

**REGULAR MEETING OF THE BILLINGS CITY COUNCIL**  
**September 27, 2010**

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 Thomas Hanel called the meeting to order at 6:30 p.m. and served as the meeting's presiding officer. Councilmember Pitman gave the invocation.

**ROLL CALL** - Councilmembers present on roll call were: Ronquillo, Gaghen, Pitman, Cimmino, McFadden, Ruegamer, McCall, Ulledalen, and Astle. Councilmember Clark was excused.

**MINUTES:** September 13, 2010, approved as distributed.

**COURTESIES** - Mayor Hanel recognized the many local citizens who organized the recent Montana Governor's Cup.

**PROCLAMATIONS** - National PA Week Proclamation, October 6-12, 2010.

**ADMINISTRATOR REPORTS - TINA VOLEK**

- Ms. Volek advised that a copy of the Children, Families, Health, and Human Services Interim Committee's Summary of Medical Marijuana Review Process and Bill Drafts was on Council's desks and filed in the ex-parte notebook in the back of the room.
- Ms. Volek advised that as of 5:00 that evening, 199 e-mails had been sent to the Mayor & Council since Thursday in favor of the Zoning Commission's recommendation to ban medical marijuana inside the city limits.
- Ms. Volek advised that as of 5:00 that evening, 5 e-mails had been sent to the Mayor & Council since Thursday against the Zoning Commission's recommendation to ban medical marijuana inside the city limits.

She advised all e-mails had been posted to the City's webpage and were available in the ex-parte notebook in the back of the room.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Item #1 ONLY. Speaker sign-in required.** (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. **Bid Awards:**

1. **Landfill Track-Type Tractor Purchase for Solid Waste Division.**

(Opened 9/14/2010) Recommend Tractor & Equipment Company; \$433,997.

2. **Purchase of City Vehicles in the Car and Light Truck Class.** (Opened 9/14/2010) Recommend Fremont Motors for Schedules II, VIII & XIV without trades - \$81,301.20; Archie Cochrane Ford for Schedules I, III, VI & VII without trades and Schedules V and XI with trades - \$242,138.00; Bison Ford for Schedules IV, IX, X, XII & XIII without trades - \$193,031.70.

3. **Oil and Lubrication Products for City Equipment.** (Opened 9/14/2010) Recommend A & I Distributors; \$112,461.65.

4. **Gasoline and Diesel Fuel Products for City Equipment.** (Opened 9/14/2010) Recommend Town and Country Supply Association for the next 48 months.

5. **W.O. 09-14 Wicks Lane and St. Andrews Drive Traffic Signal.** (Opened 9/14/2010) Recommend Ace Electric; \$107,918.

6. **SID 1370 Interlachen Drive Storm Drain, Curb/Gutter, Asphalt Restoration, Sidewalks, and Drive Approaches.** (Opened 9/14/2010) Recommend Knife River-Billings; \$154,235.

B. **Contract Renewal for Alternative Modes Coordinator Services.** 10/1/2010 through 9/30/2011; \$68,000 for one year (\$42,000 Federal Funding and \$26,000 Local Match from Planning Division.)

C. **Amendment #4, W.O. 03-07: Alkali Creek Multi-Use Path - Professional Services Contract,** Dowl HKM, \$32,463.

D. **Approval** of additional budget authority for 2010 JAG Grant; \$13,980.

E. **Approval of Quarterly Report for Pledged Collateral** for First Interstate Bank Certificates of Deposit, US Bank Certificates of Deposit, and US Bank Repurchase Account.

F. **Approval of Semi Annual Investment Report.**

G. **Street Closures:**

**1. Harvestfest Street Closure Time Extension.** Saturday, October 9, 2010, from 6:00 a.m. to 9:00 p.m.; N. 28th Street between 1st and 3rd Avenues North and 2nd Avenue North from the alley west of N. 27th Street to N. 29th Street.

**2. Yellowstone Family Dental 5K Fun Run/Walk.** October 16, 2010, from 9:00 a.m. to 12:30 p.m.; beginning on the 1600 block of Rimrock heading east to Virginia Lane, right on Virginia to Park Lane; right on Highwood Drive; back to Rimrock to Wisconsin; right on Yale; right on 13th to Rimrock and finishing in the parking lot of Yellowstone Family Dental.

**H. Acceptance of Donation** from BikeNet to the Main Street Pedestrian Underpass Project to provide a portion of the local matching funds; up to \$36,000.

**I. Resolution of Intent #10-18997 to Exclude Property** to de-annex a portion of the Briarwood Planned Unit Development property described as Tract 2A of C/S 2544 Amended; and set a public hearing date of October 25, 2010.

**J. Resolution #10-18998** re-spreading assessments on SID 1386, Street and Storm Improvements to East and West MacDonald Drive. (Delayed from 9/13/2010)

**K. Approval** of Settlement Agreement with Alternatives, Inc. dismissing the annual \$40,000 payment in lieu of taxes assessment associated with Special Review #813, dated 5/22/2006.

**L. Approval** of Settlement Agreement for Human Rights Bureau Longevity Discrimination Claim; estimated settlement amount -\$87,100.

**M. Approval** of Amended Certificate of Survey 3364 accepting dedication of Avenue E and the Development Agreement for proposed construction of a Children's Clinic at the intersection of Avenue E and Zimmerman Trail.

**N. Final Plat of Lake Hills Subdivision, 32nd Filing.**

**O. Bills and Payroll**

1. August 27, 2010

2. September 3, 2010

Councilmember Ronquillo separated Items A5, K, and L. Councilmember Cimmino separated Items O1 and O2. Mayor Hanel said he also wanted to separate Item K. Councilmember McCall moved for approval of the Consent Agenda with the exceptions of Items A5, K, L, O1, and O2, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

Councilmember Ronquillo referenced Item A5 and asked Public Works Director Dave Mumford about the cost. He said when he and Councilmember Gaghen inquired

about a stoplight on State Avenue, they were told the cost would be \$400,000 and asked why the difference. Mr. Mumford advised the design work was done, the road was already constructed with turn lanes, power was in place, and all widening and subsurface work had been done. He said all they would be doing on Wicks and St. Andrews would be installing mast arms and the control cabinet. Councilmember Cimmino added that the subject location was a T-intersection controlled by a single stop sign, which could also make a difference. She said she would be abstaining from the vote because she worked for the consulting firm who did the study on the proposed traffic light. Councilmember Pitman said it was an initiative he had proposed about a year before, and it would assist the fire trucks getting onto Wicks from the fire station located on the corner. Councilmember McCall moved for approval, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9 to 0.

Councilmember Ronquillo referenced Item K and said he would not support the agreement with Alternatives. He said when they came to the Council they agreed to the \$40,000 and now they were backing out on it. He commented they received better police service than anyone in the room who paid taxes. He said if someone called the police with a broken window on their car, the police would take their name, and that was about it. He said if these people had a fight down there, they called two officers who dropped everything and responded immediately. Councilmember Ronquillo said he still had a hard time with the businesses that made good money and came in and used the City's resources without paying the City a dime.

Mayor Hanel advised he would remain silent on Item K and said he had separated himself earlier. He asked Deputy Mayor Ed Ulledalen to take over for Item K. Deputy Mayor Ulledalen asked for action on Item K.

Councilmember Ruegamer moved for approval of Item K, seconded by Councilmember Pitman. Councilmember Ruegamer told Councilmember Ronquillo he was on the Council then, too; and Councilmember Ronquillo had warned them at the time that the Alternatives folks were not always very forthcoming. He said what he remembered, just for the folks that were not there at the time, they agreed to the payment in lieu of taxes of \$40,000 a year, and did not have the integrity or courage to say no; they walked out of here and got a lawyer and that was the kind of business. He said so anytime they dealt with Alternatives, Inc. in the future they should do it on paper with lawyers.

Councilmember Cimmino stated for the record that since she did not attend or participate in any of the closed sessions regarding the settlement, she would abstain from voting on the agreement. She also noted for the record that during the whole course of time the past four years, she had abstained from all action on the matter.

