



**VISION STATEMENT:**  
"The Magic City: A diverse,  
welcoming community  
where people prosper and  
business succeeds."

## WORK SESSION AGENDA

COUNCIL CHAMBERS

July 6, 2021

5:30 P.M.

CALL TO ORDER: Mayor Cole

- 1. Marijuana Legislation and Medical Marijuana Ordinance.**  
*(Presented by: Karen Tracy, Assistant City Attorney)*  
- Public Comment
- 2. American Rescue Plan Act (ARPA) Overview.**  
*(Presented by: Sarah Lane, Accountant, Jennifer Duray, Deputy Public Works Director, and Chris Kukulski, City Administrator)*  
- Public Comment
- 3. Mitchell Development Compensation Agreement.**  
*(Presented by: Debi Meling, Public Works Director and BSED)*  
- Public Comment
- 4. Messinger Company Compensation Agreement.**  
*(Presented by: Debi Meling, Public Works Director)*  
- Public Comment

COUNCIL DISCUSSION:

**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.)*

ADJOURN:

Note:

- This meeting is an "informal" meeting of the City Council. The content of the Agenda is subject to change at the meeting.
- In the event there is a Closed Executive Session at the end of a Work Session, the sole purpose is to discuss litigation strategy. The other parties to the case(s) discussed are not public bodies or associations as described in Section 2-3-203(1) and (2), MCA. The meeting is closed, as allowed by Section 2-3-203(4)(a), MCA, "to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position" of the City of Billings.

**City Council Work Session**

**Date:** 07/06/2021  
**Title:** Marijuana Legislation and Medical Marijuana Ordinance  
**Presented by:** Karen Tracy  
**Department:** Legal  
**Presentation:** Yes

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**RECOMMENDATION**

No action is required of council at this time. However, staff requests direction from council regarding the following:

1. Whether to develop proposed ordinances for the purpose of regulating marijuana businesses or undertake an election recall process on the electorate's prior approval of marijuana-related businesses
2. If council chooses to take a regulatory approach, whether zoning of such marijuana-related businesses should be limited to specific areas of the city.
3. If council chooses to take a regulatory approach, whether medical-marijuana only dispensaries should be zoned in a less restrictive manner than adult-use dispensaries, cultivators, and manufacturers.
4. If council chooses to take a regulatory approach, whether council wishes to establish of a numerical cap for the number of licenses granted for medical marijuana dispensaries, medical marijuana businesses, or other marijuana related businesses.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

Montana voters, including those in Yellowstone County and the City of Billings, approved the 190-Initiative which permitted recreational adult-use marijuana in the state. The 190 initiative, as amended by the legislature in House Bill 701, was signed into law on May 18, 2021. HB 701 delayed many effective dates from the 190-Initiative, expanded some local government regulatory options, and merged and repealed some aspects of the existing Montana Medical Marijuana Act in with the new adult-use regulations. Most of these changes will be effective January 1, 2022.

Under the prior version of the Montana Medical Marijuana Act, state statutes expressly authorized the City of Billings to prohibit storefronts. BMCC Ordinance 11-5545 § 2, passed on November 14, 2011, prohibited storefronts under the authority granted to the City of Billings by state statute.

The attached questions and answers are provided to give the Billings City Council guidance in the decisions it faces related to marijuana regulation overall, as this will relate to the scope of authority the council has to regulate medical marijuana as well as adult-use marijuana. In particular, the attachment provides information concerning where the City of Billings may impose stricter requirements on marijuana businesses than are imposed by the state.

Montana medical marijuana businesses will be the first to be granted state licenses for recreational adult-use, but only to the extent that those medical marijuana businesses are in good standing with the state and any local jurisdiction as of January 1, 2022. For this reason, timely adoption of standards related to medical marijuana businesses maximizes the ability of the City of Billings to regulate both medical marijuana sales and adult-use marijuana businesses.

**ALTERNATIVES**

Staff seeks direction from council regarding whether to pursue recall election process or to begin work on proposed ordinances to regulate marijuana-related businesses.

**FISCAL EFFECTS**

The City of Billings currently derives no revenue from the sale of medical marijuana. House Bill 701 provides for a local-option marijuana excise tax not to exceed 3% on the retail value of all marijuana and marijuana products sold at an adult-use dispensary or a medical marijuana dispensary within a county. Imposition of any local excise tax requires an election at the county level. Unless or until such an election is held, there is no revenue impact to the City from the sale of medical marijuana and medical marijuana products.

Establishment or expansion of medical marijuana businesses, or marijuana businesses in general, will result in additional expenses for code enforcement, business licensing, and law enforcement and judicial resources for compliance with new state statutes and local ordinances.

The City of Billings retains the ability to license and zone medical marijuana businesses. Licensing fees should be set at a level sufficient to cover expenses related to additional code compliance, and fire and inspection needs.

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## Attachments

FAQ

I. **GENERAL INFORMATION ON RECENT MARIJUANA LAWS PROVIDED BY THE MONTANA DEPARTMENT OF REVENUE**

**Is adult-use marijuana possession and use legal in Montana?**

**Per Department of Revenue:** As of January 1, 2021, adults 21 and over may possess and use up to one ounce of marijuana with no criminal penalties.

