

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

**August 9, 2021**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Cole called the meeting to order at 5:30 p.m. and served as the meeting's presiding officer. Councilmember Ewalt gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Shaw, Neese, Ewalt, Joy, Choriki, Purinton, Ronning, and Brown. Councilmembers Yakawich and Boyett were excused.

### **MINUTES:**

**July 12, 2021** - Councilmember Neese noted there had been a duplicate approval noted for a Consent Agenda Item and he asked it be removed. Councilmember Joy made a motion to approve with the changes noted, seconded by Councilmember Shaw. On a voice vote, the motion was approved unanimously.

**July 26, 2021** – The Minutes were pending.

### **COURTESIES:**

Councilmember Ronning mentioned how fun the charity softball game was between the Fire and Police Departments and she thanked all that came to support the event. She thanked the Mustangs for allowing spectators to attend free and wished the Fire Department better luck next year as the Police won 6-4!

Councilmember Neese recognized Atonement Lutheran Church in the Heights for holding an event for the community to meet the Police Department.

### **PROCLAMATIONS:**

Mayor Cole proclaimed the week of August 8-14, 2021, as National Health Center Week, and recognized RiverStone Health Clinic for serving the medical needs of the community for more than 50 years.

### **COUNCIL REPORTS:**

There were no Council reports.

## **COVID-19 UPDATE: (Added to Agenda)**

John Felton, Yellowstone County Health Officer, provided a report outlining the increase in infections throughout the country and noted that Florida had about 1/5<sup>th</sup> of all COVID cases presently. He reviewed Montana's numbers and stated there had been a rapid increase in the past 2 weeks. He noted that Yellowstone County was 3<sup>rd</sup> in the state in the number of active cases, behind Flathead and Cascade and Yellowstone County was gaining new cases at a slower pace than the other counties. He reviewed the 2 hospitals' censuses and explained that hospitalizations lag approximately 2 weeks after a test positivity so increases in hospitalizations were expected. He stated the numbers of hospitalizations as of August 7<sup>th</sup> were as high as they were in mid-January of 2021 and the trends were heading in the wrong direction. The largest age group for positive infections was now younger than before at 20 years old to 39 years old at 37%; school aged children, 0-19 years old were steady at 14% and 40-59 years old at 28%. Mr. Felton then addressed immunity by infection and immunization and quarantining recommendations. He stated that people who were infected are also recommended to receive a vaccination because the immune response was not as strong as for those who had been vaccinated. He stated that at the peak of immunizations, Yellowstone County was administering over 9,000 doses per week and that had flattened to about 1/10<sup>th</sup> of that. He provided the percentage of fully vaccinated for the state at 48% as of July 30, 2021, and Yellowstone County was at 47% for that same time period, and stressed we were a long way from achieving the recommended 70%. He stated that fully vaccinated individuals 70+ years old held the highest percentage at 76%. He spoke about "breakthrough cases" being those individuals that have been fully vaccinated (infected beyond 2 weeks after their second dose) and noted that fully vaccinated people were 99.995% protected from the illness and 99.999% protected from death due to the illness. Mr. Felton then reviewed the identified variants by county and stated the Delta variant was the most active in Montana, was highly transmissible and masking was recommended if social spacing was not possible in indoor scenarios. He encouraged vaccinations and doing whatever possible to get vaccination numbers increased. He spoke about the incentives RiverStone Health was able to provide due to generous donations by 2 separate donors and stated incentives worked.

Council asked questions about the 20–39-year old's raising school-aged children who upon returning to school may potentially infect many other families and the school district's approach with a "masks-optional" approach. Council asked about mandates and self-disclosures that are unlawful. Discussions continued concerning identifying unvaccinated populations throughout the City and using zip codes and GIS support.

**ADMINISTRATOR REPORTS - CHRIS KUKULSKI**

Mr. Kukulski stated there were 5 ex parte communications received via email concerning Regular Agenda Item No. 3, Resolution Referring Ballot Issue Prohibiting Marijuana Businesses to November 2, 2021 Election and stated those were available for public viewing in the Ex Parte notebook located on the cart at the entry of Council Chambers.

Mr. Kukulski noted that Regular Agenda Item No. 2 was struck from the agenda as the applicant withdrew their petition.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 ONLY. Speaker identification required.** (Comments are limited to three (3) minutes or as set by the Mayor. Please sign the roster at the cart located at the back of the Council chambers or at the podium. Comments on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For items not on this agenda, public comment will be taken at the end of the agenda.)

