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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

THERESA VONDRA, et al.,
Plaintiffs,
-vs-
CITY OF BILLINGS,
Defendant.

Case No. CV 22-30-BLG-KLD

**PLAINTIFFS' BRIEF IN
SUPPORT OF SUMMARY
JUDGMENT**

***ORAL ARGUMENT
REQUESTED***

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INTRODUCTION

The right to demand a warrant is fundamental to the security guaranteed by the Fourth Amendment. The City of Billings (“City”) has taken this right and security from massage therapists by imposing unannounced, warrantless, and virtually unconstrained searches on their homes and businesses to try and catch criminals engaged in sex trafficking. That laudable goal does not allow Billings to violate the Fourth Amendment. Plaintiffs are a group of massage therapists, and one patient, whom the City compelled to surrender their Fourth Amendment rights to exclude the government from their houses, papers, and other properties in exchange for a City facility license. Absent a license, Plaintiffs face criminal prosecution and fines for continuing to treat their patients. With no reasonable alternative, Plaintiffs filed a lawsuit and now ask this Court to disentangle the unconstitutional bargain the City has forced on them, declare the Ordinance unconstitutional, and enjoin its enforcement.¹

STATEMENT OF FACTS

Many modern-day criminal enterprises, specifically those trafficking in sex, have chosen to disguise themselves as massage businesses. Instead of funding the police department to assign more officers, gather evidence, and execute warrants to catch these criminals and combat this illegal activity, the City adopted an ordinance

¹ Plaintiffs also ask for nominal damages and reasonable attorneys’ fees and costs.

that strips law-abiding massage therapists of their Fourth Amendment rights. This ordinance exposes all massage therapy businesses to warrantless, unannounced searches of their entire premises, including treatment logs. *See generally* Ord. 21-5757 (“Ordinance”). The Ordinance’s purpose is plain as day: shut down criminals’ illicit sex operations with scant regard for the security and privacy of law-abiding massage therapists’ livelihoods, employees, patients, properties, and homes.

Theresa Vondra and Adam Poulos

Plaintiff Theresa Vondra is a state-licensed massage therapist and business owner of *The Massage Company*, who employs one receptionist and four massage therapists at her 11th Street West location in the City. She personally treats approximately 45 to 55 patients each month. (Exh. 17, 12:23–13:8). One of her long-time patients is Adam Poulos, who began seeing Theresa for therapeutic massage after suffering a neck injury. He saw her several times per week at first and now approximately once per month. (Exh. 15, 45:19–48:17).

Theresa applied for a facility license as required by the Ordinance after it went into effect, (Exh. 1), the requirements of which she protested by way of letter drafted by counsel. The letter rejects explicitly the requirement for her to “attest” that she would “allow warrantless searches and seizures of her private property and client records as a licensing condition.” (Exh. 1). As part of the licensing process, the City initially inspected *The Massage Company* on March 3, 2022. (Exh. 17, 90:1–95:13).

A City official searched areas of the business beyond the lobby, including massage rooms, storage areas, and lockers used to store the personal belongings of patients and employees. (Exh. 1); (Exh. 25)); (Exh. 17, 32:25–33:09, 94:21–95:13). The City issued Theresa a facility license on March 8, 2022. (Doc. 36).

Because of the licensing scheme, Theresa’s business now maintains a separate paper treatment log, in addition to the business’s electronic database system, to comply with § 7-1911 of the Ordinance’s mandate to keep a massage therapy treatment log with a record of the “date, time and type of each massage therapy administered, and the name of employee administering massage therapy.” (Exh. 17, 96:15–97:7). Adam, as Theresa’s patient, has the times and dates of his massage therapy treatments recorded in this log, which the Ordinance exposes to unannounced, warrantless searches without cause. § 7-1911.

Donna Podolak

Plaintiff Donna Podolak is a state-licensed massage therapist practicing in the City, treating patients as a home-practitioner from her apartment in an over-55 community. She utilizes one of the rooms in her home for therapies, in which she also stores confidential treatment records, patients’ insurance information, a massage table, and all the equipment necessary for her work. However, her patients often use the bathroom across the hall from her massage room and get a glass of water in her kitchen. Upon immediate entry to Donna’s home apartment, the kitchen, living

room, and Donna's bedroom are visible. To avoid criminal liability for practicing her chosen profession, Donna applied in person to the City for a solo practitioner certification. For the reason stated above, she also maintains a separate treatment log. (Exh. 22); (Exh. 14, 102:21–103:4).

Lynda Larvie

Finally, Plaintiff Lynda Larvie is a state-licensed massage therapist who practices from a property she owns in the City under the company name of *Bella Spa: Body, Mind, Spirit*, where she has previously rented space to estheticians and hairstylists. (Exh. 13, 37:1–16). The City approved her as a solo practitioner and issued a licensing certificate on September 8, 2021. (Exh. 2). She too maintains a separate treatment log. (Exh. 23); (Exh. 23).

STATEMENT OF JURISDICTION

This Court possesses federal-question jurisdiction over Plaintiffs' claims under the Fourth Amendment, incorporated against the State through the Fourteenth Amendment; Civil Rights Act of 1871, 42 U.S.C. § 1983; Declaratory Judgment Act, 28 U.S.C. § 2201; 28 U.S.C. § 1331; and 28 U.S.C. § 1343. The City is located within Billings, MT, and most Plaintiffs are domiciled here, thus venue is proper. Also, Billings is the location in which the alleged constitutional violation underlying this lawsuit has occurred and remains ongoing. 28 U.S.C. § 1391(b)(1); L.R. 1.2(c)(1), 3.2(b).

ARGUMENT

I. THE ORDINANCE FACIALLY VIOLATES THE FOURTH AMENDMENT

The Fourth Amendment defends the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. A court’s threshold task in a Fourth Amendment action involves determining whether the challenged conduct was a “search.” U.S. Const. amend. IV. Two lines of precedent have emerged from the Supreme Court to answer the “search” question: one grounded on the security of self and property against physical government trespasses, *United States v. Jones*, 565 U.S. 400, 411 (2012), and another that focuses on societal expectations of privacy. *Katz v. United States*, 389 U.S. 347, 361 (1967). Plaintiffs assert causes of action against the Ordinance in two separate counts. *See* (Doc. 1 at 26) (Complaint) (“Count I: Facial claim ... for physical invasion of property); *id.* at 30 (“Count II: Facial claim ... for invasion of privacy”). Plaintiffs’ third count asserts that the warrantless search conditions attached to their licenses violate the unconstitutional conditions doctrine by requiring them to relinquish their Fourth Amendment rights against unreasonable *Katz* and *Jones* searches of their homes, businesses, papers, and effects. (Doc. 1 at 34–37).

