

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL**  
**October 26, 2009**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> Street, Billings, Montana. Mayor Ron Tussing called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Gaghen gave the invocation.

**ROLL CALL:** Councilmembers present on roll call were: Gaghen, Pitman, Brewster, Veis, Ruegamer, McCall, Astle, and Clark. Councilmembers Ronquillo and Ulledalen were excused.

**MINUTES:** October 13, 2009, approved as presented

**COURTESIES:**

- Mayor Tussing recognized members of Boy Scout Troop #7 who were in the audience.
- Councilmember Astle reminded everyone of the "Pack the Place in Pink" event at Skyview High School the following evening for Breast Cancer Awareness Month.

**PROCLAMATIONS** - None

**ADMINISTRATOR REPORTS - TINA VOLEK**

- Ms. Volek referenced revised Agenda Item 1A that was sent via e-mail to the Council the previous Friday, and noted a copy was on their desks that evening and in the ex-parte notebook in the back of the room for public review.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1 and 2 ONLY.**

**Speaker sign-in required.** (Comments offered here are limited to **1 minute** per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard **ONLY** during the designated public hearing time for each respective item.)

*(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

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

**1. CONSENT AGENDA**

**A. Resolution #09-18889** approving City Council Electronic Communications and Usage Policy (delayed from 10/13/09).

**B. Change Order #2 Final**, W.O. 05-17, Highland School Route Sidewalks, Riverside Sand and Gravel, \$21,145.85.

- C. Professional Services Contract** for development of an Integrated Water Plan; HDR Engineering, Inc.; \$212,000.
- D. Professional Services Contract** for Safe Routes to School Study; Sanderson Stewart; \$55,000.
- E. Amendment #3, W.O. 05-20, Aronson Avenue**, Professional Services Contract, DOWL HKM Engineering, \$13,062.83.
- F. Lease Agreement** with GSK Partners, LLP, for temporary use of 1.45 acres of land during construction of W.O. 04-26, Zone 4 Reservoir pump station and water storage tank; 9/1/2009 through 10/31/2011; \$44,000 total with option of additional month-by-month lease for up to six months at a monthly payment of \$2,000 per acre.
- G. Subordination of Housing Rehabilitation Loan** for Julie Slevira, \$14,523.91.
- H. Approval of Quarterly Report for Pledged Collateral** for First Interstate Bank Certificate of Deposit, US Bank Municipal Investor Accounts, US Bank Repurchase Account, and US Bank Certificates of Deposit.
- I. Resolution #09-18890** establishing criteria for use of Recovery Zone Facility Bonds.
- J. Final Plat Approval** of Appleby Subdivision, Amended Lot 2, Block 1; and **revocation** of Condition #2 of preliminary plat approval (3/9/09).
- K. Bills and Payroll**

- 1. September 25, 2009
- 2. October 2, 2009

(**Action:** approval or disapproval of Consent Agenda.)

Councilmember Gaghen separated Item F, and Mayor Tussing separated Item D. Councilmember McCall moved for approval of the Consent Agenda excluding Items D and F, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved. Councilmember McCall moved for approval of Item D, seconded by Councilmember Ruegamer. Mayor Tussing recused himself from the vote because of his wife's involvement with the project. On a voice vote, the motion was approved 8 to 0.

Councilmember McCall moved for approval of Item F, seconded by Councilmember Ruegamer. Councilmember Gaghen asked Mr. Mumford for clarification on the temporary use of the property and said the amount of the lease seemed high. She said it seemed high compared to what the City was obtaining from the County to provide space for the GSA. Mr. Mumford said he was not sure about the agreement with the GSA, but what they needed was a staging area to build the reservoir, and they were working around corrals with horses and other structures. He said they looked around and asked if the lease amount was reasonable, and said it was mid-range for the value of the land. Councilmember Gaghen asked if the lease precluded the sale

for development of the land. Mr. Mumford advised after the lease period, the land could be sold and subdivided. City Administrator Volek referenced the article in the previous day's newspaper regarding the closure of the block for the GSA project and said the City was only receiving approximately one-tenth of the amount that the County was receiving for the easement. She said she thought the amount the County would receive was in the neighborhood of \$866,000. Mayor Tussing commented he also felt the amount was high. Mr. Mumford advised the land being leased was in the county, so the land would not benefit from the improvements the project would bring. On a voice vote, the motion was unanimously approved.

