

Regular City Commission Meeting

Mayor Winters presiding

**CALL TO ORDER:** 7:00 PM

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

**ROLL CALL:** City Commissioners present: Michael J. Winters, Robert Jones, Bill Bronson, Mary Jolley and Fred Burow. Also present were the City Manager, City Attorney, Assistant Director of Fiscal Services, Directors of Library, Park and Recreation, Planning and Community Development, the Public Works City Engineer, Executive Director of the Housing Authority, Fire Marshal, Police Chief and the City Clerk.

**FIREFIGHTER OATHS:** Mike R. Pancich and Nathan L. Schmidt

**PROCLAMATION:** Mayor Winters read a Proclamation for "National Garden Week."

## **NEIGHBORHOOD COUNCILS**

### **1. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

**NC 4.**

**Sandra Guynn**, Chair NC 4, reported that the council's position regarding urban chickens is that the matter should be brought before the City Commission for the public to participate. Ms. Guynn read the nomination letter from Fred and Patty Cadwell and presented Neighborhood Council 4's "Good Neighbor Award" to Roger and Bonnie Lane.

**NC 8.**

**Karen Grove**, Chair NC 8, reported that the council's sentiment regarding the chicken issue is also that the matter should come before the City Commission for public participation before a decision is made. Ms. Grove reported that Bundi Gardens donated red, white and blue pansies to plant at Memorial Park in dedication of all branches of the military. She also reported receiving telephone complaints about bicyclists using the skate park, kids without helmets, and concerns that there will be a tragic accident.

Mayor Winters discussed the graffiti at the skate park.

Chief Grove explained that the skate park is a difficult situation the police officers deal with all the time. He explained that there are time periods when officers cannot be at the skate park, and that Park and Recreation staff also monitors the skate park. There were suggestions made a couple of years ago that would involve staffing and funding.

## **BOARDS & COMMISSIONS**

### **2. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

There were no miscellaneous reports and announcements from any members of the Boards and Commissions.

### **PUBLIC HEARINGS**

**Ordinance 3055, not considered on second reading.**

**Ordinance 3054. Adopted.**

### **3. MEDICAL MARIJUANA ALTERNATIVES.**

City Attorney James Santoro reported that the first alternative for consideration is prohibition. Marijuana is a controlled substance pursuant to the Federal Controlled Substance Act. The cities of Helena and Kalispell have banned marijuana businesses, noting that the use and sale of the drug remain illegal under federal law. The other alternative is to extend the moratorium up to one year. Extending the moratorium means that any establishment attempting to grow, sell or distribute medical marijuana will be prohibited from being opened, operated or licensed in the City of Great Falls. It does not apply to a qualifying patient's own use, nor shall it apply to a caregiver who possesses not more than six marijuana plants and one ounce of usable marijuana solely for each of his or her qualifying patient's use. Mr. Santoro clarified several myths. In summary, there exists no lawful pre-existing medical marijuana business within the City of Great Falls. Violation of the ordinance is a misdemeanor. Mr. Santoro concluded that a ballot initiative is being drafted for signatures to repeal the 2004 Medical Marijuana Act.

Mayor Winters declared the public hearing open.

Those speaking in opposition to the medical marijuana alternatives were:

**Brandon Peressini**, 1513 Balsam Court, reported that he is part-owner and operator of "Medical Montana," a business that operated out of the Columbus Center for approximately six months. After the City Commission meeting in February, he reported that his attorney, Mark Frisbie, filed an appeal but it was returned by the State.

Mr. Peressini believes Great Falls needs at least one medical marijuana business. He stated he was in business and had a good reputation. He asked that his medical marijuana business be "grandfathered." He reported that he is currently working with an architect to renovate the seventh floor of the Columbus Center for his business. Mr. Peressini concluded that he respects the law and would work close with the City and the Police Department.

Mayor Winters asked if he had a business license. Mr. Peressini responded that he does not and is not currently operating his business in the City of Great Falls.