First, the Ordinance authorizes physical trespassory “*Jones*” searches by providing that a government officer may (i) enter physically the private area of a home and a business property and, (ii) access treatment logs.

Second, the Ordinance authorizes invasion-of-privacy “*Katz*” searches because society recognizes a reasonable expectation of privacy against arbitrary intrusions into both a home and a businesses’ private areas, and the information contained in the treatment logs required to be kept under the Ordinance.

A. Warrantless searches of homes and businesses are presumed unconstitutional.

“Searches and seizures inside a home without a warrant are presumptively unreasonable.” *Payton v. New York*, 445 U.S. 573, 586 (1980) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 477–78 (1971)). It is well settled that this rule extends to businesses. *See v. City of Seattle*, 387 U.S. 541, 543–45 (1967) (“The businessman, like the occupant of a residence, has a constitutional right to go about his business free from unreasonable official entries upon his private commercial property ... without official authority evidenced by warrant.”).

Thus, the right to security from unreasonable searches is fundamental to commercial property owners like Theresa Vondra and Lynda Larvie, just as it is to Donna Podolak, who practices from home. It is the government’s burden to establish that a warrant exception applies and is satisfied. *City of Los Angeles v. Patel*, 576 U.S. 409, 419–20 (2015).

B. The Ordinance authorizes warrantless searches of businesses, houses, and papers.

The Ordinance authorizes searches of massage therapists' private properties and records without a warrant. Removing all doubt, the Ordinance imposes criminal sanctions on massage therapists who refuse (1) to permit government access; (2) to accede to government officials' demands to open cabinets, rooms, and other storage areas; and (3) to produce treatment logs promptly on demand. Because the Ordinance's sweeping search powers depend neither on a warrant nor consent and because they provide no procedure for judicial pre-compliance review, as a matter of law the Ordinance must be presumed unconstitutional. *Coolidge*, 403 U.S. at 454–55. (citation omitted) (“The burden is on those seeking the exemption” from the Warrant Clause); *Patel*, 576 U.S. at 419.

Only one section is titled “Inspections,” but three sections within the Ordinance authorize searches of massage therapists' properties. The first, Section 7-1910, prohibits “refus[al] to provide access to government inspectors or law enforcement personnel who provide proof of identity.” The second, Section 7-1911, requires that massage therapists “[i]mmediately open any locked door, including any exterior door, upon request by an inspector or law enforcement officer who provides proof of identity.” It also requires massage therapists to furnish a log of all massage therapy administered to any inspector that demands it. § 7-1911(c). And the third, section 7-1912, provides that “a law enforcement officer may enter ... at any time

during business hours to determine compliance *with any law* under that person’s jurisdiction, including but not limited to this article or provisions of the Massage Therapy and Licensing Act,” § 7-1912(c), and also mandates that “[a]ll rooms, cabinets, and storage areas shall be subject to inspection and any locked rooms, cabinets, or storage areas shall be promptly opened for inspection.” § 7-1912(d).

Section 7-1911 requires a log containing the “date, time, and type of each massage therapy administered, and name of employee administering” to be kept for one year—and “shall be subject to inspection upon request.” Such records are unequivocally “papers” within the meaning of the Fourth Amendment. *Patel v. City of Los Angeles*, 738 F.3d 1058, 1061 (9th Cir. 2013) (en banc).

The Ordinance unconstitutionally lacks any mechanism for precompliance judicial review of the search demands before imposing criminal liability for refusal of searches. *See Patel*, 576 U.S. at 420 (“[T]o be constitutional, the subject of the [administrative] search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker.”). On the contrary, Sections 7-1912(d) and 7-1911(c) compel “prompt[ly]” obedience “upon request,” while exposing a violator to both criminal and civil penalties for noncompliance. § 7-1919.

Physical intrusions authorized by the Ordinance operate against the property interests enumerated by the Fourth Amendment, constituting trespassory searches. *Jones*, 565 U.S. at 411. Likewise, they intrude on the reasonable expectations of

privacy of patients, massage therapists, and business owners in their homes, commercial properties, and papers, including the information required to be kept in treatment logs. *Katz*, 389 U.S. at 361 (Harlan, J., concurring).

II. THE ORDINANCE VIOLATES PLAINTIFFS' FOURTH AMENDMENT RIGHTS AS APPLIED TO THEM INDIVIDUALLY THROUGH THE CONDITIONAL LICENSING MANDATE

Though government may withhold a privilege or benefit outright, it “may not impose conditions” on those privileges or benefits “which require the relinquishment of constitutional rights.” *Frost v. R.R. Comm’n of California*, 271 U.S. 583, 594 (1926). It is firmly settled that a government may not require people to surrender their constitutional rights in exchange for a license or benefit—even a completely gratuitous one. *See, e.g., Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013) (Fifth Amendment Takings Clause); *United States v. Scott*, 450 F.3d 863 (9th Cir. 2006) (Fourth Amendment). Yet this is exactly what the Ordinance requires of massage therapists. The “unconstitutional conditions doctrine” prohibits such exchanges and is “especially important in the Fourth Amendment context” to enforce limits on the government’s ability to induce waivers of constitutional rights. *Scott*, 450 F.3d at 867.

Under the unconstitutional conditions doctrine, a court first asks whether the challenged condition, if imposed outside the context of the transaction, would violate the person’s constitutional right. *Koontz*, 570 U.S. at 612; *Frost*, 271 U.S. at 593.

Second, the court applies merits review to the condition in the context of the transaction. *Frost*, 271 U.S. at 599. For conditions that force a waiver of Fourth Amendment rights, this involves determining whether a warrant exception applies and whether that exception is satisfied. *See Scott*, 450 F.3d at 868–72. With that in mind, an analysis of the Ordinance’s scheme follows.

