

**REGULAR BUSINESS MEETING
OF THE BILLINGS CITY COUNCIL**

December 20, 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 Neese gave the invocation.

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

MINUTES:

December 13, 2021 – The Minutes were pending.

COURTESIES:

Mayor Cole congratulated the Montana State Bobcats on their football win over the South Dakota Jackrabbits! He wished them well in their fight for the national championship against North Dakota State in Frisco, Texas on January 8, 2022.

Mayor Cole acknowledged that the first Omicron infection was diagnosed in Gallatin County, Montana.

Mayor Cole recognized the outgoing Councilmembers and gave each of them a plaque of appreciation. Commissioner Pitman spoke recalling his years as a Councilmember and thanked the outgoing Councilmembers for their service and dedication to the citizens of Billings.

Councilmember Ewalt thanked the citizens of Ward II for their support.

Councilmember Ronning acknowledged the "Shop with a Cop" program that involved 160 children that were able to shop for themselves and family members with a police officer or firefighter at the Westend Walmart. She thanked all that contributed to the annual event.

Councilmember Yakawich shared his appreciation of staff and constituents during his terms.

PROCLAMATIONS:

Mayor Cole proclaimed December 21, 2021, as Homeless Persons' Memorial Day. He reminded the Public that a ceremony would be held on the Courthouse lawn at Noon in recognition of the homeless in our community and those that had lost their lives. He noted that December 21st was the longest night of the year.

COUNCIL REPORTS:

Councilmember Yakawich recognized Brandon Scala on the Parking Board. He stated he sat in a legal proceeding in Municipal Court concerning an abatement and acknowledged Judge Kolar for her professionalism and encouraged Council to attend proceedings in the Courtroom. He continued that he will be vacating his position on the Citizens Advisory Committee supported by Phillips 66 and they would want another Councilmember to fill that position. He stated meetings were held on the first Tuesday of every month at 5:30 p.m.

Councilmember Ronning stated she had sat on the DBA Board meetings and spoke about the impact TIF monies made to improving downtown, i.e. Alberta Bair Theater and the Babcock Theater. She too will leave her post on the DBA Board.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI (*Kevin Iffland, Assistant City Administrator*)

Mr. Iffland noted concerning 1C – 5-yr. Agreement with Sky Gifts Billings, LLC, the staff wished to make a change to the recommendation to: "Council's approval for the Mayor to execute the final agreement." Negotiations were in progress and the agreement was not quite ready but would be shortly.

Mr. Iffland reminded Council that City offices were closed Friday, December 24th, in observance of the Christmas holiday, and on Friday, December 31st, for New Year's Eve Day. This was the last Council meeting of the year. The next meeting was a Work Session on Monday, January 3rd. New Councilmembers would be sworn in and a training session with Dan Clark of the Local Government Center was scheduled.

Mr. Iffland stated there were no ex-parte items sent to Mayor and Council after 3 p.m.

Mr. Iffland Introduced Steve Arveschoug, Big Sky Economic Development, who recognized Councilmember Shawn Brown for his contributions on their Board. He thanked all the outgoing Councilmembers for their support and gifted them with Brockel's Chocolates. He stated the ex officio member was appointed by the County Commissioners. He offered a tour of the Rock 31 construction any Thursday at 1:30 p.m.

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.

- **Sharon Wetsch, 4625 King Avenue West, Billings, Montana**, in reference to Consent Agenda Item 1K, stated that because she would not sell her property to the developer, that high-rise apartments would be built on one side of her property and commercial development, a gas station, would be built on the other side of her property. She asked that Council not approve the proposed plat and that it be re-platted to something more harmonious to meet zoning standards.

- **Max Griffin, 1655 Valley Heights, Billings, Montana**, in reference to Regular Agenda Item 7, stated his support for TIF assistance for the pedestrian crossing upgrade on Montana Avenue.

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

1. **CONSENT AGENDA:**

A. **Bid Awards:**

1. **W.O. 22-03: Contract No. 1 City Overlay.** (Opened 12/7/21)
Recommend Schedule 1 and Schedule 2, Knife River;
\$1,215,246.90.