However, marijuana consumption and possession (including medical marijuana) remains prohibited in public and certain other locations. It is also prohibited under federal law on all federal lands and waters.

Marijuana (except medical marijuana) is prohibited in hospitals and other health care facilities.

Operating a motor vehicle under the influence of marijuana remains illegal.

**Is it legal now to buy or sell marijuana in Montana?**

**Per Department of Revenue:** No, except that providers licensed under the Montana Medical Marijuana Program may sell marijuana and marijuana products to registered cardholders in the program. An individual cardholder may possess up to 1 ounce of marijuana (or the equivalent in concentrates or edibles), and may purchase up to 5 ounces per month, but may not distribute it to other people.

When will adult-use sales begin in Montana?

Certain medical marijuana licensees will be allowed to also sell adult-use marijuana starting on January 1, 2022.

**Will adult-use marijuana be available for sale in all Montana counties on January 1, 2022?**

**Per Department of Revenue:** No. In counties where the majority of voters supported Initiative 190 in November 2020, adult-use sales may occur starting in January 2022. In counties where the majority of voters opposed Initiative 190, adult-use marijuana sales remain will be prohibited.

**Could a county change its position on marijuana businesses operating in its locality?**

**Per Department of Revenue:** Yes. In a county where the majority of voters opposed Initiative 190, adult-use sales will be allowed if that county holds an election and a majority of the voters choose to allow marijuana businesses to operate in that jurisdiction

In a county where the majority of voters supported Initiative 190, certain marijuana businesses could be prohibited if that county holds a local election and a majority of the voters choose to prohibit that type of business from operating.

**What types of adult-use marijuana licenses will be available?**

**Per Department of Revenue:** In addition to continuing the Montana Medical Marijuana Program, the Department of Revenue will issue separate licenses for marijuana cultivators, manufacturers, dispensaries, transporters, and testing laboratories.

The Department will offer 13 different cultivation or “canopy” licenses for cultivation facilities of different sizes.

A worker permit will also be required for any employee participating in any part of a marijuana business.

**Can anyone apply for a license to grow or sell recreational marijuana, or manufacture recreational marijuana products?**

**Per Department of Revenue:** No. From January 1, 2022, until July 1, 2023, only Montana medical marijuana licensees who were licensed on November 3, 2020 (or had an application pending with DPHHS on that date) may be issued a license for cultivation, manufacture, or sale of adult-use marijuana.

**Is it legal for individuals in Montana to grow their own marijuana?**

**Per Department of Revenue:** Adults may cultivate up to two mature marijuana plants and two seedlings for private use in a private residence, subject to certain restrictions. (Medical marijuana cardholders may cultivate up to four mature plants and four seedlings). The plants may not be visible to the public.

**What will the tax be on recreational marijuana?**

Recreational marijuana will be taxed at 20% of retail sales. Local jurisdictions may add an additional tax of up to 3% only by election at the county level.

Medical marijuana will continue to be taxed at 4% of retail sales. The statute appears to permit the optional, local 3% excise tax on medical marijuana as well.

**Will medical marijuana and recreational marijuana be available at the same business?**

**Per Department of Revenue:** Yes. A licensed recreational marijuana provider and licensed medical marijuana dispensary may operate in a shared location. A single entity may also be licensed for both medical and recreational marijuana.

**Will marijuana licensees be permitted to sell their licenses the way alcohol licensees may sell their licenses to buyers approved by the Department?**

**Per Department of Revenue:** No. The marijuana licenses may not be transferred.

## II. ELECTORATE REPEAL OPTION v. REGULATION

### The voters of Billings and Yellowstone County approved the 190-initiative permitting adult use marijuana. What options are available to council to control marijuana?

The 190-initiative passed in Yellowstone County by a relatively slender margin (1,142) but passed within the Billings city limits by a much wider margin (over 4,000 votes).

The City of Billings may hold an additional election to permit city electors to decide whether to prohibit any or all of the following categories of marijuana businesses that are authorized either by the 190-initiative or by state legislation such as HB 701 or the Montana Medical Marijuana Act:

- a. Cultivator
- b. Manufacturer
- c. **Medical marijuana dispensary**
- d. Adult-use dispensary
- e. Combined-use marijuana license
- f. Testing laboratory
- g. Marijuana transporter facility

If the qualified electors of the city vote to prohibit any of the above categories, the city “**may not** allow that type of marijuana business to operate in the municipality.” MCA §16-12-301(c)(ii) (emphasis added). Staff recommends against conducting such an election, based upon the comfortable margin by which the City of Billings voters passed the 190-initiative.

#### **1. But if the Billings voters once again vote to approve any or all of the above categories, must the City authorize those businesses?**

If the voters approve marijuana adult-use dispensaries, adult-use marijuana-infused products providers, and adult-use dispensaries, those businesses must be authorized.

The legislature left the following I-190 language intact:

MCA §7-1-111(21) “A local government unit with self-government powers is prohibited from exercising the following: . . . any power to prohibit completely adult-use providers, adult-use marijuana-infused products providers, and adult-use dispensaries from being located within the jurisdiction of the local government except as allowed in Title 16, chapter 12;”

Although the council may be able to ban some marijuana businesses, the foregoing provision appears to definitively disclose an outright ban on adult-use marijuana products and dispensaries, absent a vote from the electors.

