

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 8, 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. Mayor Cole gave the invocation.

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

MINUTES:

October 11, 2021 – The Minutes were pending.

October 25, 2021 – The Minutes were pending.

COURTESIES:

Councilmember Ronning thanked law enforcement for the recent sting operation that led to 9 arrests for sexual abuse of children. Rich St. John, Police Chief, stated detectives, agents and officers from State and local agencies ran a 3–4-day operation that resulted in the arrests. He thanked them for their forward thinking and hard work.

PROCLAMATIONS:

There were no proclamations.

COUNCIL REPORTS:

Councilmember Purinton reminded Council that Regular Agenda Item 9, would not include the election of a Deputy Mayor Pro Tempore, as that would not occur until after January 1, 2022.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

Mr. Kukulski thanked the public for their support of the Public Safety Mill Levy and stated the City would work hard to keep their trust. He added voter response had been the highest for a non-federal/general election.

Mr. Kukulski stated the City was hosting the first legislative discussion for local legislators on Wednesday from 7 – 8 am at the Double Tree Hotel.

Mr. Kukulski informed Council there had been a revision to Regular Agenda Item 4, to add "Behavioral Health Facilities" to Section 27-1005.

Mr. Kukulski informed Council there were no ex parte communications received concerning the agenda.

Mr. Kukulski, in reference to Regular Agenda Item 9, stated Council should nominate and elect a Deputy Mayor during the meeting, but the nomination and election of the Deputy Mayor Pro Tempore would need to wait until after the first of the year according to Charter.

Mayor Cole recognized a Boy Scout from Troop 7 and asked him to introduce himself to Council. He introduced himself as Bennett and stated he was attending the Council meeting for his Community of the World merit badge.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 5, 6, 7, 8 and 9 ONLY. Speaker sign-in 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.

- **Jason Smith, 4515 Palisades Park, Billings, Montana**, in reference to Regular Agenda Item 5, stated there would be a major influx of black-market marijuana due to Council's decision to prohibit recreational marijuana. He added the City needed safe and regulated product in order to keep it safe from drug traffickers.
- **Frank Furman, 433 Hillview Lane, Billings, Montana**, in reference to Regular Agenda Item 7, stated the costs were too high for the project and encouraged Council to review the proposed amounts and consider something more reasonable.
- **Steve Zabawa, 810 Bluegrass Place, Director of Safe Montana**, in reference to Regular Agenda Item 5, stated a lot of people had shown their lack of appetite for recreational marijuana with the recent vote against allowing it in the City limits. He encouraged Council to form a strong front against recreational marijuana.
- **Tina Walker Smith, 4100 Murphy, Billings, Montana**, in reference to Regular Agenda Item 5, stated it was disappointing how few providers had appeared at Council meetings to voice their opinions. She encouraged them to participate in upcoming County meetings and fight for what they wanted.
- **Shannon Daniels, 119 North Court North, Billings, Montana**, in reference to Regular Agenda Item 5, stated Billings needed money and allowing recreational marijuana would have helped the City achieve much needed revenue.
- **Stephanie Ronson, 1912 Wentworth Drive, Billings, Montana**, in reference to Regular Agenda Item 5, thanked Council for allowing the citizens an opportunity to express their desires during the recent vote.

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

1. **CONSENT AGENDA:**

A. Bid Awards:

1. **Snow Hauling.** (Opened 10/19/21) Recommend K2 Civil, Inc.; \$175.00 per hour/truck and driver, not to exceed \$160,000 per year.
2. **Truck Cabs and Chassis with Refuse Bodies.** (Opened 9/21/21) Recommend Schedule I: Montana Peterbilt; \$630,802; Schedule II: Western Systems & Fabrication; \$181,841.04; and Schedule III: Peterbilt; \$269,844.
3. **W.O. 20-01: Phase 2, Sanitary Sewer Interceptor Replacement.** (Opened 10/19/21) Recommend Western Municipal Construction, Inc.; \$4,035,345.

B. Council Holiday Schedule.

C. Purchase 72.77 acres of land north of the Airport for noise buffer from Alkali Timbers, LLC; \$552,000.

D. Agreement with Power Service of Montana for Transfer Pump H1; \$99,270.

E. Memorandum of Understanding between the City of Billings and Yellowstone County for the sharing of fiber infrastructure.

