

City Council Work Session

October 2, 2006
5:30 PM
Community Center

ATTENDANCE:

Mayor/Council (please check) Tussing, Ronquillo, Gaghen, Stevens, Brewster, Veis, Ruegamer, Boyer, Ulledalen, Jones, Clark.

CONVENE TIME: 5:30 P.M.

ADJOURN TIME: 7:44 P.M.

Agenda

TOPIC #1	PUBLIC COMMENT
PRESENTER	
NOTES/OUTCOME	
• None	
TOPIC #2	Board & Commission Reports
PRESENTER	None
NOTES/OUTCOME	
TOPIC #3	Public Policy Manuals
PRESENTER	Billings Chamber of Commerce – Bruce McIntyre
NOTES/OUTCOME	
<ul style="list-style-type: none">Billings Chamber of Commerce Director of Government Affairs Bruce McIntyre said the Chamber has been working on this manual for the past year. He said the legislative agendas for both state and federal governments are included. Mr. McIntyre said the current local issues include:<ul style="list-style-type: none">The new ballpark, with the Chamber being one of the lead organizations on the campaign. Over 1200 people have signed up to be on the ads.Shiloh Road is an important local issue.Working with School District 2 to improve understanding between the business community and schools and working to help get issues passed.METRA ParkExpanded resort tax is on the top of the legislative agenda. The Chamber has been talking with all local legislative candidates. Mr. McIntyre said \$1.7 billion is spent in Montana on tourism; \$300 million in Billings alone.	

- Councilmember Ronquillo asked, "Where does the tourism money go that comes back to Billings?" Mr. McIntyre said very little comes back from the state but the local \$225,000 goes to Custer Country which is allocated for grants to local Chambers for trade shows, recruiting conventions, etc. Councilmember Boyer asked if at one time the "bed tax" came to City. Mr. McIntyre said the \$1 / night bed tax was ruled unconstitutional; the State then implemented the bed tax. He said 4% goes to tourism promotion and 3% to the State general fund. Councilmember Gaghen asked how many counties are part of "Custer Country". Mr. McIntyre said 7 counties are part of Custer Country, but Billings CVB gets most of that.
- Mr. McIntyre said the new proposed resort tax would stay with the City. He said there is a sunset, and it is meant for specific projects. Mr. McIntyre said West Yellowstone and Whitefish use it for infrastructure. He noted that it could reduce property taxes or assessments. Mr. McIntyre said the City must give at least 5% to property tax relief, adding that Whitefish gives back 25%.
- City Administrator Tina Volek asked Mr. McIntyre if the meeting for 2:00 tomorrow is still planned. Mr. McIntyre replied, "Yes", adding that a donor for the new ballpark is being announced on Tuesday at 2:00 p.m. at the field and all the councilmembers are invited.
- HANDOUT attached

TOPIC #4	Uses of Undeveloped Property
PRESENTER	Councilmember Larry Brewster

NOTES/OUTCOME

- Councilmember Brewster said there are broader policy issues here he but would use this piece of land to talk about it. He said this particular land is behind Skyview High School is -- High Sierra Park, subdivision and public lands. Councilmember Brewster said the property was deeded to the City because the taxes were delinquent. He said the aerial photo shows Skyview High School and other recent developments. Councilmember Brewster noted that High Sierra Park is next to the water tank. He said the other structure in the aerial photo is Harvest Church. Councilmember Brewster said for years the whole area has been available for off-road use, whether right or wrong or by default. He said the photo shows most of the trails are near the west end of the property. Councilmember Brewster said people complained about some of the uses, including running trucks at night and through the mud. He added that if people do not use off-road vehicles (ORV) here, they will do it elsewhere. Councilmember Brewster said it is better to allow off-road vehicles on this property and put restrictions on them than to disallow them completely. He also noted that 230 KV lines run through the land.
- Councilmember Stevens asked if the state is planning a corridor under the power lines. Councilmember Brewster said this property was divided into 5 lots about 5 years ago and four of those lots sold. He said the topography may prevent future development, so it could be used for off-road trails. Councilmember Brewster noted that the area in the "bowl" cannot be seen and would not interfere with development. He recommended putting reasonable restrictions on the area, such as no nighttime use or certain days and/or times.
- City Administrator Tina Volek said the one issue not addressed is liability. Councilmember Brewster said liability has not been addressed for the past 20 years. Councilmember Boyer asked if this area is part of the park land. Councilmember Brewster said it's not park. He noted that the Heights Task Force has never dealt with this area. Councilmember Brewster said the neighbors do not like the after hours noisy use. He added that most people use the land respectfully.