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

**1. CONSENT AGENDA:**

**A. Mayor Cole recommends that Council confirm the following appointments:**

	Name	Board/Commission	Term	
			Begins	Ends
1	Clinton Peck	Yellowstone Soil Conservation	07/01/21	06/30/24

**B. Bid Awards:**

1. **Billings Public Library Hail Repairs - Rebid.** (Opened 07/20/21) Recommend T.W. Clark Construction, LLC; \$1,574,500.
2. **Stewart Park Hail Repairs.** (Opened 7/20/21) Recommend Finishing Touch Exteriors, Inc.; \$106,300.20.
3. **Poly Vista Park Development, Phase 1.** (Opened 7/20/21) Recommend Weave Construction; \$853,500.
4. **Chlorine for Water Plant.** (Opened 7/27/21) Recommend DPC Industries, Inc.; \$169,500, with option of 2, 1-year extensions.

- C. **Grant Application Request** to submit "Our Town" grant application to the National Endowment for the Arts and acceptance, if awarded; up to \$50,000.  
**APPROVED 8-1, PURINTON OPPOSED**
- D. **Recommendation** of approval of 2022 Unified Planning Work Program (UPWP) to the Policy Coordinating Committee (PCC).
- E. **Donation** to the Billings Parks and Recreation Department from Big Sky Economic Development for Coulson Park; \$6,000.
- F. **Donation** to the Billings Parks and Recreation Department from Peter Yegen Jr. Inc. for plantings at Pioneer Park; \$1,000.
- G. **Donations** from various donors to the Billings Parks and Recreation Department for the Centennial Park grand opening; \$8,000.
- H. **Final Expedited Minor Plat** of Turnbull Subdivision.
- I. **Final Plat** of Annafeld North Subdivision, 1st Filing.
- J. **Final Plat** of Lake Hills Subdivision, 39th Filing.
- K. **Second/Final Reading Ordinance 21-5768** amending Billings, Montana City Code (BMCC), Article 22-1000, Arterial Construction Fees.
- L. **Bills for the Weeks of:**
  - 1. July 6, 2021
  - 2. July 12, 2021

Mayor Cole separated Consent Agenda Item 1G in order to abstain.

Councilmember Purinton separated Consent Agenda Items 1C and 1K for discussion.

Councilmember Neese moved for approval of the entire Consent Agenda, with exception of 1C, 1G, and 1K, seconded by Councilmember Ronning.

Councilmember Ewalt, in reference to 1B1 and 1B2, asked about the dates hail damages occurred and insurance coverages were extended. Jessica Iverson, Facilities Manager, responded that the City is in daily communications with the insurance companies for the damages sustained in August of 2019 and the insurance companies are honoring the claims and working with the City through extensions.

Councilmember Neese recognized the contributors to the Parks Department. Michael Whitaker, Parks Director, provided specific amounts of recent donations.

On a voice vote, the motion to approve the entire Consent Agenda, with the exception of 1C, 1G and 1K, was approved unanimously.

Councilmember Purinton, in reference to Consent Agenda Item 1C, stated she had researched the National Endowment for the Arts online and did not agree with using government funds and would not support a motion for approval.

Councilmember Joy moved for approval and acceptance of grant award if granted of Consent Agenda Item 1C, seconded by Councilmember Shaw.

Council discussed the importance of community partners and projects that affected community safety. Comments were made about appreciation for the arts in the community.

Councilmember Neese noted that even though the staff memo stated there was no cost to the City associated with the grant, there would actually be considerable staff time devoted to applying and administering grants by staff and that was a cost to the City that should be noted in future staff memos.

Councilmember Brown voiced his confusion about the messages Council sent to staff regarding applying for as many grants as possible and then questioning some of the grant opportunities. He stated his support for the motion.

On a voice vote, the motion was approved 8-1, Councilmember Purinton voted in opposition.

Mayor Cole recused himself from the vote for Consent Agenda Item 1G and passed the meeting to Deputy Mayor Pro Tempore Neese. Councilmember Shaw moved for approval of Consent Agenda Item 1G, seconded by Councilmember Ronning. On a voice vote, the motion for approval was passed, 8-0, Mayor Cole abstained.