It does appear that the legislature left open the possibility that the council could ban some marijuana businesses, notwithstanding the outcome of the vote:

“If a majority of the qualified electors in the municipality vote to approve a category of marijuana business to be located in the municipality, the municipality may allow that type of marijuana business to operate in the municipality.” MCA §16-12-301( c)(i) (emphasis added).

In addition, the legislature expressly repealed the following provision from the 190-initiative:

“A local government may not adopt ordinances or regulations that are unduly burdensome.” MCA 16-12-301(2)(b).

But the legislature expressly repealed parts of MCA 50-46-328, specifically MCA 50-46-328(2) which states “A local government may adopt an ordinance or resolution prohibiting providers and marijuana-infused products providers from operating dispensaries or as storefront businesses.”

The legislature repealed, replaced and recodified MCA 50-46-328(1) which previously read:

To protect the public health, safety, or welfare, a local government may by ordinance or resolution regulate a provider or marijuana infused products provider that operates within the local government’s jurisdictional area. The regulations may include but are not limited to inspections of registered premises and testing laboratories in order to ensure compliance with any public health, safety and welfare requirements established by local government.

The comparable provision is now contained in MCA 16-12-301(2)(a) which states:

To protect the public health, safety, or welfare, a local government may by ordinance or otherwise regulate a marijuana business that operates within the local government’s jurisdictional area. These regulations may include but are not limited to inspections of licensed premises, including but not limited to indoor cultivation facilities, dispensaries, manufacturing facilities, and testing laboratories to ensure compliance with any public health, safety, and welfare requirements established by the department [of revenue] or the local government.

**2. Does the city have until the January 1, 2022 effective date to have the voters possibly reject adult-use dispensaries or other marijuana business categories?**

If voters reject a marijuana business category that was previously approved by the 190-initiative or otherwise, that vote is effective on the 90<sup>th</sup> day after the local election is held. MCA §16-12-301(7)(b). Depending on the date that the election was conducted, even if the

voters did reject adult-use dispensaries through an election, there may be a period of time when adult-use sales are authorized within the city.

### III. Zoning and Licensing Options

Staff recommends that the city council regulate medical marijuana businesses, through licensing and zoning ordinances.

#### Licensing

The current legislative scheme includes a state licensing process for each of the marijuana business categories. The City of Billings may implement its own licensing scheme which would permit additional oversight of the businesses to protect the public health, safety, or welfare of the community. MCA §16-12-301(2)(a). Nothing in the Montana Code Annotated prohibits the City from limiting the number of licenses issued within the City limits.

#### Zoning

The City of Billings may also impose stricter zoning than set forth in the Montana Code Annotated which provides:

#### **MCA Section 16-12-207(3)(a)**

The department [of revenue] shall deny a cultivator license, manufacturer license, adult-use dispensary license, or medical marijuana license, if the applicant's proposed licensed premises:

- (i) Is situated within a zone of a locality where an activity related to the use of marijuana conflicts with an ordinance, a certified copy of which has been filed with the department;
- (ii) Is not approved by local building, health, or fire officials as provided for in this chapter; or

(iii)(A) except as provided in subsection (3)(a)(iii)(B), is within 500 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school or postsecondary school other than a commercially operated school, unless the locality requires a greater distance. This distance must be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises.

(iii)(B) Subsection (3)(a)(iii)(A) does not apply if the application is for license renewal and the licensed premises was established before the church, synagogue, or other place of worship or school or postsecondary school existed on the same street.

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By contrast, the City could adopt language similar to that in Yellowstone County's Resolution No. 11-71 which prohibits medical marijuana businesses within 1000 feet of schools, daycare centers, childcare centers, school leased property, public recreation centers or public parks, as well as churches, synagogues or other places of worship or youth centers.

## **Special Considerations**

### A. Different zoning requirements for marijuana business categories

Nothing in the current law prohibits different zoning requirements for solely medical marijuana dispensaries and adult-use dispensaries. Considering the potential secondary community effects of adult-use dispensaries, council may wish to impose stricter requirements on adult-use dispensaries. This would allow those utilizing medical marijuana have greater access to those dispensaries selling only medical marijuana. However, medical marijuana dispensaries may already deliver to registered cardholders under provisions included in HB 701 upon compliance with state regulatory provisions.

Marijuana cultivators and manufacturers raise different zoning concerns related to building and fire inspection as those businesses are more commercial in practice. The council may wish to consider more industrial zoning provisions.

### B. Capping the number of licenses for various marijuana businesses.

Council may cap the number of licenses issued. However, given the restrictions above, an unduly small number of licenses would likely result in litigation.

### C. Congregating marijuana businesses

Council may wish to zone marijuana businesses within a certain section of the City. Given that registered card holders are able to receive marijuana by delivery or through a designated agent, medical use may not be overly burdened by taking this approach. Another option would be to permit medical marijuana-only dispensaries to operate across a broader section of the City than those dispensaries selling adult-use marijuana.