Under the Ordinance, a massage therapist’s “refus[al] to provide access to government inspectors or law enforcement personnel” is a *criminal offense*. §§ 7-1910(k); 7-1919. On these facts, application of the doctrine of unconstitutional conditions is straightforward. First, the City could not—constitutionally—have imposed searches on the homes and commercial properties of Plaintiffs outside the licensing process. *See See*, 387 U.S. at 543–45. Second, because no warrant exception applies to the practice of massage therapy in Montana, the search conditions are unconstitutional as a matter of law. *See Patel*, 576 U.S. at 419–20; *infra* Part III.

Thus, the Court’s analysis can end here with a grant of this motion in favor of the Plaintiffs. For purposes of a full briefing, however, Plaintiffs will show how the Billings’ scheme fails to pass constitutional muster for additional dispositive reasons based on the City’s warrant-exception defense.

III. THE WARRANT EXCEPTION FOR CLOSELY REGULATED INDUSTRIES DOES NOT APPLY TO MASSAGE THERAPY IN MONTANA

The only specific warrant exception the City relies on in its Answer is the closely-regulated-industry exception, which falls within the administrative-search category of warrant exceptions. (Doc. 16 at 9 ¶ 4) (City’s Answer). Before this Court may reach that exception’s rigorous 3-pronged test for reasonableness, the City must first establish that (1) the Ordinance’s primary purpose is not crime control within the meaning of the Fourth Amendment’s “special needs” doctrine, and (2) massage therapy in Montana is a closely regulated industry.

A. Crime control is the programmatic purpose of the Ordinance, thus the searches at issue do not fall within the “special needs” doctrine.

Administrative-search programs *must* have as their predominant purpose a government interest separate from crime control. *Ferguson v. City of Charleston*, 532 U.S. 67, 81–86 (2001). The City fails this threshold test for two reasons. First, it conceded the crime-control purpose in its Answer. *See* Doc. 16 at 9 ¶ 5. Second, its officers have repeatedly affirmed that its massage ordinance’s specific central purpose is combatting criminal sex trafficking enterprises. For example, a public letter from City Attorney Gina Dahl to the Billings City Council sets out the Ordinance’s predominant purpose:

If properly implemented and enforced, this ordinance will reduce human trafficking by making it more difficult for illicit businesses to

operate under the guise of being massage or spa facilities. Additionally, it will save resources for law enforcement by providing an alternative process to shut down these illicit businesses, and it will drive away criminal enterprises masquerading as legitimate businesses in exchange for low cost, nominal regulation.

(Exh. 4, City 705).

Training materials for City staff confirm that crime control is not a side effect of the Ordinance, but its primary objective. They instruct that inspections should “[f]ocus on suspected illicit operations” and conduct “war not battle” against them. (Exh. 5, City 1065). Under a heading titled “Proposed Ordinance Goals,” a June 8, 2021 training presentation for City personnel states the Ordinance would “[p]rohibit practices specific to illicit businesses” and “[e]asily spot and remove illicit businesses through inspections ... instead of expensive, risky, covert law enforcement operations for misdemeanor busts.” (Exh. 5, City 1069). The City’s Rule 30(b)(6) representative also admits that the “purpose” of the inspections is “[t]o determine if there[] [are] any indicators for any illicit massage activity occurring”—a reference to “prostitution or human trafficking.” (Exh. 11, 9:4–9:25, 21:3–22:2). Likewise, the City’s Code Enforcement Division Manager, Tina Hoeger, confirmed under oath that the City’s inspections are designed to look for condoms, vibrators,

and things “of a sexual nature” that indicate a business is a front for sex crimes. (Exh. 12, 30:12–30:23).

One element of an administrative-search program that reveals its crime-control purpose is information-sharing with law enforcement. *See Ferguson*, 532 U.S. at 83 (hospital’s policy of drug testing pregnant patients did not serve “special need” where results were shared with local police). Here, the Ordinance does not merely implement a program where information is shared with law enforcement, which would be unconstitutional standing alone. No, it goes further: It authorizes warrantless entries by police officers themselves “to determine compliance with *any law* under th[eir] jurisdiction.” *Id.* (emphasis added). Even when code enforcement is the department conducting investigations, the Ordinance was designed to uncover criminality so that the police can follow up without the inconvenience of obtaining a warrant. At the City Council’s April 12, 2021 session, Chief St. John stated that the Ordinance’s search authorities provide the police “another tool to access the information and evidence [needed] to bring a case together,” (Exh. 10, 225:1–259:3), and highlighted that code enforcement would share investigation evidence with the police. *Id.* at 100:13–101:16.

The text of the Ordinance is instructive here as well. In the “WHEREAS” clauses, it recognizes the scourge of “illicit businesses,” “human trafficking,” “unlawful sexual activities,” and “other unlawful activity,” Ordinance, at 1–2. The

Ordinance references and prohibits “erotic parlors,” “nudity,” and “sexual acts.” § 7-1902. Furthermore, it targets practices and objects specifically associated with criminal sex trafficking operations. *See* § 7-1910(h) (sex toys, lubricants, etc.), (j) (sex for compensation), (k) (“elud[ing] law enforcement by exiting side or back doors”), (m) (“operate an erotic parlor”); (Exh. 16, 21:10–25:20) (identifying red flags associated with illicit sex trafficking); (Exh. 6: City FAQ re Ordinance) (describing Ordinance’s focus on “red flags” associated with criminal sex trafficking operations).

Even if the Ordinance serves an additional government interest in helping the victims of sex trafficking, the Court must evaluate the Ordinance’s “immediate” purpose. At a high level of abstraction, every crime-control law serves a broader ultimate public purpose, but “[s]uch an approach is inconsistent with the Fourth Amendment.” *Ferguson*, 532 U.S. at 83 (rejecting the “ultimate purpose” lens). While many crimes harm the public’s general health, safety, and wellness—including their victims—this does not immunize programmatic searches and seizures (like the ones here) designed to reveal evidence of criminality from the warrant requirement.

The City’s warrant-exception defense fails here because administrative-search programs cannot be motivated by an interest in crime control. This alone is sufficient

for the Court to rule in Plaintiffs' favor. But there are additional dispositive reasons the City's warrant-exception defense fails.