On a roll call vote, the motion for approval of the Settlement Agreement with Alternatives, Inc. failed 5 to 3. Councilmembers Ronquillo, Gaghen, McFadden, McCall, and Astle voted 'no'. Councilmembers Pitman, Ruegamer, and Ulledalen voted 'yes'.

Councilmember Ronquillo recused himself from Item L. He said he was not in any of the meetings and did not know what took place in the meetings.

Councilmember Astle moved for approval of Item L, seconded by Councilmember Ruegamer. Councilmember Ruegamer asked City Administrator Volek for the pay range of the people in the settlement. Ms. Volek advised it would be in the 30's to low 60's. Councilmember Ruegamer said the City of Billings paid well and paid within the

parameters of the private sector with good or better benefits than the private sector and good working conditions. He said all of them had fine working conditions, good benefits, good pay; and when they turned around and sued the city, he had to think - #1, it was greed to get a few bucks without doing anything or they did not like themselves; therefore, they did not like their job; therefore, they sued the city. He said it was dissatisfaction. He said he worked with people like that in the private sector, and it was very discouraging to work with them. He said it was a disloyal thing. He said the City had always treated everyone well, and they even treated him well by paying him \$600 to do this. He said he felt when you sued your employer you ought to be looking at finding another job if you did not like what you were doing.

Councilmember Cimmino said she would not be supporting the motion in lieu of the fact that there was no formal court ruling or any findings whatsoever the City had committed any wrongdoing.

Councilmember Ronquillo began to speak on the item, but Mayor Hanel advised him that since he had recused himself earlier, he could not comment.

Mayor Hanel said he wanted to comment in respect of Councilmember Ruegamer's testimony. He said he certainly understood and agreed with him that he felt City employees were fairly compensated and the working conditions were very good. He said in respect of Councilmember Cimmino's comment regarding court cases; a court case was exactly what they wanted to avoid. Mayor Hanel said in that particular manner, if a situation had been identified where there had been an error and the recommendation was that the error be resolved on a level that they were at that evening, he said he believed in the best interest of the city, citizens, taxpayers, and employees, that they resolve it at this level and not have it escalate to a higher level. Mayor Hanel said he would speak in favor of the motion.

Councilmember McFadden said just to clarify things for the public this would be what would commonly be referred to as an out of court settlement.

Councilmember Pitman said he too felt it was "biting the hand that feeds you." He said he would support it reluctantly and unfortunately and assured the Council he would be coming up with an initiative to follow up on it.

On a voice vote, the motion was approved 8 to 1. Councilmembers Gaghen, Pitman, McFadden, Ruegamer, McCall, Ulledalen, Astle, and Mayor Hanel voted 'yes'. Councilmember Cimmino voted 'no'.

Councilmember Cimmino explained that for Item O1, she would be abstaining from voting on Invoice #736392 and for Item O2, she would be abstaining from voting on Invoice #736623, due to employment with the consulting firm.

Councilmember Astle moved for approval of Items O1 and O2, seconded by Councilmember Pitman. On a voice vote, the motion was approved 9 to 0.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING to receive input on the City's FY2009-2010 Draft Comprehensive Annual Performance Evaluation Report (CAPER) Community Development Block Grant (CDBG), and HOME Programs. No Action is Required.**

Community Development Manager Brenda Beckett began her presentation explaining that each year the City of Billings was required to report on the results of its

federally funded CDBG and HOME programs and submit a report to HUD within 90 days of the end of the program year, June 30, 2010. She said as part of the report process, the City of Billings must make the report available for public comment for a minimum 15-day period and hold a public hearing on the performance during the period. Ms. Beckett said the Annual Performance Report reported on the City's progress in achieving the goals of its Five Year Consolidated Plan. She said the period covered by this year's report represented progress under the City's Five Year Consolidated Plan for fiscal years 2005-2009. She said the City received \$711,449 in new federal CDBG funding and \$538,612 in new HOME funding for FY2009-2010 activities. The City also received an additional \$190,430 in stimulus funds through the American Recovery and Reinvestment Act of 2009 for weatherization activities. Ms. Beckett listed the five strategies of the Consolidated Plan, as follows.

**Strategy #1**

Promote the **preservation of the existing supply** of affordable housing in the community

**Strategy #2**

Promote the preservation and **revitalization of the community's older neighborhoods** where the affordable housing stock is located

**Strategy #3**

Promote **new affordable housing** opportunities

**Strategy #4**

Work as an **active partner** with non-profits, neighborhood groups, and others to address housing, community and neighborhood needs

**Strategy #5**

Improve the **economic conditions** of lower-income households in the community

Ms. Beckett advised the CDBG and HOME budget the last five years was over \$8 million. She showed a chart of the total fund leveraging between Project Homeless Connect, VISTA Project Support, VISTA Value of Members, VISTA Resources Raised, Homeless Initiatives – Small, Housing Projects, Fair Housing Grants, and Small Projects Grants.

Ms. Beckett showed before and after pictures of renovations of existing affordable housing and new affordable housing opportunities, such as Whitetail Subdivision, Westchester Square, and Southern Lights. She reported preservation of older neighborhoods had included special assessment grants for 23 households, a tree program for 64 households, and other projects such as Central Park Playground, Friendship House Computer Room, Young Families Early Head Start Building Expansions, and the Milton Road Drain. Ms. Beckett advised between 1992 and 2008, there had been 238 public service projects and \$1,976,562 had been committed to public services.

Ms. Beckett stated that in FY09-10 their homelessness Achievements included the creation of 85 new housing units, employment of 20 individuals, 1,336 individuals and families were housed, 28,962 individuals and families received services, 381 housing units were rehabilitated, and 60 households achieved homeownership.

There were no questions for Ms. Beckett. City Administrator Volek advised there was no council action required.

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

**3. PUBLIC HEARING AND RESOLUTION #10-18999 reducing the arterial construction fee assessments providing relief to commercially-zoned properties being used solely as owner-occupied single family residences located at 2104 Bench Boulevard, 107 South 8th Street West, 922 North 30th Street, 233 Swords Lane, and 704 Logan Lane. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina Volek advised this was an annual item, and 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 of Item 3, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**4. PUBLIC HEARING AND RESOLUTION #10-19000 authorizing filing of the annual Federal Transit Administration Section 5307 Grant. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina Volek advised this was an annual item, and 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 Astle moved for approval of Item 4, seconded by Councilmember McCall. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND RESOLUTION #10-19001 setting mill levy rates for the Public Safety Fund, General Obligation Debt Service Parks, General Obligation Debt Service Streets, General Obligation Debt Service Series A Baseball Stadium, and General Obligation Debt Service Series B Baseball Stadium for tax year 2010. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina 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 McFadden moved for approval of Item 5, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**6. PUBLIC HEARING AND RESOLUTION #10-19002 recapturing the 2009 mill levies for Public Safety II for tax year 2010. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** City Administrator Tina 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 Ulledalen moved for approval of Item 6, seconded by Councilmember Astle. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING AND RESOLUTION #10-19003 assessing annual fee for encumbrances, obstructions, or encroachments on, over, across or above the streets, avenues, sidewalks, or alleys of the City of Billings. Staff recommends approval. (Action: approval or disapproval of staff recommendation).** City Administrator Tina 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 Cimmino moved for approval of Item 7, seconded by Councilmember Pitman. On a voice vote, the motion was unanimously approved.

**8. PUBLIC HEARING AND RESOLUTION #10-19004 assessing the cost of cutting and/or exterminating weeds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Planning Director Candi Beaudry said she was happy to report of the 1,758 cases they had this year, which was 500 more cases than last year, they had a 93% compliance rate. She said 120 properties had to be mowed. Ms. Beaudry advised 24 property owners had already paid, and 10 bills had been voided because they had run into a problem where there was a transfer of ownership between the time the property owners were notified and the City went out to mow. She said there were currently two cases in litigation. Ms. Beaudry said she had received a number of letters protesting the charges within the last week because they had notified everyone being assessed of the public hearing. She said there may be additional voids that she had not had a chance to look into yet. Ms. Beaudry commented they had a very, very busy weed season with only two enforcement officers, and she felt they did an excellent job.