### D. State regulatory structure

The state adopted comprehensive legislation that appears to adequately address the following areas of the 6 marijuana business categories:

1. Transportation of marijuana products throughout the state
2. Background reviews for issuances of state licenses
3. Requirement that onsite, day-to-day manager is Montana resident
4. Extensive statutory scheme governing the regulation of marijuana cultivation
5. Operating hours for dispensaries
6. Inspection of books and facilities of marijuana businesses
7. Requirement for video surveillance and limited entrances to dispensaries to deter theft.
8. Packaging (prohibitions on packaging attractive to children, child resistant packaging)

Although the state statutes contain some zoning requirements, those requirements are relatively loose, and do not protect areas such as parks, child care facilities and day

cares. Staff seeks direction of city council regarding zoning of the respective license categories.

**IV. FINANCIAL CONSIDERATIONS**

**What revenue benefits are available to the City from the new marijuana laws?**

HB 701 provided for a local-option marijuana excise tax not to exceed 3% on the retail value of all marijuana and marijuana products sold at an adult-use dispensary or a medical marijuana dispensary within a county. Imposition of any local excise tax requires an election at the county level.

Forty-five percent (45%) of the local excise tax is allocated to the municipalities within the taxing county, based on population proportion of the municipalities.

Based upon state sales projections, the following revenue estimates were calculated under various scenarios for the sale of both adult-use and medical marijuana and marijuana products:

		Percent of State Sales in YelCo	Excise Tax Percentage		
		15%	3%		
Fiscal Year	Total State Sales	Gross Sales in YelCo	Total Tax Revenue	45% To Municipalities	68% to Billings
2022	17,581,000	2,637,150	79,115	35,602	\$ 24,209
2023	90,039,000	13,505,850	405,176	182,329	\$ 123,984
2024	143,204,000	21,480,600	644,418	289,988	\$ 197,192
2025	192,616,000	28,892,400	866,772	390,047	\$ 265,232

		Percent of State Sales in YelCo	Excise Tax Percentage		
		20%	3%		
Fiscal Year	Total State Sales	Gross Sales in YelCo	Total Tax Revenue	45% To Municipalities	68% to Billings
2022	17,581,000	3,516,200	105,486	47,469	\$ 32,279
2023	90,039,000	18,007,800	540,234	243,105	\$ 165,312
2024	143,204,000	28,640,800	859,224	386,651	\$ 262,923
2025	192,616,000	38,523,200	1,155,696	520,063	\$ 353,643

		Percent of State Sales in YelCo	Excise Tax Percentage		
		15%	2%		
Fiscal Year	Total State Sales	Gross Sales in YelCo	Total Tax Revenue	45% To Municipalities	68% to Billings
2022	17,581,000	2,637,150	52,743	23,734	\$ 16,139
2023	90,039,000	13,505,850	270,117	121,553	\$ 82,656
2024	143,204,000	21,480,600	429,612	193,325	\$ 131,461
2025	192,616,000	28,892,400	577,848	260,032	\$ 176,821

**What expenses are projected as a result of the new marijuana laws?**

The additional costs that are anticipated, but not yet quantified, include:

Costs related to the initial issuance of licenses, and initial building and fire inspections.\*

Municipal court and city attorney costs related to time incurred in expungement and resentencing requests.

Billings Police Department, City Attorney, and Municipal Court expenses related to anticipated prosecutions related to impaired driving under the influence. For 24/7 coverage of DRE officers, 6 officers would need DRE training.

Increased code compliance costs for issues such as signage, building, and fire inspections.

**Billings currently has an ordinance prohibiting storefront medical marijuana dispensaries. Is that ordinance still valid?**

No. Effective January 1, 2022, the statutory authority under which the ordinance was passed has been repealed. A number of Billings medical marijuana dispensaries are listed with DPHHS, but do not operate as storefronts at this time. These businesses will have priority in obtaining adult-use licenses.



## City Council Work Session

**Date:** 07/06/2021  
**Title:** American Rescue Plan Act (ARPA) Overview  
**Presented by:** Andy Zoeller, Finance Director  
**Department:** Finance  
**Presentation:** Yes

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### RECOMMENDATION

Staff will be presenting an overview of the American Rescue Plan Act funding opportunities that exist for the City of Billings. On July 12th, Council will be asked to authorize the City to apply for a State of Montana Competitive Grant created under ARPA. The projects that are being proposed for application will be presented at this meeting. Future uses of other ARPA funds will come back to Council for consideration and approval through future budgets, budget amendments, or other future council action items.

### BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

#### **American Rescue Plan Act**

The American Rescue Plan Act was a Federal Bill passed in March 2021 to spur economic stabilization and promote infrastructure. Money was distributed to individuals and state and local governments for various causes. Billings is eligible for both state and federal funds under ARPA. The State created grant programs have various deadlines, described below. While an overview of the entire ARPA program will be provided to City Council. Staff will be specifically seeking feedback on the State Competitive Grant Program, which has the most immediate deadline approaching.

Due to the language in Montana's ARPA bill (HB632), state funds for local governments are limited only to infrastructure projects for water, wastewater, and storm water. The allocation direct from the US Treasury has additional allowable uses.

The Federal Government has allocated \$15,940,314 for the City of Billings based on population size and the CDBG formula as a Metropolitan area over 50,000 in population. The City of Billings has received half of this amount and will receive the second half in May 2022.