B. Massage therapy in Montana is not a closely regulated industry under either *Jones* or *Katz*.

First, Plaintiffs challenge the Ordinance under *Jones*, 565 U.S. 400, which applies the Fourth Amendment's irreducible protections against physical trespasses to property under the background law of property, customs, and search-and-seizure law as they existed in 1791. *Id.* at 411. They also assert a claim under *Katz*, 389 U.S. 347, which defends against the invasion of reasonable societal expectations of privacy. *Id.* at 361 (Harlan, J., concurring). Laws authorizing *Jones* searches are reviewed under a standard that asks whether they are reasonable under the background law in existence at the time the Fourth Amendment was ratified, e.g., common-law trespass. *See Torres v. Madrid*, 141 S.Ct. 989, 998 (2021) (Amendment defends "th[e] degree of privacy against government that existed when the Fourth Amendment was adopted."). Inquiries into societal expectations of privacy are properly relegated to *Katz* searches. *Cf. Carpenter v. United States*, 138 S.Ct. 2206, 2213–15 (2018) (applying *Katz* to privacy interests in cell phone locational data).

Under Plaintiffs' *Jones* cause of action, the Ordinance is unconstitutional because (1) the Ordinance authorizes physical trespasses to homes, the private areas of business properties, effects, and papers; (2) the practice of massage therapy existed prior to 1791; and (3) no background customs, practices, or principles of law

from the Founding Era subjected massage therapists to warrantless searches. *See Patel*, 576 U.S. at 424–26 (finding hotels were regulated at the Founding but not subject to unannounced warrantless searches and therefore not a closely regulated industry).

Under Plaintiffs’ *Katz* cause of action, the Ordinance is unconstitutional because (1) the practice of massage therapy in Montana is not heavily regulated by intrusive restrictions, and (2) has not been regulated by the State for very long. *See Killgore v. City of S. El Monte*, 3 F.4th 1186, 1189 (9th Cir. 2021) (evaluating effect of history and intrusiveness of regulations on expectations of privacy to determine if an industry is closely regulated for a *Katz* claim).

1. Massage therapy has been in existence since the Founding and was not subject to warrantless searches at that time.

The meaning of the Constitution is fixed and must provide massage therapists the same right against unreasonable searches and seizures in their homes, businesses, effects, and papers as they enjoyed in 1791 when the Fourth Amendment was ratified. *Jones*, 565 U.S. at 411. When evaluating a regulatory scheme under the *Jones* test, a court must determine (1) whether the regulated activity existed at the time of the Founding, and then (2) whether it was subject to reasonable warrantless searches at that time. If the answer is in the positive, the court must then apply the doctrinal test for reasonableness that existed in 1791. *Cf. Carroll v. United States*, 267 U.S. 132, 150–55 (1925).

Massage therapy has been practiced in various parts of the world since ancient times. *See* Andrew Vickers & Catherine Zollman, *ABC of Complementary Medicine: Massage Therapies*, 319 *British Medical J.* 1254, 1254 (1999). Massage therapists in England and colonial America during the 1700s would often massage patients following surgeries or to help stimulate movement in atrophied limbs. Patricia J. Benjamin, *Brush Up on the History of the Massage Therapy Profession*, AMERICAN MASSAGE THERAPY ASS'N (Aug. 27, 2015); Abraham Colles, *On Massage*, 2 *BRITISH MEDICAL J.* 175 (1888). Ohio was the first state to regulate and require a license to practice, but not until 1915. Thornton et al., 56 *J.L. & Econ.* At 374; *see also id.* (only 10 states licensed massage through 1975).

The City simply cannot show that massage therapy was an activity subjected to warrantless searches and seizures as a matter of background law at the time of the Founding. Thus, even if the City can establish that the Ordinance serves a primary purpose other than crime control, its closely-regulated-industry defense to Plaintiffs' Count I *Jones* claim and Count III unconstitutional conditions doctrine claim fail at this stage.

Nor does the City's closely-regulated-industry defense fare any better against Plaintiffs' Count II claim that the Ordinance violates *Katz* expectations of privacy, as will be shown below.

2. Montana’s massage regulations do not significantly diminish privacy expectations under *Katz*.

Whether an industry is closely regulated under *Katz* depends on three factors: (1) the historical duration of regulation, (2) the effect of pervasive industrial regulations on expectations of privacy, and (3) whether the activity “poses a clear and significant risk to the public welfare.” *Patel*, 576 U.S. at 424.

Massage therapists in Montana have only been licensed since July 1, 2010. Montana Laws 2009, ch. 451, § 6(1) (H.B. 662). But the mere licensing of an activity is not pervasive industrial regulation. It was not until 2019 that Montana imposed its first regulation on massage therapy businesses themselves. *See* Mont. Laws 2019, ch. 419 (H.B. 749) (imposing business requirement to conspicuously display state licenses). Thus, state regulations on the operation of massage therapy businesses had been in place for *less than 3 years* when the City adopted its Ordinance. This should be contrasted with the California massage industry, which had been regulated for over 30 years when the Ninth Circuit ruled that it was closely regulated under the *Katz* line of industrial-search cases. *Killgore*, 3 F.4th at 1191. The Billings Ordinance became effective 10 months prior to Plaintiffs’ suing the City. (Doc. 1); Ordinance, at 16, § 4. Thus, the duration element weighs heavily in Plaintiffs’ favor.

Next, for an industry to be “closely regulated” under *Katz*, the regulations imposed on businesses must be particularly pervasive. For example, in *Killgore*, the Ninth Circuit found that California had “completely regulate[d] the environment in

which massages are provided.” 3 F.4th at 1190 (quoting *Rush v. Obledo*, 756 F.2d 713, 720 (9th Cir. 1985)) (cleaned up). Such regulations “must be sufficiently pervasive and defined that the owner of such a facility cannot help but be aware that he ‘will be subject to effective inspection.’” *Donovan v. Dewey*, 452 U.S. 594, 603 (1981) (quotation omitted). No such state regulations existed at the time of the Ordinance’s adoption. The only state-imposed inspection power—indeed the only requirement imposed on *businesses* rather than *practitioners* themselves—was a 2019 law that allows state and local officers to enter a massage therapy business for the limited purpose of ensuring that each practicing massage therapist’s license is conspicuously displayed. MCA § 37-33-406. Because this activity does not invade the private areas of businesses, it fails to intrude on the reasonable expectation of privacy that business owners have in the employee-only areas of their businesses, unlike the Ordinance. *See Marshall v. Barlow’s, Inc.*, 436 U.S. 307, 314 (1978) (striking down OSHA inspection power as to private areas of businesses).