Councilmember Ruegamer asked who did the mowing. Ms. Beaudry said last year was the beginning of the contract with the Parks Department so they no longer used a private contractor. Councilmember Ruegamer said he had received a call from a property owner who said he never received a notice, and asked how he should respond to the caller. Ms. Beaudry said staff would go back to verify that a notice was sent and sent to the address listed on the tax rolls.

Councilmember McFadden asked if there was a special program to help property owners who were handicapped or had a special need and could not cut their own weeds. Ms. Beaudry advised brochures were sent with phone numbers of contractors, and some of the contractors provided the service at no charge. She said the property owners could also contact city staff and ask for some relief for time or until they could contact a contractor to do the mowing. She said they were always willing to work with the individuals.

The public hearing was opened.

- **David Standish, 1002 Parkhill Drive**, said he was a local physician and had been practicing in Billings for 20 years. He said last fall he helped his daughter



purchase her first house at 730 Lewis Avenue. He said his daughter was a nursing student and married to a man who was deployed to Iraq last week. Mr. Standish said the City sent notification to his house while he was on vacation, and by the time he had returned from vacation, the property had been cleared by the City. He said the City sent them a bill for \$235 to mow his daughter's back yard. Mr. Standish said he objected to it primarily because the City never notified his daughter, the owner of the property. He said the inspector who went to the property did not take the opportunity to put notification on the house, or knock on the door, or mail a letter to the property owner. Mr. Standish said he also objected because the policy was not uniformly enforced because the property right across the alley still had weeds that were three and four feet high. He said he drove by Centennial Park last weekend, and there were weeds in Centennial Park higher than the policy allowed, so the City was not following its own policy. Mr. Standish said he also objected to the excessive price of \$235 to mow a small back yard. He said that amount was more than his daughter's monthly food budget and something she could not afford as a nursing student.

Councilmember Gaghen asked Mr. Standish if he was aware it was a complaint-driven process, and the City did not go out and survey neighborhoods for weeds that needed cut. Mr. Standish said nothing in the notice sent by the City indicated there had been a complaint. Councilmember Gaghen said she felt there should be communication in the notice that a complaint had been received. Mr. Standish said he felt it was a subjective opinion whether a lawn needed to be mowed or not.

Councilmember Pitman asked Mr. Standish's daughter if she could confirm the pictures being shown were of her backyard. She said it was her back yard.

Councilmember McFadden asked if the bill included how many man-hours were required and what special equipment was needed to clean up the backyard. Mr. Standish said he did not have the bill in front of him but there was a \$100 charge for the mowing and the rest was for penalties. Mr. Standish advised the photograph being shown looked much worse than it actually was, plus it was a backyard that could not be seen from the street, only the alley. He said the plants in the back of the picture were actually on the neighbor's property.

- **Julia Standish, 1002 Parkhill Drive**, said they received the notice and read the booklet. She said they sent back an objection letter, dated September 7, 2010, and received a response on September 13, 2010, saying the fees would not be waived. Ms. Standish said the biggest complaint she had was that the Warranty Deed had their address on it, but it was only for mailing purposes. She said she went to the title company and told them the legal address for the tax code for the house should be 730 Lewis. She said her biggest complaint was that the notice went to their house and not her daughter's house at 730 Lewis. Ms. Standish said her research showed that the realty transfer certificate that went to the Department of Revenue was where the wrong address was put down. She said it was the wrong address to begin with and if that would not have happened, the communication would have happened. She said they left on vacation for two months and had it scheduled to be cleaned up. Ms. Standish said when the

person they hired went to do the work, it had already been done and they were confused who had done it and when it was suppose to be done. She said they could not check their mail because they were on vacation. Ms. Standish said it was a miscommunication, and it would have been cleaned up if the City had not come before their scheduled clean-up. She said if they would go look at it now, it was cleaned up, and they even took some of the trees out.

Councilmember Ruegamer said he was confused with all of the addresses and asked if the notice was sent to her house. Ms. Standish said it was sent to the address on the City files. Councilmember Ruegamer asked again where the notice was sent. David Standish responded that it was sent to 1002 Parkhill Drive. Councilmember Ruegamer asked if 1002 Parkhill Drive was on the deed. Mr. Standish said it was handwritten on the deed. Councilmember Ruegamer asked Ms. Beaudry to clarify where she obtained the addresses. Ms. Beaudry advised the notifications were sent to the addresses listed with the Department of Revenue on the Yellowstone County Website tax rolls. She said the primary owners were listed as David and Rosaline Standish at 1002 Parkhill. She said an additional owner was listed as Julia Standish, and no address was listed for the additional owner.

Councilmember McFadden asked Ms. Beaudry if there was any remedy to reverse a matter without formal action of the City Council if the City made a mistake. Ms. Beaudry advised the Standishes followed the procedure outlined in the code to appeal directly to her because she had the administrative ability to waive charges. She said she always went back and reviewed the file to ensure the City actually performed everything in accordance with code. She said she felt there was nothing wrong with the notification, timing, mowing, and the billing in this case. She said if she had found an error, she would have written a letter of apology and notified them their bill would be waived. Councilmember McFadden asked if their bill was up for waiver. Ms. Beaudry said it was not by her; but the Council could, and in the past had, waived assessments.

Mayor Hanel asked if the bill had been paid. Ms. Beaudry advised it had not.

Councilmember Astle asked if the tax statements for the property were mailed to 1002 Parkhill. Ms. Standish advised in her research she found out that the wrong address was on the City record. Councilmember Astle asked about the tax statement mailed out from the Department of Revenue every fall. David Standish said his daughter had not owned the property for a year yet, so she had not received a tax statement. Councilmember Astle asked if the address on file with the state and county was 1002 Parkhill Drive. Ms. Standish said it was, but it was not suppose to be like that. Councilmember Astle said the City could not know that they had sold it to their daughter. Ms. Standish said when they bought the house, it was always suppose to be 730 Lewis so at the time they bought the house, it was filed wrong to begin with. She said someone else hand wrote their address in and the legal statement said it was suppose to be 730 Lewis. She said it was at the very beginning. Councilmember Astle said it would be the mistake of the title company, the state and the county. Ms. Standish said that was correct.

City Administrator Volek pointed out that it was not a document the City filed and said it was usually filed by the title company or some other individual, so the City relied on the record that was given to Yellowstone County and Yellowstone County relied on the record as presented to them.

- **Rosa Sherman, 730 Lewis Avenue**, said her parents had covered everything about their complaint. She said she had official letters from the IRS that went directly to 730 Lewis Avenue and not to the home of her parents, which is why she did not understand why she was not notified at her house.

Councilmember Pitman asked Ms. Beaudry how tall the grass could grow before it needed to be mowed according to City Code. Ms. Beaudry advised it was 12 inches.

- **Larry Liptac, 2122 East Echo Drive**, said he was representing Fred Besel, his neighbor. Mr. Liptac distributed a handout to the Council. He said they received a letter from Code Enforcement on Mr. Besel's lot located on South 28<sup>th</sup> and 10<sup>th</sup>. He said the letter directed them to "cut, destroy, or remove the weeds and/or offending vegetation within ten days." Mr. Liptac advised on the 18<sup>th</sup>, he and Fred re-sprayed the lot with Roundup and Clarity. He said the Roundup worked on the general weeds and the Clarity was to take care of the tall weed called Kochia. He said they heard from Fred's neighbors that the City had come in and cut the weeds somewhere around the 20<sup>th</sup>. He said he had looked at the weeds on the 20<sup>th</sup>, and they were all showing signs of destruction. Mr. Liptac advised that immediately after Fred had heard from his neighbors, they went to Ms. Beaudry's office to tell her they had sprayed the weeds and taken care of the problem and complied with her directive to "cut, destroy, or remove." He said nowhere did the notice say the weeds had to be removed. Mr. Liptac said he had worked in weed control for 25 years, and to destroy weed meant to kill it, not mow it. He said they sent a letter to Ms. Beaudry on July 26<sup>th</sup> that said they had complied with the notice and that the Roundup typically took about seven days to take effect. He said they received a letter on August 2<sup>nd</sup> that stated in bold print "the weeds on the vacant lot need to be cut". Mr. Liptac showed photographs of the lot and the irrigation ditch that ran across the back of the lot. He said nobody but a fool would spray weeds on an irrigation ditch with running water. He said they sprayed the weeds in the foreground and showed where the weeds were starting to twist and turn brown. He said the picture from 10<sup>th</sup> Avenue showed almost 90% bare ground because they treated it in early spring and really cleaned it up. Mr. Liptac asked that the City waive the charges for \$402 because the lot had 90% bare ground.

