in addition to the fact that you believe we do have the legal capability of doing this, and the other cities do, I believe that we are advocating our self-governing powers and the priority always for local government, is to maintain our local control. I think that the Council needs to think about that. Tina addressed it very carefully and articulately the evening this was voted on
- Cromley: This editorial was not aimed at going to the AG. It was aimed at the process in which we did it. He did not reply of that. He replied on whether or not the City has the power to pass the NDO, and other City Attorneys agree. He has not given us an opinion on whether or not to process.
- Yakawich: Want to apologize to Tina and to the City for my statement about the employee who was speaking before us, that I alluded that I hope he doesn't get fired. That was inappropriate of me because I know he wouldn't.
- Mayor Hanel: Ms. Volek if you would share with Mr. Mumford, when they do the work on Grand, which is to begin soon. Whoever engineered Rimrock Rd, if you drive down Rimrock, they strategically located the manhole covers, in the driving lanes. The traffic will swerve to avoid them because they are not smooth. Looks like intoxicated drivers, simply because of the way they finished the road. Please ask Mr. Mumford not to let that happen on Grand. Broadwater needs to be redone again. And at 19th and Broadwater just North in the southbound lanes, they have not completed the manhole.
- Brown: Follow-up on Grand. Are they doing the work in the evenings?
- Tina Volek: Last I heard it was going to be night work. I will double check.
- Cimmino: Can you provide us what the status is on the contractor that didn't meet their obligation with the Library demolition?
- Tina Volek: Brief update. My understanding was that the main contractor has returned to the site and is supervising the work. They are working with assurity for the subcontractor who did not complete the work. I believe that was due to start today. The work has begun again, to do the remediation. We will then need to have DBQ come and do an inspection. I will try and get something to you in writing.

TOPIC #6: Public Comment on Items not on the Agenda

- Marty Elizabeth Ortiz – 707 1st St. W. Apt. 6: A few months ago, CM Pitman brought forward an Initiative to change the name of a park. It was suggested at that point, that should be a vote to be put in the Agenda for public comment. CM Brown put an Initiative to stop working on the NDO and then once that happened, it became a vote to put it on the Agenda for public comment. But last week it was an Initiative to ask the AG for their opinion. There was no vote to put it in the Agenda for public comment. Something like a park is worth putting in the Agenda, but something that I believe the Administrator said to have repercussion for the City and for the ability of the City to pass Ordinances, that is not important enough to put in the Agenda. Did nobody think to amend that motion?
- Mayor Hanel: You have a good point, but let me caution you. The NDO was also an Initiative back in January. If we start retracting Initiatives, we are going to retract the NDO.
- Marty Elizabeth Ortiz: That was an Initiative for staff to bring something back to put on the Agenda. This is an Initiative to ask the AG.
- Cimmino: I understand your question but, subsequent to that action, there was another Initiative for the City to look into the prospect of sensitivity training. That passed by 8 to 3. Are we supposed to put that on the Agenda too?
- Marty Elizabeth Ortiz: The way I would understand that, cause staff had to research that and put it all together right? They are not going to just implement it. They are going to put it together and then you are going to vote on it? Or was that just automatically implemented?
- Tina Volek: Our instruction as I understood it was to bring back information on a process.

- Cimmino: You look at the spreadsheets of all the Initiatives we had, we pinpoint every single one going back previous Councils. Are we supposed to bring back all those Initiatives and take a look at them? What we did was valid and we did not violate any Montana open meeting law as alleged by those who follow the Gazette. I know for a fact our City Attorney would not allow us to violate any laws and would caution us.
- Marty Elizabeth Ortiz: He suggested for it to go into the Agenda for public comment when it was the renaming of a park.
- Bird: Because it was my Initiative about sensitivity training, was clearly to direct staff to bring some information forth. It wasn't to implement or do it; it was to bring some information forth so we could have something for discussion. That needs to be very clear. That is our prerogative as Council members, to ask staff to bring things forth for us for consideration.
- Walt Donges – 941 Constitution: The Billings Human Relation Commission was appointed by this body to make references, to do research and to make suggestions and recommendations. How do we do that for you?
- Mayor Hanel: Good question. I will give that some thought and get back to you.

ADDITIONAL INFORMATION:

ADJOURN TIME: 10:26 pm