

# City Council Work Session

5:30 PM  
Council Chambers  
Date: November 3, 2014

## ATTENDANCE:

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

## Agenda

### TOPIC #1: Quarterly Updates

- BIRD
- Downtown Billings Partnership
- Budget
- Initiatives
- Cell Phone Statistics
- City-Wide Park District 1 Projects

#### BIRD

- EBURD (East Billings Urban Revitalization District) – Tina introduced Kelly McCarthy and Patty Nordlund representing BIRD (Billings Industrial Revitalization District):
- Kelly McCarthy: We had the busiest quarter to date with the BIRD. I will start with the project of the Exposition Gateway. We have been working with County land owners on the east end throughout the quarter and took to them some incentive packages to see if they could get some voluntary annexation to get them into the City. There was about 22 acres that we had identified as potential for annexation. And of that, just less than 10 acres came in and there were six landowners, 12 parcels who requested annexation to the City and Candi Millar has those applications. It gives us the avenue to move forward. The design contract has been awarded and Sanderson-Stewart are surveying for infrastructure project, and the design will be done early spring. Construction will begin early in the year of 2015. Patty Nordlund, Operations Director at BIRD is working on the draft Urban Renewal Plan to expand the TIFD (Tax Increment Finance District) to include annexed areas. Hoping to have done in January of 2015. We requested that BOCC (Board of County Commissioners) attend on Nov 17 to discuss EBURD expansion. We have the new code down in the EBURD and don't have a lot of architects that are familiar with the code because there haven't been a lot of projects for them to use. Have talked about some training with the Planning Dept. and the Billings Association of Architects to help them get a little more familiar. Every year the Billings architects do a design contest and this year they would like to do in the EBURD. MSU in Bozeman will use same area for design practice. At the end of January, students will come from Bozeman. We will see

50 to 75 different designs on what could happen with that EBURD Code. There will be a public unveiling in the Library at the May Art Walk.

We had our first successful annual end of summer “BIRD Bash”. We had around 200 business owners and their staff. We also had supporters that helped with money and food.

New Brownfields project – there is \$400,000 available. Patty and Kelly are on the steering committee. Will be working on an inventory of those properties that are within the boundaries that currently don’t have a Brownfield assessment on them. We will try to get the landowners to get Phase I and possibly Phase II done. Did meet with the County Commissioners August 25 to let them know what is being worked on. BSEDA, Chamber of Commerce, DBA, and we had been talking about trying to be more proactive about the Legislature. Legislative candidates met with BSEDA on August 29<sup>th</sup>.

- Mayor Hanel: Very good report and I want to thank you from the community for your commitment.
- Swanson – Can you explain the Brownfields grant?
- Patty Nordlund: The EPA has a Brownfields grant program where communities can apply and receive funding to offer Phase I and Phase II Environmental Assessments to landowners at no charge. Big Sky EDA, we secured a \$400,000 in Brownfields funding. We did spend that assessing 23 parcels in the EBURD with Phase I assessments and 9 parcels with Phase II assessments. There was no remediation required resulting from those assessments. Big Sky EDA applied again for another \$400,000 and was successful in being awarded those funds. Last Friday was the deadline for Environmental Engineering Firms to submit proposals to carry out those assessments. We are going to be on the committee to review all the proposals and select the firm that will get the contract. They will be out working with land owners to do voluntary environmental assessments as requested by land owners.
- Swanson: Is the TIF for this project going to be self-contained or will it be attached to any existing TIF’s?
- Patty Nordlund: Right now we have the downtown N. 27<sup>th</sup>’s TIF. When we extend and include these properties that are requesting annexation, it will be contiguous extending towards the Metra Park Facilities.
- Yakawich: Make sure drainage facilities planned with newly annexed area.
- Patty Nordlund: That is part of the Sanderson-Stewart design work that will get underway as soon as that contract is approved, and will be working with the City to alleviate those problems.. We will be visiting land owners in that whole area from N. 13<sup>th</sup> to the Exposition Drive and asking for their concerns and what they experience when they are flooded during storms. Then the design work.
- Brown: Brief description of code for the EBURD.
- Patty Nordlund: The newly annexed areas will have to be rezoned with new code. The EBURD code is unique to MT, form based, hybrid zoning. It is more flexible and allows more uses and mixed use where you can put residential above your shop. It is not as restrictive as controlled or pure residential. It has 5 or 6 districts specifying each and what is allowed. Kelly McCarthy has a 1 page description. It mimics downtown uses. Office, residential, and moves into the

industrial towards the Metra Park area. When we get together with City/County Planning and land owners, we will talk about code for the newly annexed areas. They will be considering what is best for property owners in that area. The Code is on the BIRD website (BillingsBIRD.com), and the City Planning website.