Councilmember Stevens said she disagrees. She said the area has been used as a garbage dump and a lot of residents from High Sierra Drive have complained. She said just because machines are in the bowl and can't be seen, they still can be heard. Councilmember Stevens said many people do not trailer their machines here, but rather drive them on public roads to this area. She asked City Attorney Brent Brooks to define public nuisance. Mr. Brooks said the noise ordinance applies to this area, but the public nuisance ordinance deals with buildings and it would be hard to apply here. Councilmember Stevens said there is also a state nuisance code. She said that homeowners did not know they were moving next to an off-road vehicle park when they purchased their homes. Councilmember Brewster asked what other potential uses for this area are. He said vehicles are using other areas because they are run out of this one. Councilmember Stevens said people are trespassing on City property and riding unlicensed vehicles. Councilmember Gaghen said her concerns are time limits, noise, trash, and demanding more law enforcement. She said she's not sure that posting would help a lot. Councilmember Brewster said putting up the signs made no difference without enforcement. Councilmember Boyer asked if it is the City's responsibility to provide a motor park. Councilmember Brewster said he's not proposing a motor park just that the City leaves it alone, as it was for 20 years. Councilmember Stevens said people were not living nearby 20 years ago. Councilmember Gaghen said this situation is similar to Pioneer Park and changing uses.

- Ms. Volek said this is a dilemma and maybe needs a policy. Neighborhood demands are hard to anticipate and manage, citing Spring Creek, 5th Street West, Pioneer Park as examples. Ms. Volek said the problem is balancing neighborhood good and community good. She said the complaints led to posting the area. Ms. Volek noted that perhaps there needs to be a larger discussion about when neighborhoods should be influential and when community needs are greater. Councilmember Ruegamer said if this area has a litter, noise or drinking problem, the City needs to deal with the problem. He said the Council needs to identify the real problem and then deal with it.
- Mayor Tussing asked if the neighborhood wanted this use off-road vehicle usage. Ms. Volek said in this case, the neighborhood doesn't want it. Councilmember Boyer said Rehberg Ranch talks to perspective homeowners about the gun club and the airport. She asked if these purchasers know there is an ORV park nearby. Councilmember Brewster said some don't want to acknowledge they moved next to a high school. He said the City can stop the incompatible uses by signage and enforcing it with reasonable restrictions. Councilmember Stevens asked, "If you lived up there, would you want the noisy vehicles?" She said in the city limits people have the expectation that this activity won't occur here like it does in the county. Mr. Brooks said the Council can establish specific rules for this property. Mayor Tussing asked what liability the City would incur if it tacitly approve motorized vehicles in this area, while allowing pedestrians, and bikes, etc.? Mr. Brooks provided the recreational use statute which says a gratuitous user cannot recover unless owner is grossly and willfully negligent. He said in a 2004 case against the City of Great Falls, it had installed a catch net on a sled hill and someone was injured. Mr. Brooks said the City of Great Falls got sued. The Supreme Court said the city is immune because it wasn't willfully negligent. Mr. Brooks said the Council should have someone look at the land and make it as safe as possible, but is not required to make it safe, as long as the City doesn't charge for the use. If the City has evidence that accidents occur due to an identifiable factor, then the City should correct that factor. Mr. Brooks said if the City establishes rules, then the City is responsible for enforcing them.
- Councilmember Boyer asked what the skatepark issues are. Mr. Brooks noted the recreational use statute and skate park liability endorsement through MMIA. Recreation Superintendent Joe Fedin

said it is only available because it was designed by an architect and it meets standards. He said this land use is not the same as skatepark use.