**Mike Kaszula**, 2416 2<sup>nd</sup> Avenue North, stated his opposition to both proposed Ordinances. He believes there is room for medical marijuana under the Controlled Substance Act. By prohibiting medical marijuana, Mr. Kaszula opined that teenage kids will have the dope in their hands, and the

people that need it will be denied access to it. The decision rests on this Commission to allow medical marijuana businesses to be licensed for people who are looking for legitimate sources of income.

**Pam Birchard**, 95 Fisher Road, reported working in conjunction with the Montana Ethical Caregivers Association, Montana Medical Growers Association and the Montana Caregivers Network to propose to the State the implementation of a caregiver certification program. She commented that those organizations believe this industry does need further regulation. They are promoting transparency, want to operate legally within communities, and want to provide for the needs of their patients. Ms. Birchard reported that she is a caregiver that provides for some seriously ill people. If the City continues to prevent caregivers from operating within the City limits, Ms. Birchard commented that the City will be denying seriously ill people access to medicine that they need. She is advocating for a voluntary registry of growing locations to be filed with county sheriff departments, to certify caregivers, annual inspections and re-certifications. Ms. Birchard urged the Commission to take her comments into consideration.

**Mark Frisbie**, 616 7<sup>th</sup> Avenue South, commented that it is a myth that the Medical Marijuana Act would be preempted by federal law. The California Supreme Court found that the law could handle both the Controlled Substance Act and the Medical Marijuana Act. It construed that the Controlled Substance Act would control recreational use, and the Compassionate Use or Medical Marijuana Act would control medical use of marijuana. Regarding the moratorium, Mr. Frisbie commented that there are several businesses in town that have been selling medicinal herbs for many years with business licenses. He believes if marijuana was taken off the black market the criminal element would be removed. He urged the Commission to vote against the Ordinance prohibiting medical marijuana within the City of Great Falls.

**Doug Shides**, 635 Gerald Street, Missoula, member of “Montanans for Responsible Legislation” commented that he is afraid prohibition will create a ring of unregulated caregivers around the City. This community is begging for regulation at the local level. Turning a blind eye or passing the buck is doing the most vulnerable citizens in the City a disservice. He urged the Commission to extend the moratorium so that they could get down to the nuts and bolts of regulating this industry.

**Timothy Lewis**, commented that he recently moved and does not know his address. He discussed a hospital bill he incurred as a result of being the victim of a hit and run accident. He has a medical marijuana card for his back pain. Mr. Lewis commented that medical marijuana needs to be in a business and off the streets.

**Karen Kaszula**, 2416 2<sup>nd</sup> Avenue North, reported having multiple sclerosis since 1993. Insurance pays for her artificial drugs but nothing makes her feel good except when she smokes marijuana.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, stated his opposition to Ordinance 3054 because of the general prohibition wording: “no use of land shall be permitted . . . that is in violation of federal, state or local law.”

**Dan Cherry**, 3420 Falcon Court, commented his concern was that the voters were misled when the initiative passed. As a result, the legislation that was put in place was faulty and flawed. He believes that legislation needs to be in place to have medical marijuana properly regulated. A recent *Tribune* article highlighted the issue of the physician that administered 150 prescriptions in less than 15 hours which comes out to less than six minutes per patient. He doesn't believe that can be construed as medical care in any way. Dispensing prescriptions in that manner can't possibly be what the voters wanted when the initiative passed. Mr. Cherry reported that he is a nationally registered EMT and, as such, has seen the direct and indirect effects of drug usage. Narcotics are carefully controlled and monitored by the Drug Enforcement Agency. Yet, caregivers have no medical training to dispense marijuana. Mr. Cherry suggested that, if marijuana is here for medical uses, the moratorium be enforced until the legislature can meet to get this properly regulated. If it is a drug, it should be regulated and dispensed through credible pharmacies and physicians, not grown unmonitored by so-called caregivers with no medical background and making a profit out on the streets.

