

23 November 2020

Dear City Council,

I write to you today with concerns about Project Re-code, which is up for its first reading at this evening's council meeting. My goal in writing to you is to ask for more time to allow for tweaks that help Re-code really start off on the right foot.

As someone who has been on the peripheral of Project Re-code, I am more familiar with its origin and creation than my average fellow Billings citizen. I have spent dozens of hours reading, asking questions, and participating in group meetings to understand how the proposed changes will affect the day to day of myself, prospective buyers, and other trade professionals.

The essence of my argument rests on this; With the current zoning, it is practically impossible to mix residential zoning uses, with the proposed zoning, mixed use becomes the only option. I advocate for a middle ground, where mixed use is allowed, but the power of if to use and how much to use remains in the private sector's hands. **Staff Clarification: The Neighborhood Zone districts range from single family only (N3) to one & two-family (N1 & N2) to mixed residential one to four unit buildings (NX1), two to eight unit building (NX2) and five plus unit buildings (NX3). This mix of zone districts allows flexibility for a residential areas. Mixed use districts form Neighborhood Office (NO), Neighborhood Mixed Use (NMU) and the Corridor Mixed Use districts will also allow some mixing of residential uses in commercial buildings. The new commercial districts will not continue the allowance to do a stand-alone multi-family apartment in a commercial zone.**

This can be accomplished by removing minimum quantities of N1, N2, or N3 zoning in each new planned neighborhood development. The minimums have been advocated as a way to increase density, reduce sprawl, and keep Billings looking the way it's always looked. The main reason I have been given as to why those are promoted as virtues generally refer to cost of providing services. What about the other side of the ledger, revenue? **Staff Clarification: City Staff is presenting changes for the PND tool, and for new N1 & N2 districts.** I contend people should be able to have lower density housing if they are willing to pay for it. Let's not limit what Billings will allow in hopes, of but no guarantee of, reducing infrastructure costs.



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I also understand the desire of the Re-Code to keep Billings' First and Mid-Century neighborhoods looking the way they do. I do not understand why that should have any bearing on what new construction looks like in new neighborhoods that do not look like Billings' First or Mid-Century neighborhoods. N1 and N2 have form requirements (aesthetic mandates) that limit the types of housing that can be built in new construction.

Aesthetic mandates are never less expensive to build and are purely subjective in assuming what one person likes and thinks is appealing another person will like and think is appealing. The reason we have First Century and Mid-Century housing to begin with is because the market decided that was how those homes were to have been built, not the planning regulations. So why limit our future to the past?

In conclusion, I am an advocate for progress, and the efficient allocation of resources. I understand the tension between private sector self-interest and the public sector regulation. We cannot have one without the other. Project Re-code will shift the balance too far without some tweaks to how it is written. Markets are better at allocating resources than planning.

The planning department is listening to the private sector's comments, but more concerns are raised as more people become aware of what will change. Please do not vote tonight, delay your vote 4 weeks while we improve upon the zoning that will govern the next decades.

Respectfully,

A large, stylized handwritten signature in black ink, appearing to be "Steve Wells".

Steve Wells

President

Wells Built, Inc.



dba Ernie Szillat Construction, Inc.
235 E Airport Rd
Billings, MT 59105
406-259-5200
CreativeVinylFencing.com

November 23, 2020

Attn: City Council Members:

I oppose the approval of the proposed re:Code for building codes and ask for a continuance to resolve major issues that have been found. Partly due to COVID-19, the construction industry has been inundated with business. This industry needs appropriate time to review the proposed re:Code and conclude to acceptable standards for housing that is affordable. The following are specific drawbacks to the proposal:

A. The new code would be disingenuous to affordability of building due to:

- I. Overreach of architectural design in ALL zones. **Staff Clarification: Four minor form requirements are added to the residential and commercial zones in some cases. Not all districts.**
2. Overreach of landscape requirements in ALL zones. **Staff Clarification: Please see all previous replies on this issue.**
3. Overreach of controlled/required types of buildings III PD/PND/PUD (required mixed use of residential & commercial) **Staff Clarification: This is not true. The PND tool will require two districts and can be all residential uses.**

B. As written, RMH Zone min 3000 sq ft lot (30' x 100') can accommodate a building 14' wide x 80' long x 34' high WITH an accessory building of 12' wide x 30' long x 40' high. **Staff Clarification: All code requirements have to be met - not just minimum lot area. Setbacks, lot coverage and building separations will also be required and enforced.**