F. 2021 Domestic Violence Grant, and authorization for the Police Chief to sign all required grant material; \$52,603.

G. Utility Easement with Northwestern Energy to allow installation of new underground electric cables at Rimrock West Park.

H. Final Plat of Trails West Subdivision, 5th Filing.

I. Resolution 21-11015 to allow street painting in the EBURD and acceptance of grant award from Bloomberg Philanthropies for asphalt art; \$25,000.

J. Bills for the Weeks of:

1. October 4, 2021
2. October 12, 2021

Councilmember Brown separated Consent Agenda Items 1J1 and 1J2 to abstain, stating his employer was a beneficiary of payment.

Councilmember Neese moved for approval of the entire Consent Agenda with the exception of Items 1J1 and 1J2, seconded by Councilmember Boyett.

Councilmember Shaw thanked Chief St. John for applying for the 2021 Domestic Violence grant that had been awarded to the City.

Councilmember Neese asked Kevin Ploehn, Aviation and Transit Director, to speak about Consent Agenda Item 1C, purchase of land north of the Airport.

Kevin Ploehn, Aviation and Transit Director, stated the land would be purchased for the Airport as a noise buffer. He stated there was more airplane noise due to the increase in traffic and hoped the City could purchase even more land in the future for additional noise buffering. He added the sound of airplanes had not increased but the number of flights had increased.

Council discussed recent noise complaints and the City's potential liability.

On a voice vote, the motion for approval of the entire Consent Agenda with the exception of Items 1J1 and 1J2, was unanimously approved.

Councilmember Boyett moved for approval of Consent Agenda Items 1J1 and 1J2, seconded by Councilmember Neese. On a voice vote, the motion was approved 10-0, Councilmember Brown abstained.

REGULAR AGENDA:

2. PUBLIC HEARING AND SECOND/FINAL READING ORDINANCE 21-5782 FOR ZONE CHANGE 999: a zone change from Corridor Mixed Use 1 (CouncilmemberU1) to Corridor Mixed Use 2 (CouncilmemberU2) located at 733 S. 31st St. W. just north of the Mercedes Benz car dealership on King Avenue West. Patricia Harvey, owner; WWC Engineering, agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.)

Nicole Cromwell, Zoning Coordinator, gave a brief PowerPoint of the property and added she was available for questions.

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

Councilmember Shaw moved for approval of Item 2, seconded by Councilmember Boyett. On a voice vote, the motion was unanimously approved.

3. PUBLIC HEARING AND SECOND/FINAL READING ORDINANCE 21-5783 FOR ZONE CHANGE 1000: a zone change from Mid Century Neighborhoods (N-2) to Neighborhood Office (NO) located at 436 Wicks Lane. Lighton D. Jones, DMD, owner; Performance Engineering, agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.)

Nicole Cromwell, Zoning Coordinator, gave a brief PowerPoint of the property and stated it was being converted from a home and former dental office to a new dental office. She added she was available for questions.

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

Councilmember Ewalt moved for approval of Item 3, seconded by Councilmember Neese. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND SECOND/FINAL READING ORDINANCE 21-5784 FOR ZONE CHANGE 1001: Text amendment to Section 27-1000, 27-1005, 27-1006, 27-1400, 27-1803, related to the regulation of marijuana businesses and to include several recommended amendments by the Zoning Commission to the original draft including a reduction -in the separation distances from dispensaries to protected uses, allowing dispensaries in two more zoning districts, and adding language to ensure there is no waiver of the required separation distances. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Nicole Cromwell, Zoning Coordinator, gave a PowerPoint presentation reviewing the Zoning text amendments to marijuana businesses and a timeline of the action that occurred. She stated there had been an omission of Behavioral Health Facilities in Section 27-1005, as a use that would require a 1000-foot separation from a medical dispensary, which would be corrected by staff. She added since there had been significant changes to the text amendments there would need to be a third reading on November 22, 2021. She reviewed the text amendment outline of regulations as amended on 1st reading and the ballot election. She reminded Council the Montana Department of Revenue had a very robust website of marijuana regulations which could be helpful if Council had questions.

Councilmember Ronning asked for clarification on what was currently allowed within the East Billings Urban Renewal District (EBURD). Ms. Cromwell stated testing laboratories would not be allowed in the EBURD without an amendment to the proposed ordinance.