Speaking in favor of the medical marijuana alternatives were:

**Don Johnson**, 124 Riverview 8 West, commented that he is for the ban of medical marijuana. He recently moved his business to an area where he doesn't believe there would be marijuana storefronts. With regard to “patients,” Mr. Johnson commented that he worked in the medical field for 14 years. It takes some time and knowledge for a doctor to get to know and monitor a patient. Mr. Johnson urged the Commission to prohibit medical marijuana to keep our City clean.

**John Lind**, 7 Jayhawk Lane, Ulm, commented that he is the owner of a property management business. He is a proponent for the ban of medical marijuana. He discussed two instances of having learned that units were rented to persons with medical marijuana cards; the complaints from the other tenants in the building; and, the amount of damage growing marijuana in a multi-family dwelling had caused.

**Richard Calsetta**, 56 32<sup>nd</sup> Avenue NE, commented he is for an outright ban on medical marijuana because he doesn't believe that an ordinance or moratorium is going to stop the dramatic increase in recreational use. Prior to and after 2004, people that legitimately needed this drug had the ability to get his drug for their health problems. He doesn't believe the City needs to have moratoriums or ordinances because people that need it for medical reasons can get that prescription drug. It is the recreational users and doctor caravans and caregivers that are going to destroy this issue for people who, if there is a legitimacy to this drug, really need it. Mr. Calsetta discussed his

wife's chronic asthmatic condition and use of steroids for 47 years. His wife has to leave Great Falls for certain medical care that isn't provided here. The same is true for the legitimate patients that need medical marijuana. Mr. Calsetta urged the Commission to prohibit medical marijuana.

**Mike Lewis**, P.O. Box 2832, commented that, after researching this issue, a total ban on marijuana is the correct way of going. The U.S. Drug Enforcement Administration has medical marijuana called "Marinol," available by prescription. Crude marijuana smoked is a poor way of administering any type of drug. There is four times the amount of tar and carcinogens in marijuana versus cigarettes. Mr. Lewis opined that many years from now there will be lawsuits blaming medical marijuana for emphysema, bronchitis and lung cancer.

**Kelly Lind**, 7 Jayhawk Lane, Ulm, commented that she listened to all the statistics at the last meeting and then researched to verify those statistics were correct. She trusts the Fire Department, Police Department, medical doctors, and the teachers, councilors and principals' that had comments, articles and statistics on the negative effects of marijuana. She urged the Commission to trust what the statistics say and to trust what the people that have been hired in the City to keep the City safe have to say. The folks that truly need medical marijuana have access to it. Ms. Lind urged the Commission to look at the big picture of where this is going and to trust that the professionals in the community know what they are talking about.

**Jerrod Jones**, 4048 6<sup>th</sup> Avenue South, spoke in opposition to the proposed medical marijuana alternatives. He commented that synthetic drugs are terrible for the human body. Marijuana is natural. He discussed his mom's negative situation on synthetic drugs and how much better she is doing on natural, holistic medicine.

**Greg Beers**, 3418 Falcon Court, commented that his wife has been an herbalist for over 20 years. He knows there are a lot of natural things out there that will kill you, so not to listen to the "natural is better for you" argument. Mr. Beers stated that this matter will go back to the State Legislature. Anything this Commission does now can be reversed, and then the Commission would have to backtrack. He commented that the Commission has a lot of pressure on them and are doing a good job.

**John Peterson**, 27 Teresa Lane, Principal at Foothills Community Christian School, on behalf of the School Board, urged the Commission to adopt prohibition as the logical choice. If the Commission chose the moratorium, everyone will be back here hearing all the same discussion and the Commission will have to make the same decision again. After the State Legislature acts, then the Commission could act with guidance from the State. The only logical, cost effective thing to do right now is prohibition.