- Tina Volek: We could send to Council a short version of the Executive Summary.

### **Downtown Billings Partnership**

- Greg Krueger: Showed a picture of downtown Billings with and without TID (Tax Increment District). Central Business District Urban Renewal activities, we still work closely with the Railroad crossing committee. We are also working with MDOT for the left turn light on Montana Ave. and 27<sup>th</sup> St. and exploring the cost of doing an over/underpass for the two center lanes of North and South 27<sup>th</sup>, and at grade with the two outer lanes so there would still be access to all of the areas on Montana and Minnesota. We are going to support street level retail, lodging, and restaurant growth. We are trying to streamline the DBA (Downtown Billings Association), DBP (Downtown Billings Partnership), and the Downtown BID (Billings Improvement District). Work together as a team, and cut off waste. Still support the enhancement of the downtown building stock and want to renew our focus on housing. Housing is still very important to downtown. We believe there is the potential for 8,000 new units, ranging anywhere from studios to 1-2 bedroom units. Promote the revolving loan fund and more use of the TIF for projects. We work with the Finance Dept. to implement growth projects, large and small as Fund 203 resources become available. Have dedicated the last two years to the Empire Parking Garage. The Tracy Building Loft project has 19 loft style apartments. Total cost for project was \$2M. TIF qualified expenses are greater than .5M. There is also a risk that Council may not approve. Requested a \$250,000 revolving loan fund which was approved by Council. The project is finished and it is a LEED Platinum project by the U.S. Green Building Council. Have filled all but one loft. There are no parking spaces. (Greg passed out a handout to Council titled "This is a Work in Progress"). Tracy Loft project will be presented to Council soon and asking to approve a \$125,000 grant to reimburse the developers.

- Bruce McCandless: We can bring before Council on the 24<sup>th</sup> of November.
- Cimmino: Children's museum?
- Greg Krueger: The Children's museum was something that the Junior League was going to be involved in when the Wise Penny was closed. At the location they were at in downtown, it didn't work out. They have retreated from that and we haven't heard much for a while. The museum group has formed a separate organization who we are now working with. Looking at spots that are going to be vacant soon. Trying to keep it downtown. It is a private nonprofit venture.
- Lisa Harmon – Executive Director of the Downtown Billings Alliance: BID cosponsored the Innovations Summit with over 350 participants. It was a success. Special thanks to Tina Volek for her leadership and guidance. Website was up October 1 with a lot of supporting documents. (Lisa handed out the Community Innovations booklet to Council). Book is available online at forrealchange.org or at downtownbillings.com. Thanks goes to Brenda Beckett and Lynda Woods from the Community Development Division for their hard work

on this book. There will be a meeting on Thursday, November 6, for the Summit Task Force and one week later we will meet again. Council is invited to come and join in as we work towards solutions. We have a lot of immediate short and long term strategies. A magazine from Milwaukee contacted my office and they are producing an article about alleviating homelessness and transients in their town. It is all about Billings, MT and our approach to this effort.

We have been involved in releasing \$15,000 for our "Spare Change for Real Change" grant. 74 individuals that are chronically inebriated, experiencing mental health illness, disability, and addiction in our streets. Our grant will only go to entities that will be connecting people with treatment, and getting them off of the streets.

We had the NILE, and downtown Trick or Treat.

Small Business Saturday is coming soon. We are working with Public Works on Public Art and they have given us funds to help bring public art to our traffic signal boxes.

Did a broadcast for the Public Safety Mill Levy. We have TIF money flowing through the DBP, and assessment money through the BID. We can't tell people how to vote, but can take a broadcast of the presentation that was done by Tina and Staff.

Our office was awarded a \$20,000 TIF grant from the Montana Office of Tourism to restore the historic banners on Montana Ave.

- Bird: Ms. Beckett had her AmeriCorp VISTA members who were part of coordinating and organizing team too.