## REGULAR AGENDA

**2. ADOPTION OF WELCOME HOME BILLINGS TEN-YEAR PLAN TO IMPACT HOMELESSNESS AND THE MAYOR'S COMMITTEE ON HOMELESSNESS' FY2009-2011 ACTION PLAN, AS SUBMITTED. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Ms. Volek advised the item was the subject of a public hearing at the last meeting. She said staff had no presentation but was available for questions. Councilmember Ruegamer moved for approval, seconded by Councilmember Pitman. Mayor Tussing also advised that the item had been discussed at a previous work session. Councilmember Clark said he felt the plan was very well done. On a voice vote, the motion was unanimously approved.

**3. PUBLIC HEARING AND RESOLUTION #09-18891 levying and assessing emergency abatement expenses on the tax rolls for property located at 314 South 26th Street, Billings, MT, in the amount of \$8,863. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Ms. Volek advised the item was an abatement related to the demolition of a home partially destroyed by fire. She said staff had no presentation but was available to answer questions. Ms. Volek confirmed the owner of the property was Mr. Charles Albert. Councilmember Gaghen commented that Mr. Albert had been resistant to the demolition and not having access to living on the property and asked if the situation had improved. Planning Director Candi Beaudry advised that the situation had not improved, and a court hearing was scheduled that week on the conditions. She said she understood Mr. Albert was bringing used bicycles and other materials to the site, so the storage problem was growing. Councilmember Gaghen advised that she hoped the problem would be resolved soon.

The public hearing was opened. There were no speakers, and the public hearing was closed. Councilmember Veis moved for approval, seconded by Councilmember Brewster. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTION #09-18892 authorizing the filing of a Grant Application for Federal Transit Administration, Section 5309, Bus and Bus-Related Facilities Program Funds in the amount of \$247,000 for purchase of four paratransit vans and the subsequent execution by the Mayor of the Grant Agreement. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Ms. Volek advised staff had no presentation but was available for questions. The public hearing was opened. There were no speakers, and the public hearing was closed. Councilmember Brewster moved for approval, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION #09-18893 authorizing permanent speed humps on 38th Street West between Colin Drive and Poly Drive. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek advised staff had no presentation but was available to answer questions. The public hearing was opened.

- **John Heenan** said he lived on 38<sup>th</sup> Street West and wanted to thank the City and particularly Jani McCall for all of the hard work. He said they had temporary speed humps for several months that had slowed down cars and kept kids safe. He said 38<sup>th</sup> Street was near Arrowhead Elementary School.

There were no other speakers, and the public hearing was closed. Councilmember Pitman moved for approval of permanent speed humps, seconded by Councilmember McCall. Councilmember McCall advised it had taken approximately two years to install the speed humps. She said Public Works purchased and installed the temporary speed humps and with all the activity in the neighborhood, the humps were extremely effective. Councilmember Ruegamer said three or four years ago Mr. Mumford had said the City did not do speed bumps, and now the City had them. He asked Mr. Mumford if this was something new. Mr. Mumford advised they still did not install speed bumps. He said these were speed humps or platforms. He said a speed bump was something you would find in a shopping center parking lot that brought the vehicle to a near stop, and a speed hump or platform was a tapered ramp. He said if a vehicle drove the speed limit, it would drive right over it; but if a vehicle was driven over the speed limit, the hump would be felt. Mr. Mumford said the speed humps would not hinder emergency vehicles from responding but would require them to drive the speed limit over them when responding. Ms. Volek advised that Public Works paid for the temporary speed humps, but the neighbors were paying for the permanent speed humps. Councilmember Gaghen asked what the cost of the speed humps were. Mr. Mumford advised the neighbors were working under private contract with Knife River to install the humps, and he was not sure how much they cost. Mr. Heenan advised they took a neighborhood vote, and no one wanted a special assessment; so the neighbors each paid their share. Councilmember McCall advised 13 of 14 neighbors were sharing the cost. Councilmember Pitman said he was sure he would receive phone calls from others wanting speed humps and asked what the process would be. Mr. Mumford advised people needed to contact Engineering, and they would work with each neighborhood. He said it was not the first installation, as they had installed them on Lake Hills Drive a couple years ago. Mr. Mumford said the purpose of the temporaries was to make sure the neighbors really wanted them because they do inconvenience the neighbors by forcing them to drive the speed limit. Councilmember Brewster asked if some streets were not eligible for the humps, such as snow routes. Mr. Mumford said they would not place them on arterial streets because of the posted speed on arterials. He said the snow blades could be lifted over the speed humps when plowing snow routes. Councilmember Ruegamer asked what the cost of a speed hump was and the size. Mr. Mumford advised the cost was between \$2,500 and \$3,000 per speed hump, and they were the width of the road by about fourteen feet wide including the taper and the platform. Mr. Mumford said it would take multiple humps spaced evenly so people could not speed up in between them. On a voice vote, the motion was unanimously approved.