- B. **Professional Services Contract** with A & E Design for a Multi-Generational Community Recreation Center in SBBURD; \$244,436.
- C. **Five-year Agreement** with Sky Gifts Billings, LLC, to operate the Airport's Gift Shop Concession.
- D. **Development Agreement** with KSKC Properties, LLC.
- E. **Amendment No. 1, W.O. 20-24: West End Storm System Improvements,** Professional Services Contract, DOWL; \$297,861.
- F. **Sponsorship** of the Billings Bench Water Association ARPA grant application to the State of Montana.
- G. **Grant Application Request** to submit application for AmeriCorps VISTA and authorize City staff to negotiate and finalize the project, if awarded.
- H. **Preliminary Minor Plat** of Hilltop Subdivision, 2nd Filing, Amended Lot 9A, Block 12.
- I. **Preliminary Minor Plat** of Terrace Estates Subdivision, 3rd Filing, Amended Lot 200 and Adjacent Parkland.
- J. **Preliminary Minor Plat** of Lenhardt Square Subdivision, 1st Filing, Lot 1A, Block 1.
- K. **Preliminary Major Plat** of Ridgeline Subdivision.
- L. **Preliminary Major Plat** of Annafeld Subdivision, 4th Filing.
- M. **Bills for the Week of:**
 1. November 22, 2021

Mayor Cole separated 1F for discussion.

Councilmember Neese asked City Attorney, Gina Dahl, if Item 1C needed to be separated and voted on separately since Staff's recommendation changed. Ms. Dahl responded it was not necessary to separate it if the motion specified the changed recommendation.

Councilmember Brown separated Consent Agenda Item 1M1 to abstain, stating his employer was a beneficiary. Councilmember Joy stated she would abstain as well because her brother was employed by Warren Transport, a beneficiary to payment.

Councilmember Shaw moved for approval of the entire Consent Agenda with the exception of Items 1F and 1M1 and noted the changes to staff recommendations for Consent Agenda Item 1C as "Council's approval for the Mayor to execute the final agreement," seconded by Councilmember Choriki.

Councilmember Ewalt asked why the contract in Consent Agenda Item 1C was not ready for approval. Assistant City Administrator, Kevin Iffland, responded there had been a staff member who was involved unexpectedly had to leave for a family emergency and was not able to complete the contract negotiations, but it was expected to be settled soon. Councilmember Ewalt made a substitute motion to approval the entire Consent Agenda with the exception of Items 1C, 1F, and 1M1. The motion died for lack of a second.

Councilmember Neese asked about sufficient public notice when draft contracts were not attached in agenda packets. City Attorney, Gina Dahl, stated the item was listed on the agenda and the staff memo explained what would be heard and that was sufficient.

Mayor Cole asked Kevin Ploehn, Aviation and Transit Director, who stated the agreement was standard with all other concession agreements. He said the vendor wanted changes to the non-exclusivity clause for the terminal itself. He said the changes were not that significant that Council could not approve it. He said it was a very good deal for the airport and 3 to 4 months' time to get everything built and inventory established was not very much time. He asked that Council approve it without delay. Councilmember Purinton voiced concerns that the vendor was not a Montana-based company. Mr. Ploehn responded the vendor was based in South Dakota but had offered many Montana-made products, and the guaranteed revenue was attractive and exceeded anything the airport had ever received in the past. Councilmember Ewalt asked about the timing. Mr. Ploehn stated the contract was timed as close to construction completion as possible, so inventory and other items do not arrive before the construction was completed.

Councilmember Ronning, in reference Consent Agenda Item 1G, recognized Brenda Beckett, Community Development Manager, for her leadership of the AmeriCorps VISTA program and all the many contributions VISTAs made to the community through the various non-profit organizations.

Councilmember Neese stated he had reviewed the draft agreement concerning the Airport's gift shop and had no problem approving it. He then asked Michael Whitaker, Parks Directors, about Consent Agenda Item 1B, and the process A & E Design would use to refine elements of the Master Plan. Mr. Whitaker stated A & E Design would present twice before

the Council to gather direction on the facility from Council and finally a final concept.

On a voice vote, the motion made by Councilmember Shaw was approved 10-1, Councilmember Ewalt voted in opposition.

Mayor Cole stated he separated Consent Agenda Item 1F for discussion and asked Jim Stott, Chair of the Billings Bench Water Association, for their liability insurance limits and a general status report. Jim Stott provided a history of the building of the big canal from Laurel past present day Shepherd and how the City's growth around the canal was affecting its function. He stated the grant was to help with tunnel maintenance and the Association was asking for the City's support in obtaining the grant. He continued that the recent problem areas were all lined, but with additional grant monies lining of the canal would continue. Mr. Workman stated he believed the liability limits were \$2 million and probably needed to be increased.

