

JOURNAL OF COMMISSION WORK SESSION
August 18, 2009

City Commission Work Session

Mayor Dona Stebbins presiding

CALL TO ORDER: 5:30 p.m.

ROLL CALL: City Commissioners present: Dona Stebbins, Bill Bronson, John Rosenbaum, Bill Beecher and Mary Jolley. Also present were the Assistant City Manager, Acting City Attorney, Directors of Fiscal Services, Park and Recreation, Community Development and Public Works, the Acting Planning Director, Acting Library Director, Acting Police Chief, Fire Chief and the Acting City Clerk.

1. SOCIAL HOST ORDINANCE

Chad Parker, Acting City Attorney, reported on statistics supporting the Social Host Ordinance and application as written. He listed laws that are geared towards underage drinking prevention, including Minor in Possession of Alcohol, Attempting to Purchase Alcohol under age 21, Unlawful Transactions with Children and Endangering the Welfare of Children. However, in the past year there have been 560 MIP-A charged in Municipal Court, 3 citations for Attempting to Purchase Alcohol under age 21, 6 citations for Unlawful Transactions with Children and 39 incidents of Endangering the Welfare of Children (only 4 addressed parent/host providing alcohol to a minor). This low number results from the gap between ages 18 and 21 because the statute only allows citation of the host if the person receiving alcohol is below 18. Additionally, it has been almost impossible to get evidence to show the actual handing over of the alcohol because there is a wall of silence at house parties. Though there is clear and direct evidence of the person who is hosting the party, they can't show that he/she provided the alcohol, so they can't reach the level of probable cause.

With Unlawful Transactions with Children, they have to show the handing over of the alcohol to the minor and, again, there is the silence. There were only 3 incidents of Attempting to Purchase Alcohol under age 21. Recently 49 officers made stops at locations in Great Falls where, historically, minors obtained alcohol (funded by the Federal EUDL grant). No violations were found. This fact and the statistics presented show that minors are obtaining alcohol at house parties. The 560 MIP-A have almost exclusively been cited at house parties. There is a loophole for those people who knowingly control a residence and knowingly provide that premise for that purpose. A person in the 18-21 age range receives an MIP-A, possibly relating to deferred prosecution. MIP-A criminalizes our youth; DUI does not unless it is at the level where someone is killed, or has already been convicted three times. A child who may be going through a period of testing becomes a criminal with consequences lasting 75 years. However, after five years, a new DUI offense is considered a first offense.

Mr. Parker explained that his office believes it is appropriate to give some minors a second chance. After the second offense, they are treated as someone who knowingly engaged in a criminal act. However, the 'Social Host'—the guy who is having the party, the cool guy—is the

one who is off the hook, and that person is actually engaging in a criminal act—contributing to the delinquency of a minor.

Mr. Parker said there has been misinformation regarding this ordinance. To convict someone under the Social Host Ordinance, a person must conduct, allow, organize, supervise, control or permit (or aid another in doing so) a party, event or gathering of any number of individuals, and knows or reasonably should have known that an underage person is a) in possession of an alcoholic beverage, b) is consuming an alcoholic beverage, or c) has consumed an alcoholic beverage on a premise and fails to take reasonable steps to prevent possession or consumption.

Mr. Parker explained that landlords are being told that if they have a tenant who is allowing/conducting a party, they (the landlord) are on the hook; that is not true. A landlord whose only relationship to the premise is ownership and who is shielded by the tenant's ownership interest in the property would not be cited. A tenant who signs an agreement owns the property for all practical purposes during the term of their rental agreement/lease. A landlord is not allowed to come into an apartment; a warrant must be issued against the tenant's rights. The Constitutional protection is on the tenant, so the Constitutional burden is also with regards to the tenant. A landlord is not responsible for another's actions.

Mr. Parker said that the hope behind this ordinance is to affect a culture change in Great Falls. Everyone already has concerns for our youth; most people don't believe it is okay for their kids to engage in underage drinking. They are afraid of what may happen to their sons or daughters at these parties. At the prom party that occurred in December 2008, that led to the push for this ordinance, there were kids carrying girls in prom dresses, tossing them into the corner of a garage and running. Girls were so drunk they could have choked on their own vomit. And, there was the kid who was running the party under his mom's supervision. There were reports that keys were collected; thus, the host had absolute control over that premise, with a knowledge that this was going to happen. Almost seven hours of police time was spent on that party because of the number of kids involved.