C. Clarity & better definition is needed for all zones so lot sizes and building footprint are compatible. Specifically, in NX I if a lot is 7000 sq ft, a duplex is allowed. If a single lot is 15 acres, is only a single duplex allowed? Another example: NI district: a 20' wide x 100' long interior lot, the building may be 10' wide x 60' long x 2.5 stories (34' high). **Staff Clarification: The table provided for each zone district explains and the definitions (Sec. 27-1803) further clarify the meaning of terms and measurements. The table states "per principle structure" not "per property".**

Reviewing this proposed re:Code, I have come across over 100 questions & conflicts as a builder/developer. **We request ample time to stand behind the final document so it will be compatible & beneficial to the current people of the city and for future generations to come.**

Ernie Szillat, owner

Sincerely

A handwritten signature in blue ink, appearing to be 'Ernie Szillat', is written over a horizontal line.

From: Bill Hanser <bill@hanserconstruction.com>

Sent: Monday, November 23, 2020 1:37 PM

To: Council <council@billingsmt.gov>

Subject: [EXTERNAL] Project Re-Code

ATTENTION: This email originated from outside of the City of Billings. Use caution when clicking links or opening attachments unless you recognize the sender and are expecting the contents.

Dear Mayor Cole and Members of the City Council,

I want to thank all of the people who have devoted so much work to Project Re-Code.

Below are several items that I would ask receive additional consideration:

Overall:

There is always a balance between administrative oversight and private property rights to most efficiently create the community we all desire to live in. I believe it is important we have strong and clear zoning to drive the shape of our communities, while also allowing maximum personal choice, innovation, and flexibility to create desirable neighborhoods, provide affordable housing, and meet the changing market demands.

Section 27-304 N1 District

Requires side or alley facing driveways. This requirement adds cost and reduces the available yard space. Side entry driveways add expense and increase the amount of snow removal for the homeowner. **Staff Clarification: The Table for N1 is not clear that a front load driveway/garage is allowed. A clarification to this part of the code is prepared for Council consideration. It was not the intent of the code to prevent in all cases, a front load driveway/garage.**

Section 27-305 N2 District

Allows a maximum 6/12 roof pitch. This makes sense in already built N2 Zones, but in new construction, we frequently use greater than 6/12 pitches to create affordable bonus spaces in attic and garage trusses. **Staff Clarification: Staff and the consultant team are preparing a flexible plan for new building while keeping the character requirements for infill or re-builds in existing neighborhoods.**

An 80' front is allowed for a single residence, but only a 60' front for a duplex. It seems these should both allow for an 80' front. **Staff Clarification: See note above.**

Section 27-306 N3 District

Does not allow for duplexes. For most efficient use of land and to create more affordable housing, perhaps this should be an option through special review in this zoning as well.

Section 27-1203 Landscape Plan

Requires a landscaping plan to be submitted with the building permit and that plan will be binding on successors. This seems to add a significant, hard to enforce burden, as well as additional cost to the housing market. Also, many homeowners choose to build sweat equity by doing their own landscaping, allowing them to purchase a property they otherwise would not be able to afford. **Staff Clarification: For existing lots for new residential structures, the only required landscaping is the street frontage landscaping showing street trees. This can be done on the existing site plan already submitted for review by Building, Planning & Engineering.**

Again thank you to all those who have committed so much energy and hard work to Project Re-Code.

Bill Hanser
2916 Thousand Oaks St
Billings, MT 59102
(406) 671-7301

From: mtstock@bresnan.net
Date: Nov 23, 2020 11:18 AM
Subject: [EXTERNAL] Project recode
To: "Purinton, Pam" <purintonp@billingsmt.gov>
Cc:

ATTENTION: This email originated from outside of the City of Billings. Use caution when clicking links or opening attachments unless you recognize the sender and are expecting the contents.

Pam and City Council, please be advised that I am not ok with the project recode as it stands today. We have not had time to thoroughly review the document. Stock Development has developed over one hundred million dollars in residential, commercial and multi-family real-estate in Billings over the last several years. During the project re-code we were never given the opportunity to comment on any of the changes that have been made. Just reviewing the 400+ page document the parking for residential/multi-family has increased over 25%. This is astronomical in development worlds and will have a substantial increase in development costs! As it stands today we will no longer be able to consider Affordable housing or for that matter Housing in general. Costs due to this type of increase could be as much as 2 Million on a 200 unit complex. Stock Development is very energy conscious and all the work we put into making our buildings ENERGY EFFICIENT will be canceled out by the increase parking! 99% of all municipalities across the country are reducing parking codes not increasing them. Please put this project Recode on hold so we can have time to properly review and make comments. Thanks...Michael Stock

Pam sorry for all the typos rush job....