Finally, there is no evidence in the record that massage poses any danger to the public. On the contrary, it is a therapeutic practice. If the City relies on a non-crime-control purpose for the Ordinance’s inspection powers, it must prove that the proffered purpose attempts to control a dangerous activity. *Patel*, 576 U.S. at 424. That burden falls on the Defendant and examination of the record reveals that it is not met.

The City cannot meet its burden of establishing that massage therapy was closely regulated—even under the more relaxed *Katz* standard.

This Court need not apply the *Katz* warrant exception for closely regulated industries because massage therapy in Montana is not closely regulated. Nonetheless, the Ordinance would fail this analysis, as detailed below.

IV. THE ORDINANCE DOES NOT PASS MUSTER UNDER THE CLOSELY-REGULATED-INDUSTRY EXCEPTION, EVEN IF IT APPLIED

If the City’s defense makes it past the “special needs” and closely-regulated-industry tests, it nonetheless fails here because (1) the Ordinance does not impose a “comprehensive regulatory scheme,” (2) warrantless searches are not necessary to its purpose, and (3) the Ordinance places no significant limitations on the scope of searches or discretion of the officers executing them. *See Patel*, 576 U.S. at 425–26 (citation omitted). There is one additional prong to this analysis, which Plaintiffs need not address, and that is the substantial-government-interest prong. Without doubt, investigating criminal sex traffickers is a substantial government interest. However, crime control is not a *legitimate* interest for purposes of an administrative-search scheme. *See supra* Part III-A. If the City elects to rely on a government interest other than “curtailing prostitution and human trafficking,” as set out in its Answer, (Doc. 16 at 9 ¶ 5), Plaintiffs will address it in their responsive brief.

A. The Ordinance does not create a comprehensive regulatory scheme.

To apply the closely-regulated-industry test, there must first be a “comprehensive scheme of regulation” for a court to review. *See Patel*, 576 U.S. at 425. The City’s Ordinance is neither regulatory nor comprehensive. The section imposing “prohibitions” for businesses is simply a list of practices strongly associated with sex trafficking crimes accompanied by mandates to comply with the government when it arrives to search without a warrant. *See* § 7-1910. Its “requirements” section follows this same theme. § 7-1911. These “nominal”² regulations as well as the section titled “Inspections,” § 7-1912, are backed by threats of criminal and civil sanctions for disobedience, rather than merely revocation of licensure. *See supra* Part I-B. Indeed, the City’s published FAQ document concerning the Ordinance even places the word “regulations” in quotation marks when referencing the requirements it imposes on massage therapy businesses. (Exh. 6).

At the Billings City Council meeting concerning the Ordinance on April 12, 2021, local attorney Stephanie Baucus, by whom “[t]he initial draft [of the Ordinance] was refined, edited, and shaped,” (Exh. 6, City 964), related how the regulatory “burden” imposed on massage therapists by the Ordinance “pales in

² (Exh. 4, City 705).

comparison to regulations on ... cosmetologists.” (Exh. 10, 211:14–212:1); *see also id.* (“[A]ll the burden amounts to is basically some paperwork[.]”); (Exh. 26). She was correct.³ Cosmetologists in Montana are licensed and regulated at the state level—and closely. State laws and regulations impose strict sanitary requirements, restrictions on which animals can be present and for what purposes, rules concerning the retention of equipment manuals, and prescribed practices for the use of abrasive liquids and tools, just to name a few. MCA § 37-31-204; Mont. Admin. Rules 24.121.1505, 24.121.407, 24.121.1507, 24.121.1509; *see also* (Exh. 18) (extensive cosmetology inspection checklist). Such restrictions are the hallmarks of a comprehensive regulatory scheme. These regulations, unlike those contained in the Ordinance, relate to industrial practices rather than serving as a transparent excuse to investigate crime.

Admittedly, in *Killgore* the Ninth Circuit Court of Appeals upheld an ordinance imposing inspection regulations on massage therapists in the face of a *Katz* claim. A review of the ordinance in *Killgore*, adopted by the City of South El Monte, California, reveals just how incomprehensive the Billings Ordinance is by comparison. The *Killgore* ordinance imposed a laundry list of facility requirements, including restrictions and prohibitions concerning: the size, materials, and number

³ As was City Attorney Gina Dahl when she described the regulations imposed by the Ordinance as “nominal.” (City 463).

of signage; the conspicuous display of photographs of each practicing massage therapist; the adequacy of ventilation systems; requirements for wash basins and restrooms; the availability of sanitary towels, bathrobes, sheets, and linens; laundering rules; the repair of fixtures and appliances; general cleaning, and the frequency thereof; sterilization of instruments; the use of liquids, powders, and creams so as to prevent contamination; and restrictions on the size and usage of foam pads. City of South El Monte, Ordinance 1195 § 5 (2014).

By contrast, the Billings Ordinance imposes only 13 “[p]rohibitions during operation.” § 7-1910. Eight of them relate to sex and nudity. *Id.* Three more simply qualify the state and City’s requirement of a license. *Id.* Another mandates compliance with unannounced searches and prohibits eluding law enforcement. *Id.* This leaves *one* true regulatory prohibition, which is more of a zoning rule than anything else: it prevents the use of a massage therapy business as a dwelling.⁴ *Id.*

The Ordinance’s “[r]equirements during operation” section is likewise devoid of substantive regulations of massages and the equipment or facilities strongly associated with them. § 7-1911. Instead, it imposes 11 rules that prioritize tracking down and frustrating criminal sex traffickers, like the maintenance of employee and contractor lists, retention of books and logs, restrictions on hours of operation, and compliance with unannounced searches. *Id.* The Ordinance’s requirements and

⁴ Home-practitioners are exempted.

prohibitions closely track the extensive testimony about indicia of human trafficking and criminal sex operations during the April 12, 2021 Billings City Council hearing delivered by FBI Agent Brandon Walter, Detective Scaramucci, and Police Chief Rich St. John. (Exh. 10, 100:13–16, 105:18–108:11, 109:25–115:1).

The Ordinance is not a comprehensive regulatory scheme but a list of rules the City believed would help it investigate and root out crime without warrants. The City’s repeated justification for imposing warrantless searches on massage businesses is not to ensure that massage therapy is safe, sanitary, and well-practiced, but because “[c]riminal investigations of human trafficking are expensive and time-consuming.” (Exh. 4) (Dahl Letter 4/26/21). Police Chief St. John has repeatedly described the Ordinance as a “tool” for law enforcement. (Exh. 10, 258:7–15) (“[A]gain, it’s a tool for us.”). Not only is this an illegitimate purpose for administrative searches, but it illuminates why the Ordinance is devoid of substantive regulations of the *practice* of massage therapy: It isn’t a regulatory scheme at all.