Mayor Tussing advised it had been requested that Item #6 be postponed until later on the agenda until one of the County Commissioners who wanted to testify arrived. Councilmember McCall moved to postpone Item #6 until Commissioner Kennedy arrived, seconded by Councilmember Ruegamer. Councilmember Veis said he did not feel the motion should be “until Commissioner Kennedy arrived.” Councilmember McCall amended her motion to postpone Item #6 until “Commissioner Kennedy arrived or as the last item on the agenda,” seconded by Councilmember Ruegamer. On a voice vote, the voluntarily amended motion was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION #09-18894 vacating the north half of North 26th between 2nd Avenue North and 3rd Avenue North; Yellowstone County, owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Ms. Volek advised staff had no presentation. She noted County Commissioner Kennedy was now present and available for questions. Mayor Tussing asked Ms. Volek to expand on her earlier statement that the County would receive ten times as much for the property as the City would for the lease in Agenda Item F. Ms. Volek advised it was the acquisition of the north half of 26<sup>th</sup>. She said the GSA was seeking an additional 50 feet in width to add to the parcel they already had in order to support the construction planned for the site. She said if the City would have given the 50-foot easement to GSA, GSA would not have compensated the City with anything more than a modest amount well under \$1,000. She said the City would be giving the property to Yellowstone County who would, in turn, sell it as an overall parcel to GSA. Ms. Volek said the remainder of the street parcel owned by the City would go to Yellowstone County. She said the City would receive \$80,000 for the 50-foot strip. She said it was her understanding from the newspaper that the County would receive about \$866,000 for the entire parcel that included the City’s land. She said it was a better arrangement for the City than it would have been if they would have dealt directly with GSA, and it would relieve the City of the maintenance of the street.

The public hearing was opened.

- **Bill Kennedy, County Commissioner**, asked the Council for approval and said it would finalize their entire project with GSA and the federal courthouse project. He said a portion of the easement would provide parking in front of the Sheriff’s Office, and there would be a 2-year easement for the federal building construction. He said GSA would be purchasing additional parking places and a parking lot and part of the roadway from the County to expand the footprint for the federal courthouse building that would include the Federal Courts, the US Marshall, the US Attorney, and Federal Probation. He said it would also give the Sheriff’s Department additional parking and help with the ingress and egress to the parking lots directly north of the federal courthouse building.

There were no other speakers, and the public hearing was closed. Councilmember Astle moved for approval, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND SITE DEVELOPMENT ORDINANCE VARIANCE #OP-09-04: A variance from the Site Development Ordinance, Section 6-1203(r), which prohibits customer access to alleys from commercial sites that abut a residential zone. Cenex**