Councilmember Purinton asked whether the Planning Department considered developments next to the ditches. Wyeth Friday, Planning Director, stated every new development near ditches were considered and correspondence sent to ditch associations for comments and to address easement concerns.

Councilmember Neese stated he would abstain from the vote because he was a ditch customer.

Councilmember Yakawich moved for approval of Consent Agenda Item 1G, seconded by Councilmember Joy. On a voice vote, the motion was approved 10-0, Councilmember Neese abstained.

Councilmember Boyett moved for approval of Consent Agenda Item 1M1, seconded by Councilmember Ronning.

Councilmember Chorki exited Council Chambers at 6:27 p.m.

On a voice vote, the motion was approved 8-0, Councilmember Joy and Brown abstained, Councilmember Choriki absent.

REGULAR AGENDA:

2. PUBLIC HEARING AND RESOLUTION 21-11021 approving the discontinued use of one-half of the east-west alley from South 28th Street to South 29th Street. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Councilmember Neese announced he would abstain from the vote due to client involvement.

Debi Meling, Public Works Director, provided a brief PowerPoint presentation and stated Council had two decisions to make: the area and the cost. She explained the discontinuation was different from the vacation of the alley in that the City would still own the alley and the area would remain an alley. She explained the Montana Rescue Mission wished to block or gate the alleyway that lies within its campus for safety reasons. She stated Section 22-600, BMCC did not offer guidance concerning cost and only 3 discontinuances had occurred over the past 30 years and were done at no cost.

This discontinuance, however, was valued at \$6.74/sq. ft. for a total of \$18,872. She stated if encroachments were allowed, charges could be rendered for those.

Council discussed emergency vehicle access to the alley, possible encroachments and key access.

Councilmember Choriki returned at 6:28 p.m.

The public hearing was opened.

- **Matt Lundgren, Executive Director, Montana Rescue Mission, 2102 Montana Avenue, Billings, Montana**, thanked Council for attending tours of the facility and asked for their support to provide added safety for their residents.

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

Councilmember Yakawich moved for approval of the discontinuance at no cost, seconded by Councilmember Shaw. On a voice vote, the motion was approved 10-0, Councilmember Neese abstained.

3. PUBLIC HEARING AND RESOLUTION 21-11022 establishing business license fees for marijuana-related businesses. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Andy Zoeller, Finance Director, provided a PowerPoint presentation and gave details of the Committee's findings and recommendations. He stated the lottery costs were reduced and costs included legal and administrative review with a total estimated annual cost of \$70,970/yr. He continued that an added application and license fee for transporters was advised. He provided the fees as: (non-refundable) Application Fee - \$350; Annual License Fee for all types \$3,950; and Transport only (No local storage) - \$55; application fees would be credited toward initial license fee.

Council discussed future fee adjustments, storage and transport requirements and restrictions.

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

Councilmember Ronning moved for approval of the Resolution establishing business license fees for marijuana-related businesses, as recommended by staff, seconded by Councilmember Yakawich.

Councilmember Joy expressed concern about lacking policy and unintended consequences without measured outcomes.

Councilmember Shaw stated she was concerned about the fees, but since not a single person appeared to give public comment, the industry must be okay with the fees, and she would support the motion.

Councilmember Boyett stated the fees could be changed after a year if data gathered indicated the need to do so.

Councilmember Ronning stated that in other states the licenses are very expensive, and the fees recommended were reasonable.

Councilmember Neese stated he was concerned about the limited transportation fee. Councilmember Neese moved to amend the motion to remove the limited transportation fee of \$55, seconded by Councilmember Boyett.

Councilmember Yakawich stated he trusted the committee's recommendation and would not support the motion.

Councilmember Ronning stated the committee had discussed the limited transportation fee and staff would not have recommended it unless the committee forwarded that recommendation. Therefore, she would not support the motion to amend.

Councilmember Choriki likened a limited transporter to an Uber driver or Door Dash driver that would simply collect the product from an established business and deliver to a customer to make extra cash. The \$3,950 fee would be prohibitive for that delivery service. He would not support the motion.

