

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 22, 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 4:00 p.m. and served as the meeting's presiding officer. He called for a recess at 4:02 p.m. to a **Closed *Executive Session** to conduct the City Administrator, Chris Kukulski's, Annual Review.

*Note: The Executive Session was closed, as allowed in Section 2-3-203(3), MCA, as discussions relate to matters of individual privacy and wherein the demands of individual privacy exceed the merits of public disclosure.

Mayor Cole reconvened the meeting at 5:30 pm. Councilmember Shaw gave the invocation.

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

MINUTES:

October 21, 2021 – Councilmember Choriki moved to have the minutes revised as: Item 5, Page 8 - Councilmember Choriki stated staff had been directed by Council to bring the recommendations being presented and he had argued against it throughout the process. ~~He added he had not found any studies that showed marijuana to be a gateway drug.~~ He added most of the data included in the staff memo had been correlational information that was circumstantial, and he would not support the motion.

Changes to be made:

He added that studies he reviewed did not support a medical reason for cannabis to be considered a gateway drug. However, studies did support a social cause due to the illegal nature of cannabis and the subsequent association with people doing other illegal drugs.

Councilmember Brown asked whether the statements were actually said or was it Councilmember Choriki's "intention" to make those statements. Councilmember Choriki stated he was not certain he said his intention that way, but that was what he meant it to say. Councilmember Neese asked that the Clerks review the tape for the accurate information and made a substitute motion to postpone approval of the minutes until verification could be made, seconded by Councilmember Ewalt. On a voice vote, the motion was approved 10-1, Councilmember Choriki voted in opposition.

October 25, 2021 – Councilmember Joy moved to approve, seconded by Councilmember Neese. On a voice vote, the motion was unanimously approved.

November 8, 2021 – The Minutes were pending.

COURTESIES:

Councilmember Purinton introduced Hank Jagodzinski, a 10th grader at Billings Central Catholic High School, recipient of an International Rise Scholarship. Mr. Jagodzinski stated he was interviewed on Good Morning, America, about his project. He explained the requirements of the scholarship and the school student journalism project that earned him the scholarship. Councilmember Ronning noted that Mr. Jagodzinski was an outstanding speech and debate student, too.

PROCLAMATIONS:

Mayor Cole proclaimed November 25th- December 10th as the 16 Days of Activism Against Gender Violence.

COUNCIL REPORTS:

Mayor Cole gave updates from the Policy Coordinating Committee (PCC) meeting regarding 6th Avenue Underpass Project to begin in the Spring of 2022 and completed during the summer of 2022; Safe Routes to Schools survey deadline – December 17, 2021; MDOT Lockwood Interchange public comment period will open soon concerning bicycle and pedestrian access.

Councilmember Yakawich provided a list of various boards and commissions he was involved and gave updates to their activities, i.e. Bright and Beautiful – Christmas Tree cleanup locations; Suicide Prevention Coalition of Yellowstone Valley – attended hybrid seminar sponsored by Riverstone Health, led by Sarah Music; Mayor's Challenge to Reduce Suicide among Service Members, Veterans and Family Members - 2022 action plan led by Kathy Sabol at Riverstone Health; Yellowstone County Mental Health Local Advisory Board - Luminaries at Dehler Park; Friends of the USS Billings - final donor plaque has been placed at the Billings Public Library; Aviation and Transit Committee - toured construction area; Parks Board - reviewed upcoming CIP.

Councilmember Joy stated she attended a Community Innovations meeting recently. Their focus was helping individuals with mental health and substance abuse issues. She invited them to a future work session to provide an update to Council.

Councilmember Purinton stated the Safe Routes to Schools survey would on the banner of the front page of the City's website and everyone needed to take the survey.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

Mr. Kukulski stated that a motion to remove Consent Agenda Item 1E, Petition to Discontinue a portion of an alley for the MRM campus, from the agenda was needed. The item was not ready to come before Council for approval.

Mr. Kukulski stated concerning Regular Agenda Item No. 6, the Agenda Description incorrectly stated the amount of the TIF request at \$779,524. The correct amount was \$362,525.46 and it was correct throughout the staff memo and the information the public received.