Mayor Cole resumed officiating the meeting.

Councilmember Purinton, in reference to Consent Agenda Item 1K, asked for clarification on the second reading. Debi Meling, Public Works Director, stated that the item was relative to amending the language in the City's code, due to changes brought about by Project ReCode. Discussions between Council and staff continued concerning the exemption process and equity between properties.

Councilmember Shaw moved for approval of Consent Agenda Item 1K, seconded by Councilmember Neese. On a voice vote, the motion was approved unanimously.

## **REGULAR AGENDA:**

**2. CANCELLED - PETITION WITHDRAWN. PUBLIC HEARING AND RESOLUTION** ~~vacating a portion of the alley right of way adjacent to Lots 13 and 14, Block 5, of the Original Town of Billings. No action necessary.~~

**3. PUBLIC HEARING AND RESOLUTION referring ballot issue regarding prohibiting marijuana businesses to November 2, 2021, election. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Gina Dahl, City Attorney, provided the background history of this item, i.e. HB 701 and its effects, discussions held during work sessions, committee reports, a drafted resolution, drafted recommended regulations, the County's decision to bring a 3% excise tax to the voters in November. She reviewed the excise tax percentages that would go to the Department of Revenue, County, other Cities within Yellowstone County, and that which the City would receive (approximately .92 per every \$100 in sales). She reiterated that the resolution in no way impacted medical marijuana dispensaries and reviewed the revised ballot language to make it clear to voters. She reminded Council that they needed to approve the resolution at this meeting in order to meet the statutory deadlines.

Councilmember Neese stated that the resolution also did not prohibit the use or possession of recreational or medical marijuana within the City limits and proposed that perhaps a change to that effect should be included. Karen Tracy, Assistant City Attorney, cautioned Council about added any "use" language in the resolution because there were some restrictions as set forth in State law.

Council and staff continued discussions about the language on the ballot; the 7 categories to consider; and anticipated annual amounts of excise tax to Billings. Chris Kukulski, City Administrator, explained that the 3% excise tax could be spread to both medical and recreational marijuana sales depending on the voter outcome. He explained that during a recent Substance Abuse Connect meeting in which Ben Cort, a national expert on marijuana impacts, stated the State of Colorado underestimated sales. He continued that it was very clear that revenues would not cover the cost of the expenses, or the impacts marijuana usage had on the State.

Karen Tracy, Assistant City Attorney, clarified that the State was imposing a 20% tax on recreational, adult-use marijuana and marijuana products and 4% was assessed to medical marijuana. If the voters approved the 3% for both, then the taxes would be 23% for recreational, adult-use marijuana and marijuana products, and 7% for medical marijuana.

Councilmember Neese moved to amend the resolution's ballot language to include, after the sentence ending with "'House Bill 701.' The use and possession of marijuana for adults over the age of 21 and the remaining categories of marijuana businesses will not be impacted by this vote, including medical marijuana dispensaries, and will be permitted in the City of Billings upon the effective date of House Bill 701." Under the Proposal section of the Resolution, the amendment would begin after the sentence ending with "'21 years of age or older.' This proposed ordinance would not prohibit the operation of medical marijuana dispensaries within the City of Billings.", seconded by Councilmember Brown. On a voice vote, the motion to amend the resolution's ballot language was unanimously approved.

The public hearing was opened.