Andy Zoeller, Finance Director, acknowledged that the State had a transportation license fee as well and it was in the thousands of dollars. This would apply to Uber-type drivers, too, so might not be lucrative to them.

Gina Dahl, Cit Attorney, reminded Council that the State statute prohibited delivery of adult-use marijuana to users, only medical marijuana could be delivered to patients.

On a voice vote, the motion to amend the motion failed, Councilmembers voting in favor were Neese, Ewalt, Boyett and Brown.

Council discussion continued concerning application fees and transport fees.

Councilmember Boyett called the question. Councilmembers Shaw, Joy, Ronning and Mayor Cole voted in opposition. The vote did not receive 2/3 vote and therefore failed.

Councilmember Ronning amended her motion to revise the resolution language that would exclude the \$350 application fee from the \$55 transport fee, seconded by Councilmember Shaw. On a show of hands vote, the motion to amend the original motion was approved 7-4, Councilmembers Yakawich, Neese, Ewalt and Brown voted in opposition.

On a voice vote, the amended motion was approved 8-3, Councilmembers Neese, Joy and Choriki voted in opposition.

4. PUBLIC HEARING AND FIRST READING ORDINANCE amending Billings, Montana City Code (BMCC) Article 7-1800, Cable System Franchise. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Stacy Tenney, Deputy City Attorney, stated she found two housekeeping amendments to the TDS Cable Franchise ordinance and wished to correct them. She stated the City wanted to keep the two cable franchise agreements equal. She explained that 5% of gross revenues was paid to the City from cable franchise fees each year. She continued that the definition of gross revenue did not include public educational and governmental fees. She explained how the fees could and could not be used for community TV channels. She explained that the apostrophe was in the wrong place for year's versus years' which would make a big difference in the amount of fees paid or collected.

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

Councilmember Ronning moved for approval of first reading ordinance, as recommended by staff, seconded by Councilmember Boyett.

Councilmember Ronning expressed excitement about competitive cable services in Billings.

On a voice vote, the motion was unanimously approved.

5. CDBG-CV AND CDBG ALLOCATIONS TO PARKS PROJECTS; up to \$1 million. Community Development Board (CD Board) and Parks, Recreation and Cemetery Board recommend approval. (Action: approval or disapproval of CD Board and Parks, Recreation and Cemetery Boards' Recommendation.)

Tam Rodier, Community Development Division Program Coordinator, provided a PowerPoint presentation outlining proposed parks improvements. She explained Federal funds in the amount of \$1,257,586 were received that were to support coronavirus and other infectious disease response and be used primarily to benefit low-income individuals and families in Billings. She explained how some of the funds have been used and turned her attention to increased parks and trails usage during the pandemic and provided supportive statistics. She said 8 parks were identified in low-income areas and those were proposed to receive improvements by the CD Board and Parks, Recreation and Cemetery Board. She reviewed the improvements and enhancements for each park, including free Wi-Fi for all 8 parks. She explained the expenditure deadlines for CDBG funds and CDBG-CV funds.

Council discussed expenditure procedures and procurement processes necessary to meet the deadlines and the free Wi-Fi access expense.

Councilmember Neese stated he understood that amenities are not added to parks unless they were identified in a Master Plan for the park. He asked for clarification of the policy. Michael Whitaker, Parks Director, stated a Master Plan was a guiding document. He explained that most of the older parks did not have Master Plans and others needed to be updated. He continued that the addition of adult playground equipment located near childrens' playgrounds encouraged parents to stay nearer to their children.

Councilmember Ronning moved for approval of Item 5, as recommended by the CD Board and Parks, Recreation and Cemetery Board, seconded by Councilmember Choriki.

Councilmember Ronning stated it was hard to be low-income and the City should make it less hard for low-income to gain access to services.

Councilmember Choriki added he was supportive of anything that drew more people to parks.

Council discussed other possibly eligible parks and improvements to them. Councilmember Yakawich asked Mr. Whitaker if there was any money left after the other improvements were made, could a sign for the small undeveloped Bohl Park in the Heights be provided. Mr. Whitaker responded affirmatively.

Mayor Cole called for recess at 7:38 p.m.

Mayor Cole reconvened the meeting at 7:46 p.m.

6. FAST-TRACK APPLICATIONS FOR CDBG-CV PUBLIC SERVICES PROJECTS; up to \$15,000 per public service award. Community Development Board (CD Board) recommends approval. (Action: approval or disapproval of CD Board recommendation.)