#### **Direct Federal ARPA Allocation**

For the federal funds, the US Treasury Interim Final Report authorized 5 categories of spending through local governments; Revenue Loss Replacement; Water, Wastewater, and Broadband Infrastructure; Premium Pay; Economic Impact Programs; and Public Health Expenditures

#### **Revenue Loss Replacement**

Across the states, local governments saw a decrease in revenue from park programs, airport travel, and loss of tax revenue. The federal government allows local governments to use a portion of the Federal allocation to replace the lost revenue. The Treasury guidance provides the formula for determining the amount of revenue loss experienced at the City. The prescribed formula uses either a rate of growth at 4.1%, or the actual growth rate if the city exceeded 4.1% over the prior three years. Historical amounts show that Billings grew at less than 4.1% during the prior three years, so Billings has used 4.1% as the base rate of growth for this calculation. Then, the difference between the assumed rate of growth (4.1%) and the actual for calendar year 2020 is the revenue loss amount. Using the prescribed formula for the City of Billings, the revenue loss calculated for 2020 is \$7,394,678.

The revenue loss calculation allows for a wider variety of uses than the other 4 categories. The US Treasury allows for broad latitude by local governments for the amount calculated but generally suggests following the list of eligible uses, including the maintenance or building of infrastructure including water, wastewater, and roads. The funds may also be used for the provision of fire, police, and public safety services. Additionally, Billings can invest in cybersecurity including hardware, software, and protection of infrastructure. And finally, the city can also use the revenue loss replacement funds to cover environmental projects, such as potential pollution remediation.

#### **Water, Sewer, and Broadband Infrastructure**

The focus for infrastructure in this federal bill is solely for water, wastewater, and broadband. The emphasis is to provide these public services to areas that are lacking or need repairs. By directly applying the funds towards infrastructure without calculating revenue loss, we are limited to the four main infrastructure types; water, wastewater, storm water, and broadband.

Water and Wastewater projects should meet drinking water standards and reach portions of the city that are needing

improvements or build pipelines and storage to meet usage needs. This does include failing treatment or distribution systems and should address water quality or pollution.

Storm water is the second option. The primary focus of this infrastructure addresses pollution so that the water can be treated and reused in an efficient and safe manner.

Finally, there is broadband. This was meant to create public service for broadband meeting specific upload and download speeds for areas not meeting service needs. Generally this is contracted through companies and is meant for more rural populations. Since we do not have a public broadband utility this may be difficult for the city to implement in the time allotted. Additionally, Montana is granting money directly to entities for fiber optic installation across the state.

### **Other Eligible Uses**

The third federal use category would be establishing economic impact programs that use funding to support lost public sector revenue for businesses or individuals facing economic insecurities. Local governments can also subsidize public health expenditures by mitigating COVID19, and support public health staff. The final allowable use of the federal funds would be to provide premium pay for essential workers.

### **State of Montana ARPA Grant Funds: House Bill 632**

The State of Montana has received \$2.7 Billion from the federal government to distribute amongst the state, cities, towns, counties, and other programs. Montana House Bill 632 created two grants for local government water and wastewater projects, a minimum allocation grant and a competitive grant. The state bill only allows these funds to be used for infrastructure of water, wastewater, or storm water.

### **Minimum Allocation Grant**

The first grant through the state is the Minimum Allocation Grant and is allocated by the same formula as the gas tax. Based on the state allocation of funds to all eligible cities, towns, and counties, Billings is eligible for \$15.6 Million. There is a required one-to-one match component of up to \$3.9 million per application. The City can apply for multiple projects up to the \$15.6 Million cap, but must provide a match for each application. This grant is not competitive with other cities, but must follow the American Rescue Plan requirements. The application must be submitted by the end of 2022.

### **Competitive Grant**

The second state grant established in HB 632 is the Competitive Grant. The City is able to apply for multiple grants at any amount up to \$25M per project. Since the money flows through the state from the federal government, we must meet the same requirements for "necessary" improvements. Additionally, the state has required a match of some level from the government and the higher our match means greater approval odds. There will be a "ranking" system for competitiveness that will be based on the match amounts and other details. As Billings is competing against other cities and counties, this project(s) should demonstrate a high level of necessity.

The timeline allows Billings to be able to pay for projects retroactively going back to March 3<sup>rd</sup> of 2021. The state competitive grant will need to be submitted by the 15<sup>th</sup> of July. The Minimum Allocation Grant's final deadline will be January 1, 2023, but is currently open for submittal. Billings has through December 2024 to obligate all the funds and must spend the entire amount by December 2026 so that we do not need to return funds to the treasury.

### **Projects for Competitive Grant Application**

Both water and sanitary sewer have many projects included in the five year Capital Improvement Plan (CIP). After review of the ranking system, staff selected projects that would score the highest for both water and sewer. The criteria strongly favors projects that address existing deficiencies. The criteria for both water and sewer is included in the attached presentation. The projects being planned for application are:

- Influent Lift Station (sanitary sewer)
- Zone 6 Reservoir and Redundant Line (water)
- Water Storage Improvements Zone 1 (water)
- Staples Reservoir (water)
- West End Distribution and Treatment Plant (water)
- 2021 and 2022 Water Rehabilitation (water)

While there are many projects in the CIP that are important, these are the ones that most closely meet the criteria of the competitive grant. Staff will present other projects for consideration when the federal and state allocations are discussed at future meetings.

## ALTERNATIVES

No immediate action will be needed, as such, alternatives have not been analyzed.