**Petroleum, Inc., owner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)** Ms. Volek advised staff had no presentation, but was available for questions. The public hearing was opened. There were no speakers, and the public hearing was closed. Councilmember Gaghen moved for approval, seconded by Councilmember Veis. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND ZONE CHANGE #858: A zone change from Residential 6000 and Residential 9600 to Controlled Industrial on a 4.87-acre parcel of land described as Certificate of Survey 473 and the south 132 feet of Lot 4 in the SW1/4 of Section 9, Township 1S, Range 26E, and generally located at 415 and 431 South Billings Boulevard. Ralph Hanser, applicant. Zoning Commission recommends approval and adoption of the 12 Zoning Commission Determinations. (Action: approval or disapproval of Zoning Commission recommendation.)** Nicole Cromwell, Zoning Coordinator, began her PowerPoint presentation showing the location of the subject property and describing the surrounding properties. She advised there was a 40-foot wide storm drain easement on the property that made it very difficult to build any type of structure, so the proposed use was virtually one of few that would be appropriate to the site. Ms. Cromwell said the expansion would include employee and customer parking in the front, a 9-foot sight-obscuring fence around the entire facility, lighting directed into the property and not across property lines, and landscaping along the street frontage. Ms. Cromwell advised the Engineering Division would be reviewing the storm water capture plan if the zone change request and following special review were approved. She said the Zoning Commission recommended approval based on the 12 criteria for zone changes. She said the zone change was compatible with the existing zoning, a pre-application neighborhood meeting was held on August 20, 2009, no negative comments were received, and they received a letter of support from the Southwest Corridor Task Force. Ms. Cromwell advised the property was adjacent to a principle arterial street, was compatible with the neighborhood, and would provide infill development in the tax increment finance district.

The public hearing was opened.

- **Ralph Hanser, 1565 Westridge Circle**, said he was present to ask for approval of the zone change. He said Hanser's continued to try to expand to meet the needs of their customers and appreciated what the City of Billings had done for them in the past. He said they maintained a payroll of \$3.5 million per year. He said their storm water runoff was reviewed by DEQ the past week, and they were told they were "Class A" in how they managed it. He said they had six water separators with containment pads so absolutely nothing could happen. He said no oil, gasoline or any type of liquid or contaminant would ever be on the subject property. He said there was no opposition from their neighbors at the meetings that were held. Councilmember Ruegamer asked Mr. Hanser to briefly summarize their certification for cleaning up contaminant spills. Mr. Hanser said they had won several awards on their pollution efforts. He said they had 20 people who were certified to manage spills before contaminants could get into the ground water, rivers, or ditches.
- **Scott Hanser, 3020 Donegal**, said one of the biggest reasons for their expansion was the need to provide more inventory. He said they would keep the property in pristine condition inside and out. He said they had systems in place to keep it clean.

- **Joe White, Billings, MT**, said he wanted to comment on the “pick a part”. He said it was cheap repair for cars. He said they needed to contain the bodies and not have them out in the open with old air conditioners and grease.

Councilmember Pitman reassured Mr. White a fence would be constructed around the property.

There were no other speakers, and the public hearing was closed. Councilmember Clark moved for approval, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

Mayor Tussing advised they would return to consideration of Item #6.

**9. PUBLIC HEARING AND SPECIAL REVIEW #879: A special review to allow a vehicle wrecking facility in a proposed Controlled Industrial (CI) zone on a 4.87-acre parcel described as Certificate of Survey 473 and the southern 132 feet of Lot 4 in the NW1/4, SW1/4 of Section 9, Township 1S, Range 26E, generally located at 415 and 431 South Billings Boulevard. Ralph Hanser, applicant. Zoning Commission recommends conditional approval. ( Action: approval or disapproval of Zoning Commission recommendation.)** Ms. Cromwell advised the City Zoning Commission conducted a public hearing on the special review after recommending approval of the zone change. She said the nine conditions recommended by the Zoning Commission were, as follows:

1. The special review approval applies to this location.
2. Development will be as shown on the site plan screening fencing, sight-obscuring gates, landscaping and parking area. Increases greater than 10% will require additional special review.
3. Full cutoff shielding of outdoor lighting.
4. All vehicles stored within screened area and no stacking above fence line.
5. Business hours 7 am to 7 pm.
6. State wrecking license obtained within 6 months of approval.
7. Manage storm water on site.
8. Conditions run with the land.
9. Comply with all city codes that apply.

The public hearing was opened.