**Ben Forsyth**, 900 9<sup>th</sup> Street South, commented that controls are not functioning for the moratorium. Prohibition is more enforceable. After the

last moratorium Mr. Forsyth commented that it has been business as usual at a storefront next to his business. He implored the Commission to pass the ban. A ban will not prevent legitimate patients access to marijuana. He blamed the marijuana industry that went past the law and allowed for clinics that issue marijuana cards to just about anybody resulting in the backlash that we are seeing today.

**Linda Sterling**, 1375 13<sup>th</sup> Avenue SW, Apt. 12, commented that she is a landlord. She shared her personal experience regarding caregivers causing danger to tenants and damage to her property. She described the electricity required for grow lights, the substantial amount of water needed to grow marijuana, the odor, and the additional traffic. As a landlord she has to give 24 hours notice to enter a building. That gives them just enough time to move the plants around and then move them back in. She pleaded with the Commission to ban medical marijuana to protect legitimate businesses.

**Judy Peterson**, 2400 12<sup>th</sup> Street South, commented that she manages 170 rental units within the City limits, many of which are multiple units with children, elderly and families. She has received notices from tenants that are moving because of the marijuana smell in the building. She doesn't believe people should have to live next to this in multiple-unit housing. She urged the Commission to ban medical marijuana entirely.

**Dr. Paul Gorsuch**, 401 15<sup>th</sup> Avenue South, argued for whatever gives greater clarity to the law enforcement. All agree that abuses are occurring. Zoning can't impact the physician or user misbehavior. It seems to him the greatest clarity would be banning medical marijuana.

Mayor Winters closed the public hearing.

**Commissioner Jones moved, seconded by Commissioner Bronson, that the City Commission adopt Ordinance 3054 that prohibits businesses that grow or sell marijuana from operating within the City of Great Falls as it is a controlled substance under the Federal Controlled Substance Act of 1970.**

Mayor Winters asked if there was any discussion amongst the Commissioners.

Commissioner Jolley read the title of Ordinance 3054 and expressed that she believes there may be some unintended consequences.

Commissioner Jones responded that if there are unintended consequences, they can be dealt with openly and fixed if a problem arises. He commented that the high school principals' comments made an impact on him, as well as the public comments today, and feels strongly the Commission should adopt this ordinance.

Commissioner Bronson underscored Commissioner Jones' comments.

When this process started out, he was in favor of a reasonable zoning proposal to deal with legitimate businesses. Since then he has studied this issue more and listened to the evidence and comments made by members of the public. Additionally, he knows both of the principals and respects their opinions and judgments very much. What they have reported tends to vindicate what he has seen as he has looked at the statistics more recently. Cards are being issued to a large number of young people in this State who have no business dealing with or smoking marijuana under any circumstances. Even medical providers that believe that there is some limited use of marijuana would agree with that statement. As someone who works with injured people in the practice of law and works with the medical profession trying to deal with the problems of injured and disabled people, he is appalled at the fact that cards are being handed out to a large number of people ostensibly due to chronic pain. The vast majority of those people are getting cards under false pretenses, or doctors are not taking the time to adequately study the condition of that patient, look through the history and diagnostics of what is going on with that patient. Until the Legislature addresses the inadequacies in the current law, he is not comfortable with zoning businesses in this field. For every one business that may be legitimate, he is concerned there will be one or two that are illegitimate. A moratorium will not send a strong enough message. Until the Legislature deals with this issue and there is a legal structure to only provide marijuana in limited instances that are appropriate, only then will he be interested in looking at a zoning proposal. He would rather deal with an unintended consequence on a case by case basis than allow the type of system that has been going on and expand any further.