B. Warrantless searches are far from necessary to effectuate the Ordinance’s goals.

Warrantless searches must be necessary to further the regulatory goals underlying a comprehensive regulatory scheme. *New York v. Burger*, 482 U.S. 691, 710 (1987). While there is no comprehensive scheme to speak of, nor does the

Ordinance serve any true *regulatory* goals, warrantless searches are still unnecessary to the scheme it *does* impose.

The warrantless search power is necessary in cases where it, for example, ensures that underground mines are safe or firearms distributors are doing their diligence tracing the origins of weapons. *See Donovan v. Dewey*, 452 U.S. 594, 602–03 (1981) (mines); *United States v. Biswell*, 406 U.S. 311, 315–16 (1972) (firearms). The way searches have unfolded under the Billings Ordinance proves that unannounced searches are unnecessary and do not serve the purpose of industry regulation. In the words of the City’s code enforcement manager, inspections are “usually complaint driven.” (Exh. 12, 14:4–14:7). While the text of the Ordinance authorizes unannounced, post-licensure inspections, the City contemplated a complaint-driven policy of enforcement from the beginning. *See* (Exh. 6) (“Code Enforcement investigations occur on a complaint basis. Code enforcement only shows up when a complaint is filed.”). If unannounced inspections of massage businesses were necessary to ensure compliance with health and safety, the City would be conducting them regularly—and not just against businesses suspected of crime. Its selective use of the unannounced inspection power is evidence that it is unnecessary.

Several additional reasons reveal the City cannot prove its necessity.

First, initial licensing inspections, which are scheduled ahead with license applicants,⁵ are (and have been) sufficient to reject noncompliant businesses during the application process and weed out illicit sex operations. As the record shows, any concerns that evidence of noncompliance can be easily covered up on short notice⁶ do not obtain here since the City has successfully weeded out criminal operations with initial inspections. *See* City 1277–45; 1246–1309; 1310–77; 1378–1419. Indeed, a presentation to the City by Code Enforcement Manager Tina Hoeger asserted that no “suspected illicit massage facilities” were operating in the City any longer. (Exh. 8).

Second, because warrants can be obtained quickly and *ex parte* for searches of suspected criminal sex trafficking operations, there is no need for the warrantless searches. If the City is waiting for evidence of criminality anyways, it could simply use the *ex parte* warrant process to search businesses suspected of wrongdoing. Billings Police Chief Rich St. John confirmed that his department has used telephonic means to acquire warrants in the past and that even a conventional warrant can be obtained *ex parte* within “a day or two.” (Exh. 16, 15:9–16:11.)

Finally, if the City’s unannounced, warrantless inspection power is necessary to ensure massage businesses remain in regulatory compliance, why has it only been

⁵ (Exh. 11, 12:4–13:7).

⁶ *See Dewey*, 452 U.S. at 603 (safety hazards at underground mines could be covered up if no unannounced search power).

used so few times that the City’s code enforcement manager can “count them on one hand”? (Exh. 12, 18:4–11). The reason is obvious: The unannounced search power is there to target suspected criminals, not legitimate massage businesses. It is unnecessary to any regulatory purpose.

C. The Ordinance places no meaningful limits on the discretion of the police and code enforcement officers it empowers to search and seize homes and businesses.

The final prong of the closely-regulated-industry test asks whether the scheme places sufficient limits on the discretion of inspecting officers to serve as an adequate substitute for a judicial warrant. 576 U.S. at 426. Eliminating arbitrary discretion from officers in the field is one of the primary concerns of the Fourth Amendment. *See Brown v. Texas*, 443 U.S. 47, 50 (1979) (“A central concern ... has been ... the unfettered discretion of officers in the field.”). To pass muster, a regulatory scheme’s search powers “must be ‘carefully limited in time, place, and scope.’” *Burger*, 482 U.S. at 703 (quotation omitted).

The warrantless-search regulation considered in *Killgore* included language limiting inspections to twice annually, 3 F.4th at 1188, and the ordinance specifically detailed objects to be reviewed for compliance. *See City of South El Monte, Ordinance 1195 § 5* (2014). The Billings Ordinance is quite different in these respects. It places no limits on *either* the minimum or maximum frequency of searches. Likewise, the scope of searches is both vague, *e.g.*, § 7-1910(m) (no “erotic

parlors”), and excessively broad. The scope of a search is defined by the object of the search, to include anywhere those objects could be found. *Horton v. California*, 496 U.S. 128, 140 (1990) (citing *United States v. Ross*, 456 U.S. 798, 824 (1982)). Thus, the Ordinance’s scope encompasses any place within a business—or *home*—where even a single condom could be found. *See* (Exh. 12, 30:6–23); (Exh. 9) (inspection checklist). The Ordinance’s text confirms this nearly limitless scope by holding every single part of a business or home open to inspection for any law under a police or code-enforcement officer’s jurisdiction. §§ 7-1911, 7-1912, 7-1912(c).

The Ordinance contains only two limits on the searches it authorizes: they (1) must occur during business hours and (2) cannot interrupt a less-than-two-hour massage. §§ 7-1911(c), 7-1912(c). These are constitutionally inadequate.

V. PLAINTIFFS ARE ENTITLED TO INJUNCTIVE AND DECLARATORY RELIEF, NOMINAL DAMAGES, AND REASONABLE ATTORNEYS’ FEES

Plaintiffs have met their burden of establishing that the Ordinance authorizes warrantless searches of massage therapy businesses, homes, and papers—including their own. Since no warrant exception applies to the challenged search powers authorized by the Ordinance, the law is facially unconstitutional under the Fourth Amendment. *See Patel*, 576 U.S. at 418 (In facial Fourth Amendment challenges, “the proper focus of the constitutional inquiry is searches that the law actually authorizes[.]”). Thus, Plaintiffs are entitled to declaratory relief.

Further, because they were compelled by the Ordinance into surrendering their own Fourth Amendment rights, Plaintiffs are likewise entitled to nominal damages and injunctive relief in the form of enjoining the searches authorized by the search conditions attached to their licenses and certifications. 42 U.S.C. § 1983.