## FISCAL EFFECTS

The City has received substantial funding from the American Rescue Plan Act. Both directly from the Federal Government and additionally through the State of Montana. Each of the available programs and related amounts are described in detail above. The potential grant funding available to the City of Billings is as follows:

Direct Federal Allocation - \$15,940,314

State of Montana Minimum Allocation Grant\* - 15,607,145

State of Montana Competitive Grant\* - up to \$25,000,000 per project

\*Local matching requirement exists for these grants

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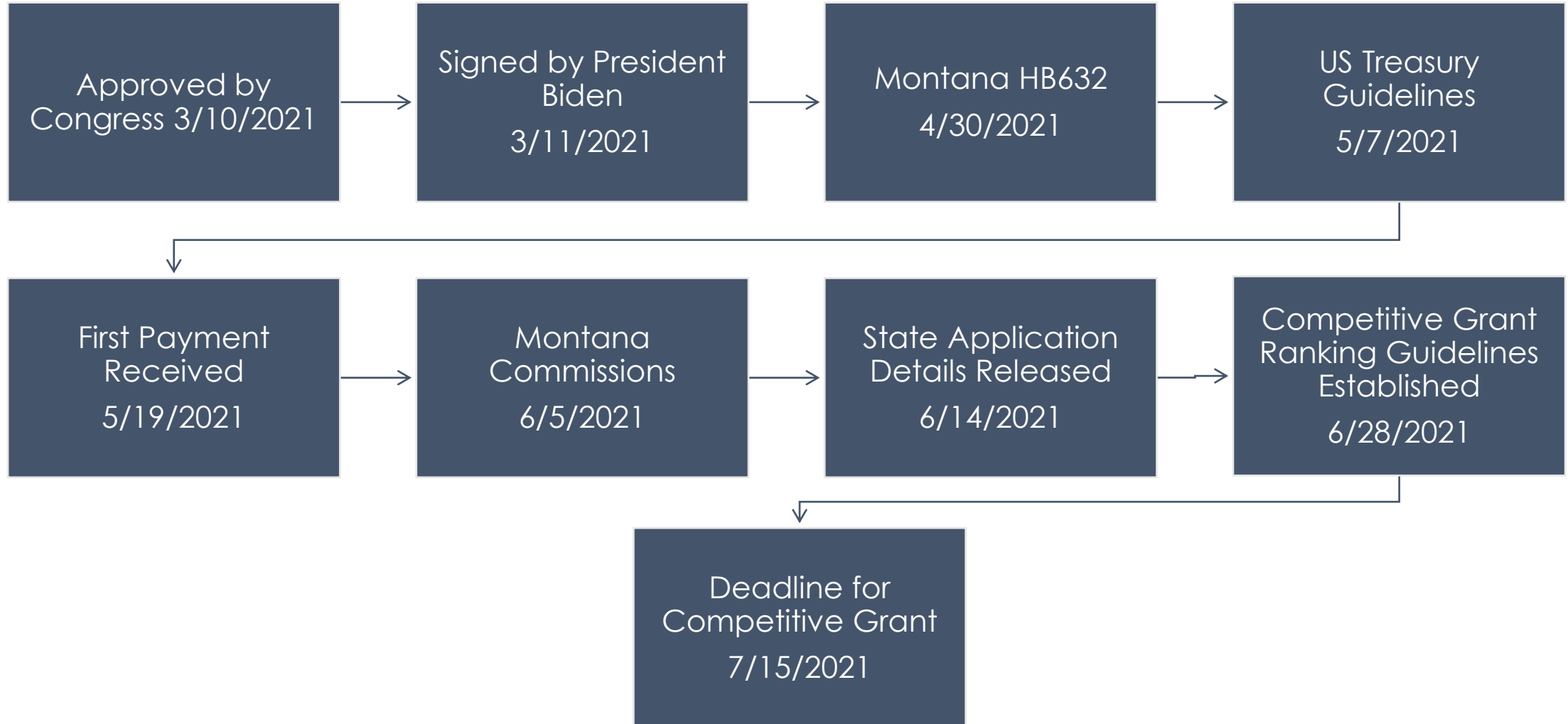
## Attachments