## **Budget**

- Pat Weber – Financial Director: Any questions?
- Cimmino: Variance column, is that positive or negative? Do the expenditures exceed the revenues? Footnotes to explain the variances?
- Pat Weber: Library is a tax that doesn't come in until Dec. and June. The gas tax comes from the State. We probably have not received the bill from the State yet. There are also reserves in the gas tax that are being used for capital projects.
- Pitman: Why are property taxes so short?
- Pat Weber: The taxes only come twice a year. Until we receive in Dec., we will show a deficit.
- Pitman: When will the report show where City really stands?
- Pat Weber: 4<sup>th</sup> quarter FY 2015.
- Swanson: Recommend that you do what is done with annual report – Executive Summary on how we're doing?
- Pat Weber: The first quarter will be tough because you have so many funds.
- Tina Volek: Will provide something for you.
- Pat Weber: When we got certified taxable value this year, we had \$3M in new taxable value from all that is going on in our City. We really should have grown taxable value, but we actually went down ½%. That gives you an idea of what kind of adjustments are being made on centrally assessed property.
- Tina Volek: Not only centrally assessed but the rollback this year in reappraisal will take us back to 2008 in terms of property evaluation. That was one of the worst years of the recession. Property values were at a low that we hadn't seen

in several years. That will be the basis on which the State will move forward over the next six years so that in 2020, property values will be at what they should be this year. That is a conscious effort on the States part to keep people from being taxed out of their homes.

- Yakawich: Could you give tell us about the Victim Witness Fund and the Dog Park Construction?
- Pat Weber: The Dog Park Construction Fund receives donations and that is when the parks are built. Victim Witness is partially grant supported and the people who convict them that work with Legal. There is an Attorney and a Staff person.
- Mayor Hanel: Which centrally assessed property is down?
- Tina Volek: Charter Communications.
- Mayor Hanel: With the reappraisal process, and with the Charter as it is, the actual gains and tax revenue in the last year, how much?
- Pat Weber: 1%, so about \$130,000.

### **Initiatives**

- Tin Voleka: We have 21 items; will remove 9 items that say they're complete. We will keep adding as the Council creates Initiatives.
- Pitman: Looking at the oldest Initiatives, we have Mayor Tussing on directing staff to look at the pros and cons of Phipps and Riverfront Park annexation. Presented earlier?
- Mike Whitaker – Parks/Public Lands Director: The pros outweighed the cons that we should move forward and annex the two parks into the City. It would standardize law enforcement at those facilities. We have been working on other projects. We see a value in annexing those two parks into the City.
- Pitman: What does it take to get the item to Council?
- Tina Volek: We needed to add it to the limits of annexation and that has been done. Now it is a matter of having staff time to work on the annexation itself.
- McFadden: Is there a problem with law enforcement at either park?
- Mike Whitaker: It makes it easier for our PD to enforce rather than using the Sheriff Dept..

### **Cell phones**

- Tina Volek: Overall our numbers are down in citations and warnings. In 2013 to date we had 310 citations, and 361 warnings. This year, the number of citations at 288 exceeds the number of warnings at 230.
- Cimmino: How much manpower committed to traffic?
- Tina Volek: 2 officers that are exclusively oriented toward traffic and they are working primarily in assigned locations to deal with specific traffic issues. Given the size of our current staff, we are moving from call to call, especially during the busy shifts in the City. We do not have more than the two officers.
- Cimmino: There are lots of accidents and phone use.
- Mayor Hanel: When looking at statistics, cell phone violations are impressive, but in reality, the violations have not dropped but picked up. Cell phone violations are not a priority because the Police Department is backed up.
- McCall: This speaks to the need for the Safety Mill Levy.

- Brown: Are the warning signs up for cell phones?
- Tina Volek: Public Works is working on installing them and will get a timeline for Council.
- Pitman: If phone use is a real concern, maybe we should be looking at some public service announcements.
- Tina Volek: The Chief at one time did some public affairs announcements. It may be time for more announcements and may be able to get some free airtime.
- Brown: Are we looking more at an informative type of PSA?
- Pitman: I agree that is what we need to be doing.
- Yakawich: PD is already doing PSAs. Maybe Councilmembers should be more involved.