Brenda Beckett, Community Development Division Manager, provided a brief PowerPoint presentation and explained the current process and timelines for CDBG and HOME Loans and CDBG-CV. She stated the CD Board's recommendation was for \$10,000 and \$15,000 grants and explained the expedited funding for services.

Councilmember Yakawich moved for approval of Item 6, as recommended by CD Board, seconded by Councilmember Ronning.

Councilmember Neese asked if the process would divert Council's approval. Ms. Beckett stated the loans are small and are well below the City Administrator's signing authority, to disburse funds more quickly. Councilmember Neese asked for clarification on the application process and whether agencies could be awarded multiple \$15,000 grants. Ms. Beckett stated it was one loan up to \$15,000 per service agency.

On a voice vote, the motion was approved unanimously.

7. TAX INCREMENT FINANCING ASSISTANCE from Downtown Urban Renewal District for a pedestrian crossing upgrade; up to \$15,000. Downtown Billings Partnership (DBP) Board recommends approval. (Action: approval or disapproval of DBP Board recommendation.)

Mehmet Casey, DBP Development Director, provided a PowerPoint presentation and explained how Rectangular Rapid Flashing Beacon (RRFB) would increase pedestrian safety when crossing Montana Avenue at 25th Street North. He stated staff from Public Works, Planning and the DBP were all supportive and coordinated on the project. He continued that if the crossing was successful, others may be added along Montana Avenue. He added that the City and MDT would coordinate a larger reconfiguration of Montana Avenue. He stated the DBP recommended 100% TIF funding for the pilot project.

Councilmember Neese left the meeting at 8:06 p.m. and returned at 8:09 p.m.

Councilmember Boyett asked how long the pilot project would last. Mr. Casey responded that it would be a permanent fixture, but the monitoring and data gathering would be the pilot portion of the project to determine its success and whether additional crossings would be advantageous. Debi Meling, Public Works Director, stated MDT had conducted traffic studies of the area, and that would occur again after the RRFB was installed.

Councilmember Shaw moved for approval of Item 7, as recommended by the DBP Board, seconded by Councilmember Ronning.

On a voice vote, the motion was unanimously approved.

8. LAW AND JUSTICE CENTER/CITY HALL PROFESSIONAL SERVICES DESIGN CONTRACT, Phase I, with JLG Architects; \$195,000, plus \$12,500 allowance for reimbursable expenses. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Jessica Iverson, Building and Facilities Manager, provided a PowerPoint presentation and gave updated information about the project's estimated timelines. She explained the RFP process that led to the selection of JLG Architects; named members of the review committee involved in the selection process; and the qualifications of JLG. She reviewed the master planning and design process for Phase 1 and explained that the cost

of the contract was paid from the General Fund via budget amendment. She continued that it was too early to determine the scope of work in Phase II.

Ms. Iverson introduced Nick Lippert, Project Manager, JLG Architects. Mr. Lippert introduced the core team and consultants that would be working on the project, stating many of the consultants were local experts. He explained the process of involving key staff and when items requiring a decision would be brought to the Council.

Mayor Cole asked if there were items that needed to be addressed before the August construction start date. Mr. Lippert stated hazardous materials abatement and selective demolition could be done before design and construction began.

Councilmember Yakawich asked Mr. Lippert to consider placement of a memorial for all those lost to COVID-19 as Council had adopted in a recent initiative.

William Haynes, Collaborative Designs, introduced himself and stated his company had been in Billings for 40 years. He stated their goal was to improve efficiencies for the government offices and improve the community's experiences.

Councilmember Ronning voiced her displeasure about an out-of-state firm being hired for a Billings project but was happy that Collaborative Designs was involved. Mr. Haynes stated that Collaborative Designs would rely on the experience JLG had with municipal buildings because his company had not ever built a City Hall for Billings before.

Councilmember Brown stated his employer, Morrison-Maierle, would also be involved in the project and explained their role. He stated he would abstain from the vote on this item.

Councilmember Purinton asked about the bidding process for construction. Ms. Iverson responded that an RFP would be advertised soon for a project manager for the construction. That project manager would be involved throughout the build-out.