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

Mr. Kukulski reminded Council that City offices were closed Thursday and Friday, November 25th and November 26th, for the Thanksgiving holiday, including City Hall. He also reminded them that Monday, November 29th was a bye week, and therefore no City Council meetings were scheduled.

Mr. Kukulski mentioned that The Nutcracker was playing at Alberta Bair Theater (ABT). That the facility was world class, and everyone was encouraged to visit the ABT soon.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 6 and 7 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.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, Montana**, in reference to Regular Agenda Item No. 6, asked that Council deny the application because he felt that soil compaction was not an allowable expense for reimbursement because it is not public property. He suggested all the infrastructure improvements be done at the same time and go to bid. He continued that green parks, etc., do not fall under "public" improvements and there was incorrect information and statutes written in the application, etc.

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

1. **CONSENT AGENDA:**

A. **Bid Awards:**

1. **2021 Tracked Excavator.** (Opened 10/19/21) Recommend rejecting all bids.

B. **Professional Consulting Agreement** with SRF Consulting to complete the MET Transit 5-Year Transit Development Plan; \$150,470.

C. **Memorandum of Understanding** between the City of Billings and the Continuum of Care (CoC) for reimbursement of FEMA funds for the non-congregate shelter.

D. **Declaration** of surplus equipment and authorizing MET to dispose of 17 buses via advertisement and solicitation of offers before taking to auction or salvage.

E. ~~**Acknowledge Receipt of Petition to Discontinue** a portion of the alley within Block 191 within the Billings Original Townsite and set a Public Hearing for December 20, 2021.~~

F. **Final Expedited Minor Plat** - Big Sky King Subdivision.

- G. **Resolution 21-11016** establishing compliance with reimbursement under Internal Revenue Code for the South TIF Construction Projects.
- H. **Third/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.
- I. **Third/Final Reading Ordinance 21-5785** repealing Article 7-1700-Medical Marijuana, Billings, Montana City Code (BMCC) and adding Article 7-2000 - Marijuana Regulations, BMCC.
- J. **Bills for the Weeks of:**
 - 1. October 18, 2021
 - 2. October 25, 2021

Councilmember Boyett moved to remove Consent Agenda Item 1E per City Administrator's request, seconded by Councilmember Shaw. Councilmember Neese stated he would abstain from the vote as he had a client relationship with the party to the matter. On a voice vote, the motion was approved 10-0. Councilmember Neese abstained.

Councilmember Ronning separated Consent Agenda Items 1G, to abstain because she had a relationship with the party to the matter.

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

Mayor Cole separated Consent Agenda Item 1F, to abstain because he had represented the parties in the past.

Councilmember Joy separated Consent Agenda Item 1H for discussion.

Councilmember Neese moved for approval of the entire Consent Agenda with the exception of Items 1F, 1G, 1H, 1J1 and 1J2, seconded by Councilmember Shaw. On a voice vote, the motion was approved unanimously.

Mayor Cole passed the meeting to Deputy Mayor Yakawich to officiate on the vote for Consent Agenda Item 1F. Councilmember Purinton moved for approval, seconded by Councilmember Joy. On a voice vote, the motion was approved 10-0, Mayor Cole abstained.

Mayor Cole resumed presiding over the meeting.

Councilmember Shaw moved for approval of Consent Agenda Item 1G, seconded by Councilmember Joy. On a voice vote, the motion was approved 8-2, Councilmember Ronning abstained and Councilmembers Neese and Ewalt voted in opposition.

Councilmember Joy, in reference to Consent Agenda Item 1H, stated she would not support a motion to approve because prohibition does not decrease consumption nor price but increases violence. She stated under the proposed regulations it would be difficult to have a thriving legal marijuana business. Councilmember Boyett moved for approval, seconded by Councilmember Ronning. On a voice vote, the motion was approved 9-2, Councilmembers Joy and Choriki voted in opposition.