ARPA Presentation



American Rescue Plan Act

# ARPA Timeline



# Funding Sources



## Federal Allocation

Local Fiscal Recovery Funds

\$15,940,314

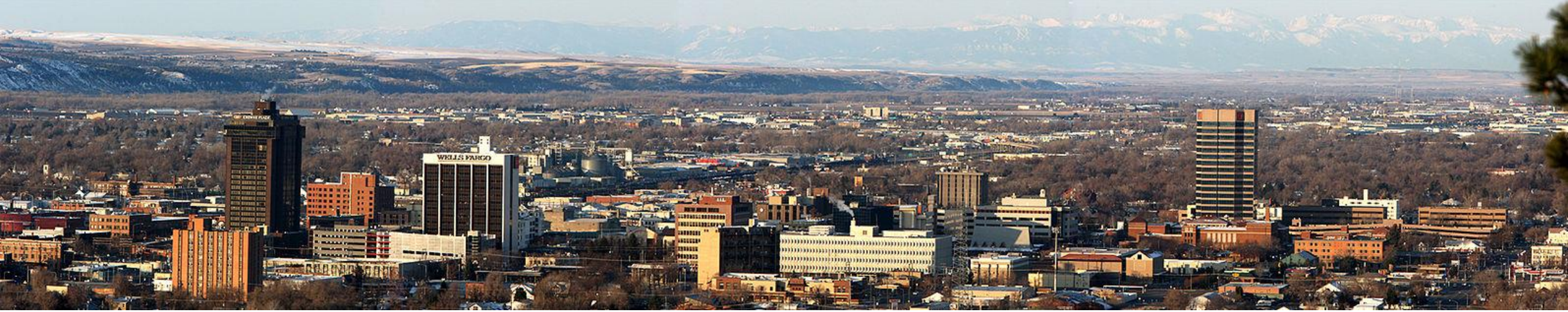
## State Grants

Minimum Allocation Grant

\$15,607,145

Competitive Grant

Up to \$25M per project



# American Rescue Plan Act

\$15,940,314

Revenue Loss  
Replacement

Infrastructure

Public Health  
Expenditures

Economic  
Impact  
Programs

Premium Pay  
for Essential  
Workers

# Revenue Loss Calculation

\$7,394,678

- ✓ Calendar Year 2020 Amount
- ✓ Growth Rate per calculation: 4.1%
- ✓ Revenue Loss due to COVID19: 3.6%
- ✓ No Federal Grants, Bonds, Utilities



# Eligible Uses for Revenue Loss Funds



# Funding Sources



Federal Allocation	State Grants	
Local Fiscal Recovery Funds	Minimum Allocation Grant	Competitive Grant
\$15,940,314	\$15,607,145	Up to \$25M per project

# Minimum Allocation Grant



\$15,607,145



Fund match requirement

- Lesser of \$3.9M or a one-to-one match per application



Application opens July 15th



Final Deadline January 1, 2023

# Funding Sources

## Competitive State Grant



### Federal Allocation

Local Fiscal Recovery  
Funds

\$15,940,314

### State Grants

Minimum Allocation Grant

\$15,607,145

Competitive Grant

Up to \$25M per project

# Eligible Water & Sewer Infrastructure Projects



## Drinking Water State Revolving Fund (DWSRF)

**Building/upgrading facilities**

**Transmission & distribution system**

**Storage systems**

**Replacement of lead service lines**

## Clean Water State Revolving Fund (CWSRF)

**Wastewater treatment**

**Wastewater collection system**

**Water conservation**

**Managing & Treating stormwater**

# Competitive State Grant



Applications due by 7/15/21 for first round



Covered Period 3/3/21 – 12/31/26



Obligated by 12/31/24



Ranking Categories	Points Available
DWSRF or CWSRF	420
Readiness	80
Affordability	50
Match	50
<b>Total</b>	<b>600</b>



# Competitive State Grant Water Project Rankings



Water Project Ranking	Points
<b>Documented health risks</b>	<b>180</b>
Acute health risks	120
Non-acute health risks	60
<b>Potential health risks</b>	<b>80</b>
Microbiological & nitrate health risks	50
Chemical contaminant health risks	30
<b>Compliance</b>	<b>50</b>
Proactive Compliance Measures	50
Project addresses a formal enforcement action	25
<b>Consolidation or creation of a new system</b>	<b>30</b>
<b>Conservation</b>	<b>80</b>
Water use efficiency	30
Water meters	20
Energy efficiency	30
<b>Total Points in DWSRF</b>	<b>420</b>

# Competitive State Grant Sewer Project Rankings



Sewer Project Ranking	Points
<b>Public health and water quality</b>	<b>250</b>
Project protects public health	75
Project reduces toxic effects	25
Project reduces sediment	25
Project reduces nutrients	25
Project complies with secondary standards	25
Project helps meet a TMDL	50
Project addresses formal enforcement action	25
<b>Effectiveness in improving water quality or public health</b>	<b>100</b>
Eliminate health hazards or restore beneficial uses	100
Improve but not fully restore	50
May or may not improve water quality	25
<b>Point source projects OR</b>	<b>70</b>
Capacity	10
Reliability or obsolescence	20
Beneficial use	20
Water conservation	10
Energy Conservation	10
<b>Total Points in CWSRF</b>	<b>420</b>

# Competitive Grants Other Ranking Criteria

City Match	Points
1:1 Match of % of the ARPA Local Recovery Funds	50
25% = \$7,886,865	
50% = \$15,773,730	
<b>Max Points</b>	<b>50</b>

Readiness to Proceed	Points
Engineer has been formally hired for planning and design	10
In planning document	10
All other project funding in place	10
Final plan and specs have been approved	20
Construction will begin within next 24 months	30
<b>Max Points</b>	<b>80</b>



Affordability: Expected average household combined water & sewer rates, including debt retirement and O&M are:	Points
> 3.5% of MHI	50
2.6% and 3.5% of MHI	25
1.1% and 2.5% of MHI	15
< 1.1% of MHI	10
<b>Max Points</b>	<b>50</b>