Staff Clarification: Mr. Stock along with more than 165 other individuals including developers, real estate professionals and neighborhood task force members were notified continually over the 3.5 years of the code development. This included notification and emails with draft code. The opportunity was available and input requested all along the way.

Mr. Stock attended several Urban Issues Working Group meetings that focused on the off-street parking requirements for multi-family apartments as well as other uses. Overall, the new off-street parking code is a better fit for developers since it is based on current understanding of parking demand. The City Engineering Division originally proposed that no enclosed off-street parking garage spaces be "counted" for multi-family developments. It was the Engineering staff opinion these were primarily used for household storage and not for car parking. The Urban Issues Working Group did not agree this was an appropriate measure to handle over-subscribed parking in multi-family apartment areas. This was directly influenced by the participation of Mr. Stock and other multi-family developers. The proposed code changes the current off-street parking ratio from one space for each studio or 1-bedroom unit and 1.5 spaces for each two or more bedroom unit to 1.5 parking spaces for each dwelling unit in a multi-family development plus 1 additional space for every 10 dwelling units. The one additional space is to accommodate visitors. This is a parking ratio Mr. Stock provides already in his multi-family developments. Many multi-family developers also provide between 1.5 to 2 off street parking spaces per dwelling unit. Staff agrees parking ratios should be adjusted where necessary, so administrative relief, transit offsets and shared parking agreements are encouraged in the proposed code. The code will also allow for a zoning variance if needed.

The current parking code is over 60 years old and is of little use to gauge the correct off-street parking demand.

From: Doug Wild <doug@billingsbuilders.com>
Sent: Monday, November 23, 2020 9:29 PM
To: Council <council@billingsmt.gov>
Subject: [EXTERNAL] Landscape requirements

ATTENTION: This email originated from outside of the City of Billings. Use caution when clicking links or opening attachments unless you recognize the sender and are expecting the contents.

I wanted to voice concern with the landscape requirements as it concerns residential development. I believe that there should not be specific requirements set forth for single family and duplex property. There are a number of times that home owners have the desire to do their own landscape to help with adorability. Requiring landscaping at time of certificate of occupancy will cause additional cost.

Staff Clarification: The new landscaping requirements for single lot existing residential developments ONLY include the requirement for street frontage landscaping (Section 27-1203 and Table 27-1200.1) For new residential developments that adjoin or are across an alley from a different zone or use such as mixed-use or non-residential development, the developer will need to plan for a buffer yard on the residential side of the shared property line. The mixed-use or non-residential development will also be required to install a buffer yard on their side of the property line or alley.

From: Doug Wild <doug@billingsbuilders.com>
Sent: Monday, November 23, 2020 10:20 PM
To: Council <council@billingsmt.gov>
Subject: [EXTERNAL] "style" requirements n1 and n2

ATTENTION: This email originated from outside of the City of Billings. Use caution when clicking links or opening attachments unless you recognize the sender and are expecting the contents.

I wanted you again thank you for your time and the city council meeting this evening.

I believe that it is appropriate to remove the style requirements for the N1 and N2 for new development. As they are written to ensure conformity in these historic parts of town. Requirements restricting roof pitch, front facade garage doors, windows, and the like are things that should be left up to the person purchasing the home. I believe that removing the style requirements will entice developers to develop smaller lots thus conforming more with the city's growth policy. Removing such style restrictions will not decrease the quality of homes built only provide flexibility and innovation for our growing community.

Doug wild

Staff Clarification: Staff is working with the consultant team to allow a flexible plan for the N1 & N2 zone districts to continue the character of existing neighbors and allow some flexibility for new developments.

From: Laura Boyer <laura@boyerproperties.com>

Sent: Monday, November 23, 2020 11:34 AM

To: Council <council@billingsmt.gov>

Subject: [EXTERNAL] Re-Code

ATTENTION: This email originated from outside of the City of Billings. Use caution when clicking links or opening attachments unless you recognize the sender and are expecting the contents.

As a builders and developer in Billings, Montana for over 45 years we feel we have a strong pulse on what buyers are looking for and this new code will no longer allow us to provide that to the Montana buyer. The most popular multifamily and single family homes that we have sold over the years will no longer be able to be built under this new code. Our market is driven by the consumer and if we cant produce what the consumer wants this will have a negative effect on our community.

Staff Clarification: Staff is not able to answer this concern without specific code requirements that would prevent Design Builders from building their current design in the future. Staff reviewed all of the proposed and approved master building plans on record for Design Builders, and each one met the proposed code requirements for the N3 zone district. I am not aware of a multi-family building plan constructed by Boyer Properties in the past 5 to 10 years. The N2 & N1 zone district will have a flexibility plan for new developments.