- **Ralph Hanser, 1565 Westridge Circle**, said he was asking for Council’s approval and would be happy to answer any questions. Councilmember Brewster asked if they would be building a “pick and pull” at the location. Mr. Hanser said they would. Councilmember McCall asked if Mr. Hanser’s staff would be monitoring the “pick a part” process. Mr. Hanser said his staff was always available, and there were certain things they would not let the public do themselves such as pull engines because of the danger.
- **Scott Hanser, 3020 Donegal**, asked for approval and said they would be able to increase their inventory from 600 cars to 1200 to 1400 cars. He explained the process and the savings to the public of having a “pick a part”. He said there would be no

hazardous fluids in the vehicles, and all the vehicles would be up on stands to ensure the public's safety. Councilmember Gaghen asked if they had ever considered conducting classes on how to pull parts. Mr. Hanser said most people know how to pull parts themselves, and they always had at least two employees in the area to answer questions and help the customers. Mr. Hanser said the age of the vehicles in a "pull a part" was 10 years and older.

There were no other speakers, and the public hearing was closed. Councilmember McCall moved for approval, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #850: A text amendment to the Unified Zoning Regulations, regulating the location of Sexually-Oriented Businesses within the City of Billings; amending Sections 27-201 and 27-611 BMCC to include a definition of 'Adult Cabaret' and regulating the location of an 'Adult Cabaret'. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Ms. Cromwell advised in July 2008 the City Council passed an interim ordinance to define and regulate adult cabarets because the existing code did not. She said a business opened in the Central Business District that offered adult cabaret, which was live nude and semi-nude dancing. She said because the business did not offer alcohol, they were able to take advantage of a loop hole in the code. Ms. Cromwell advised the first interim ordinance was in effect for six months. She said in September 2008 the Planning Division and the City Attorney's Office brought forward a permanent ordinance to the Zoning Commission that included housekeeping in the existing codes, added the adult cabaret definition, and sought to regulate some of the existing book and video stores to put them into a non-conforming status that would give them four years to move their businesses. She said the September 2008 code also eliminated sexually-oriented businesses as an allowed use in the Central Business Zone and Highway Commercial Zone. Ms. Cromwell said there was testimony from the bookstore owners and their representatives at the first reading of the ordinance whereby they felt since they were existing businesses that had worked well within their neighborhoods, they should not be placed in non-conforming status and have to move. Ms. Cromwell advised the City Council did not approve the code on second reading and directed the Planning Division and the City Attorney's Office to go back to the drawing board and come up with a code that would not affect the existing businesses but still allow the City to regulate adult cabarets. Ms. Cromwell said the new ordinance would still allow sexually-oriented businesses in the Central Business District, Highway Commercial Zone, Controlled Industrial Zone, and Heavy Industrial Zone. She said in those four districts, the sexually-oriented businesses must be 1000 feet from any residential zoning district, a public library, a public park or playground, a public or private school, a state-licensed daycare, churches, and other places of worship. She said in the code she was presenting that evening, they added the Agriculture-Open Space Zone, which was a county zone that allowed residential uses; the Planned Development Zone where residential uses were allowed, which was a special zoning district where some commercial and mixed uses were typically incorporated unless the Planned Development Zone was separated from the sexually-oriented business by an interstate highway. She said they also included cemeteries, preschools in addition to K-12 as separated uses. She said they retained the provision that any sexually-oriented business must be 600 feet from any other sexually-oriented



business. Ms. Cromwell said they left in the definition of adult cabaret and where they could be located. She said the amendment did not create any non-conforming sexually-oriented businesses that currently exist. She said all of the existing businesses were given copies of the draft ordinance and notification of the Zoning Commission and City Council public hearings. She said one of the existing owners came to the Zoning Commission public hearing, asked questions, and was satisfied that his business would not be affected by the zone change. Ms. Cromwell showed a map of the locations of the current sexually-oriented businesses.

The public hearing was opened.

- **Joe White, Billings, MT**, said they needed the tightest regulations with sexually-oriented businesses; the same as beer licenses. He said businesses near strip joints would go out of business (the rest of Mr. White's testimony was inaudible.)