Councilmember Ruegamer said he had the same problem in part of his alley and he sprayed the weeds, waited a couple days and then cut them. He asked Mr. Liptac if he could have done the same thing. Mr. Liptac said he would wait seven to ten days before cutting the weeds because he wanted the roots to be dead. He said he preferred to have the Roundup kill the root before he cut the weeds.

Councilmember Ronquillo asked if they were able to see Candi when they went by her office. Mr. Liptac said they were not. He said they had gone to her office twice and the secretary told them they needed to respond in writing both

times. Councilmember Ronquillo asked who had told them that. Mr. Liptac advised it was the secretary who sat outside the door in the Code Enforcement area.

Councilmember Ulledalen asked how long Mr. Besel had owned the property and if he had a plan for regularly mowing it because the weeds would grow every year. Mr. Liptac said they treated it at least twice a year. He said they were after bare ground and they were 90% there.

Councilmember McCall asked Ms. Beaudry to clarify what happened when they came to see her. Ms. Beaudry said she was not entirely sure what their code enforcement clerk told them. She said according to code, they needed to appeal to her in writing. She said whether she was there or not, she could not say, but they certainly did not turn people away. Councilmember McCall asked Ms. Beaudry if she was aware they had been turned away twice by the clerk. Ms. Beaudry said she was not aware of it.

Councilmember Pitman said he had a problem that the weeds grew past 12 inches but because the notice had the wording 'or destroy' as an option, he could see the misunderstanding.

Councilmember Ronquillo said he had spoken with the ditch rider about spraying along the ditch, and he was told nothing along the ditch was ever sprayed, and they took care of the weeds themselves.

Councilmember Ulledalen commented that the point that needed made clear was that if there was a weed problem and someone complained about the height of the weeds, the weeds needed to be removed or mowed. He said it needed to be clear to the property owner that someone had complained about the height of the weeds and wanted them eliminated. Mr. Liptac said if that was the case, they would not have had a problem. He said both he and Mr. Besel were good citizens, good residents, and proud of the City.

- **Peter Schmidt, 123 Grand Avenue**, said he was representing one of his properties located at 1215 8<sup>th</sup> Street West. He distributed a handout outlining the sequence of events on the property. Mr. Schmidt said they had been proactive in the maintenance attempts of the property, and on May 12, 2010, their property management company sent a 14-day notice to the tenant to mow the lawn. He said the first notice they received was a statement from the City on June 8<sup>th</sup> for \$252.88. Mr. Schmidt said contacting the City was very difficult because the phone number on the statement was not accurate in finding the person to discuss the matter. He said the Code Enforcement Clerk named Lisa said he had to write a protest letter to Candi Beaudry within 7 days or he would be unable to further protest the issue at any time. He said he wrote a letter on June 15<sup>th</sup> protesting the charge due to lack of receipt of a notice. He said on June 25<sup>th</sup>, following no response to the June 15<sup>th</sup> letter to Ms. Beaudry, he wrote a letter to the City Administrator about the matter and the mess left behind by the grass cutters and received no response. Mr. Schmidt said he received response from Candi Beaudry on July 14<sup>th</sup> apologizing for not discovering his letter a month earlier but said she would not waive the charge because a letter had been sent to Mr. Schmidt and his wife, Sue Ann Schmidt, on May 6<sup>th</sup>. Mr. Schmidt said he had never had a wife by the name of Sue Ann Schmidt and said Ms. Beaudry was

making baseless assumptions. He said the names of the legal owners were Peter Schmidt and Sue Ann McMahon. Mr. Schmidt said a second letter of protest was sent on September 20<sup>th</sup> requesting proof of mailing and proof of receipt of notification. He said there had been no response from Ms. Beaudry. He said he noticed an undocumented \$40 inspector fee, which was not a documented part of the resolution. Mr. Schmidt said he was requesting vacating the assessment based on no documentation of mailing or receipt of violation notification, inaccurate charge documentations, inaccurate and un-based assumptions, and excessively high fees for such a small parcel. Mr. Schmidt said he felt code enforcement never mailed notification and was trying to cover up their internal issues.

Councilmember Cimmino asked Mr. Schmidt for the final bill on the 638 square feet of lawn. Mr. Schmidt said it was \$252.88. Councilmember Cimmino asked if it was just the front yard. Mr. Schmidt said there was a small portion in the backyard. Mr. Schmidt said the charge was \$150 for mowing, \$37 for a penalty, another \$25 fee, and a \$40 inspector fee.

Councilmember Ulledalen asked Mr. Schmidt if he normally had a game plan for mowing the property. Mr. Schmidt said they sent the tenant a letter on May 12<sup>th</sup> because they knew something had to be done. He said "landlords just cannot go in and do stuff or they were going to get wacked."

Councilmember Ruegamer asked Mr. Schmidt if he could not mow the lawn without the tenant's permission. Mr. Schmidt said he could not and charge them for it. Councilmember Ruegamer said he was not talking about charging the tenant. He said he had a rental, and he could go on the property and mow the lawn. Mr. Schmidt said they could do that; however, the issue was they never received notification.

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

Mayor Hanel asked Council to review the information provided that evening and asked City Administrator Volek to explain the action whether to approve or not approve the financial assessments involved. Ms. Volek advised there were 120 properties that had been mowed and 36 had not been paid, voided, or were in litigation. She said the larger number needed to be approved by Council in order to be posted to the owner's tax bills. She said if the Council wanted to exempt properties, it could do so by an action directing staff; but she encouraged Council to allow staff to post the remaining 120 properties that were mowed to the tax rolls. She said the County Treasurer's Office would need them by approximately October 1<sup>st</sup>.

Councilmember Ruegamer moved for approval of Item 8, seconded by Councilmember Ulledalen.

Councilmember Astle referenced the lot on South 28<sup>th</sup> and said because the word "or" was used instead of "and" in the notification letter, he would prefer it not go to litigation. Ms. Volek said in that case an amendment would be needed to exclude the property.

Councilmember Ruegamer said the City had a system in place where Ms. Beaudry made the decision and if she would have come to Council and said she made

a mistake, he would be inclined to waive the charge. He said he wanted to hear from Ms. Beaudry why she felt a property should be excluded. He also said, as far as the money charged, the City was not in the business of mowing lawns, and he did not care if they charged \$1,000. He said the City had to pay for insurance, equipment, and inspections of the properties and unless something was clearly messed up, he would not be inclined to waive the fee. Councilmember Ruegamer said he felt that none of the testimonies heard that evening deserved waiving.

Councilmember Pitman said he felt this was always the most interesting night of the year, and he remembered tweaking the letter to be kinder and gentler. He said he agreed with Councilmember Astle. Councilmember Pitman moved to amend the original motion and exempt property at 913 South 28<sup>th</sup> Street and directed staff to change the word 'or' to 'and' on the notification letter, seconded by Councilmember Ronquillo.

Councilmember Ronquillo said it was hard for him to understand who would tell people that Candi was not there or they could not see her for one reason or another. He said maybe the people should have been referred to Candi's right-hand person, Nicole Cromwell.

Councilmember Ruegamer said he thought the wording was very clear. He said he sprayed weeds around his house all the time, and it took sometimes a month to kill a weed. He said if he waited until the weeds grew 10 feet tall and died, he would expect the City to come and cut them. He said he did not feel that spraying was the answer unless additional time was requested.

Councilmember Astle said the costs involved were tripled when they hired a private contractor in the past. He said currently the City was using City staff, City equipment, and paying outside the normal course and scope of job duties. He said it was an added duty put on the mowing people, so the costs were not unreasonable. He said the only reason he would vote in favor of the amended motion was because of the word 'or'. He said if it had said 'and', he would have no sympathy.