We would like to ask the City to hold off on making a decision about the rezoning. There are many concerns that homebuilders and developers have but with COVID right now we are unable to attend meetings and the fact that we are extremely busy building and selling homes that we will no longer be allowed to build under this new code.

Laura Boyer
406-698-5455
Boyer Properties, LLC
Boyer Land, LLC
Design Builders, Inc.

Laura Boyer
406-698-5455
Boyer Properties, LLC
Boyer Land, LLC
Design Builders, Inc.

From: Ewalt, Frank

Sent: Thursday, November 26, 2020 8:07 AM

To: Kukulski, Chris <kukulskic@billingsmt.gov>; Cromwell, Nicole <CromwellN@billingsmt.gov>; Iffland, Kevin <ifflandk@billingsmt.gov>

Cc: .MayorAndCouncil <Mayor&Council@billingsmt.gov>

Subject: re-code

I want to commend the movement made by planning/re-code committee so far. I feel the changes are appropriate in addressing concerns voiced mostly by the building/developers of our community. Thank you for exercising this flexibility.

One other area of concern is the financial impact that is being imposed upon property owners when this re-code is passed and enforced. Their property is worth "X" amount today and the next day a lessor amount due to re-zoning, much like making casinos/bars/taverns non-conforming that next day. It may be advantageous to consider a 2 year grace period for those that can prove financial loss with the re-code. It is very easy to say that upon passing and enforcing re-code all past zoning will be gone, if you have no real "skin in the game". This financial impact is very real for some property owners, and may become very real for the City if litigation is filed against the City for this reason.

Staff Clarification: Property value, market value and utility of property are based on many factors, the least of which is probably zoning conformity or nonconformity. Property appraisers, who help determine market value, are concerned with zoning conformity as are lenders and insurance underwriters. The ability to rebuild a residential property – as is and where is – is important for residential lending. If a home is in a flood plain, then flood insurance will be required. If a home is too close to a property line, often the lender will require a zoning variance so the home can be re-built at the same location. If a home is too large for the lot – over lot coverage – the lender may require a zoning variance. Many of the changes to the residential zone districts will alleviate existing non-conformities – not create new problems. The new “urban form” requirements are not in the same category of nonconformities as a building height, setback or lot coverage. A building with more than 50% of the front façade in garage openings can continue, can be renovated and updated so long as the garage door openings are not increased on the front façade. This is a site characteristic and the code recognizes the unique property of a site characteristic versus other zoning requirements such as use.

Thank you for consideration of this matter.

Frank

From: tylert@epconsigngroup.com <tylert@epconsigngroup.com>

Sent: Wednesday, November 11, 2020 9:18 AM

To: Council

Cc: toddt@epconsigngroup.com

Subject: [EXTERNAL] EMD Regulations/ Sign Code Allowances

ATTENTION: This email originated from outside of the City of Billings. Use caution when clicking links or opening attachments unless you recognize the sender and are expecting the contents.

Dear Council Members,

I have attached the document which an EMD user must sign before their EMD is permitted. This document pertains to the sign code they were presented, upon signing this agreement. My customers would not have signed this, nor made the substantial investment, if the code limited the use of the sign as the proposed new sign code. I urge you to think about the backlash from the business owners if they are told to not use their EMD in accordance to what they signed. **Staff Clarification: The existing sign code prohibits several uses of EMD signs that many owners are violating including the current sections of the sign code at 27-708 (Prohibited Signs)**

(a) Animated and intensely lighted signs: No signs shall be permitted which are animated by means of flashing, scintillating, blinking, traveling lights, displaying video or any other means not providing constant illumination (unless specifically permitted in special sign districts). Electronic Message Displays may be allowed provided they do not flash, scintillate, blink, show motion borders or traveling lights or display video.

The proposed change to static display for most existing EMD signs is based on the lack of compliance with the existing code, even by owners who sign an EMD certificate.