- Councilmember Veis said underage drinking is not legal anyway, so putting up a sign doesn't make sense. Councilmember Stevens asked if Ms. Volek had heard from the state about trespassing on state property. Ms. Volek said the state is not excited about the use of this land and it has actually fenced the land and the fences have been torn down. Mayor Tussing asked if there is someone the City could contract with who knows about this kind of use and have them tell us whether the use fits? He suggested some agency to survey the neighborhood about use of the area and type of restrictions necessary. Ms. Volek suggested contacting MMIA. Councilmember Stevens said first the Council needs to ask if this is the type of activity that should occur in the City. Councilmember Boyer said she is concerned about liability. She wants to know if MMIA can do anything for the City. Councilmember Brewster said he does not want to spend money on this issue and if there is a cost, the Council should not do it. He said the Council will just have to tell users to find a new place for ORVs. Councilmember Stevens said the Council needs to consider what happens as this area builds out. She added that it is not the City's responsibility to provide an ORV park. Councilmember Brewster said there will be a "problem" here whether the City likes it or not and he thought with reasonable restrictions, the City could mitigate the situation.
- Ms. Volek said MMIA will be giving a continuing legal education session at the West Yellowstone meeting and they could give the Council advice. She said perhaps simply installing a sign stating the City is not liable would be sufficient. Councilmember Brewster said it's a nice place for little kids on little motorbikes to "putt around". Councilmembers Stevens noted that as the area grows, this problem will go away as people buy and develop the land. Mr. Fedin said he likes the recreational use, but once people have it for this use, it will be difficult to take it away. He asked if the Council was setting precedent. Mr. Fedin said it is a small area for a high-risk sport and high potential for serious accident. Councilmember Brewster said the uses aren't that intense. Mayor Tussing asked how the Council wants to proceed. Ms. Volek suggested using MMIA expertise and having Staff report back to the Council, adding "If it requires monetary expenditure, we'll come back to you first."
- HANDBOUT attached

TOPIC #5	Legislative Agenda
PRESENTER	Councilmember "Shoots" Veis

NOTES/OUTCOME

- Councilmember Veis distributed the updated legislative agenda. He said the meeting took place two weeks ago, and the agenda still isn't finalized. Councilmember Veis said the Montana League of Cities and Towns (MLCT) uses this document (of resolutions) as broad policy guidance because what will be introduced during a legislative session is unknown. He said they added #10, #11 to Resolution 1, to stop shifts of cost from the counties to cities in inmate responsibilities. Councilmember Veis said #11 would allow the City to still privatize, but it would be a local decision not a state decision.
- City Lobbyist Jani McCall said in the 2005 session waste haulers pushed for privatization. Ms. Volek noted the City received a letter from MSU-B Regents stating that the University cannot compete with the private sector in recreation services. Councilmember Gaghen said there was an extensive swimming lessons program at the University and the private sector complained and it

was terminated. Ms. McCall said the University of Montana has also encountered this issue. Councilmember Stevens said it is curious because the public sector first provided pools and the private sector came later.

- Councilmember Veis said Resolution 2 is on the local option taxes. He said MLCT has supported this Resolution since 1981. Councilmember Veis noted there are strong feelings on this issue, but urged the Council not to kill it if it has a chance of passage. He noted that revenue sharing limits the City's use, but it could work for some. Ms. McCall said this language is what caused a problem in 2005 and sets up a conflict from the outset. Councilmember Veis said he agreed, but the attitude should be that cities won't oppose each other's bill. Ms. McCall said MLCT supported the City's bill last time and added that small towns won't support this bill without revenue sharing. Ms. Volek said at the MLCT meeting she hopes to meet with the other city managers and hopefully gain their support for this bill. Councilmember Veis said the MLCT bill will be similar to the resort tax bill except for the revenue sharing portion. Councilmember Boyer said Billings and the other six cities need to be going in the same direction. Councilmember Veis noted that is not necessarily what is happening. He said he spoke with the City Manager of Kalispell and what they want to see is the resort tax population limit to be 25,000+. He suggested maybe they could support the City's bill or the City could support theirs because it's a step in the right direction. He added that if it works well there, the City could use that momentum to expand it further. Councilmember Boyer said some movement is better than none. She said if Billings opposes revenue sharing openly and it kills the legislation, "we'll be in trouble with other cities." Ms. McCall noted that Chamber and others would not support resort tax, without revenue sharing. Councilmember Clark said the Council might get local legislative support, but they won't agree to go statewide. Councilmember Ulledalen said there are 6 legislators that are clearly urban, and the rest are influenced by rural areas. Ms. McCall confirmed that was correct. She said it looks like there will be 95% support for resort tax, but it still can't overcome the rural votes. Councilmember Boyer asked if the other six major cities are supporting local option with revenue sharing. Councilmember Veis said yes, except Kalispell might help Billings with resort tax. Councilmember Boyer said what bothers her is that Billings can't play with others. She said she "knows it's not exactly what we want, but it's progressive", noting that if Billings does not get on board, no tax reform will happen. Councilmember Ruegamer said he has never heard a good argument why small cities should share the revenue. He said the resort tax cities have never shared with their neighbors, adding that its "blackmail" and that's the only reason.
- Councilmember Ulledalen said our trade area is about 300 miles. He said visitors from that distance resent paying taxes that Billings keeps. Ms. Volek said she does not think that anyone has talked with other city managers about why Billings is pursuing a resort tax. She added that the November 6 work session will include this topic. Ms. Volek said other small cities such as Laurel could use resort tax, so rural opposition may not be as strong as we think. Councilmember Veis said other cities don't want to give away money, but they believe it's the only way it would be approved. Councilmember Ruegamer emphasized it is ridiculous to take 25% of the money that would be generated and give it to Roundup or "should we give it to Wyoming – 90 miles away, Powell or Cody – these people come up to Billings?"
- Councilmember Stevens asked the definition of regional. Councilmember Veis said it is defined as an area that has 5 major regional newspaper distributions. Councilmember Stevens asked if every city in the region is included. Councilmember Veis said "yes". Councilmember Stevens asked if it applies to internet sales. Councilmember Veis replied, "Probably not"; it is intended to include a fairly small number of venues. Councilmember Boyer said she thinks the 25% is negotiable, but