### **City-Wide Park District 1**

- Mike Whitaker: Reports on completion of 2013 projects and planned 2014 projects. Have completed the installation of the new equipment at the batting cages this spring. We signed a contract with our consultant to prepare specs and drawings so we can go out to bid for tennis courts at Pioneer and Castlerock Park the first part of 2015. Our goal is to start construction as soon as the weather permits.  
We have a South Park playground project. Still on hold by the State because we have received a \$75,000 grant from LWCF. We are waiting on their agreement. We have been contacting them on a regular basis.
- Pitman: As we are looking at our playground equipment that we are going to be purchasing, and is there a standard that makes all of this compliant with the public playground safety handbook? Are we using that now?
- Mike Whitaker: Yes. Whenever we build any playgrounds, we have the installer complete an independent audit to verify that we are compliant with current standards and guidelines. We have five people on staff that are certified playground safety inspectors, and we do the audit in-house. I have been here eight years and we have always used the handbook and ASTM standards when we install playground equipment. We should have the RFP for design services on the streets by November 6 for the South Park playground. We hope to bid the playground project the first part of the year and start construction in the spring and completed in time for the summer. Part of the RFP will require the consultant to look at several locations in South Park and bring back a recommendation. Then we will work closely with the South Side Task Force and our Parks Board to determine the best location.
- Yakawich: Impressed with the sidewalk grinding that you are doing in South Park, where rather than replacing the sidewalk, you grind down the edges.
- Mike Whitaker: We have been working with Public Works on their sidewalk program. We have a lot of trip hazards in our parks and we are saw cutting the trip hazards.
- Bird: What was the usage on the batting cages?
- Mike Whitaker: Towards the end of the summer, we were \$15,000 higher than the previous year.
- Pitman: Follow-up. Last year we had put in the new slides at Rose Park. Have we met the goals of income we expected?

- Mike Whitaker: The report I got from our Recreation Superintendent, when he went out to the pool, the majority of kids always had wrist bands on and revenues were up over \$12,000 for the slides this past season. (Mike Whitaker introduced Mike Pigg the Park Supervisor.)

#### Public Comment

- Tom Zurbuchen – 1747 Wicks Lane, Billings, MT: Agree with CM Cimmino's comments about explanation for the budget report. PSF (Public Safety Fund) is the only one that always shows a negative forward balance. What are we using to pay Police and Fire? If General Fund is the source, why isn't PSF paying interest to the GF? 29% dedicated reserve in GF isn't enough to carry the GF and PSF between tax distributions.
- Pat Weber: Charter settlement money came in the first quarter and money to PSF paid without having to transfer from GF. Reserve is for the GF and the PSF.
- Marty Elizabeth Ortiz: Thank you for last week's event, the Innovation Summit. I think we should have a Safety Mill Levy. How do you distinguish the difference between issuing a citation and issuing an actual warning?
- Mayor Hanel: As far as the issuance of a citation and/or warning, that is the officer's discretion. They base it on the seriousness of the stop.
- Bird: I think that cell phone warnings should be tracked and once warned, should be cited.

## **TOPIC #2: Sidewalk Repair Program**

- Debi Meling – City Engineer: Gave a presentation. Trippers are what I will be speaking on tonight. We have a large concrete repair program that deals with curb and gutters, alley and driver approaches. There are two different types of trippers. Definition of a tripper is "a tripping hazard". We have a list of defects that it has to meet to be termed a tripping hazard. We get complaints in the office, or claims from someone tripping on a sidewalk, and then we go out and look at the site. There is a big difference between the types of trippers.

#### **Current Program**

- Identify tripper
- Notify property owner
- Check repairs
- Add to Miscellaneous Program
- Resolution of Intent / Resolution Order in Improvements
- Construction
- Assessment / Sell Bonds

#### **What's wrong with the program?**

- Nothing
  - ..... for slight trippers and miscellaneous concrete repairs
- Time for the significant trippers

- Currently up to 18 months
- Potential injury
- Risk management
- Existing emergency ordinance

### **What would change?**

- Misc. Concrete Maintenance program
  - Identify tripper
  - Notify property owner
  - Check repairs
  - Add to program
  - Resolutions to Council
  - Construction
  - Assessments over time
- Add a Tripper Repair Program
  - Identify tripper
  - Notify property owner
  - Check repairs
  - Communicate plan with property owner
  - Construction immediately
  - Send payment options
    - One payment
    - Assessment over time

### **Program Improvements**

- Timing of repairs
- Payment options
- Construction options

### **Moving Forward**

- Ordinance revision
- Resolution granting authority for Property Owner Reimbursement Agreements
- Resolution for Miscellaneous Concrete Maintenance (annual)
- Resolution approving locations for Tripper Repair Program (annual)
- Bond sale process (annual)
- Brown: When you stretch out payments over 12 years, is there a cap?
- Debi Meling: You can either pay it off or if you have an assessment on your taxes, you can pay it off during a 12 year period. When we sell bonds, we sell for a time period.
- Brown: Is the bond (lien) transferrable to the next property owner?