Councilmember Cimmino said in light of the fact that there were 1,758 cases and 93% were compliant, it meant they had a successful program. She said the three parties who provided testimony for 730 Lewis Avenue, 913 South 28<sup>th</sup>, and 1215 8<sup>th</sup> Street West showed evidence they made a concerted effort to rectify the matter. Councilmember Cimmino moved to amend the amended motion to approve the resolution exempting the three mentioned properties, seconded by Councilmember Gaghen.

Councilmember McFadden agreed that all three properties should be exempt because if they were guilty, they probably would not have come down to the meeting that evening. He said he thought anytime government communicated with people, there was always a chance that bars could get crossed. He said he firmly believed it was the duty of the City Council or other government body to give typical citizens the benefit of the doubt. Councilmember McFadden said he would support the amendment to the amended motion.

Councilmember Gaghen said she was concerned about 730 Lewis because the notice, in error, did not go to the actual residence. She said a lot of it was not the City's fault and obviously some miscommunication had occurred between the title company and realtor. She said the fact that they had arranged for the property to be mowed but

were out of town and their daughter did not get the notice troubled her. She said they seemed conscientious enough to take care of the problem had they been aware.

Councilmember Ruegamer said they could find a lot of reasons not to do it, but he felt most of the people in Billings mowed their lawns and kept their weeds down. He said he cut his neighbor's weeds because he did not like them high but did not want to complain about them. To say if someone came to the meeting they must be telling the truth, the Council could have everyone with a fine come before them. He said the facts would bear out if the fines were given for good reason.

Councilmember McCall asked Ms. Beaudry if she could clarify that staff followed all of the rules. Ms. Beaudry said the notification was sent to the name on the tax rolls that was Peter Schmidt and Sue Ann. She said the tax rolls did not give a last name for Sue Ann so she made the assumption Sue Ann was his wife. She said in that particular case they also notified the tenant. She said she was not sure how they knew who the tenant was; maybe they had his name associated with the property from past actions.

Councilmember Ruegamer asked Ms. Beaudry if she would waive any of the fees based on what she had heard that evening. Ms. Beaudry said she had written letters to all three of the individuals and had made the determination that the City had done nothing incorrect.

On a roll call vote, the motion to amend the amended motion to exempt the properties located at 730 Lewis, 913 S. 28<sup>th</sup> Street, and 1215 8<sup>th</sup> Street West failed 5 to 5. Councilmembers Ronquillo, Gaghen, Cimmino, McFadden, and Mayor Hanel voted in favor of the motion. Councilmembers Pitman, Ruegamer, McCall, Ulledalen and Astle voted against the motion.

On a roll call vote, the amended motion exempting the property at 913 South 28<sup>th</sup> Street was approved 7 to 3. Councilmembers Ronquillo, Gaghen, Pitman, McFadden, McCall, Astle, and Mayor Hanel voted in favor of the amended motion. Councilmembers Cimmino, Ruegamer, and Ulledalen voted against the motion.

On a voice vote, the original motion, as amended, was approved 9 to 1. Councilmember Cimmino voted 'no'.

Mayor Hanel called for a short recess at 8:05 p.m.

Mayor Hanel called the meeting back to order at 8:15 p.m.

**9. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #867: A zone change from Residential 6,000 (R-60) to Neighborhood Commercial (NC) on Lot 6, Block 6, Central Acres Subdivision, 4th Filing, located at 3333 Central Avenue. Paul and Sharon Allen, owners. Zoning Commission recommends approval of the zone change and adoption of the determinations of the 12 criteria. (Action: approval or disapproval of Zoning Commission recommendation).** Zoning Coordinator Nicole Cromwell began her PowerPoint presentation showing a map of the current zoning and photographs of the subject property and the surrounding properties. She advised a pre-application neighborhood meeting was held on July 17, 2010, at the residence of the subject property that was attended by several surrounding property owners and no comments were received by the Planning Division. Ms. Cromwell advised the West Billings Neighborhood Plan recognized the suitability of property on arterial streets for professional offices, limited

commercial uses, and multifamily housing, and the proposed Neighborhood Commercial zoning would allow for all of those uses. She said the Zoning Commission conducted a public hearing on September 7, 2010, and was forwarding a recommendation of approval on a 5-0 vote based on the following 12 criteria.

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following goals of the Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. (Land Use Element Goal, page 6)

The proposed zoning would permit the existing residential use to continue and would allow re-development of the site for offices, service businesses, limited retail or multifamily dwellings. The site has commercial zoning to the south and west and is on a principal arterial street. Residential uses to the east and north should be compatible with the types of uses allowed in the RP zone.

- Contiguous development focused in and around existing population centers. (Land Use Element Goal, page 6)

The proposed zoning would allow the re-development of the property in an area with existing services – promoting an in-fill of an underutilized property.

2. Is the new zoning designed to lessen congestion in the streets?

There should be no effect on traffic congestion. The existing dwelling likely generates 10 or more vehicle trips per day. An office or service business use of the property would increase traffic on Central Avenue but it is constructed as an arterial street and could handle the additional traffic generated. If the new use generates 500 or more new trips per day a traffic accessibility study may be required prior to re-development of the property.

3. Will the new zoning secure safety from fire, panic and other dangers?

The subject property is currently serviced by City Fire and Police. Any re-development would change the type of service needed at the property. There should be no effect on public safety given the proximity to the fire station and existing services provided to the adjacent commercial businesses.

4. Will the new zoning promote health and general welfare?

The proposed zoning would permit the existing single family dwelling to continue and would allow re-development of the property for office, service businesses,



limited retail or multifamily dwellings. The surrounding property values should not be affected by either the continued use or any re-development.

5. Will the new zoning provide adequate light and air?

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. Will the new zoning prevent overcrowding of land?

The proposed zoning, like all zoning districts, contains limitations on the maximum percentage of the lot area that can be covered with structures. The R-60 zone allows 40% lot coverage and the NC zone allows up to 50% lot coverage. The R-60 zone and the NC zone have similar setback requirements.

7. Will the new zoning avoid undue concentration of population?

The new zoning does avoid undue concentration of population. The R-60 zoning allows single family homes on a minimum lot size of 6,000 square feet and two-family dwellings on lots of at least 7,000 square feet. Multifamily dwellings are allowed by special review and this lot could have up to 9 dwelling units by special review. The proposed zoning also allows multifamily dwellings and this lot could have 9 dwelling units.

8. Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?

Transportation: The proposed zoning should not impact the surrounding streets.  
Water and Sewer: The City will provide water and sewer to the property through existing lines.

Schools and Parks: There should be no impact to schools from the proposed zone change.

Fire and Police: The subject property is currently served by the City of Billings fire and police departments.

9. Does the new zoning give reasonable consideration to the character of the district?

The proposed zoning will allow re-development of the property for commercial uses. There are existing commercial uses on the south and west of the location. Residences to the east and north are primarily two-family dwellings and multifamily dwellings. Central Avenue is a principal arterial street with increasing traffic volumes.

10. Does the new zoning give consideration to peculiar suitability of the property for particular uses?

The subject property is suitable for the requested zoning district. The location is on a corner lot within 2 blocks of a high traffic signalized intersection. The new zoning allows the existing residential use to continue and would allow potential re-development for commercial or multifamily uses.

11. Was the new zoning adopted with a view to conserving the value of buildings?

Surrounding residential property to the north and east exhibits higher taxable land value. The existing dwelling although rated in average condition will likely need significant investment to maintain the quality of the residence. The NC allows the owner to retain the residential use and allows the owner an option of re-developing the property for a business.

12. Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?

The proposed zoning will permit the current development to continue and could allow future re-development for businesses that are more compatible to the other business uses to the south and west.

The public hearing was opened.

- **Sharon Allen, 3333 Central**, said she and her husband were contemplating selling the property next summer for various reasons. She said they felt it would be almost impossible to sell a single family residence in the situation they currently had with approximately 10,000 cars passing by on a daily basis. She said they had been approached by an insurance company, who would like to have the zone change in place before pursuing the property. Ms. Allen said within two blocks they were the only single-family dwelling, and asked the Council to approve their zone change request.