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 SPECIAL REVIEW 992: a special review to allow an automobile collision repair center greater than 5,000 square feet in a Corridor Mixed Use 2 (CMU2) zoned district, for a proposed 18,554 square foot building, on Lot 13, Block 1, Montana Sapphire Subdivision, a 2.187-acre parcel of land, generally located at 4130 Kari Lane. Montana Sapphire, LLC, owner; Nick Fore, Cross Development, agent. Zoning Commission recommends conditional approval and adoption of the findings of the 9 review criteria. (Action: approval or disapproval of Zoning Commission recommendation.)

Karen Husman, Planner, provided a PowerPoint presentation and reviewed the area and businesses around the property. She reviewed the parking requirements and the number of spaces available and the proposed use. She stated the special review was for a larger building to be placed on the land, rather than the use of the land. She stated the Zoning Commission forwarded their recommendation for conditional approval and listed the 8 conditions. Concerning the fencing recommendation under Condition No. 3, Ms. Husman added that Council could make further conditions as to fencing materials, etc.

Council discussed fencing materials, placement, and landscaping.

- **Bret Green, Oxford Architecture**, stated that the representative from Cross Development could not appear, but was happy to answer questions. He stated chain link fencing with slat installed was the preferred fencing material, but the applicant would consider white vinyl fencing as another option. He stated the Rhino-rock material was the most expensive option and the applicant would split the difference and use white vinyl fencing if Council wished.

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

Council and staff discussions continued concerning whether a policy was needed to determine fencing materials requirements and replacement of the vinyl fence due to any future damage. Wyeth Friday, Planning Director, stated the Special Review conditions were attached to the permitting and of record and would run with the land, just as the landscaping plans. He said an additional policy was not needed as Council could approve from several options fencing materials based on the area, etc., on a case-by-case basis.

Councilmember Boyett moved for conditional approval of Special Review 992 and adoption of the 9 review criteria as recommended by the Zoning Commission and adding to Condition No. 3 that there be solid vinyl fencing installed on the east, west and south sides of the property, seconded by Councilmember Purinton. On a voice vote, the motion was approved unanimously.

3. PUBLIC HEARING AND FIRST READING ORDINANCE repealing and replacing Article 7-900, Billings, Montana City Code (BMCC), granting a renewal cable system franchise to Spectrum Pacific West, LLC, locally known as Charter Communications, Inc. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Stacy Tenney, Deputy City Attorney, addressed Council and stated the cable franchise agreement with Charter Communications was due to expire the end of December. She asked Council to approve first reading ordinance to repeal and replace Article 7-900 of the City's code with the newest, proposed franchise agreement with Spectrum Pacific West, LLC, locally known as Charter Communications. She continued that Billings wished to provide its citizens with cable competition and there was no advantage given to either cable competitor through the agreements.

Council and staff discussed Federal mandates for entering into franchise agreements and the benefits to the City to offer live TV coverage of its meetings because of it.

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

Councilmember Yakawich moved to approve Item 3, as recommended by staff, seconded by Councilmember Ewalt. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE amending Article 14-600, Billings, Montana City Code (BMCC) - Regulation of Fire / Security Alarm Systems. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Mike Spini, Fire Marshall, and Lieutenant Shawn Mayo of the Billings Police Department provided a PowerPoint presentation reviewing statistics of false alarms for the Fire and Police Departments, the proposed criteria for commercial properties, proposed fee schedule and collection methods, and the recommendations from the CPSM report and stakeholders committee.

The public hearing was opened.

- **Jack Jennaway, Business Advocacy Coordinator, Billings Chamber of Commerce representative**, and stakeholders committee member, stated public safety concerns were a major concern for 90% of the Chamber's business members. Reducing the number of false alarms that the Fire and Police Departments respond to would allow them more time for proactive policing and legitimate alarm responses. He compared the proposed fees with other national cities' fee schedules and stated the City's was a happy medium.

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

Councilmember Shaw moved to approve Item 4, as recommended by staff, seconded by Councilmember Ronning. On a voice vote, the motion was unanimously approved.