the City has to be ready to compromise or it will not move forward in even an incremental way. Ms. McCall confirmed the distribution is negotiable; noting that the two-tier system proposed in 2001 will likely be revisited. Councilmember Veis added that the Governor views this as a new tax and he has stated that he does not support new taxes.

- Councilmember Veis introduced Resolution #3 – distribute 3% to cities where it is collected. He said this has a better chance of passing than the local option tax. Councilmember Veis said the accommodation tax is currently at 7% and could increase to 10%. Councilmember Ulledalen noted that locals would not pay this so there is less opposition. Ms. Volek recommended that this legislation make it clear that this money is dedicated to the City, so the state cannot take it back to balance its budget. She added that it should also state that the monies be used for capital, not operating because the state could take it away. Councilmember Veis noted that the MLCT will not support a bill that does not say, “accommodation tax to the local jurisdictions where it is collected.”
- Councilmember Veis said there was a lot of discussion for making this a top priority for MLCT. He said it could still happen since these resolutions aren’t ranked in any order. Councilmember Boyer said this discussion takes place at the MLCT general session and the councilmembers attending the MLCT conference this week have to be prepared to speak up. Mayor Tussing asked if the Governor considers local option to be a new tax. Councilmember Veis said it depends on how it’s argued and by whom, noting it is not a new state tax; it has to be done locally.
- Councilmember Veis said resolution #4 goes through finance policy items individually. He discussed the Public Defender law and the transfer of payments; low income water and sewer rates; realty transfer tax; floating mills at full rate of inflation; and opposition to the loss of Tax Increment Finance Districts (TIFD) levies.
- Councilmember Veis said Resolution #5 is on land use, including the highlights of changing mega landfill siting legislation, and encouraging use of community sewer systems.
- Councilmember Veis said Resolution #6 is on protective services and general operations. He said it would waive Council appeal of suspension of a firefighter; PERS - monitor legislation; noting there may be a move to make municipalities and counties pay more; and additional all beverage licenses for promoting economic development, especially in downtowns. Councilmember Veis noted this is particularly applicable to Kalispell and “mom and pop” restaurant establishments there.
- Councilmember Veis introduced Resolution #7 -- ballot measures. MLCT recommends opposing CI-97 and CI-98 and I-154. MLCT will support legislation which requires initiative petition signature gatherers to be registered Montana voters with valid identification.
- Councilmember Clark asked if Billings has a voting representative at MLCT general session. Councilmember Veis replied that each city gets one vote, but a request can be made for a population-proportional vote. Councilmember Boyer she sits on the board and it looked to her that everyone in the general session votes.
- Ms. McCall added a closing comment regarding local option taxes. She said, “We’ll know more about resort and local option after the MLCT conference is over, but the legislation is about compromise and incremental steps. I think the Council will have to wrestle with this before the session. Resort tax is the priority for all entities in Billings and I think it is good for the City of Billings... The next step is to meet with local colleagues and peers (the Chamber and Big Sky EDA) and say, ‘OK, we’re going after resort tax; we’ll give it the best we can, but are we all willing to compromise at the next level?’”
- Councilmember Boyer asked if the BSEDA board is supporting resort tax. Councilmember