Councilmember Astle asked for the size of the lot. Ms. Allen said it was about 1,806 square feet, or not quite half an acre.

Councilmember Ruegamer asked where the 10,000 vehicle count came from. Ms. Allen said it was on the Zoning Commission's report to them. Councilmember Ruegamer said the street would continue to get busier.

Councilmember Gaghen asked how long they had owned the property. Ms. Allen said they had owned it for five years. She said it was built in the 50's.

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

Councilmember Astle moved for approval including the recommended 12 criteria, seconded by Councilmember Ruegamer. On a voice vote, the motion was unanimously approved.

**10. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #868: A text amendment to Section 27-306 of the Unified Zoning Regulations limiting medical marijuana businesses to a few commercial and industrial zones; providing separation from residential zones, schools and public places; requiring special reviews for some businesses; amortizing legal non-conforming uses over four years; and limiting signage. Zoning Commission recommends denial of Zone Change #868 and recommends prohibiting any new medical marijuana businesses in the city and amortizing out all existing medical marijuana businesses within two years. (Action: approval or disapproval of Zoning Commission recommendation.)** Zoning Coordinator Nicole Cromwell advised the Zoning Commission considered the zone change that was forwarded to them by Council initiative on August 9, 2010. She said the initiative was amended slightly from the ad hoc committee's recommendation to require a 1,000-foot separation for all types of medical marijuana businesses and to not include the Community Commercial zone as an allowed zone for a retail operation. Ms. Cromwell advised the current code prior to the moratorium allowed medical marijuana in all commercial zoning districts and began her PowerPoint Presentation explaining the following steps that had been taken so far and where in the process they were that evening.

- October 2009, the Department of Justice issued a memorandum advising state enforcement agencies to not focus resources on prosecuting the growing, sale or distribution of medical marijuana in states that had adopted laws allowing medical marijuana. Ms. Cromwell advised after that time, the number of registered caregivers and registered patients within the State of Montana took off and within a few weeks, the City of Billings received over 80 applications for new medical marijuana business licenses.
- November 2009, City Council considered interim zoning but instead chose to appoint an ad hoc committee to analyze and recommend changes to City Code to better regulate expanding medical marijuana businesses.
- May 11, 2010, after a medical marijuana store front opened on Grand Avenue a short distance from a school, the City Council imposed a temporary 6-month moratorium on any new medical marijuana businesses within the city but allowed existing businesses that were licensed at that time to continue under the temporary moratorium as long as they stayed at their current locations.
- August 9, 2010, City Council initiated zoning amendments as recommended by the ad hoc committee with an expansion of the 1,000-foot separation to all medical marijuana businesses with residential zones and exclusion of Community Commercial zoning districts.

The initiated amendments were as follows:

1. Defined medical marijuana businesses in three categories: (1) Growing; (2) Manufacturing/Processing; (3) Retail Sales. Each category was allowed in certain zoning districts by right or by special review. Growing operations allowed by right in Controlled Industrial and Heavy Industrial; processing allowed by right in Highway Commercial, Controlled Industrial, and Heavy Industrial; retail allowed by special review in Highway Commercial, Central Business District, and Controlled Industrial.
2. Medical Marijuana Businesses must be 1,000 feet from residential zones; public libraries; playgrounds, parks, trails or cemeteries; public or private schools (pre-school to 12<sup>th</sup> grade); and group homes, day care homes, or day care centers.
3. Medical Marijuana Businesses in a nonconforming location must relocate or close business within 4 years of new regulations, which included all medical marijuana businesses operated as home occupations.

Ms. Cromwell said 28 of the 29 current Medical Marijuana Businesses in commercial zones would have to move to a conforming location within 4 years and all new locations would require special review approval. She also showed a map developed by the City's GIS Department showing potential or relocation areas for the 28 existing businesses in the City. Mayor Hanel asked about locations on Main Street. Ms. Cromwell advised there was no Controlled Industrial zoning on Main Street.

4. Medical Marijuana Business signs may not use words, statements, pictures or symbols in signage that depicted a Schedule I substance as listed in the Federal CSA.

Ms. Cromwell advised the Planning Staff recommended approval to the Zoning Commission of the initiated amendments with the two following changes.

1. The definition of Medical Marijuana Business be consolidated into one business type or category. Ms. Cromwell said some Medical Marijuana Businesses had a location where medical marijuana was grown and another location where the medical marijuana was processed and sold. She said they were the same business but with two separate locations. She said in reading through the ordinance, it could give an enforcement agent or potential business owner the impression they could just be a grower or just a processor. She stated the state law required each caregiver to grow, process and sell medical marijuana to patients.
2. Medical Marijuana Businesses be allowed by special review approval in Highway Commercial, Central Business District, and Controlled Industrial and as an allowed use by right in Heavy Industrial.

Ms. Cromwell advised the Zoning Commission took the recommendation and received testimony from the public on September 7, 2010. She said based on the testimony and concerns by the Zoning Commission that the State Legislature was

actively looking at the Medical Marijuana Act with potential revisions, they voted to recommend denial of the initiated amendment and to ban Medical Marijuana Businesses within the City and to allow existing businesses two years to close operations.

City Attorney Brent Brooks advised the Council of their current options, as follows:

1. Approve the Zoning Commission recommendation; or
2. Disapprove the Zoning Commission recommendation; or
3. Amend the Zoning Commission recommendation; or
4. Deny the zone change; or
5. Delay action on the zone change for up to 30 days; or
6. Vote to withdraw the zone change.

City Attorney Brooks commented that if Council chose Option #3 and amended back to their original submission, they would need to hold an additional hearing because they would be changing what was before them that evening. He said he asked City Lobbyist Ed Bartlett to be present that evening because they had attended at least two of the committee hearings with the interim legislative committee, which recommended by way of bill to the legislature that they were not recommending complete prohibition authority on local cities and counties but were heavily regulating the business. He said they were not allowing prohibition should the bill proceed but giving the Council authority to zone appropriately to where these businesses were located similar to gaming and alcohol licensed establishments.

Councilmember Astle asked if the Zoning Commission had overstepped their bounds recommending the changes. Attorney Brooks said, as an advisory body, they were entitled by law to change what had been submitted to them, but at the end of the day, it was up to Council to make the ultimate decision.

Councilmember Ulledalen said it was obvious the Zoning Commission threw them a curve, and he did not support what they had done. He said he did not think the Legislature would get anything done on it; but on the other hand, the Legislature could come back and pass something that would undermine whatever stance the Council took. He asked if they could table the item until the end of February when the transmittal date had passed and they had some idea of what might come out of the Legislature or if they could just withdraw completely and resubmit. City Attorney Brooks said the cleanest and safest procedural approach would be to withdraw and wait four months to initiate a new zone change.

Attorney Brooks referenced Agenda Item #11 and advised that if they were to extend the moratorium, the action would require a 2/3 vote.

Councilmember McFadden asked if there was possibly any consideration given to making medical marijuana mesh with ADA. Attorney Brooks said in terms of ADA, the current Medical Marijuana Act indicated an employer was not required to accommodate the use of medical marijuana in the workplace and he did not know what the motivation of the Zoning Commission was for the significant alteration of the original application from Council.

Councilmember Ruegamer asked Attorney Brooks if Council would stay right where they currently were if they disapproved of the Zoning Commission's recommendations. Attorney Brooks said that was correct. City Administrator Volek advised that the current moratorium expired November 11, so Council would need to give staff direction on Agenda Item 11.

Councilmember McCall said she supported Attorney Brooks' comments regarding the Legislature. She said she disagreed with tabling the item completely, and said they needed to look at either disapproving or withdrawing. She said they needed to get to the end of the Legislature because many bills lived or died in the last few days of the session.

Attorney Brooks confirmed with Ms. Cromwell that if the Council disapproved the application, the zoning code required a one-year wait. Ms. Cromwell said if Council disapproved the Zoning Commission's recommendation, they would effectively kill the zoning amendment.