Finally, Plaintiffs are entitled to permanent injunctive relief against enforcement of the Ordinance, particularly the searches authorized by it. They have suffered irreparable injury to their liberty in the form of being compelled to surrender their fundamental constitutional right against unreasonable, warrantless searches of their home, businesses, and papers. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (“The Court has repeatedly held that the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies.”).

CONCLUSION & PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court declare the Ordinance unconstitutional both on its face and as applied to Plaintiffs, enjoin its enforcement against them and *per se*, in particular all warrantless searches it authorizes of homes, businesses, papers, and effects, and award nominal damages and reasonable attorneys' fees and costs.

DATED: November 28, 2023

Respectfully submitted:

/s/ Daniel T. Woislaw
DANIEL T. WOISLAW
ALEXANDER J. SMITH
ETHAN W. BLEVINS
MARK MILLER

CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced, with left, right, top, and bottom margins of one inch; and that the word count calculated by Microsoft Word is 6,497 words, excluding the Table of Contents, Table of Authorities, Certificate of Compliance, and Certificate of Service.

/s/ Daniel T. Woislaw

DANIEL T. WOISLAW*

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2023, I filed electronically with the Clerk of the Court the above document via CM/ECF, which shall automatically serve the City's counsel of record with an electronic copy.

By /s/ Daniel T. Woislaw
DANIEL T. WOISLAW

EXHIBIT
1

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD



Massage and Spa Facility License

Finance Department
P.O. Box 1178 Billings, Montana 59103
406-657-8364
businesslicense@billingsmt.gov

A complete application will include all of the following items, for each owner of a non-exempt massage or spa facility.

- ✓ Initial application fee of \$25.00
- ✓ Completed attached application
- ✓ State background check from the Montana Department of Justice
- ✓ Copy of Massage License issued from the Montana Board of Massage Therapy
- ✓ A certificate of good standing, registration, or incorporation from Montana Secretary of State

Section I – Business Information

- 1.) Business Legal Name
Massage Company, LLC
- 2.) Business Name (DBA)
The Massage Company
- 3.) Legal Business Form
LLC (S-corp)

Section II – Applicant Information

(This section is to be completed by all persons owning at least 5% of the business entity)

- 1.) Applicant Name
Therese M Uondra
- 2.) Applicant Aliases

- 3.) Applicant Ownership Percentage
100%
- 4.) Date of Birth
[REDACTED] 1986
- 5.) Place of Birth
Billings, MT
- 6.) Race (optional)

7.) Sex (optional)

8.) Telephone number(s)

(406) _____ (406) _____, (406) _____

9.) Email address

billingsmassage.therapists@gmail.com

10.) Residential Address

_____, Billings, MT 59105

a. If applicant has resided in this location for less than 2 years, list most recent previous address

11.) Has the applicant, either as an owner or employee, ever been refused any similar license or permit in the city or elsewhere?

YES NO

12.) Has the applicant, either as an owner or employee, ever had any similar license or permit revoked or suspended in the city or elsewhere?

YES NO

13.) Is the applicant or any owner (owning at least 5% of the business) a registered sex offender?

YES NO

14.) Has the applicant or any owner (owning at least 5% of the business) been convicted of, or on diversion or deferred judgement for any felony, financial crime, or sexual offense?

YES NO

a. If yes, please explain

15.) Is the applicant or any owner (owning at least 5% of the business) currently under indictment or charge for any felony, financial crime, or sexual offense?

YES NO

16.) Please Provide: A state fingerprint background check from the Montana Department of Justice.

Background checks can be obtained at: <https://dojmt.gov/enforcement/background-checks/>

17.) Is the applicant attestation aware of the provisions of the ordinance and will comply with them?

YES NO

Section III – Applicant 5 Year Employment History

- 1.) Occupation and employment history for prior 5 years (use additional pages, if necessary)

Employer Name: Self-Employed (The Massage Company)
Occupation: massage therapist
Dates of Employment: 2014 - Present
Employer Contact Information: 406- [REDACTED] (cell)

Employer Name: _____
Occupation: _____
Dates of Employment: _____
Employer Contact Information: _____

Employer Name: _____
Occupation: _____
Dates of Employment: _____
Employer Contact Information: _____

Section IV – Business Information

- 1.) Physical Business Address

1311 11th Street West, Billings, MT 59102

- 2.) Business Mailing Address, if different

~~1311 11th~~ Same as above

- 3.) E-mail address

billingsmassage therapists@gmail.com

- 4.) Business telephone number

(406) 318-0752 - (406) 702-1128

- 5.) Business entity legal structure (e.g, partnership, Corp, LLC, Sole Proprietor)

LLC (S-corp)

- a. Please Provide: A certificate of good standing, registration, or incorporation from Secretary of State

- 6.) Hours of Operation

We are by appointment but our hours we see clients are Mon - Saturday 9am - 7pm

7.) Hours of Operation during which the business entrance may be locked.

Varies on if my receptionist is away

8.) Sec. 7-1911 Requires all interior and exterior doors to remain unlocked unless an exception or variance exists. If a variance to this requirement is desired, please use this space to provide information demonstrating that a variance is necessary for the security of employees, contractors, or property of the licensee.

There are times when we dont have someone covering the front desk and in those instances we have our doors locked w/a time listed to when we will be out of an appointment.

9.) List of services to be provided at the facility

Massage From 30min - to 90min
Infrared Sauna sessions 20min to 90min

Section V – Business Location Premises Information

1.) Name of Business Premises Owner

Robbin Dangerfield

2.) Physical Address of Business Premises Owner

2917 Doreen Drive Billings, MT 59102

3.) Phone Number of Owner of Premises

(406) 698 - 7880

4.) E-mail address of building owner

~~rob~~ robin1d334@gmail.com

Section VI – Applicant Attestation

1.) Every licensed massage facility shall be required to:

(a) Maintain a current list of employees and contractors on site with start dates of employment or contracted service, full legal name, date of birth, place of birth, home address and telephone number, employment position, date first began service and the date when services were terminated, if applicable.