Also, the current sign code allows a freestanding sign to be a maximum of 175 square feet in most commercial zones, the proposed code is cutting this down to 50 or 80 square feet for a single tenant in CMU1 and CMU2, (most of grand avenue, 24th street, and many more arterials). **Staff Clarification: The proposed code will allow smaller sign area but we are also changing the way sign area is measured. Current measurement includes the entire sign cabinet. The new measurement method will distinguish between the total area of a sign and the area that just supports the sign face. Decorative designs and sign area not designed for the placement of text, symbols or graphics will not be included in the sign area calculation.**

This would make the majority of the freestanding signs, legal non-conforming. We understand 175 square feet is a lot, but cutting it by more than half seems drastic and unfair to new businesses trying to compete. **Staff Clarification: I reviewed some of the more recent sign permits for locations of single tenant properties on arterial streets. It appears this statement does not conform to our more recent permits (2018 through 2020) for new freestanding signs on Grand, 24th St W, Broadwater Avenue, Central Avenue, Main Street or other arterial streets. Most of these are 50 to 80 square feet in area. The much larger new freestanding signs are generally for new casinos and gas stations. Also, minor nonconformities for sign height or area (20% or less of the proposed sign limits) can continue and can have regular maintenance and new sign faces. The signs more than 20% out of conformity with height or area limits have stricter requirements for sign changes, but sign faces may still be replaced. (Section 27-1403)**

The new proposed freestanding sign size will also greatly reduce the size of an allowed EMD, an EMD can only be 40% of the sign, making an allowed EMD 20 square feet, now try to advertise anything with

a 6 second static message. **Staff Clarification: The percentage of the total sign area is not in all cases 20 square feet for the EMD. For example, an 80 square-foot total sign area could have 40% or 32 square feet for the EMD sign.**

The current code allows 3 square feet of building signage per foot of building frontage, the new code limits 1 building sign per street frontage, again, extremely unfair to any new business to compete with an existing competitor. **Staff Clarification: The proposed sign area for building signs for one tenant buildings is 20% of the total wall area (on the street façade) or 250 square feet whichever is smaller. The business could have multiple building signs including one each of the sign types listed in Table 27-1400.6 of the proposed sign code. These sign types include wall signs, projecting signs, awning signs, canopy signs and window signs**

I could go on and on, but I urge you to look at the current code, compared to the proposed code, and see how drastic the allowances have been reduced.

Thank you for your consideration,

Tyler J. Thelen
930 Avenue C
406-670-0555

From: Travis Woltermann <Travis.Woltermann@goldenent.com>

Sent: Monday, November 23, 2020 2:34 PM

To: Cole, Bill <coleb@billingsmt.gov>; Shaw, Kendra <shawk@billingsmt.gov>; Yakawich, Mike <yakawichm@billingsmt.gov>; Ewalt, Frank <ewaltf@billingsmt.gov>; Neese, Roy <neeser@billingsmt.gov>; Choriki, Danny <chorikid@billingsmt.gov>; Joy, Denise <joyd@billingsmt.gov>; Purinton, Pam <purintonp@billingsmt.gov>; Ronning, Penny <ronningp@billingsmt.gov>; Boyett, Mike <boyettm@billingsmt.gov>; Brown, Shaun <browns@billingsmt.gov>

Subject: [EXTERNAL] Project Re:Code

ATTENTION: This email originated from outside of the City of Billings. Use caution when clicking links or opening attachments unless you recognize the sender and are expecting the contents.

Good Afternoon Mayor Cole and Members of the Council,

I'm writing to you today with hope that you will delay the decision making on Project Re:Code until further research is conducted and discussions have been had in more detail. It was recently brought to my attention that it will directly affect the industry I'm currently in which is the Hospitality Industry. I've started reviewing this 428 page document and after reviewing a few of the mentions in the Re:Code, it was quite alarming as I immediately felt like this was more of an attack on our industry rather than for general purpose. A few examples of those mentions I've listed below.

- Casino Classification- These will now be categorized into 3 areas. Accessory Limited, Accessory Small, and Primary/Large if I understand correctly. I'm not quite comprehending the need for the breakdown and would be interested to hear reasoning. Page 147 **Staff Clarification: The classification was to distinguish between business models that are primarily oriented to a gambling use and those with an accessory or minor additional use to the primary use – a restaurant for example.**
- Separation Distances- (a) Primary/Large casinos shall be separated from religious institutions by at least 600 ft. For the most part I agree with a reasonable separation when also mentioning "active" schools or parks or playgrounds however why is that the separation is required by casinos yet churches or places of worship are under no restrictions and can be placed within 600ft of a casino? In a particular past case, I'm aware of a church being the landlord of the casino. Seems to be a bit one sided from my view. **Staff Clarification: This is the current code requirement measured property line to property line. The new measurement will be from the exterior of the building where the casino/bar is located to the property line of the protected use – school (primary & secondary), church (religious assembly), park with a playground, and now residential zones. The proposed code makes the separation distances no eligible for reduction, waivers or variances.**
- Page 146. Bars or taverns shall also be separated from any residential neighborhood zone (N1, N2,N3, N4, NX1, NX2, NX3, and RMH) by at least 150 feet, measured from the exterior of the occupied building space of the bar or tavern to the property line of the lot in the residential neighborhood zone. Why are casinos required to be 600 ft? Again, having troubles finding the clarity for reasoning behind these proposed and some current restrictions. **Staff Clarification: Bars & taverns (places that serve more alcohol than food), will need to meet the 150 feet separation to a residential zone and casinos (Large, Primary) will need to be separated from residential zones by 350 feet.**
- There was a mention in the Billings Gazette made by Nicole Cromwell stating if the bar or casino gets destroyed by accident or disaster, it can't rebuild as a bar or casino if it doesn't fit the new