Councilmember Pitman asked if Council could move to withdraw for six months and then bring it back. Attorney Brooks advised Council could specify a date. He said the four-month waiting period was the minimum.

Councilmember Ronquillo asked if the Legislature did something that contradicted what the Council had done, would the Council have to conform to the Legislature. Attorney Brooks said if the State passed a law that was in contradiction with a local ordinance, the City would have to conform its ordinance or repeal it.

Councilmember Ulledalen asked if the Council chose not to withdraw, could they bring back their original zoning plan. Attorney Brooks said they could, and he would recommend a substitute motion to bring back the original application for a future meeting at a newly advertised public hearing. He said they would not be required to send it back to the Zoning Commission a second time. Councilmember Ulledalen asked if the best option would be to withdraw and resubmit. Attorney Brooks said that was correct but they would have to start over again.

Attorney Brooks said the safest and most conservative approach would be to withdraw and extend the moratorium to give the Legislature time to act.

Councilmember Cimmino asked Ms. Cromwell for clarification of the five individuals who testified at the Zoning Commission public hearing. She said she wanted it noted for the record that three of the five individuals who testified were ad hoc committee members, and two were from the general public. Councilmember Gaghen said the committee was doing their duty and sharing their views with the Commission, and one from the general public spoke in favor and the other spoke against. Councilmember Pitman stated for the record all he did was introduce the ad-hoc members that were present.

The Public Hearing was opened.

The following people testified in favor or in opposition of supporting the Zoning Commission's recommendation.

- James Knox, 661 Garnet, Billings, MT
- Jim Tilley, 305 Camel Place, Billings, MT

- Roy Neese, 2323 Constellation Trail, Billings, MT
- Cherrie Brady, 5032 Poly Drive, Billings, MT
- Catherine Lewis, 225 S. 41<sup>st</sup> Street West, Billings, MT
- David Lewis, 225 S. 41<sup>st</sup> Street West, Billings, MT
- Andy Larson, 901 Aronson Avenue, Billings, MT
- Sherry Wardell, 5121 Dovetail, Billings, MT
- Jim Finch, 14 Lakewood Lane, Billings, MT
- Holly Beck, 1202 S. 70<sup>th</sup> Street West, Billings, MT
- Susan Sullivan, 2540 Phyllis Lane, Billings, MT
- Carey Smith, 5522 Billy Casper Drive, Billings, MT
- Vearl Beck, 1202 S. 70<sup>th</sup> Street West, Billings, MT
- Jannae Smith, 1140 Blue Grass East, Billings, MT
- Laura Needham, 1710 Cobble Creek Trail, Billings, MT
- Will Winterholler, 4392 Ridgewood Lane South, Billings, MT
- James Haney, 2047 Andromeda Lane, Billings, MT
- Cynthia Finch, 14 Lakewood Lane, Billings, MT
- Barbara McLaws, 1030 Blue Grass Drive West, Billings, MT
- Steve Zabawa, 810 Blue Grass Place, Billings, MT
- Rich Pope, 5046 Woodvine Circle, Billings, MT
- Susan Smith, 5522 Billy Casper Drive, Billings, MT
- Friedrich Schweitzer, 2413 Montana Avenue, Billings, MT
- Doreen Dennis, 1042 Yale, Billings, MT
- Josh Daniels, 1235 Brooks, Billings, MT
- Kathleen Shannon, 2742 Andromeda Lane, Billings, MT
- Mort Reid, 1120 Yale, Billings, MT
- Jim Gingery, PO Box 1370, Ennis, MT

There were no other speakers, and the Public Hearing was closed.

Councilmember Astle moved for approval of the Zoning Commission's recommendation, seconded by Councilmember Ronquillo.

Councilmember Ulledalen asked Attorney Brooks what would happen if the motion failed. Attorney Brooks said if the motion failed the Council would be rejecting the Zoning Commission's recommendation, and the Council would either need to give direction to staff, proceed to Item #11 and consider extension of the moratorium, or wait the required one year period to make a new application.

Councilmember Astle asked Attorney Brooks if he could have made a motion to withdraw. Attorney Brooks said he could have made that motion. Councilmember Astle withdrew his initial motion, and Councilmember Ronquillo withdrew his second.

Councilmember Astle made a motion to withdraw the application for Zone Change #868, seconded by Councilmember Ulledalen.

Councilmember Ruegamer said they had heard over 30 hours of testimony, and tonight he had not heard anything new. He said Council was repeatedly hearing from both sides the words "integrity, outrage, we've got to be leaders, and we've got to do it now." Councilmember Ruegamer said this was not the first controversial issue the

Council had ever gone through, and it would not be the last. He said what they had done over time had been very methodical, intelligent, and thoughtful and to panic and ban something without any knowledge was unthinkable. Councilmember Ruegamer said a lady questioned Council's education in dealing with the matter. He said Council had the education to make a decision, and the public elected them to make decisions. He said he was not going to panic, nor did he get the sense of panic from the Council to ban something without knowing what they were doing and not knowing what the Legislature would do. He said the Legislature could throw a monkey wrench into anything Council did, so they needed to be very careful.

Councilmember Ulledalen said he thought if the Council could intelligently ban medical marijuana in Billings, they would do it. He said he thought the votes were there, but the issue was to do it intelligently. He said they had their foot in a trap, and they could either intelligently figure out a way to get their foot out of the trap or chew their leg off and deal with the consequences. He said if they approved the Zoning Commission's recommendation, his sense would be that they would be dealing with a court injunction that would stay the two-year time period; and in the meantime, medical marijuana businesses would be able to stay in business while the issue worked its way through the court system. He said if that happened, Council would have accomplished absolutely nothing. Councilmember Ulledalen said he thought if the issue became gridlocked in the Legislature and nothing was done, Council would have to come back with tougher regulations beyond what they had discussed in zoning because if the Legislature was not going to do it, they would have to do it. He said the only way to resolve the issue would be to get it back into the hands of the voters to repeal it; but in the meantime, Council needed to work with it as intelligently as it could with the tools it had. Councilmember Ulledalen said if Council withdrew it, they would be back for another 25 to 30 hours of testimony hearings, but it would give them an option to see what the Legislature did or did not do and allow Council to continue to unfold the regulations they needed to move forward. Councilmember Ulledalen asked Attorney Brooks to comment.

Attorney Brooks said it was hard to predict how long any court action would take, but if a medical marijuana business licensee challenged a prohibition with a two-year or four-year amortization, it would require at least a few months to work through it. He said there would be an evidentiary hearing, testimony, briefs, argument, and a possible appeal with the Supreme Court that could add five to six months to the time period. He said, in his opinion, conservatively it would take about a year.

Councilmember Pitman said he wanted to disclose that during the break Boyd Strissel gave him a copy of a tenant's 30-day notice of termination of rental because the tenant was not happy with a medical marijuana shop in the front yard. Councilmember Pitman said he would give it to the Clerk to file as an ex-parte item. Councilmember Pitman said he was assuming most of the e-mails sent to the Council were part of the ex-parte communications. He said Council had received 200 to 250 e-mails total that he was aware of and wanted to apologize that he was not able to respond to all of them. He said a family member had recently suffered a stroke and passed away, but he did have a chance to read all of them. Councilmember Pitman said they did take it very seriously, and they had been working very hard on it. He said they needed to do it in a way that was responsible for the entire community.



Councilmember Gaghen said she felt her feelings had been shared. She said if the Legislature ducked responsibility and it came back to the Council, it would enable them to be even firmer because the Legislature would have to enable the communities if they were not going to take it from a state level. She said she would support the motion.

Councilmember McFadden asked Attorney Brooks if a civil case went before the State Supreme Court, could they expect the Supreme Court to uphold whatever the Legislature decided. Attorney Brooks said it depended on the nature of the challenge. He said it would be hard to predict; however, the Supreme Court had a general principle of law that said a law passed by the Legislature or by a local government was presumed constitutional unless persuasively argued to the Supreme Court otherwise.