# Competitive Grant Projects - \$42.3M

Expense Types	West End Plant	2021 Water Rehab	2022 Water Rehab	West End Distribution	Staples Reservoir	Water Storage Improvements Zone 1	Zone 6 Reservoir and Redundant Line	Influent Lift Station
Project Costs	\$72,000,000	\$ 4,000,000	\$ 3,600,000	\$ 5,000,000	\$ 4,000,000	\$ 3,600,000	\$ 9,000,000	\$ 5,400,000
Application Amount	\$25,000,000	\$ 2,000,000	\$ 1,800,000	\$ 2,500,000	\$ 2,000,000	\$ 1,800,000	\$ 4,500,000	\$ 2,700,000
City Match	\$47,000,000	\$ 2,000,000	\$ 1,800,000	\$ 2,500,000	\$ 2,000,000	\$ 1,800,000	\$ 4,000,000	\$ 2,700,000
Points	170	240	210	160	180	210	210	365



# Next Steps



7/12/21 - Authorize City to apply for State Competitive Grants



7/15/21 - Competitive Grant Applications due



8/15/21 - DNRC rankings to Commission



1/31/23 - Minimum Allocation Grant applications



Council prioritization of U.S. Treasury Local Fiscal Recovery Funds



Questions?

**City Council Work Session**

**Date:** 07/06/2021  
**Title:** Compensation Agreement - Mitchell Development  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** Yes

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**RECOMMENDATION**

The information is being presented to City Council to provide background and justification for the compensation agreement that will be on a future council agenda for approval. No action is needed at this meeting.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

The parcel in the southwest corner of the intersection of Alkali Creek Road and the planned Inner Belt Loop is being considered for development. The city's water and sanitary sewer systems both end at the city limits near Strawberry Lane. There is a gap of approximately 3,400 lineal feet of water and 3,650 lineal feet of sanitary sewer from the end of the existing systems to the property line of the property being planned for development. The developers of the parcel have asked if the city can extend the lines through the county section of Alkali Creek to the edge of their property where they will be responsible to extend them along the frontage of their parcel. If the city does not extend the lines, the land will likely develop in the county due to the fact that the lots will cost too much to develop in the city. The city may recoup a portion of the cost of the extensions over time if adjacent properties develop or connect to the systems. If this parcel develops in the county and the city decides to extend water and sanitary sewer along the Inner Belt Loop, the city would need to fund the extension in question in addition to extending along the frontage of the property which is another 3,700 lineal feet. If the city decides not to extend lines along the Inner Belt Loop, this section of water line will still be beneficial to create a loop along Skyway Drive.

In addition to the extension, the Water and Sewer Rules and Regulations state that the city will compensate the developer for the difference in cost for a 12" diameter pipe and the pipe size that is required. Initial evaluation shows that a 12" diameter water line and an 15" diameter sewer line will be required. If the final design has these sizes, there would be no oversizing compensation on the water and less than \$200,000 oversizing compensation for sanitary sewer.

The compensation agreement for this development will be presented to the City Council for approval at a future meeting. The compensation agreement will require annexation.

**ALTERNATIVES**

No action is necessary at this meeting so there are no alternatives to consider.

**FISCAL EFFECTS**

The cost of the extension of water and sanitary sewer from the terminus of the existing city systems to the property being developed is estimated at \$1,200,000 for water and \$2,000,000 for sanitary sewer. The oversizing of the sewer main along the frontage of the development is estimated at \$200,000. The compensation and oversizing are included in the FY22 budget.

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**City Council Work Session**

**Date:** 07/06/2021  
**Title:** Compensation Agreement - Messinger Company  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** Yes

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**RECOMMENDATION**

The information is being presented to City Council to provide background and justification for the compensation agreement that will be on a future council agenda for approval. No action is needed at this meeting.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

A parcel south of the Frontage Road, west of Harnish Boulevard is being considered for annexation and development. The terminus of the existing city water system is near the intersection of Elysian Road and East Lane. The terminus of the existing city sewer system is approximately 1,275 feet south of the intersection of Elysian Road and East Lane. The developer of the parcel is required to extend both water and sanitary sewer lines to their parcel to get service. The water extension will be approximately 5,100 lineal feet and the sewer extension will be approximately 4,300 lineal feet. The extension of the utilities will allow for property along the route to develop in the city limits. If a development connects to the city utilities, they will be required to reimburse the city for their proportionate share which will be paid to the Messinger Company in accordance to with the Water and Sewer Rules and Regulations. A reimbursement agreement will be on a future council agenda for consideration. The city is being asked to consider a contribution to the extensions in the amount of \$250,000. As stated above, these extensions will allow for future development of a significant section of land. City staff would propose that the amount be split evenly between water and sanitary sewer if approved.

In addition to the extension, the Water and Sewer Rules and Regulations state that the city will compensate the developer for the difference in cost for a 12" diameter pipe and the pipe size that is required. The water main is anticipated to be 16" diameter and the sewer is anticipated to be an 18" diameter. The compensation agreement for this development will be presented to the City Council for approval at a future meeting. The compensation agreement will require annexation.

The presentation to the City Council will include information about the development from Big Sky Economic Development Agency and a representative from the Messinger Company as well as an overview of the process for the development.

**ALTERNATIVES**

No action is necessary at this meeting so there are no alternatives to consider.

**FISCAL EFFECTS**

The developer is requesting a city contribution of \$250,000 to extend the water and sanitary sewer from the terminus of the existing city systems to the property being developed. The oversizing of the extended water main will be approximately \$39,750 for the sewer main and will be approximately \$141,250 for the water main and will be based on actual costs. The FY22 budget does include funding for compensation agreements.

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