There were no other speakers, and the public hearing was closed. Councilmember Ruegamer moved for approval, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

**11. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #853: Text amendments to sections of the Billings, Montana City Code (BMCC); including Section 27-604 related to fences, Section 27-615 related to clear vision areas, Section 27-618 illustrations of clear vision areas, and deletion of Sections 22-441 through 22-448, redundancies related to clear vision areas in the chapter on streets and sidewalks. The Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)** Ms. Cromwell said approximately two years ago the Engineering Division and Planning Division began looking at the clear vision area provision in the city code as it related to arterial, collector, and residential streets and whether they were controlled by a traffic signal or stop sign. She said they also looked at the street designs in newer subdivisions that had looped roads that were not clearly intersections under the illustrations in the code. Ms. Cromwell advised that the City currently only had three clear vision areas; one for alleys and driveways where they intersected streets, one for uncontrolled intersections, and one for a controlled intersection by a signal or stop sign. She said the geometry of the streets and the speed limit of the vehicles were not currently taken into consideration so if there were curves in the road or if there was a difference in elevation, the clear vision areas were inadequate to ensure traffic, pedestrian and bicycle safety. Ms. Cromwell began her PowerPoint presentation showing diagrams of current clear vision areas and proposed clear vision areas for driveways and alleys, minor street stop intersections, all way stop intersections, minor street yield intersections, traffic signal intersections, Central Business District stop sign or traffic signal intersections, Central Business District driveways and alleys, uncontrolled intersections, 2-leg uncontrolled intersections, and permanent 'T' intersections. She stated obstructions such as fences or walls that were in compliance with the current code would not be required to be moved with the proposed code; however, if they were to be rebuilt or damaged by 50% or greater, they would have to be built in compliance with the new regulations. Ms. Cromwell advised under the current code and the proposed code, the City could ask property owners to trim branches and reduce heights of living and growing things such as trees, hedges, and shrubs that could be easily modified. She said the amendments

were tailored to specific street types; improved pedestrian, cyclist, and traffic safety; and DPARB and the Homebuilders Association and other interested citizens provided valuable comment and input. She said they received no serious opposition. Mayor Tussing commented there were currently fences almost to the intersections along the Zimmerman Trail bike path that made it impossible to see bicyclists and asked what would happen in those types of situations. Ms. Cromwell said they would have to wait for the property owners to choose to rebuild the fences. She said they could ask the City Traffic Engineer to look at it from a public safety standpoint. Mayor Tussing asked if a situation like that had been addressed under the new ordinance. He said probably the best thing would be to ride in the bike lane rather than on the bike trail in that particular area. Ms. Cromwell said under the new ordinance, bicyclists would definitely be more visible on the trail.

Councilmember Brewster asked if they would have a “hey day” with 30-year old trees with the passing of the new ordinance that had encroached into the zone. Ms. Cromwell advised they were a complaint-based system. She said she had noticed in her daily driving that more than 60% of the intersections had some encroachment of vegetation that obscured clear vision. She said they had received quite a few clear vision complaints already, and they would be dealing with how to manage the new standards. Ms. Cromwell said she would recommend that Council ask staff to come back in one year and report how they were doing. Councilmember Pitman said he was concerned that trees would start being “slashed”. Ms. Cromwell advised that trees were exempt if the diameter of the trunk was a foot or less. She said bottom branches could be trimmed up to eight feet above the sidewalk level and would not be infringing on the clear vision area. She said it was the shrubs and other things that would grow over 30 inches and not be able to be trimmed like a tree. She said evergreen trees could successfully be trimmed up eight feet. Councilmember McCall said she felt the proposed changes were very good, and they would improve traffic enforcement and traffic safety. She said in the citizens survey and the community conversations it was clearly a major issue for people not feeling safe walking, biking, etc. Councilmember McCall commended the staff on all their hard work. She referenced the intersection of Virginia Lane and Rimrock Road where it was evident the intersection was unsafe. She asked if the City would be at great risk for a lawsuit if a severe accident occurred. Attorney Brooks advised he would need to research the question and consult with the Department of Transportation in Helena. He said he preferred to be very thorough with his answer.

The public hearing was opened.