- Tina Volek: They are usually paid off at the time of the house sale. It maximizes the ability of someone on a fixed income to address this problem and either pay it off over time in a limited amount, or if they decide to sell then it is satisfied.
- Bird: ADA compliance with mailboxes in sidewalks and obstructing them?
- Debi Meling: In a lot of new areas, we have a 7 foot curb walk. The requirement is 36" on the back to be able to get through (accommodate a wheel chair).
- Cimmino: Is it the homeowner or City's responsibilities to replace sidewalk?
- Brent Brooks, City Attorney: Our Ordinance requires the owner to make the repairs.
- Public Comment: None

### **TOPIC #3: Pioneer Park Playground Equipment**

- Mike Whitaker: 66% of our assessment dollars goes towards projects. In 2012, the Park Board and Staff developed a list of the deferred maintenance projects that totaled over \$9M. (Passed out a copy of a list of Park Maintenance, Upgrades and Efficiencies to Council.) Once we developed a list, about 5 criteria that we used to prioritize the projects on that list. That is how we came up with the 3 year plan. Safety is a top issue, also State and Federal Compliance. Our goal is to prevent removal of the equipment in the parks. We used our needs assessment to come up with what we call the public's priorities, and we also looked at efficiency statements. Our goal for all playgrounds is CPSC and ASTM compliant. The Consumer Project Safety Commission put out a list of guidelines for playgrounds. There are also standards that we should follow when we build or maintain playgrounds. The questions were brought up about auditing playgrounds. We have audited 7 playgrounds since 2014. Pioneer Park was the last playground we audited and was completed October 1<sup>st</sup>. Whenever we need to make an improvement, an update, or replace a playground, we do an audit of what we can and can't keep. A little history, we had to remove three structures from Pioneer Park going back in 2011 and as recently as 2013.
- Bird: You have done 7 park audits. Do you have a list of other parks you are going to audit?
- Mike Whitaker: We have 40 public playgrounds and haven't put together a list yet.  
(Mike showed a power point presentation of Pioneer Park playground. He pointed out where equipment was before it was removed.) We have done an audit of the whole site. This playground is divided up in two areas. One area is where the preschool equipment is, and another area is where the bigger kids play. There is a swing set in the preschool area. Our audit recommends that we remove all playground equipment at Pioneer Park. We can reuse the tire swing. We knew we had major issues before the audit because we do regular inspections. That is why we had already removed three pieces of equipment from Pioneer Park. The tire swing doesn't have a tire on it because of safety issues.
- Brown: How often do your regulations change?

- Mike Whitaker: Pre 1970. Anything that was installed before 1978 would probably have lead paint on it.
- Cimmino: Why can't the lead paint be removed?
- Mayor Hanel: Our Federal Government requires that you must be certified to remove lead based paint.
- Mike Whitaker: It is at its end of the life cycle. The manufacturer is responsible for the design. But if we modify, we assume all liability for that equipment. To be compliant, you can't have more than two swings at one bay and that is why the middle swing was removed.
- Pitman: How many injuries have we had on this equipment in the last 5 years?
- Mike Whitaker: There have been no reports of injuries.
- Tina Volek: For the record, the response was that we did not have any injuries reported to us, that the parent would likely take care of it.
- Pitman: What are the acronyms?
- Mike Whitaker: The Public Playground Safety Handbook is the US Consumer Product Safety Commission and the ASTM (Association of Testing Materials) has guidelines. There are several standards.
- Cimmino: Is the Consumer Product Safety Commission a Federal Commission?
- Mike Whitaker: Yes. The State has not adopted any guidelines regarding safety of playground equipment.
- Brown: How did we end up with this equipment that doesn't match a book that hasn't changed?
- Mike Whitaker: This book has been evolving over the years and is updated every 3-4 years and you can go back and see the progression of it. When this playground was installed, not sure if the people who installed this playground, were aware of the guidelines. All Parks and Recreation Directors will definitely follow these two documents.
- Brown: Concerned we don't end up with this problem 20 years from now.
- Brent Brooks: You have standards that exist at the time, and I feel confident that what you see in the parks complied with the standards that existed at the time they were purchased new and installed. But over time the standards evolve.
- Brown: We are not liable because at the time it was put in, it was by the standard.
- Brent Brooks: If somebody is hurt, there may or may not be a litigation, but we can't make the statement that nobody is liable for anything. Anytime there is a playground incident, there is going to be a myriad of issues that come up. Not only the design and maintenance of the playground equipment, but the age of the participants, and were they being supervised by their parents. I caution that there are shades of gray that are fact dependent. There are many variables here.
- McCall: Standards and guidelines change. Mike has said two or three times, this equipment is at the end of its life cycle. The Parks Dept. is going to use the guidelines and we are going to have equipment that meets those guidelines.
- Pitman: This was a bigger project that wasn't presented to the Council.
- Mike Whitaker: This structure (Power Point presentation) was installed in 1995. We found five head entrapment points in the railing. When you have a head