zoning requirements. This one is very concerning to me as arson is very much alive and well in our city. 20 years ago I wouldn't have questioned it as much as I do today. After recently discussing with local fire departments, we do in fact have a problem with arson in our city.

Overall in the hospitality industry, we can come a very long ways adapting to new times and progression in the world we live in. We've gone from bars and nightclubs packing in 300-400 people to nowadays pubs, lounges, and casino hosting a fraction of that number and maintaining lucrative tax revenues for the State and local departments. Casinos are heavily taxed businesses paying in 56 times per year! Billings generated \$10.6M in tax revenue alone during it's last fiscal year. I feel that is a very strong number generated mainly by local mom and pop's businesses. Some people will argue there are too many casinos currently in Billings. The "perception" is that there is no cap on gaming licenses and the city will soon turn into Las Vegas. Not true. These licenses have been capped now for several years. Usually when one older style casino shuts down.... a newly remodeled modern casino reopens.

In closing, I appreciate what you all do for this great City of Billings we live in. I hope we are not writing and approving new laws/regulations based off perception. The word seems to be all too common these days in discussions. Please consider postponing your decision on Project Re:Code until we fully understand it's direction and where it's all stemming from.

All the best,
Travis

TRAVIS J. WOLTERMANN | VP of MT Operations

Golden Route Operations- MT

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From: Bough, Jason <Jason.Bough@goldenent.com>
Sent: Monday, November 23, 2020 4:06 PM
To: Council <council@billingsmt.gov>
Subject: [EXTERNAL] Project Recode

ATTENTION: This email originated from outside of the City of Billings. Use caution when clicking links or opening attachments unless you recognize the sender and are expecting the contents.

Good afternoon Mayor and Council Members,

I am writing in the hope that you will rethink Project Recode, and the effect it will have on the bar and casino industry in Billings. I believe this is being contemplated to combat the notion that bars and casinos are everywhere in Billings, and that more and more keep popping up. Most people outside of the industry do not realize that there are no new city alcohol licenses (that allow gaming) available from the state. What that means is that when you see a new bar/casino open somewhere in Billings it is because a different bar/casino closed somewhere else.

We currently have state mandated separation distances from churches, schools, and parks, although variances are allowed in some instances. This Project Recode makes the distances more restrictive in redefining how the distances are calculated ,not allowing for variances, and added residential areas to the separation requirements. So now bars/casinos can't be near churches, schools, parks, or residential areas which leaves them to main streets and industrial areas.

Schools and parks aren't added very regularly, but churches (especially small venues) seem to move around a lot and they can currently move within the 600 foot distance to a bar/casino which then hinders the bar/casino from possible expansion, even on their own property. It seems like any distance requirements should prohibit both parties from being near each other. **Staff Clarification: If a church or religious assembly rents a space in a larger building, this will not trigger the separation distance requirement in the existing or proposed code. If the religious assembly is the primary use of the property (more than 50% of the building or land area) would a separation distance be required.**

The bar and casino industry in Billings employs a lot of people and generates a lot of tax revenue. I hope you review this project and ask yourself what it is trying to accomplish, as these restrictions seem intended to severely restrict business which will have a negative impact to tax revenue, as well as to peoples livelihoods.

Thank you very much for your time,

Jason Bough

JASON C. BOUGH | Route Manager
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5604 Interstate Avenue | Billings, MT 59101

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mtoilman@welterconsulting.com

To City Council on November 23, 2020

Project Re-Code points of interest & concern

Below are the specific sections and language in Project Re-Code that will have detrimental effects to our State sanctioned gaming businesses. Before I layout those proposed provisions, it is important to know that I believe that Project Re-Codes zoning map may NOT PROVIDE ENOUGH LEGAL SPACE for all of Billings Casinos to be legal. The proposed map lays out zoning options for casinos, but with a 350 ft separation from residential districts, 600 ft separation from churches, parks with a playground, and schools in CMU zones, and an additional State Law requiring a 150 ft separation from the exterior wall of another casino (which I don't know any one is considering), it is my belief there not enough real estate in the proposed map to cater to the 130+ State approved licenses operating in city limits. **Staff Clarification: A map was prepared by the City GIS staff showing areas available for the location of new casinos if the proposed non-reducible separation distances are approved. The existing state law requiring 150-foot separation from another casino ONLY applies to locations owned by the same party – not separate parties or corporations.**