Commissioner Burow stated his opposition to Ordinance 3054. He commented that history has always shown that prohibition has done just the opposite of what people intended it to do and used alcohol as an example. He felt medical marijuana should have been dealt with in the first place through regulation. He facetiously compared this issue to the lack of prohibition of drugs, alcohol, unregulated herbs and holistic vitamins. As to the concern about growing marijuana, Commissioner Burow commented that he does sympathize with landlords, but that is a landlord/tenant matter. He commented that it was never the intent of this Commission to have in-home businesses growing marijuana. He also pointed out that smoking is not the only way of ingesting marijuana. He opposes prohibition any way, shape or form.

Commissioner Jolley commented that the Commission is passing an ordinance that doesn't say anything about marijuana, but it does prohibit any use of land within the City of Great Falls that is in violation of federal, state or local law. She concluded that if the Controlled Substance Act of 1970 were changed, the City will be back to square one trying to figure out how to zone medical marijuana.

Mayor Winters concurred with Commissioner Bronson's comments. He, too, was leaning towards the moratorium until he read Sunday's paper and

listening to the phone calls from concerned citizens. He noted the Commission is charged to protect and do the best it can for its citizens. His heart is heavy for the people that actually need this. The problem is the people that really need it are the ones that are being harmed the most by the people that abuse it. It is time to do something.

Motion carried 3-2 (Commissioners Burow and Jolley dissenting).

### **OLD BUSINESS**

### **NEW BUSINESS**

### **ORDINANCES/RESOLUTIONS**

#### **Consent Agenda. Approved.**

#### **CONSENT AGENDA**

4. Minutes, May 18, 2010, Commission meeting.
5. Total expenditures of \$1,815,277 for the period of May 8-26, 2010, to include claims over \$5,000, in the amount of \$1,783,212.
6. Contracts list.
7. Approve Memorandum of Understanding (MOU) between the Great Falls School District, the Great Falls Tennis Association and the City of Great Falls regarding maintenance of the CMR and Hurd Tennis Courts. **OF 1598**
8. Approve Change Order No. 1 in the amount of \$63,000 to Kuglin Construction for the Northern Lights reconstruction. **OF 1573**
9. Award construction contract in the amount of \$159,304.65 to United Materials of Great Falls, Inc., for the Broadwater Drive water main relocation/replacement. **OF 1578.1**
10. Award bid for asphaltic concrete material to United Materials of Great Falls, Inc., in the amount of \$687,400.

Commissioners Jolley, Bronson and Burow requested that Items 5, 7 and 8 be pulled for further discussion.

With regard to Item 5, Commissioner Jolley asked if the payment for legal fees for the MEIC lawsuit should be an expense from the Electric City Power fund since the City wouldn't have been sued if it didn't have Electric City Power. City Attorney Santoro responded that the \$20,000 is shown as an expense of the City, but the Southern Board recently approved contributing 50% of those attorney fees to the City. Assistant Director of Fiscal Services Melissa Kinzler added that the rationale is that the lawsuit was the result of a records request, which is a general fund obligation. There is a line item under legal services for outside litigation and legal counsel.

Commissioner Jolley also noted the payments to Water Right Solutions under enterprise funds and asked if Southern was reimbursing the City for



work performed like it had done a couple of years ago. City Manager Doyon responded that it was his understanding under a prior agreement the City was responsible for negotiating and making sure Southern had adequate water. He was not sure if reimbursement by Southern applied in this case and advised that he would follow up with Commissioner Jolley on that question. Ms. Kinzler added that this payment was for services provided for the month of April from Water Right Solutions. Part of the bill was for dealing with DNRC for general water rights, and the other part was for dealing with the Highwood plant.

With regard to Item 7, MOU between the City, Great Falls School District and Tennis Association, Commissioner Bronson noted grammatical errors in paragraph 3: line 2 should read advocacy of youth; line 3 should read promotion of growth; and line 4 should read establishment of public/private partnership.

Regarding Item 8, Commissioner Burow noted that he received clarification before the meeting that Change Order No. 1 for Northern Lights Reconstruction was the result of City staff overestimating the original cost that left enough money to extend street reconstruction one additional block.