5. PUBLIC HEARING AND FIRST READING ORDINANCE prohibiting adult-use marijuana dispensaries. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Gina Dahl, City Attorney, advised Council that the passage of the ordinance was necessary due to election results in which the majority of voters stated they did want adult-use marijuana dispensaries sold within the City's limits. She reiterated that medical marijuana dispensaries would be allowed, and that ordinance passed recently.

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

Councilmember Ronning moved to approve Item 5, as recommended by staff, seconded by Councilmember Neese. On a voice vote, the motion was approved 10-1, Councilmember Choriki voted in opposition.

6. TAX INCREMENT FINANCING ASSISTANCE from South Billings Boulevard Urban Renewal District (SBBURD) to KSKC Properties, LLC for improvements located at 3218 South Frontage Road; up to \$779,524 \$362,525.46. SBURA Board recommends approval. (Action: approval or disapproval of SBURA Board recommendation.)

Jim Tevlin, SBURA consultant, provided a PowerPoint presentation and explained that Tim Compton, the developer of the property wished to develop approximately 17 acres on the South Frontage Road. The property was formerly a gravel pit and that created some special soil preparations that needed to be addressed first. He reviewed the allowable expenses and proposed plat map and infrastructure needs. Mr. Tevlin argued his support for the approval of the assistance to KSKC Properties. He stated Mr. Compton's contribution was \$11 to every \$1 of TIF funding.

- **Tim Compton, developer**, stated the development would be an improvement along I-90 and the TIF assistance encouraged him to develop the property.

Mayor Cole called for a recess at 7:34 P.M.

Mayor Cole reconvened the meeting at 7:40 P.M.

Mayor Cole asked Wyeth Friday, Planning Director, for clarification on the infrastructure on private property for the public's benefits concerning Kevin Nelson's e-mailed concerns. Mr. Friday explained the different components of the project and which parts were allowable per State statute and Council policy. He continued that the table contained within the staff memo should have referenced Section 1c of 7-15-4288(4), MCA, as well as 1b for drive approach; and 1c for soil compaction.

Councilmember Purinton asked when Mr. Compton became aware of the DEQ's requirements concerning the soil compaction. Mr. Compton responded he was not aware of the DEQ's requirements as it occurred before he obtained the property.

Councilmember Ronning recused herself from the vote.

Councilmember Shaw moved for approval of Item 6 for the corrected amount of up to \$362,525.46, as recommended by the SBURA Board, seconded by Councilmember Joy.

Councilmember Neese asked Mr. Tevlin and Mr. Compton about whether the previous owner's bond indicated that perhaps all was not well with the DEQ and that the previous owner should be held to correcting the soil compaction, rather than using TIF dollars. Mr. Compton responded that all the remediation had been completed and approved by DEQ and the last steps to release the bond were taking place.

Councilmember Neese asked if soil compaction findings were submitted to the DEQ. Councilmember Joy called point of order. Mayor Cole allowed the question. Mr. Compton responded he did not share that information with the DEQ.

Councilmember Joy quoted from the State statutes allowable uses of public monies and stated the application was clearly within the code's definition of allowable uses.

Mayor Cole asked if Mr. Compton would be helping with the development of the trails system on the southern end of the property. Mr. Compton responded there was an easement along the back of the property and the trail would continue.

Chris Kukulski, City Administrator, stated that the DEQ's requirements for land used as a gravel pit be brought back to its original status, would not necessarily mean a building could be constructed upon it after remediation. Councilmember Choriki agreed adding that the land was likely used as a pasture before it was a gravel pit, and that may not lend to building upon even though it met DEQ requirements.

On a voice vote, the motion for approval was 8-2, Councilmembers Ewalt and Neese voted in opposition and Councilmember Ronning abstained.

7. CITY ADMINISTRATOR'S Annual Performance Evaluation.

Mayor Cole explained that a closed executive session began at 4:00 P.M., in which the Council discussed areas of improvement, accomplishments and compensation for the City Administrator.

Mayor Cole listed Chris Kukulski's many accomplishments, i.e., successful coordination and organization of leaders that led to the passage of 2 Public Safety Mill Levies; leadership in the passage of Project ReCode; passage of the massage and spa ordinance; implementation of marijuana regulations; public communications during rock falls and BBWA canal crises; building relationships with local and state legislators; aids Council with priorities; improvements to public trust of City government; empowers City staff that lead to the purchase of a new City Hall (Stillwater Building); and leadership during a pandemic that kept employees healthy and safe.