Councilmember McCall said she was “preaching to the choir” at that point, but she really appreciated Councilmember Ruegamer’s acknowledgement of some of the words they had talked about that evening. She said she believed they were being intelligent and thoughtful about the issue. She said clearly they were protecting the City at that point, and nothing else was going to be happening because of the moratorium. She said she had more faith in the Legislature and thought they would take action. She said this would give them the opportunity to get through that time period, so she would support the motion.

Mayor Hanel said he agreed with Councilmember McCall. He said he had a tremendous amount of faith in the Legislature, and they recognized statewide this was a very serious problem. He said he did not feel they would turn their backs on the citizens, and he expected some good to come out of it in the end. Mayor Hanel said he wanted to re-state that he opposed the drug itself and did not feel it was the right drug for the purpose it was intended. He said it was certainly not being distributed in a cautious, clinical manner. He said in order to do what was best for the citizens and the community he would have to agree with Councilmember McCall. He said the seriousness of it would be recognized and handled in a proper manner, and he had faith in the Legislature that they would come out of it with a good consensus for everyone.

On a voice vote, the motion to withdraw the application for Zone Change #868 was approved 10 to 1. Councilmember Ronquillo voted ‘no’.

**11. PUBLIC HEARING AND ORDINANCE #10-5523 extending the interim medical marijuana moratorium for an additional year. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)** Deputy City Attorney Craig Hensel told the Council that on May 11, 2010, they had imposed a 6-month emergency interim zoning regulation pursuant to state law. He said legal staff was directed to prepare an extension ordinance. He said by virtue of the statute, the City could extend the moratorium an additional 12-month period up to two times. He said the language was virtually identical to the first ordinance except that it referenced continuing the moratorium to be effective immediately and consecutively with the ordinance passed on May 11, 2010. Mr. Hensel said they were considering that evening the extension of the original 6-month moratorium for an additional 12 months. He advised, per state statute, passage of the extension would require a 2/3 vote of the Council.

Councilmember Cimmino said that earlier in the year she and Councilmember McCall had made a motion for a Council initiative to extend the moratorium, and asked if it would be in addition to the proposed extension. Attorney Brent Brooks advised if the

Council took no action at all that evening, the original moratorium would expire on November 11, 2010. He said their opportunity that evening would be to either vote no to let it expire on November 11<sup>th</sup> or vote yes to extend it an additional year starting November 11, 2010, and expiring on November 11, 2011.

Councilmember Ulledalen said this was the extension of their motion and second. He said they would have one other option to extend an additional 12 months after this. City Attorney Brooks told Councilmember Cimmino they were actually doing two things; they were complying with her direction and following state law on how it was accomplished.

The public hearing was opened.

- Dave Lewis, 225 South 41<sup>st</sup> Street West, said the moratorium effected the advancement of the development of medical marijuana facilities in the state and cities. He said what happened when Council acted decisively, even if it delayed action for a year or two, it was a statement of fact that they were saying there was great concern with regard to the challenge that was brought on by the citizens of Montana and passed on by the State Legislature. He said he appreciated that the Legislature needed to act and hoped they would take the words of the moratorium and continuation of the moratorium as reason to act.

Councilmember Ulledalen said he envisioned they could be back in four months picking it back up. He said if they saw the transmittal date approaching and there was nothing coming out of committee and there was going to be no action by the Legislature, he fully anticipated they would pick the ball back up and run with it. He said if there was something coming out of one house and they wanted to wait until the end of the session, it was a possibility. He said he thought they would know pretty well by the end of February what was going to come out of the Legislature or what limited things may come out of the Legislature. He said there was a lot they could do to restrict it within what they had been given.

Mr. Lewis said he agreed. He said he did not want access to marijuana for his daughter and her school mates. He said it was a public safety issue and maybe zoning was the wrong way because of the grocery store effect.

Councilmember McCall commented that with great respect for Councilmember Ulledalen, she disagreed that they could pick it back up half way through a legislative session. She said it would be a very dangerous move, and they needed to wait until the Legislature was completed.

Councilmember Ruegamer said he spent some time in Missoula the last few weeks, and they had the same problem. He said he thought the Legislature would hear it and have to act because it was such a controversial issue.

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

Councilmember Pitman moved for approval of extending the moratorium for one year, seconded Councilmember Ruegamer.

Councilmember Ulledalen said he thought it was important to do this because it bought them time and protection, it locked the existing businesses in place, and did not allow the industry to expand in the City. He said he thought they could be back in 45 days after the legislative session began if no action was coming out of committee.

Councilmember Gaghen asked Attorney Brooks if passing a one-year moratorium would preclude them from taking action at an earlier time if the Council determined they had been enabled to do something more stringent than what seemed to be occurring from a legislative standpoint. Attorney Brooks said under the broad self-governing authority, Council could come back and either repeal or do a separate ordinance. He said they were not locked into doing nothing for a year and could act before then at their discretion.

Councilmember Ulledalen said that at that point they had kept their regulatory process fully focused on zoning, and there was a whole world of things they could open up beyond that; once again taking a cue from the Legislature about how they could regulate the industry. He said if the State was not going to do it, they could take authority over how that business was prosecuted within the City limits. He said there was a lot of ground that could be covered under their authority.

Mayor Hanel said not only was the passage of the extension important, it was critical and he would be speaking very strongly in favor.

On a voice vote, the motion was unanimously approved.

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

The Public Comment period was opened. There were no speakers, and the Public Comment period was closed.

### **COUNCIL INITIATIVES**

- **PITMAN:** MOVED to direct staff to begin the process of eliminating longevity pay for city employees, seconded by Councilmember Ruegamer. City Administrator Volek advised they were already working on it. On a voice vote, the motion was unanimously approved.
- **GAGHEN:** MOVED to add approval of the use of up to \$1,500 of Council Contingency Funds to the 10/12/10 agenda to be used for public education on the new city ordinance banning the use of electronic communications devices while operating a motor vehicle, seconded by Councilmember Astle. After further discussion, Councilmember Gaghen withdrew her motion, Councilmember Astle withdrew his second, and Councilmember Gaghen moved to increase the amount to \$2,500, seconded by Councilmember Astle. Councilmember Ulledalen suggested getting some cost estimates first. Councilmember Pitman said he would be voting no because he would like to have seen a financial impact before approval. Mayor Hanel said he thought the mailing with the utility statements, along with the media, would reach a sufficient amount of people. Councilmember Cimmino said people coming to Billings for the weekend to shop or attend an event would not see the flyer in the utility bill or hear a

public service announcement and said it was the City's responsibility to provide the information through signage. She said she agreed an estimate was needed. Councilmember Ulledalen agreed and said visitors and tourists needed to be informed of the ordinance. Councilmember Gaghen added that the Billings Hotel and Motel Association's Convention would be held in Billings in October and they would have the printed information available to give to innkeepers and car rental agencies. She said the schools and colleges already had information on reader boards, and they were trying to do the most they could for the least cost. After further discussion, on a voice vote, the motion was approved 8 to 2. Councilmembers Ruegamer and Pitman voted 'no'.

- **MCCALL:** Reported the League of Cities and Towns Legislative Committee met at the end of last week. She said she would provide a quick report as soon as possible. She said they needed to get the information back in enough time for a finalized report at conference.

- **RONQUILLO:** Said a couple of months ago a lady asked for help on the flooding of 8<sup>th</sup> Avenue North and he never heard back if something had taken place. Ms. Volek advised she talked to staff about it and was told the area was at the very bottom of a drainage area. She said when the City experienced heavy water situations, the water ended up there. She said she could have Engineering look into it further if necessary, but there was a storm system there already and it had been cleaned. Councilmember Ronquillo said he thought they needed to get back to the lady with some sort of a solution.

- **CIMMINO:** Asked if the Yellowstone Valley Animal Shelter contract was up for renewal in October. Ms. Volek advised it would be in March. She said she recently received an annual report from them she could forward in the Friday packet and had very preliminary discussion with the director, who indicated they were interested in renewal.

There was no further business, and the meeting was adjourned at 11:35 p.m.

CITY OF BILLINGS

BY: \_\_\_\_\_  
Thomas W. Hanel, Mayor

ATTEST:

BY: \_\_\_\_\_  
Cari Martin, City Clerk