Mr. Parker explained that this ordinance is a logical next tool that is missing from the law enforcement tool box. The current drinking laws cannot be enforced in the current manner. The numbers are increasing; there are more sexual assaults, there are more rapes, there are more children walking home from a party and getting run over. There have been several rollovers this year after drinking and leaving a party. Currently, MIP-A is a joke. They know that they are going to get a deferred prosecution; it's looked at as a badge of honor in high school. This culture needs to be changed. Also, the culture where parents say, "it's a right of passage" needs to be changed.

Mr. Parker added that this ordinance is not a tool to abuse those who have a right to make a profit by renting and who provide a household for an 18-21 year old. It is not to attack the responsible parent. It is to attack those who have abused our system. He noted that Billings has had good success with this law and there has been a shift in attitude, as well as Helena. He informed that he wrote that ordinance, and is confident that Great Falls will have the same success. He said they liked the language and believed it is well thought out. The DUI Task Force and others have said it is a balanced approach.

Commissioner Jolley expressed concern with the language “and fails to take reasonable steps, including, but not limited to, notifying law enforcement to prevent the underage consumption or possession by the underage person.” She noted that the language states the parent has to notify the police. Commission Bronson explained the language defines a reasonable step, and whether that step should have been taken in a given instance depends on the circumstances.

Commissioner Beecher also expressed concern that in certain circumstances someone could be involved who isn’t guilty. He suggested that it may be better to punish a first occurrence with a fine, but allow possible jail time for a reoccurring event. Mr. Parker said his understanding is that since that is not the core conduct being charged, if that language was stricken or changed, it would not be a substantial change. He said that Billings has taken that approach, however, the goal is to avoid a second event.

Commissioner Rosenbaum asked about the culpability of a landlord who finds beer in a refrigerator of an underage tenant when replacing a refrigerator. Mr. Parker said the landlord should ask the tenant why they have beer in the refrigerator and tell them that when you come back again they had better not have it. Mr. Parker stated that an exception for landlords was purposely left out of this ordinance because anyone could absolve themselves of culpability by establishing a landlord and tenant relationship, regardless of knowledge and control.

Assistant City Manager, Cheryl Patton, informed the commissioners that the ordinance has a line through the phrase “or within 3 miles of the limits thereof” in one place but not under “Definitions”, so the ordinance will have to be amended. Also, she said that if the commission desires substantive wording changes, the ordinance can be tabled and another public hearing set. She suggested the Commission approve the motion, as amended, if there are only a couple of minor changes after the public hearing.

2. DOWNTOWN TAX INCREMENT FUND (TIF) PROJECTS

Assistant City Manager, Cheryl Patton reported that the Central Place Revitalization Urban Renewal District will close this year after the final payment of outstanding bonded indebtedness through tax increment financing, in accordance with State urban renewal and tax increment statutes. After final payment on these bonds, money remains in this fund for an approved landscaping project for the Broadwater Bay Business Park development, as well as some reserve funds required to be held to guarantee sufficient funds are in place to make one year’s worth of bond payments. When the final bonds are paid off, those reserve funds are no longer required, and those funds become available for spending within the tax increment district.

She explained the following recommendations for the City Commission to consider regarding these remaining revenues in this tax increment fund and for anticipated revenues due to the fund through the payment of delinquencies over the next couple of years.

The first project recommended is \$300,000 to reimburse the City’s Economic Revolving Loan Fund for loans that were made from tax increment funding which have been written off. Staff recommends these funds be transferred from the Economic Revolving Loan Fund to the Great

Falls Development Authority to establish the Downtown Revolving Loan Fund. This would show that an existing project is continuing with these funds.

The second project recommended is \$50,000 to the B.I.D. to undertake a downtown street tree trimming, removal and replacement effort. With this effort, the City would not be responsible for providing tree maintenance to the B.I.D. and City staff would be allowed to concentrate on the Boulevard District, which is their primary concern. A private sector contractor should be able to complete this work more cost effectively than the City Forestry Division.