Councilmember Neese asked for a projected final build-out. Ms. Iverson stated most of the departments were projected to be moved into the building in late 2023 or early 2024. Councilmember Neese followed asking about penalties if construction was not completed on time. Ms. Iverson assured Council that penalties would be enforced for delays.

Council discussed possible design features and future lessees of space and their timing.

Councilmember Yakawich moved for approval of Item 8, as recommended by staff, seconded by Councilmember Neese. On a voice vote, the motion was approved 10-0, Councilmember Brown abstained.

9. OPIOID LITIGATION OPTIONS.

Gina Dahl, City Attorney, provided a PowerPoint presentation and stated the State of Montana had been litigating opioid claims for several years. She reviewed the 7 local jurisdictions that had joined in the litigation efforts. She stated there were 2 nationwide settlement agreements with the distributors (McKesson Corp., Cardinal Health, Inc., and Amerisource Bergen) - \$21 billion to be paid over 18 years and Janssen Pharmaceuticals (Johnson & Johnson) - \$5 billion to be paid over no more than 9 years. She explained the details of the payment flow and allocation and stated the State of Montana could receive up to \$75 million if all 56 counties participated. She stated there could be bonus payments if the level of local government participation

increased. She stated a decision to participate was necessary by January 2, 2022 and Johnson & Johnson had an additional 30 days after January 2, 2022 to decide to continue. She stated Billings could be awarded up to \$1 million.

Councilmember Shaw left the meeting at 9:17 p.m. and returned at 9:19 p.m.

Ms. Dahl reviewed the provisions of the Memorandum of Understanding and the Settlement Agreements. She introduced the speakers that would voice their pros and cons views.

Ben Snipes, attorney with Kovacich, Odegaard and Snipes, stated that his firm was working with 6 subdivisions involved in the opioid litigation. He mentioned the cities and counties that their firm represented and stated that 5 of the 6 government subdivisions had chosen not to participate in the national opioid litigation. He stated their position on the matter was that it would not be fully paid; the term was too long; there were too many ways the distributors could opt out of the agreement; and the amount would be greatly reduced overall. He stated they were more hopeful about payment from Johnson & Johnson. He added their firm had experience with dealing with Johnson & Johnson who were slow to meet the terms of their agreements. He continued that his firm believed the City would do better to bring a separate tort action, which was what the 5 government subdivisions they represented chose.

Mark Kovacich, an attorney with Kovacich, Odegaard and Snipes, added that Gina Dahl had invited their firm to address Council. He stated that the penalty was not equal across all subdivisions and with possibly 6 of the 7 subdivisions opting out, the settlement amounts would be greatly reduced. He stated taking the separate tort actions would potentially offer a better outcome.

Mark Mattioli, Assistant Attorney General, spoke in favor of Billings joining the litigation. He provided the history of the opioid suits in Montana. He stated the offer before Council involved 45 states' attorneys general. He stated the State of Montana was trying to bring resources to the areas with the most problems. He spoke about the powers involved in the Memorandum of Understanding (MOU) and stated it lacked red tape. He spoke about the risks of filing suits separately and the benefits of joining this effort. He stated that if the most populated city in Montana would not join, he believed Billings would be "blowing up" the whole settlement for the rest of Montana.

Councilmember Boyett asked City Attorney, Gina Dahl, what she advised the City to do. Ms. Dahl responded there was a lot of money involved, but also a lot of risk. She stated she was concerned about the extensive staff time and resources that would be involved and was concerned about the evidence as the City had not built a case. She stated her concerns about the length of time the settlement would be collected and that it was certain Billings would receive something in the settlement, but it was uncertain how much if Billings chose to sign onto the MOU. Ms. Dahl stated she was conflicted.

Councilmember Ronning asked why the Council was first hearing about it. Ms. Dahl responded that the Attorney General's office sent a notice on November 26, 2021, but because she has been out of the office for a week, she could not present it before Council sooner. She stated a paper notice had been sent some time ago, but it was not

on her radar. Mark Mattioli stated Billings should have received notice quite awhile ago and he again urged the City to participate because coming in late to the game was a risk.

Councilmember Ronning confirmed with Mark Kovacich that the cities they were representing was on a contingency basis with a 25% attorney fee if they collected anything. Mr. Kovacich stated there were 4 highly valued Montana law firms involved. He disagreed with Mr. Mattioli's estimate of the number of cities and towns that would sign under the MOU. He stated the State of Texas got a better deal with Janssen Pharmaceuticals than what the national prediction was and stated that Washington State was suing now.