Councilmember Boyett asked for clarification on the 150-foot set back from arterial streets and why that did not apply to medical marijuana facilities. Ms. Cromwell stated typically medical marijuana did not have the signage and advertisements like recreational facilities would have had.

Councilmember Purinton asked for clarification on requiring a 1000-foot separation for all protected uses from business that allowed marijuana cultivation, manufacturing, and processing. Ms. Cromwell stated she did not recall that request from Council, but if they wished to include it in Criteria 1, they could add it to their amendments.

The public hearing was opened.

- **Jason Smith, 4515 Palisades Park, Billings, Montana**, stated the property at 419 Daniel Street was owned by Steve Zabawa and had been offered to him when Mr. Zabawa wanted to get into the marijuana business. He added Council did not understand some of the things that were happening behind the scenes.

- **Steve Zabawa, 810 Bluegrass Place, Director of Safe Montana**, stated the property Mr. Smith was referring to had been sold to Stockman Bank 10 years ago. He added he had never wanted to get into the marijuana business. He encouraged Council to keep the 1000-foot separation and thought the marijuana issue would go away if the voters were given the opportunity to vote against it. He added he supported Council limiting medical dispensaries to 4 within the City limits.

- **Kristen Lundgren, Substance Abuse Connect**, thanked Council and staff for their hard work. She stated their organization would be forming a committee with staff, Councilmembers, and medical providers to bring forward recommendations to the State.

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

Councilmember Yakawich moved for approval of Item 4 as amended, consistent with staff recommendations, to include Behavioral Health Facilities in Section 27-1005 and include a 1000-foot separation for cultivation, manufacturing, and processing from all protected groups, seconded by Councilmember Neese.

Councilmember Ronning asked if Councilmember Yakawich would consider changing the zoning map to permit marijuana facilities in the EBURD CW and IS zones. Councilmember Yakawich stated he would accept it as a friendly amendment, Councilmember Neese agreed.

Councilmember Ewalt stated staff would need to strike the last sentence from Criteria 1 in the findings of fact. Ms. Cromwell stated adult-use and combined uses were no longer allowed, therefore the sentence referring to an arterial setback in the draft findings of fact, should be removed since they no longer applied.

Mayor Cole asked if that would be accepted as a friendly amendment. Councilmember Yakawich stated he would accept it. Councilmember Neese stated he would not.

Councilmember Neese stated when the City had first allowed medical marijuana facilities, they had been allowed quite close to the street and had a large amount of visible advertising. He made a motion to amend to include a 150-foot setback for all medical dispensaries, cultivators and processors, Councilmember Boyett seconded.

Councilmember Boyett asked if the setback could be required for all marijuana businesses. Ms. Cromwell stated Council could make a motion to state "all dispensaries" and it would apply to all possible marijuana facilities, both medical and adult-use if anything changed with regulations in the future.

Councilmember Neese stated he would allow the amendment to include "all dispensaries", Councilmember Boyett agreed.

On a voice vote, the amendment was approved 7-4, Councilmembers Shaw, Joy, Choriki and Ronning opposed.

On a voice vote, the motion for approval of Item 4 as amended, to include a 150-foot setback from all dispensaries, include Behavioral Health Facilities in Section 27-1005, and include a 1000-foot separation for cultivation manufacturing, and processing from all protected groups, was approved 9-2, Councilmembers Joy and Choriki opposed.

5. SECOND/FINAL READING ORDINANCE 21-5785 regulating marijuana and marijuana businesses. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Karen Tracey, Assistant City Attorney, stated Council had previously adopted the staff recommended amendments to the ordinance, authorizing 4 medical and 4 adult-use marijuana dispensaries. She added the public had recently voted to prohibit adult-use dispensaries within the City limits, but election results would not take effect until 90 days after the election, therefore the City would need to have ordinances in effect until that time. She gave a PowerPoint presentation of the non-substantive changes to the ordinance and stated staff was not recommending any substantive changes. She informed Council that in an abundance of caution they were recommending a 3rd reading for the ordinance.

Councilmember Yakawich moved for approval of Item 5, as previously amended, seconded by Councilmember Neese.

Councilmember Ronning made an amendment to the motion to allow 8 medical marijuana dispensaries in the City limits, seconded by Councilmember Joy.