I've asked Nicole to provide a map highlighting potential legal locations using ALL of those separations (including the State required 150 ft separation from another casino) and we'll see what she comes back with, I could be wrong. If she comes back with nothing, I will hire a civil engineering firm to provide those answers. If it true that the city does not provide enough legal space for our businesses, although I'm not an attorney, logic tells me this might a problem.

Questions & Concerns

- I believe the proposed 350 ft separation from a residential district does not apply to uses, but to be clear will residential "uses" within a CMU or DX zone prohibit gaming? Example – Casinos are allowed in CMU2 zones, but what if there are apartments or a condo(s) on the second floor of a business located in the CMU zone. Are casinos then prohibited? **Staff Clarification: In Section 27-1005.J, the separation to a residential zone lists the specific residential districts where the separation applies. This does NOT include any of the mixed-use districts or where residential uses may be part of a development. The specific wording of the separation distances does not state "uses" it states "zone".**
- **27-1001-2 (Pg2):** Residential uses now include: day cares, healthcare facilities, household living centers, and social assistance centers. If the answer to your question above is "Yes" is it safe to assume that it is also proposed that casinos will now have a 350 ft separation from those uses within CMU zones as well? **Staff Clarification: The word "use" cannot be used interchangeably with the word "zone" in this context. The careful language of Section 27-1005.J does not require**

a separation for a “residential use” it requires a separation from a “residential zone” and those districts are listed.

- I was not able to find the definition for “healthcare and social assistance uses.” Will healthcare uses include dental, vision, rehabilitation centers? My concern again is the separation from residential uses/districts in a CMU zone. If an eye doctor is considered a residential use and/or district, is a separation required from gaming? **Staff Clarification: See the answers above.**
- **Section 27-602-6 (Pg. 2):** I do not understand what it means when they say, “No fascia of a building or canopy may be internally illuminated.” Can Nicole give us examples of prohibited internal lighting? **Staff Clarification: This prohibition is only triggered when the commercial/industrial zone is within 50 feet of a residential zone. This is in the existing code at [Sec. 27-612.e](#). Internally illuminated fascia is a building fascia – usually along the eave – where a plastic covering is placed over lighting. Exterior neon or led tubing attached to a fascia – usually along the building eave – is not included in this prohibition. This is not a common choice for exterior building materials. The current code has been in place since 2012.**

As I understand it casinos that are grandfathered into non-conforming locations and may continue to operate at those locations. However, if more than 50% of that casino property is destroyed by arson or natural disaster, the casino owners will not be allowed to rebuild and operate under the same use.

My concern here is that with so little options available for casino owners to relocate, the landowners who have land for sale or lease options available in conforming locations will naturally increase their price to casino owners as they will be desperate to find conforming space. Furthermore, the value of casinos reside within the locations that they operate, the area’s residents they serve, and the profit that the business is able to create. If the city forces casinos owners out of those grandfathered locations after being destroyed by natural disaster or arson, it will without any doubt, destroy the value of that license. Buyers of casino licenses will pay far less for casinos located in grandfathered locations due to the increased risk of being destroyed and not being allowed to rebuild. The other concern is that separation uses will eventually encroach on a gaming license under this re-code. This encroachment will make legal locations illegal and further devalue the price a buyer is willing to pay due to increased risk of being kicked out and unable to find economically viable locations.

Solution: Create assurances that grandfathered locations will be allowed rebuild and continue operating as non-conforming use if destroyed by natural disaster or fire. I would also argue that encroachment on a gaming license should be addressed. License owners lucky enough to find a legal location should not have to worry about becoming illegal and potentially losing their business and the devaluation of their property.

27-402 -D (Bottom of Page 1)

By definition, Project Re-code states the following: “CMU2 differs from CMU1 as it is meant to accommodate larger scale commercial, warehouse-style buildings, and other uses in multiple buildings on larger, deeper parcels along corridors.”