Mayor Cole also listed areas of improvement, i.e., improve communication with Council by providing more information in weekly reports; leads Council too much in certain areas of interest; and involve Councilmembers more when meeting with other officials.

Mayor Cole stated the Council agreed to provide Mr. Kukulski with a 3% COLA increase, in keeping with the other City employees and award him with one-time "Thank you" bonus of \$3,000 in appreciation of his efforts and accomplishments.

Councilmember Yakawich moved to provide Mr. Kukulski with a 3% COLA increase, and award him with a one-time "Thank you" bonus of \$3,000 to become retroactive to November 11, 2021, seconded by Councilmember Ronning. On a voice vote, the motion was approved 9-2, Councilmembers Ewalt and Purinton voted in opposition.

Individual Councilmembers made complimentary comments to Mr. Kukulski.

Mr. Kukulski gave recognition to his leadership team and staff that work for the City and thanked Council for their generousness. He acknowledged that not all Councilmembers were impressed with his performance, but it was his goal to serve Council professionally.

PUBLIC COMMENT on "NON-AGENDA ITEMS". Speaker Identification required.
(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes or as set by the Mayor. Public comments during the meeting may be made in-person or remotely by registering as an attendee through Zoom as outlined in the Agenda coversheet.)

The public comment period was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, Montana**, to a the staff memo from November 8th and spoke to urban renewal areas and the assigning of powers to a public body corporate. He asked which department was assigned to the duties as per State statute and to have it identified for the record.

Mayor Cole asked that Gina Dahl, City Attorney, investigate whether the TIF districts were meeting the requirements as Mr. Nelson had mentioned.

- **Teri Todd, 135 Monarch, Billings, Montana**, commented on the Council initiative that Councilmembers Yakawich and Choriki would bring before Council concerning regulating recovery residences and sober living houses. She is the owner operator of several of these facilities. She stated that DPHHS noted that Billings has 34 of these types of facilities, but she believed there were likely twice as many as that and stated her reasons. She spoke about effective legislation in other states that address regulation. She said the residences were increasing quickly in the area and Billings needed to act on regulating soon so it is ready for the next legislature. She supported the Council initiative.

- **Catherine Card, 2815 4th Avenue South, Billings, Montana**, stated her concerns about the integrity of the Police Department and acknowledged that the Road Dogs Christmas Toy Run was properly permitted this year. She stated that the Memorial Ride was not properly permitted and did not follow the City's parade route. She said if the Road Dogs did not have to abide by the laws, why should any other citizen. She said she had submitted public records request 69 days ago and was still awaiting a response.

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

COUNCIL INITIATIVES:

Councilmember Yakawich moved to direct staff and the future Council to design, implement and install a standalone COVID-19 memorial within the first year the new law and justice center/city hall is used in honor of those whose lives were lost due to COVID in Yellowstone, seconded by Councilmember Choriki.

Discussions continued about placement, orientation, and locations, who should and could be involved and its significance to the community.

On a voice vote, the motion was approved 7-4, Councilmembers Neese, Ewalt, Purinton and Ronning voted in opposition.

Councilmember Yakawich moved to direct staff to implement regulations for recovery residences also known as sober living housing to reduce the number of disturbances and building and code enforcement issues, seconded by Councilmember Choriki.

Discussions continued concerning the City Attorney's opinion, future State legislation and potential enforcement.

On a voice vote, the motion was approved unanimously.

Councilmember Ewalt moved to direct staff to work with the Department of Corrections (DOC) and legislators to limit the number of probationers, parolees, and inmate releasees with a cap of how many can be released to Billings, seconded by Councilmember Purinton.

Discussions continued concerning the powers of the DOC, rights of people to decide where to live, and diversion programs.

On a voice vote, the motion was approved 8-3, Councilmembers Joy, Shaw and Brown voted in opposition.

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