Councilmember Joy stated there was a tremendous amount of energy and enthusiasm regarding the possibility of medical marijuana treatments and dispensaries. She added allowing 8 facilities could help a lot of people.

Councilmember Ronning stated she had spoken to many professionals and patients that had benefited from medical marijuana. She added they had praised marijuana's ability to allow them to engage in their lives, where opioids had not.

Councilmember Brown stated he would support allowing 8 facilities within City limits.

Councilmember Neese stated he would not support allowing 8 facilities in the City limits. He added there was confusion about medical dispensaries allowing adult-use sales for the next 18 months and he wanted to see how everything worked before changing the number of dispensaries from 4 to 8.

Councilmember Shaw asked for clarification on medical dispensaries being allowed to dispense adult-use marijuana for the next 18 months. Ms. Tracey said State law stated a medical marijuana licensee could sell marijuana to registered cardholders in a jurisdiction that allowed for the operation of marijuana businesses, therefore, due to the recent vote, the State would now prohibit medical marijuana facilities from adult-use sales. She added beginning January 1, 2022, no retail sales could be allowed, therefore the City could not allow adult-use marijuana sales.

Mayor Cole stated he would not support the motion and would support increasing the number incrementally. He added the majority of the money would be in recreational sales in the County and would support allowing 6 in the City limits if the motion for 8 dispensaries failed.

On a voice vote, the amended motion to change medical marijuana dispensaries from 4 to 8 was approved 6-5, Councilmembers Yakawich, Neese, Ewalt, Purinton and Mayor Cole opposed.

On a voice vote the motion for approval of Item 5, as amended was approved 10-1, Councilmember Choriki opposed.

Mayor Cole called a recess at 7:30 pm.

Mayor Cole reconvened the meeting at 7:40 pm.

6. TAX INCREMENT FINANCING ASSISTANCE from Downtown Urban Renewal District to DB 10, LLC for a mixed-use project located at 14 North 29th Street; up to \$320,000. Downtown Billings Partnership (DBP) Board recommends approval. (Action: approval or disapproval of DBP Board recommendation.)

Mehmet Casey, Downtown Billings Partnership (DBP) Development Director, gave a PowerPoint presentation of the Sturn & Drake building built in 1912, which had become a Safeway in 1920 and the Barbizan Hotel in the 1970's. He reviewed the existing condition of the building and the proposed improvements. He added the new owners were a local investment group led by 6 members of NAI Business Properties and the owners of Hannesson Home. He gave an overview of the proposed new retail space and the improvements to the apartments.

Councilmember Ronning moved for approval of Item 6, seconded by Councilmember Neese.

Ethan Kanning, NAI Business Properties, gave an overview of the project and stated it was a perfect model for TIF assistance. He stated they would spend more money than the property would appraise for and added they were very proud of downtown.

Jessica Hannesson, Hannesson Home, stated she was excited to preserve an old building and help create a thriving downtown.

On a voice vote, the motion was unanimously approved.

7. TAX INCREMENT FINANCING ASSISTANCE from South Billings Boulevard Urban Renewal District (SBBURD) to GL Development, Inc. for improvements located at 510 Jackson Street; up to \$547,305. SBURA Board recommends approval. (Action: approval or disapproval of SBURA Board recommendation.)

Jim Tevlin, South Billings Urban Renewal Association (SBURA), gave a PowerPoint presentation of the property and the proposed development. He stated it would be a 7-building apartment complex with 38 homes that would be income and rent assisted affordable housing located on 3.6 acres of land on Jackson Street between State Street and King Avenue East.

Bill Haynes, Collaborative Design, showed photos of the project that would include a fenced playground, dog park and green space.

Council discussed management and maintenance of the project and concerns with the playground, dog park and public green space remaining well-kept and safe.

Mayor Cole asked for clarification on the development agreement being brought back to Council for final approval. Wyeth Friday, Planning Director, stated development agreements typically used a template that had been reviewed with Legal and were not brought back to Council. He added this was the normal process for development agreements. Mayor Cole asked if the development agreement would include a promise for public access to the green space and parks. Mr. Friday responded affirmatively.

Councilmember Boyett asked for clarification on the project only having one entrance and exit. Mr. Friday stated the site plan was somewhat tentative and Fire, Police and Emergency Services would review the plan to ensure it met their requirements.