Problem: Casinos are not large commercial spaces or buildings. The majority of gaming floors and establishments are small. Many times not exceeding 2500 sq ft. Re-Codes definition of CMU2 does not fit the characteristics of an average casino. My fear is that casinos will ultimately be forced into these CMU2 zones and buried in warehouse style areas that will make it economically unfeasible for casinos to continue. **Staff Clarification: Casinos and bars are not limited to the CMU2 zone district. It may be easier to locate a casino/bar in a CMU2 zone – as a tenant space or in an “out lot” on a larger parcel to meet the non-reducible separation requirements.**

27-602-F-9 (Industrial district): “No outdoor announcement system of music system whether permanent or temporary, is allowed”

Problem: This would eliminate the possibility for special events to take place (Ex: Live after 5) in an industrial district. Is this fair to the people and businesses that enjoy live music on special occasions? Seems to me that as Re-Code is written so that casinos over time will be forced to concentrate themselves into these districts. Now add that Re-Code proposes to take away these areas ability to provide a fun, economically viable entertainment elements to their area by taking away their right to be granted a permit for live music from time to time. I would even argue this is a long-term strategy by the authors to further exacerbate negative public perception of gaming. These areas will turn into overconcentrated “Casino zones” and the code seems to be attempting to prevent these districts from doing anything the public would perceive as positive.

This seems so targeted to me that, I need to question whether I am even understanding this correctly? Can Nicole confirm that I’m reading right? **Staff Clarification: This prohibition only applies when the property is within 50 feet of a residential zoning district. This is the existing code at Sec. 27-612.e. and applies to any commercial use within this 50-foot area. It does not apply everywhere and on every commercial or industrial property.**

Article 27-1005-G-1(a)-(c). (Bar and tavern separation)

Bars and Taverns without gaming are allowed a 150 ft separation from residential districts. Why are state sanctioned casinos are being targeted with a 350 ft separation from residential districts while taverns/bars are not? **Staff Clarification: The City Council gave staff direction two years ago to separate the two uses – alcohol service and gambling – so the code is different for each use. Gambling and casinos were a greater concern for the City Council and for public safety.**

The primary function of a bar without gaming is to serve alcohol. It’s my belief that alcohol creates far more problems for people, families, and cities than a gaming establishment. Gaming establishments discourage drinking due to the fact that they are forced to give much of their alcohol away. At our six casinos we do everything we can to discourage drinking. It’s expensive for our casinos to get people drunk, we don’t like to do it. Allowing bars and tavern a 150 ft separation but gaming a 350 ft separation (27-1005-J:3(b)) appears to be targeted without any rationale.

The way the separation is measured from a casino to a residential district in (27-1005-J-3(b)) is from the exterior wall of the casino to the property line of the residential district. I would encourage that it measured from building to building instead. I would further encourage casinos to be treated fairly and equally and for the separation to be reduced to 150 ft from a residential district.

- Tavern and building owners beware **27-1102** dictates that if you complete an interior remodel of your building you will be required to produce landscaping for your building as well. This will increase the cost of your remodel.

27-1204-B-1(b)

This section dictates that property owners in all districts except CBD add one tree for every 40 linear feet of frontage. The only thing I worry about here are those trees blocking the view of businesses. I think this will be okay, but would rather see bushes and plants that do not reach high enough to block line of sight of the business from the frontage. **Staff Clarification: Street trees do not need to be placed exactly 40 feet apart and can be placed as makes sense on the street frontage, accounting for driveways, clear vision areas and viewshed of the building. Street frontage landscaping always adds property value.**

27-1300.1 & 27-1300.4

Says that gaming establishments can have one parking spot for every 150 ft of building. For every parking space above and beyond the maximum amount, Re-Code requires additional installation of deciduous trees and shrubs. I'm ok with this, but people besides me need to understand this. **Staff Clarification: This refers to the "maximum off-street parking" criteria. When a location adds more than 10 to 20 percent over the maximum required, additional landscaping may be required. For example, a 2,500 square foot "casino" put in more than 20 off-street parking spaces (17 required + 4 additional), then the business would have to add four shrubs to the landscaping for the property. Section 27-1302.F**

27-1800 (Pg 55)

Definition of schools now include a beauty school, a culinary school, and training centers.

Re-Code already adds significant restrictions to a casino's ability to find economically viable locations. Being that schools have a 600 ft separation, I do not feel that beauty schools, and culinary arts schools should be included in this definition. The use of the word "Training Centers" in this definition is nebulous and not clear as to this means. Being that a 600 ft separation is required from a "Training Center" it is important that there are no grey areas in the definition of "Training Center." I would ask that this be better defined. **Staff Clarification: ONLY primary and secondary schools are included in the required separation distances for bars/tavern and casinos. Section 27-1005.G and 27-1005.J and definitions Section 27-1803.**