Councilmember Purinton asked if other Montana cities had filed against the pharmaceutical companies as far back as 2017. Mr. Mattioli stated seven Montana cities had, but he was uncertain of the dates. He disagreed that Mr. Kovacich would be able to settle and reach a separate deal. Councilmember Purinton followed asking clarification on the risks. Mr. Kovacich stated bankruptcy was a risk and gave the example of the lawsuit concerning asbestos and talc exposure in which the company filed bankruptcy rather than pay the settlement. He stated Johnson & Johnson were a bad bet. He believed his firm could get larger settlements and not force the corporations into bankruptcy. Mark Mattioli also stated bankruptcy was a risk but encouraged the City to get their money now.

Discussions continued about how abatement funds could be used, compared to direct dollars.

Councilmember Yakawich moved to authorize the Mayor to execute any documents necessary to sign onto the MOU and settlement agreements with distributors (McKesson Corporation, Cardinal Health, Inc., and Amerisource Bergen) and Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson, seconded by Councilmember Purinton.

Councilmember Joy asked if there was a "no-fault" clause in the settlement agreement. Mr. Mattioli responded affirmatively.

Councilmember Shaw stated she supported "rolling the dice" to see if the City could realize more because the offer was not enough money. She would not support the motion.

Mayor Cole asked if corporations took bankruptcy would those that entered into settlement agreements take precedence. Mr. Mattioli stated those that entered settlement agreements would receive judgments first, so it was likely they would. Mr. Kovacich stated he had represented litigants against R.W. Grace for 10 years and all claimants were treated the same, only some banks received preference because they held securities in land, etc. Mr. Mattioli stated it was very likely that litigants that came late to the game would not receive anything.

Councilmember Boyett stated he would not want the City to get involved in another lawsuit that would heavily burden staff for a long period of time, therefore he would vote in favor of the motion.

Councilmember Ronning stated she could not imagine that several law firms would work on contingency if they did not believe they could receive a better outcome. She would not support the motion.

Councilmember Purinton stated her trust with the State and would support the motion.

Councilmember Choriki stated the amount Billings would receive over 20 years was not enough to impact the problem in Billings. He saw it as 2 separate issues; 1) signing onto the agreement; and 2) what to do afterward. He would not support signing onto the settlement agreement.

Councilmember Joy asked about abatement structure. Ben Snipes, attorney with Kovacich, Odegaard and Snipes, stated should the City litigate individually, there was more freedom in determining the abatement structuring. Councilmember Joy stated she would not support the motion because there was no accepted responsibility from the Respondents for the opioid problem.

Councilmember Brown voiced his support for the motion stating the opportunity had not been on the City of Billings' radar and had not realized it could benefit from the settlement until now, and by the City joining the settlement agreement they were supporting all of Montana.

On a show of hands vote, the motion was approved 7-4, Councilmembers Shaw, Joy, Choriki and Ronning 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 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.

- **Tim Warburton, 344 Lucky Penny Lane, Billings, Montana,** thanked the outgoing Councilmembers and stated he valued their time and efforts and noted each of their accomplishments.

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

COUNCIL INITIATIVES:

Councilmember Shaw moved to direct the City Administrator to print on Council letterhead a drafted letter that had been sent to all Councilmembers for their review, to Governor Gianforte concerning crime issues, sober housing, and limiting the number of DOC releasees, parolees and probationers to Billings, to be signed by all Councilmember wishing to sign it, seconded by Councilmember Purinton. Council discussed various minor language revisions to the letter and the motion was approved unanimously.

Councilmember Ewalt moved for staff to bring a resolution to Council for the FY23 budget to adopt a 20% increase over the FY20 and FY21 increases on all out-of-city landfill collections to be set aside in a landfill fund to pay for future capital improvements at the landfill, seconded by Councilmember Yakawich. Debi Meling, Public Works Director, reminded Council they always have control of the budget and stated it would not be difficult to set aside the funds, but asked that a report to Council be made annually and not monthly because it was a manual process and took additional staff time. Council and staff discussed surcharges and legality of those on services. The motion was approved unanimously.

There was no further business, and the meeting adjourned at 10:20 pm.

CITY OF BILLINGS:



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

ATTEST:

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