entrapment on preschool equipment, if the torso of the child can get through an opening, and the head cannot get through then a child could get strangled if he cannot touch the ground. We were not aware of this major issue until we did the audit. There are other issues with this piece of equipment with what is called overlapping use zones. You have kids coming out of the slides and coming down this climbing apparatus, and you have potential for contact. This slide has what is called ribs. They don't make these slides anymore because it encourages kids to play on top of the slides. This swing is at the end of its life cycle and possibly has lead paint too. There was a leg that did break and we welded it. We probably should have removed it. Another big issue is the overlapping use zones. In 2011 the tire swing was removed because it was so far out of compliance. Not sure we can reuse the structure until we pull it out of the ground. But, if we can we will put it in an area where there is enough room around it. Ground play cannot overlap three feet.

- Bird: Would you redo or rejuvenate the sand?
- Mike Whitaker: Yes.

#### **Proposed Process of Building Pioneer Park Playground**

- Request For Proposal (RFP)
  - The process was used for Yellowstone Family Park's playground
  - This process encourages creativity from vendors
  - Parks, Recreation and Cemetery Board evaluates the play value of proposals and makes recommendations
- Cimmino: Is this \$300,000 expenditure for new playground equipment?
- Mike Whitaker: By using the RFP process, we aren't paying for design services. We are allowing the playground manufacturing to do the design for us.
- Tina Volek: Pioneer Park is our most popular park and gets a lot of use.
- Pitman: You have a lot of training and you understand where this industry and where parks are going. Are we getting to a point within our parks where we are going to be liability weary? Where do we balance that investment?
- Mike Whitaker: The more informed we are, the better we can balance the safety issues.
- Tina Volek: So staff will proceed with working on an RFP for this?
- Mayor Hanel: Yes.
- Public Comment: None

#### **TOPIC #4: Council Discussion**

- Pitman: Sent an email to the City Administrator. Just an issue every time the tax bill goes out. When looking at my tax bill, we don't separate out and show what we are paying towards Dehler Park, Library, etc.? Is there a method where we can have those shown so people can see how much they are paying in taxes to each?
- Tina Volek: I did talk to Mr. Weber. This is based on a limit and the number of lines that can be included in that form. They consolidate things like previous Public Safety Levies that are included in the GF because that is an amendment to the GF that is done through public vote. We may need to indicate what we

consider to be the most significant numbers and could work with the County Treasurers Office which sets up that form, and ask them to reflect things differently. Dehler Park for example. They too have a number of districts. It presents a significant challenge. We will do some work on that.

- Crouch: When you look at the line for City tax, mine went down almost \$50.
- Tina Volek: Knowing that taxes are coming out soon, we might be able to give you a breakdown of what is included in each of those categories so you have the capacity to answer constituents who have questions.
- Bird: Do you know in the City Ordinance if there is anything designating a perimeter for smoking in front of an entrance?
- Brent Brooks: I will check.
- Bird: Would that include retail, commercial, and residential?
- Brent Brooks: I don't think it gets that specific.
- Bird: I got a call from a constituent who lives in a multi-family dwelling and is having problems with some neighbors.
- Brent Brooks: If it is multi-family dwelling, there are definitions in the State Statute under the Montana Clean Indoor Air Act, as well as our Ordinances.
- Bird: Last year was the first year the City didn't pick up leaves and people were still sweeping them into the street. This year, do we have any indication as to whether the sweeping into the street has decreased?
- Tina Volek: I will inquire.