- **Aubrey Kincaid, 607 Yellowstone Avenue, Billings, Montana**, made comparisons between alcohol-related deaths and cannabis-related deaths, stating there were zero deaths caused because of cannabis use. He stated alcohol was socially acceptable and that the pharmaceutical industry opposed cannabis because it competed with prescription drugs they produced. He suggested that the excise tax compilation be changed so that any sales made in Billings would not be shared with other cities in Yellowstone County and that each city would keep the entire percentage of tax collected due to their sales.
- **Patrick Scott Wilson, 2104 Clark Avenue, Billings, Montana**, stated that 2020 was a divisive year in our nation's history, yet Montanans came together to vote in favor of legalizing marijuana. He stated placing the item on the ballot was a waste of voters' time and money.
- **Tanya Ludwig, 378 Jefferson Street, Billings, Montana**, stated her 22-year-old son, Eric Ludwig, was killed by a driver high on marijuana. She opposed the legalization of marijuana at all costs.
- **Steve Zabawa, 324 South 24<sup>th</sup> Street, Billings, Montana**, stated he had filed a lawsuit concerning the legality of I-190. He stated that the HIDTA report for the State of Colorado showed there were twice as many deaths due to increased DUIs since the legalization of marijuana. He supported the amended resolution.
- **Anthony Saur, 911 Miles Avenue, Billings, Montana**, stated he attended the meeting in which Ben Cort spoke, but stated there had not been enough time to speak about marijuana use in an effective manner. He stated the public had spoken and wanted recreational marijuana in Billings and he opposed the resolution placing the proposed language on the November ballot. He recited information he found concerning Colorado's marijuana statistics, stating there was no significant increase in illicit drug usage and denied that marijuana was a gateway to other drugs.
- **Dan Wells, 5847 Whispering Wood Drive, Billings, Montana**, stated he was not supportive of large recreational marijuana shops in Billings. He acknowledged a value for medical marijuana, but stated drugs overall were plaguing the community and driving increases in crime, thefts in particular. He supported placing the item on the ballot.
- **Dennis Ulvestad, 78 27<sup>th</sup> Street West, Apt. 122, Billings, Montana**, stated the City should leave things as they are and related the legalization of marijuana to the legalization of alcohol. He was not supportive of the ballot language going to the voters in November.
- **Jason Smith, 4515 Palisades Park Drive, Billings, Montana**, stated sales would be 10-fold of that for medical marijuana, based on other states that legalized recreational marijuana. He stated people from surrounding counties and states would come to Yellowstone County to purchase their supplies and it was a revenue generating business. He stated the money was already spent when the voters voted in favor of legalizing recreational marijuana. He asked where the City stood on medical marijuana and stated it was hard to know what was allowed in the City. He was opposed to the ballot language.

- **David Lewis, 2980 Daystar Drive, Billings, Montana**, explained his activism after the legalization of medical marijuana. He stated he hoped to be given the opportunity to vote "no" on the ballot and encouraged Council to approve the resolution concerning the ballot language.
- **Dick Pence, 4307 Palisades Park Drive, Billings, Montana**, stated statistics could be used any way one wished, however "policy promotes practice". He stated that the average person may believe that because a policy was instated that it was a good thing, that everyone should follow. He stated he was not supportive of recreational use of marijuana and encouraged Council to approve the resolution.
- **Tina Walker-Smith, 4100 Murphy, Billings, Montana**, quoted a county commissioner, "you don't get to re-vote just because you don't like the outcome."

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

Mayor Cole called recess at 7:43 pm.

Mayor Cole reconvened the meeting at 7:50 pm.

Councilmember Ewalt moved to approve the amended resolution referring ballot issue regarding prohibiting marijuana businesses to November 2, 2021, election, seconded by Councilmember Purinton. Councilmember Ewalt stated the City had enough issues without having to deal with marijuana businesses on every corner, like casinos were presently.

Councilmember Purinton remarked that a lot of money was brought into the State by out-of-state pro-legalization activists, however, the States of Colorado, Oregon and Washington could provide ample information why legalization should not occur; the consequences to personal health and the increases in crime. She continued that municipalities receive a very small amount of taxes collected by the State but are left dealing with the problems that come with marijuana use. She reiterated that the estimated amount of money Billings may receive would not lend much aid with substance abuse and additional law enforcement efforts and the taxpayers will be responsible for the additional costs. She stated some people wanted government to stand out of the way, however government was in the middle of it, always had been and would remain in the conversation. She continued that the marijuana business would grow bigger government whether the ballot issue was passed or not because regulations were necessary. She urged for a balanced response and for fellow Councilmembers to support the motion.

Councilmember Joy stated the voters had voted and it was up to Council as policy makers to regulate the outcome and determine how to keep the community safe.

Councilmember Brown stated determining how and what to regulate would be considered whether the ballot passed or not. He stated his support for the motion.

Councilmember Ronning expressed her disappointment that the matter was politicized, and it should not be. She stated she was bothered that the State of Montana did not do their job by making a clear all-inclusive State law, rather than leaving it to counties and cities to determine what to do. She acknowledged marijuana was a drug; should be treated as such; had addictive qualities; but stated she was fully supportive of medical marijuana. She stated citizens did not vote on House Bill 701, they voted on I-190, and the legislature took I-190 and created chaos that would create a patchwork of confusing laws throughout the State. She said the voters need to have a voice on how to regulate this because regulations will be forthcoming. She stated her support of the motion.