Ruegamer said that topic has not yet been discussed. Councilmember Boyer asked if a compromise would be possible. Councilmember Ruegamer said he thought it would be. Councilmember Veis noted that if revenue sharing passes and other cities also put it in place, it will become known whether it works within 2-3 years. He added that at least it would be a tool that the City would have. Councilmember Brewster stated that it is just “taxing ourselves if we have to give away 25%.” Councilmember Boyer said the City is scrambling for money and even with revenue sharing at least the City would get something from it. Mayor Tussing said that property tax relief has to be part of this legislation or it won’t pass.

- Ms. McCall noted that it is estimated that \$12 million would be raised on a 4% resort tax, noting that would mean the City would keep 25% -- \$9 million, and then would have to figure what to give back in property tax (minimum of 5% by statute) and administrative costs.
- HANDOUT attached

TOPIC #6	Alkali Creek Update
PRESENTER	Public Works Director Dave Mumford
NOTES/OUTCOME	
<ul style="list-style-type: none"> • Councilmember Brewster and he and Councilmember Stevens met with Mr. Mumford and Ms. Volek and took care of their concerns in a timely manner. “As far as I’m concerned, if they follow through on what was said, I’m fine,” he stated. Mayor Tussing he said he also has constituents in the Heights, but if the Heights councilmembers are satisfied, “he’s satisfied” too. • Public Works Director Dave Mumford said on the other two road projects, there is still is some punch list items and landscaping items to complete. Alkali Creek still has lots of work to be done, especially landscaping, noting the landscape contractor did not do his job and the City is changing contractor. He noted that Staff knows that there are bad trees and they will be replaced. • Mayor Tussing asked why the bike path on Zimmerman is not open. He said it looks better than the one on Alkali Creek which is open. Mr. Mumford replied that the landscape contractor is still working on the trail. He noted that the City has started tree farms at the wastewater plant and water plant last year and the City is now replacing them utilizing the PRPL tree spade, instead of paying \$1000/tree for the replacement. • Councilmember Veis asked if the City could give away trees if they get too big. Mr. Mumford said it is anticipated there are enough places to use these trees – various parks, etc. that this will not be a problem. Mr. Mumford noted he thought the City could use everything that it grows. 	

Additional Information:
<ul style="list-style-type: none"> • Councilmember Ulledalen noted that he has roughed out a public safety levy support letter and asked the Council for comments. He noted that he was still uncomfortable with Item #4 in this letter and asked for input, noting that Councilmember Brewster suggested corrections concerning state actions that have reduced the abilities of cities to increase revenues derived from increasing property values. (See HANDOUT attached) • Councilmember Veis said he agrees with what is said, but asked if the City should include

something about it being more careful about how it grows in the future.

- Mayor Tussing asked what #5 means; if we have to lay people off, it will be harder to recruit and retain quality people? Councilmember Ulledalen replied, “No, it means the workforce is a big issue in the community and people cost more money.” Councilmember Ulledalen noted there is a smaller workforce available due to aging -- it’s harder to recruit and the City has to pay appropriate wages and benefits.
- Councilmember Stevens said the City should somehow acknowledge that some people were misled. Councilmember Gaghen disagreed. Mayor Tussing said he didn’t think the City should say “misled” and suggested referring to the ordinance that specifies fair ballot language. Councilmembers Clark and Gaghen urged the Council not to address the past ballot issue. Councilmember Stevens said she thought some votes will be lost if the error is not acknowledged. Ms. Volek noted that the City is saying in the current presentations that while the language could have been clearer, there was no purposeful intention to deceive. Councilmember Boyer said when she hears that, she is uncomfortable with that because it “opens a door that this Council did not step through.” Councilmember Stevens replied that this Council did not, but people still felt deceived and if this is not acknowledged, “you will never get them to talk about the money.” Councilmember Ulledalen stated that his constituents are “ticked that people think they were deceived,” noting more people are upset that (former Councilmember Dave) Brown and (Jerry) Hansen are implying that the voters are stupid. Councilmember Gaghen said an apology is not the way to present this, even if there were flawed parts. Ms. Volek suggested that the letter be changed to indicate it is a public safety levy, not a mill levy.

Respectfully submitted
Marita Herold, City Clerk