Councilmember Neese asked for clarification on who would be financially responsible for the street development. Mr. Friday stated he had verified with Debi Meling, Public Works Director, and if the project or the property to the south did not need the street for access then the street in question could be developed at a later date through an SID and property owners would contribute toward the costs.

Councilmember Ewalt stated with the very large amount of government funding for the project it seemed like the developer did not have very much "skin in the game". He stated he would not support the motion.

Councilmember Joy asked for clarification on the developer's potential level of profit from the project. Gene Leuwer, GL Development, stated it was a project that would be beneficial for the community. He added there was a possibility of receiving up to 12% of the rent receipts per year and added he would also be the person financially responsible if the project failed. He stated the income of renters and the amount of rent that could be charged was capped by federal regulations.

Councilmember Ronning moved for approval of Item 7, seconded by Councilmember Shaw. On a voice vote, the motion was approved 10-1, Councilmember Ewalt opposed.

8. TAX INCREMENT FINANCING ASSISTANCE from South Billings Boulevard Urban Renewal District (SBBURD) to Ole Rentals, LLC (DBA Taco John's) for improvements located at 4720 King Avenue East; up to \$123,898. SBURA Board recommends approval. (Action: approval or disapproval of SBURA Board recommendation.)

Jim Tevlin, SBURA, gave a PowerPoint presentation of the property and the proposed development. He stated Pentex owned 33 properties in 6 states and currently employed 100 employees across the 4 existing Taco John's locations. He added the new project could add an additional 75 jobs across the 2 new proposed locations.

Brett Itterman, Pentex CEO, stated they were excited for the opportunity to expand and continue to be involved in the community.

Councilmember Yakawich asked for clarification on how the costs were audited. Wyeth Friday, Planning Director, stated the Planning and Finance Departments met with SBURA to review the receipts before reimbursement was provided.

Council discussed how the proposed costs could be spent and accountability for the applicants.

Councilmember Neese moved for approval of Item 8, seconded by Councilmember Joy. On a voice vote, the motion was unanimously approved.

9. NOMINATION AND ELECTION OF DEPUTY MAYOR AND DEPUTY MAYOR PRO TEMPORE. Staff recommends City Council nominate and elect a Deputy Mayor and Deputy Mayor Pro Tempore. (Action: approval or disapproval of staff recommendation.)

Councilmember Ewalt nominated Councilmember Neese for Deputy Mayor.

Councilmember Shaw nominated Councilmember Boyett for Deputy Mayor.

Councilmember Choriki stated it would make the most sense to compile all the names of potential candidates and have one vote for all of them. Council discussed the appropriate way to proceed. Gina Dahl, City Attorney, stated City Code stated there must be a voice vote. She added Council could accept nominations and make a voice vote after receiving all nominations.

Councilmember Ronning stated her first choice would be for Councilmember Joy and added she had the most seniority of all Councilmembers. She stated that she and Councilmember Joy had never missed a Council meeting. She added that Councilmember Joy had indicated she would not have time for the position, but Councilmember Ronning wanted to acknowledge her dedication.

Councilmember Choriki made a motion to close the nominations, seconded by Councilmember Joy. On a voice vote, the motion was approved 10-1, Councilmember Yakawich opposed.

On a roll call voice vote, the vote was 6 Councilmembers for Councilmember Boyett and 5 Councilmembers for Councilmember Neese. On a voice vote, Councilmember Boyett was elected as Deputy Mayor 6-5, Councilmembers Shaw, Joy, Choriki, Ronning, Boyett and Mayor Cole voting in favor.

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 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.)

The public comment period was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, Montana**, stated since the Governor had rescinded the mask order, SBURA needed to resume in-person meetings. He added constituents needed to be provided an opportunity to give meaningful comments and encouraged Council to change the procedural order of public comments.
- **Tom Rupsis, 105 Legends Way, Billings, Montana**, stated the Parks Board would meet on November 10th, 2021, at 11:00 am, to discuss the anticipated overall Capital Improvement Plan (CIP) projects and added there were several million dollars' worth of projects that needed to be addressed that were beyond the current Park District 1 (PD1) funding.

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

COUNCIL INITIATIVES:

There were no Council Initiatives.

There was no further business, and the meeting adjourned at 9:20 pm.



CITY OF BILLINGS:

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

ATTEST:

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