**Commissioner Bronson moved, seconded by Commissioner Jones, that the Consent Agenda be approved, subject to Item 7 MOU being revised to reflect the grammatical changes.**

Mayor Winters asked if there were any inquiries from the public.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, referred to Item 4, minutes of the last meeting, and commented that he would like to know Ms. Balzarini's response to Commissioner Jolley's inquiry about the significance of the date, March of 2007, and whether the City knew at that time that it would not be financing its own portion of the plant. Commissioner Jolley commented that the response was that the March date was incorrect. The correct date of November will appear on the next \$5,000 report.

Regarding Item 5 and payment for legal fees for the MEIC lawsuit, it was clarified for Mr. Gessaman that Southern was reimbursing \$10,000 to the City for said fees. He agreed with Commissioner Jolley that this should be an expense of ECP. Mr. Gessaman also noted the \$5,000 payment to Water Right Solutions for expenses for one month and inquired where the City would draw the line with this company.

Motion carried 5-0.

## **PETITIONS AND COMMUNICATIONS**

### **11. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Mayor Winters opened the meeting to Petitions and Communications.

**Economy.**

**11A. John Hubbard**, 615 7<sup>th</sup> Avenue South, commented that his son just graduated from high school. He expressed concern for all the new graduates due to the lack of employment opportunities. He also noted that grants for college were being cut due to the recession. Mr. Hubbard concluded that he is sick of all the laws, and no justice.

**ECP.**

**11B. Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, compared the quick action referenced in the paper about the 42 cats and 13 broken City ordinances to what the City was doing about ECP losing money daily in violation of Ordinance 2925. Mr. Gessaman also discussed a May 9<sup>th</sup> article naming NorthWestern Energy one of the top 100 trustworthy companies in America. He noted he didn't see Southern, SME or ECP on that list. Mr. Gessaman referred to a letter from SME's attorney regarding requested records and expects that the records will be redacted out of existence.

**Marijuana.**

**11C. Ben Forsyth**, 900 9<sup>th</sup> Street South, invited the Commissioners to contact him if any were interested in attending a presentation by doctors tomorrow evening regarding the effects of marijuana.

**Veterans, Natatorium,  
Alive@5.**

**11D. Mike Witsoe**, 2612 1<sup>st</sup> Avenue South, thanked all Veterans. Mr. Witsoe requested permission to view the basement of the Natatorium with an engineer. He reminded everyone that Thursday is Alive@5. He also commended the Commission's medical marijuana decision.

**CITY MANAGER**

**12. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

City Manager Gregory Doyon commented that he looks forward to meeting with the Commission on Thursday to preliminarily discuss the budget and get some direction before he gives his final presentation to the Commission in the coming weeks. Mr. Doyon noted that the Southern letter eluded to earlier demonstrates the complexity of what the Commission will be navigating through. He commented that, at any time the Commission would like to see a proposed redraft of the ordinance that they continue to be reminded that they are in violation of, he would do that. The public needs to understand that if the Commission were to do that, due consideration needs to be given to how that would be worded. If it was easy to exit Southern the plan would have already been before them. It was many years in the making, a team is working on it, and it will take some time to get out of it.

Mr. Doyon welcomed Kathy Mora to the team as Library Director. She was highly recommended by the Library Board.

Park and Recreation Director Marty Basta instructed Mr. Witsoe to contact him and he would personally give him a tour of the Natatorium.

**CITY COMMISSION**

**13. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Mayor Winters announced that he has a conflict in his calendar and that Mayor Pro Tempore Jones will attend the City Manager’s preliminary budget meeting on Thursday.

**ADJOURNMENT**

**Adjourn.**

There being no further business to come before the regular Commission meeting, **Commissioner Burow moved, seconded by Mayor Winters, that the regular meeting of June 1, 2010, be adjourned at 9:22 p.m.**

Motion carried 5-0.

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Mayor Winters

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City Clerk

Minutes Approved: June 15, 2010