- **Joanna Anderson, 942 Dixon Street**, said she lived on a small curve with a slight bulge in the road. She said she received a complaint of clear vision with her bushes and trees and was asked to cut them. She said she could not understand how the curve could be considered an intersection, and read the description of an intersection from the current City Code and the Montana Code Annotated. She said where she lived on Dixon Street did not intersect any other street. Ms. Anderson advised that even though she was told she no longer had to cut her trees, she felt as though she was being pushed around because someone complained and did not like her trees. She said Dixon was a dead-end street and not an intersection. Mayor Tussing asked Ms. Cromwell if Ms. Anderson’s problem would be resolved with the new ordinance. Ms. Cromwell advised there was no longer an issue. She said they applied the new 80’ x 80’ measuring exactly from the

intersecting points of the centerlines. She said the clear vision was outside of Ms. Anderson's split-rail fence. Mayor Tussing asked if Ms. Anderson would be compliant if the ordinance was passed that evening. Ms. Cromwell said that was correct.

Councilmember Pitman asked Ms. Cromwell what the appeal process was in specific situations like Ms. Anderson's. Ms. Cromwell said if a person received a notice of violation they did not agree with, they could appeal to the Board of Adjustment and present why they felt they were not in violation. If the person was not happy with the Board of Adjustment's ruling, they could appeal to the district court. She said an alternative would be to wait for a citation to be issued and make the argument in front of the judge. Councilmember Astle asked if there was a definition of an intersection that covered a curved road. Ms. Cromwell said if a radius was 100 feet or less, it met the definition of an intersection. She said the Montana Code Annotated's definition of an intersection had been adopted into the City Code under Traffic Safety Section 24, and basically said any roads where there may be traffic conflict from opposing traffic is an intersection. She said the proposed code defined 'intersection' as anything with a radius of 100 feet or less.

There were no other speakers, and the public hearing was closed. Councilmember Ruegamer moved for approval, seconded by Councilmember Astle. Councilmember Brewster commented that as the smaller-lot subdivisions were built, the 110-foot clearance at an uncontrolled intersection in a 25 mph zone would take out the front of people's houses and take away opportunity for vegetation. He said it would be worthwhile sometime in the future to look at some of the zoning classes and see if that could be 'folded into' the ordinance so people could have something in their front yards. Planning Director Beaudry said they take into account the clear vision requirements in their new subdivisions, and very typically corner lots are platted much larger than the interior lots. She said they required clear vision triangles to be shown on the final plat. Councilmember Brewster asked what they did about the older ones that were not platted that way. Ms. Beaudry said with the uncontrolled intersections, most of them had not changed with the new regulations so the existing situation would continue. On a voice vote, the motion was unanimously approved.

**12. PUBLIC COMMENT** on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.*)

- **Dennis Himmelberger, 233 Swords Lane**, expressed his concern over the street parking problems in the area of 10th Street West and Custer Avenue. He said he owned property on the corner of 10<sup>th</sup> Street West and Custer Avenue, and the problem existed because of a business located at 928 Broadwater Avenue, which was a complex that included several businesses. He said one of the businesses was a cosmetology school that had recently increased its number of students from 90 to 140, and the students were parking in the street in the residential areas around the school. He said he had visited with the owners of the business about the problem at least a half dozen times, but there did not seem to be a will to voluntarily address the situation. He said he had also visited with the Planning Division and several Councilmembers about it. He said the problem was as minor as not being able to get the curbs swept to not having parking available for his tenants. He said in visiting with several realtors, parking problems can decrease

property values from 10 to 20 percent. Mr. Himmelberger asked for the Council's assistance in remedying the problem. Councilmember Brewster said the same problem had been looked at a number of years earlier in other areas, and the only solution was permit parking. He asked Mr. Himmelberger if he and his neighbors would support having to have a permit to park in front of their houses. Mr. Himmelberger said he was reluctant to speak for anyone else, but it would be something he would consider. He said he had looked at other towns, and Helena and Missoula had different signs that said "resident parking only" or "two-hour parking" limits. Councilmember Pitman asked what the process would be to implement special parking. City Administrator Volek said they would need to have an engineering study done to see what was available, and if something was available, it would become an enforcement issue. Councilmember Gaghen said the same problems existed around MSU-B, the hospitals, and Senior High, and it would not be an easy fix. Mr. Himmelberger said he agreed it would not be a simple fix. Councilmember Ruegamer said Mr. Himmelberger's situation was unique, unlike the hospitals or MSU-B, and he would propose a council initiative to learn more about it and try to resolve the problem.