There were two public invitations that were sent to the City Council. One was the Yellowstone Boys and Girls Ranch (Child Share), and the other was a dinner to the NACO meeting (National Association of Counties).

Because of state law, City Hall will be closed tomorrow for Elections.

- Cimmino: County Commissioners approved that their employees can come to the parking structure to smoke during their coffee breaks. Is there a liability issue?
- Brent Brooks: I don't know if it would be a liability issue but there would be a question about if they are complying with the same Ordinances that Councilmember Bird inquired about. Can check with the Board of County Commissioners and get the history. Will send you the applicable Ordinances and Statutes that apply.
- Bird: Last May or June when we talked about the flags that used to be at the airport, and Councilmember Cimmino mentioned it would be nice to have flags downtown on the 4<sup>th</sup> of July, and Ms. Welch suggested her mother had possession of the flags that used to be up at the airport. If the Council is interested in pursuing, we should figure out what to do instead of waiting until May or June.
- Tina Volek: I got with Ms. Welch and Ms. Harmon and we ended up using some of the flags we still had. Will check on the status. The Fire Dept. puts them up, but they are downtown decorations. They belong to Downtown Billings Association.
- Cimmino: Follow-up, it was my understanding the City purchased those flags. I received an e-mail that they are going to be waving the flags on Veterans Day.
- Crouch: There will be 400 flags.

## TOPIC #5: Public Comment on Items not on the Agenda

- Kevin Nelson – 4235 Bruce Ave., Billings, MT: Had a confrontation with Highlands Project over the weekend. When they started with the beepers on Sunday morning at 6:55 that is enough. The Sheriff showed up and said he would make a call and all that did was prompt Highlands to level their parking lot in the windstorm on Sunday. We had dust so bad, it obscured houses. I understand the noise you can't do anything about, but when they are starting to take their sandblast dust that settles on the ground, and drive around in their big fork lifts, the dust goes everywhere. I have this on video. This is getting out of control. My wife spoke with Sheriff Linder and he said he could hear the backup alarm on the phone. The Sheriff did make an attempt to limit some of the noise, and Highland Projects threatened the Sheriff to never come back on their property. When does someone stand up and say enough. They refuse to capture or mitigate any of these issues on banging, clanging, and the dust that is spewing across the neighborhood. They feel they are above the law and can do what they want. No one seems to want to step in and take control of this situation. When it starts impacting the neighborhood, there has got to be an answer somewhere, somehow. On Friday, the neighborhood will find out if we can take some actions privately.
- Mayor Hanel: Councilmember Cromley a while back, suggested some ideas. What about legislative action?
- Kevin Nelson: Will wait until after Friday.
- McFadden: If they are dumping that dust around, this has to be an EPA violation and I would suggest calling and turning them in. I talked to John Ostlund and he said that we are a general powers government and we wouldn't even have the authority to enact any of that regulation because the State has not given us authority to do that. I don't believe that. I would think the County would have authority. I personally think it is John Ostlund dragging his feet. Bill Kennedy is ready to do something. Sheriff Linder indicated that it was in the County Commissioners hands.
- Bird: I can only imagine what it is like for those of you who live in that area. It seems like you are getting the runaround constantly because nobody is sure what to do. I am in support and if we can figure out something to do, we really should be doing it. I am looking forward to watching the video. That could be a significant health hazard to elderly, children, or anyone with upper respiratory problems. I think it would be worthwhile of taking a sample of the soil and having it tested. Could have a serious issue with toxic waste.
- Kevin Nelson: The business owner next store has to issue his employees ear protection devices for them to go into the yard.
- Tom Zurbuchen – 1747 Wicks Lane, Billings, MT: Pending litigation, as a tax payer, I would like to know what lawsuits are pending against the City. You should release some information on what you are discussing. I am not asking for specifics. What cases are out there that you have an Executive Session on? As an open transparent government, isn't it your responsibility to be open with us?
- Mayor Hanel: We are adjourned and we will go into pending litigations.

- Kevin Nelson: I oppose that. I believe you are violating my constitutional rights by going into Executive Session.
- Mayor Hanel: We are adjourned.
- Brent Brooks: The session we are about to talk about strategy does not involve other public bodies or associations and I think it would be a detriment to the City's litigation position if that meeting remained open.

**ADDITIONAL INFORMATION:**

**ADJOURN TIME:** 8:30 pm