The third project is \$52,000 left from the Broadwater Bay Business Park Landscaping project. Staff proposes to use that remaining balance to landscape the portion of River Drive and Broadwater Bay adjacent to the undeveloped boat dock parking lot. Staff also proposes to relocate the entrance to that boat dock parking area away from the current intersection with Third Avenue South. At a later date, a recommendation will be made to add these funds to HB645 dollars to complete this project.

The fourth project is \$120,000 for a multi-year contract for tree trimming in the tax increment district, separate from the downtown. This tax increment district extends from the river to Tenth Street, from Tenth Avenue South to the river on the north side, and Central Avenue, First Avenue South and First Avenue North up to Fifteenth Street. Although there are lots of trees that need trimming, Staff has been concerned with Second Street. It is a major entryway into downtown, and most of Second Street is not in the Boulevard District, nor in the B.I.D. Also Staff said they would concentrate on the one-ways that are high-traffic areas in the district. This project would be a visual improvement, but also a safety improvement because many branches appear ready to fall.

The fifth project is \$38,500 to remove and repair the “bad spots” on the Gibson Park Walking Path. The “bad spots” need to be addressed now. Ms. Patton said the City is hoping to apply for CTEP money to do a complete path replacement eventually.

The sixth item, \$50,000 to finance a new Downtown Master Plan, was suggested to the Commission by the B.I.D., and Staff agrees that this is a very good, worthwhile project and suggests that responsibility be assigned to the City Planning Department. They are the professional staff that should oversee a contract for this kind of planning project. The Development Authority has offered to pursue EDA matching funds. An additional \$50,000 match would provide a sufficient \$100,000 planning fund to complete a Downtown Master Plan.

The seventh project recommended is \$167,000 for FY 2011 to pay the debt service on the Water Park, again paid from delinquencies to be received.

Ms. Patton also presented a list of other projects considered by Staff. She said Staff tried to choose projects that did not have other funding possibilities.

Alison Fried, Chair Person, B.I.D. and owner of Dragonfly Dry Goods, spoke in support of the B.I.D. receiving \$50,000 to undertake a downtown street tree trimming, removal and replacement effort. She said there are 388 trees in the district, however, and \$50,000 is just a

one-time shot in the arm. She said the B.I.D. cannot afford to assume the ongoing responsibility to maintain 388 trees. Cheryl Patton explained that the downtown is not in the Boulevard District and the property owners are not paying a boulevard assessment. She recommended Staff and the B.I.D. discuss the ongoing tree maintenance responsibility for downtown at a later date.

Ms. Fried also expressed support for the B.I.D. to receive \$50,000 toward a Downtown Master Plan that would provide backing for inquiries of past and future growth. She also reported on other projects proposed by the B.I.D. including creation of a new TIF District and a downtown park. Ms. Patton explained that ongoing maintenance responsibilities were considered when making recommendations for the TIF projects.

Brett Doney, President, Great Falls Development Authority, introduced a new VISTA volunteer, Bobby Smith. He will be working in partnership with the Development Authority and NeighborWorks half of his time over the next year on downtown efforts. Mr. Doney expressed support for Staff's recommended projects as a great compromise to balance the different interests with a limited amount of money. He reviewed additional funding opportunities and enhancement ideas for the downtown.

Marty Basta, Park and Recreation Director, reported that their department maintains 47,000 public trees in the city; 15,000 of those trees are in the Boulevard District. With the current assessment in that district, each mature tree is maintained for approximately \$18.00 per year. He expressed support for the \$120,000 multi-year contract for tree trimming in the tax increment district, \$38,500 to remove and repair 'bad spots' on Gibson Park Walking Path, and \$52,000 for improvements at Broadway Bay. Mr. Basta presented a slide presentation for these needed improvements.

Due to time constraints, #3, House Bill 645 Project Substitutions, and #4, COPS Grant Update, were tabled for the next meeting.

ADJOURN

There being no further discussion, Mayor Stebbins adjourned the work session of August 18, 2009, at 6:54 p.m.