Councilmember Shaw stated her appreciation to the committee that developed the ballot language. She continued that the 2020 election had a large voter turnout, and the upcoming municipal election would not have those numbers and would not be as representative. She stated Montana had made a shift in the past 15-20 years and she wished to honor that. She said she would not support the motion.

Councilmember Neese agreed with Councilmember Ronning's statements and acknowledged Councilmember Shaw's concerns about representation. He added that even though the number of voters would be smaller, it would have an equally proportionate number of voters. He voiced his support for the motion.

Councilmember Choriki provided a historical account of the politization of marijuana and the "war on drugs" in the 1970's. He stated marijuana had been made a social justice issue. He stated prohibition and placing one in jail affected peoples' lives. He stated marijuana just needed to be regulated.

Mayor Cole noted that the ballot issue was only about prohibiting dispensaries within City limits. He continued that marijuana would be legal to possess and use on January 1, 2022, in the County. He stated he had listened to the health concerns from many area health care providers concerning the effects of marijuana use, especially on young, developing brains. He gave many reasons citizens should be concerned about the impacts to the State. He also noted that voters approved a very broadly worded I-190, consisting of approximately 140 words, that provided no specific regulation. He stated the legislature took that initiative and wrote HB-701 which was approximately 143 pages long and it became a very different issue altogether. He supported hearing from the voters on whether they wished to allow adult-use marijuana dispensaries in the City or have them remain in the County only. He continued that the outcome of the vote would likely create the setting for policymaking for the next 30 years. He stated he would support the motion.

On a random roll call vote, the motion passed 6-3, Councilmembers Joy, Shaw and Choriki voted in opposition.

**PUBLIC COMMENT on “NON-AGENDA ITEMS”. Speaker Sign-in required.**  
*(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes. Please sign the roster at the cart located at the back of the Council chambers or at the podium.)*

The public comment period was opened.

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

**COUNCIL INITIATIVES:**

Councilmember Choriki moved to direct staff to work with County public health and emergency staff to increase the vaccination rate in Yellowstone County. He asked that \$300,000 be appropriated through a budget amendment to hire a marketing or public relations firm to manage the campaign and the media buy with up to 1/3 of the allocated funds used to incentivize individuals to vaccinate, seconded by Councilmember Joy.

Chris Kukulski, City Administrator, stated a budget amendment would be needed to spend that kind of funds and ARPA funds could be used.

Discussions and confusion followed concerning whether the initiative had been presented to Councilmembers prior to the meeting, via email, and whether the proper process was utilized.

Councilmember Joy stated incentives were effective and would cost far less than the costs of hospitalizations.

Mayor Cole stated he supported utilizing ARPA funds for this purpose but did not support the details and cautioned moving forward with the initiative. He stated he would want the County to put in a large amount of their ARPA funds toward the effort.

Councilmember Shaw stated she supported the concept but was confused about the process should the initiative fail now.

Councilmember Neese stated he agreed that something needed to be done but did not support the motion. He wanted the County to play an important role and the County should take the lead. He wanted more information and direction from the County Health Director, John Felton. He suggested forming a Council subcommittee to work on this.

Councilmember Brown stated he supported the concept but would want collaboration with the County to match some funds in the effort.

Councilmember Ronning voice her support of the concept and stated the City was 68% of the County and should lead the effort but would like the County to match the City's funding.

Councilmember Purinton stated she was not supportive of incentives.

Councilmember Choriki stated his intention was to give direction to staff to begin working on raising the vaccination rate as soon as possible.

Councilmember Ewalt agreed that the County needed to help with the effort.

Councilmember Neese stated he was not supportive of cash incentives, but that there were other ways to reach the unvaccinated.

On a voice vote, the motion failed 2-7, Councilmembers Shaw, Neese, Ewalt, Purinton, Ronning, Brown and Mayor Cole voted in opposition.

There being no further business, and the meeting adjourned at 8:44 pm.



ATTEST:

By: Denise R. Behlman  
Denise R. Behlman, City Clerk

CITY OF BILLINGS:

By: William A. Cole  
William A. Cole, Mayor