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

#### **COUNCIL INITIATIVES:**

- **Ruegamer:** Moved to have staff look into the parking problem in the area of 10th Avenue West and Custer Avenue, seconded by Councilmember Veis. He asked staff to find out if the cosmetology school at 928 Broadwater Avenue was legal; if they were legal, were they providing adequate parking for the students; and what the viability of "permit parking only" signs would be. The motion was seconded by Councilmember Veis. Councilmember McCall said she felt it should be looked at in more depth and not just at that particular location. Councilmember Brewster said the same problem was discussed several years earlier, and the information should still be available. Councilmember Astle said if they were to enforce parking permits in Mr. Himmelberger's area, they needed to do it in the other areas that had the same problem. Mayor Tussing said he would support the initiative to get it started and then see where it went. On a voice vote, the motion was unanimously approved.
- **Pitman:** Moved to have staff bring to Council on 11/9/09 an emergency ordinance restricting the placement of businesses selling medical marijuana in the city limits, seconded by Councilmember McCall. Mayor Tussing asked what type of zoning would currently be required in order to operate that type of business. Ms. Cromwell said under home occupation rules, it could not be a retail business where customers come to the home to buy products, but it could be operated like people who sell Avon or Tupperware or anything over the internet. She said it could be done in any Neighborhood Commercial, Community Commercial, Highway Commercial, Controlled Industrial, and Heavy Industrial Zone, and staff would look at it the same way they would look at any retail business such as a pharmacy. Ms. Cromwell advised they had prepared a very rough draft of an interim ordinance should Council choose to initiate it. Councilmember Ruegamer asked if there was already an ordinance in place. Ms. Cromwell said they would categorize it in their Standard Industrial Classification. Councilmember Ruegamer

commented marijuana was a “bugaboo” and you could not be for it. He said people did not go to the place they buy it and use it there; they took it home. He said people who used it had terrible diseases and did not use it to get high; they used it to ‘stay even’ and lessen their pain. Mayor Tussing asked Attorney Brooks if a person had a medical marijuana card could they smoke it anywhere they wanted. Attorney Brooks said as long as a person complied with the medical marijuana statute, they could unless it was in a place where there was a smoking ban. Attorney Brooks said he would like to emphasize that Council was struggling with a very new bill just passed by the legislature and there would be things that needed to be researched. Mayor Tussing asked what latitude the City would have to impose stricter regulations, such as making it illegal to smoke marijuana in public. Attorney Brooks said their self-governing powers were limited, especially when the state had a law in place that was very specific. Mayor Tussing asked if there would be any point in passing an ordinance on where it could be sold if the people who had it could smoke marijuana anywhere they wanted. Attorney Brooks said that was an issue that would need to be thoroughly researched. Councilmember Ruegamer asked if the smoking ban would cover medical marijuana and if it would fall under driving while being impaired. Attorney Brooks said he assumed it would. Councilmember McCall asked Attorney Brooks if the date of November 9 would give them enough time. Attorney Brooks said probably not for a thorough legal research but they would do their best. He said by statute Council could extend interim or emergency ordinances. On a voice vote, the motion was approved 8 to 1. Councilmember Ruegamer voted 'no'.

- **Pitman:** Moved to have staff revisit the wording in the Social Host Ordinance and present it at a work session, seconded by Councilmember Astle. He said even though they were assured that landlords were exempt from being held responsible for what their tenants were doing, it was not the way the wording seemed to be. On a voice vote, the motion was unanimously approved.
- **Gaghen:** Moved to establish an ad hoc committee to determine the best way to deal with distracted driving caused by texting and cell phone usage, seconded by Councilmember Astle. Councilmember Gaghen asked Ms. Volek if it could be done by November 9th. Mayor Tussing said they would only be creating the committee on November 9 and then they could start advertising for members. Mayor Tussing said there had been some discussion on including high school kids on the committee and asked if the motion was that staff bring back the makeup of the committee. Councilmember Gaghen said she was not sure but thought it would be important to have judicial, legal, and public input. Attorney Brooks said according to ordinances on advisory council membership, there were four basic items the Council would need to determine – (1) the purpose or charge; (2) the scope of responsibilities; (3) composition of the committee by number and type of person; and (4) duration of the committee. On a voice vote, the motion was unanimously approved.

**ADJOURN** - The meeting adjourned at 8:48 p.m.