- (b) Maintain a copy of each massage therapist's Montana license for each employee and contractor performing massages.
- (c) Operate under or conduct business under only the designation specified in the license.
- (d) Massage therapists shall remain fully clothed in professional attire while administering massage to clients on business premises, including premises designated by the client through an outcall massage service.
- (e) Massage facilities interior and exterior doors shall remain unlocked while the massage facility is open except as follows:
 - 1. Restroom doors may be locked.
 - 2. Exterior doors may remain locked if permitted by applicable building or zoning codes and if the massage facility is owned by one individual with no more than one employee or independent contractor present in the facility. Exceptions may be granted by the license administrator.
 - 3. Internal doors may be locked to protect confidential client or business information except that internal doors may not be locked on rooms when a massage is being performed
- (f) All massage facilities are required to have and maintain clear glass which is not painted over, darkened, or blocked by any cloth or obstruction, at the entrance to such establishment so that the front area where patrons are greeted is visible from the outside. A massage facility located in a building or residence that does not have glass on the front of the premises is required to notify the City in writing at the time of application or renewal.
- (g) List the address of the facility in any advertisement.
- (h) Provide a written list of prices for all services (through signage or written materials) of the massage facility available to all prospective customers.
- (i) Upon the sale or transfer of any ownership interest in a massage facility, the license issued pursuant to this Article shall be null and void, and a new application shall be required.

2.) Inspections

- (a) Any person operating a business within the City of Billings is subject to reasonable inspection provided in Section 13-432 to determine compliance with all laws and ordinances, including with this Section.
- (b) Each massage facility shall conspicuously display on the premises the license of each massage therapist working at the business or, for a mobile practice, make the license readily available as required by MCA §37-33-406(1), or as amended.
- (c) The license administrator, a designee of the Board of Massage Therapy, or a local law enforcement officer may enter a massage therapy business at any time during business hours to determine compliance with MCA §37-33- 406(1), as provided in MCA §37-33-406(2).

(d) All owners, managers, massage therapists, employees, contractors or persons occupying the facility other than clients shall present identification and shall not elude identification.

3.) Denial, suspension, or revocation of license

The licensing administrator may suspend or revoke a massage facility license if he or she finds:

- (a) The licensee has violated any of the provisions of this Article; or
- (b) That the qualifications set forth in the application utilized to obtain a massage facility license were likely obtained through fraud, deceit or misrepresentation; or
- (c) The State has revoked the massage therapy license of the licensee.

I have read the required acts and limitations of operation and understand that violation of these provisions may lead to disciplinary action up to and including revocation of my license. A pattern of facts indicating operation of an erotic business, house of prostitution, or human trafficking will lead to immediate summary suspension of the license. I have complete the application and to the best of my knowledge the application is accurate. False or omitted information may lead to a denial of the license.

Signature of Applicant

 Date 11/4/22

Printed Name and Title:

Theresa M Vondra

Office Use Only:

Date Rec'd: _____

Form of ID Presented: _____

Name Match (Initial): _____

Tender: Cash _____ Credit _____ Check _____



**PACIFIC LEGAL
FOUNDATION**

January 5, 2022

Ethan Blevins
Pacific Legal Foundation
555 Capitol Mall, Ste 1290
Sacramento, CA 95814

Attn:
Finance Department, City of Billings
210 N 27th St.
Billings, MT 59101

To Whom it May Concern:

I am writing on behalf of my client, Theresa Vondra, regarding her attached application for a Massage and Spa Facility License. The City's recent passage of Ordinance 21-5757 has placed Ms. Vondra in an unjust dilemma, forcing her to choose between her livelihood, a business she has built from the ground up, and her constitutional rights. This letter serves as notice that she submits the attached application under protest.

The Fourth Amendment to the United States Constitution protects Ms. Vondra from unreasonable searches and seizures of "persons, houses, papers, and effects" and guarantees that "no warrant shall issue but upon probable cause."¹ Forcing her to "attest" that she will allow warrantless searches and seizures of her private property and client records as a licensing condition is a transparent attempt to evade her constitutional right to insist on a warrant.

The surrender of a fundamental constitutional right must be voluntary.² By enacting an ordinance that compels individuals to waive the protections guaranteed by the Fourth Amendment, and by criminalizing the refusal of a warrantless search, the Ordinance removes volition from the equation.

Hence, Ms. Vondra submits the attached application and the required attestation of acknowledgment concerning the City's claimed search powers under protest.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ethan Blevins', with a horizontal line extending to the right.

¹ U.S. CONST. amend. IV.

² Ohio v. Robinette, 519 U.S. 33, 40 (1996).

Finance Department, City of Billings
January 5, 2022
Page 2

Ethan Blevins
Attorney*
Pacific Legal Foundation

**Licensed in the State of Montana*



State of Montana
Business Standards Division
Board of Massage Therapy

This certificate verifies licensure as:
MASSAGE THERAPIST

LMT-LMT-LIC-2609

Status: **Active**
Expires: **08/31/2022**

**THE MASSAGE COMPANY
THERESA M VONDRA
321 PROSPECTORS LN
BILLINGS, MT 59105**



 **Montana Department of
LABOR & INDUSTRY**
RENEW OR VERIFY YOUR LICENSE AT:
<https://ebiz.mt.gov/pol>

Renew online at <https://ebiz.mt.gov/pol> by signing in with your username and password.

The renewal cycle for your board opens 60 days prior to the expiration date on your current license.

Renew your license prior to your expiration date to avoid being charged a late fee(s).

Remember to maintain your online account information with a password, security question and a valid email address. You can update your account information by accessing the 'Account Management' link when logged in.

STATE OF MONTANA
DEPARTMENT OF JUSTICE
DIVISION OF CRIMINAL INVESTIGATION
Crime Information Bureau

AUSTIN KNUDSEN
ATTORNEY GENERAL



PO BOX 201403
2225 11th AVENUE
HELENA MT 59620-1403

November 1, 2021


Theresa Vondra
321 Prospectors Ln
Billings MT 59105

Dear: Theresa Vondra

RE: NAME/ VONDRA, THERESA
ALIASES/
DOB/ [REDACTED] 1986
SOC/ [REDACTED]

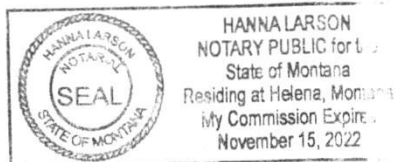
On the basis of the information furnished, a check of the records of the Montana Criminal History Records Program discloses that either the individual(s) in question has no prior criminal record or that, if, in fact, such a criminal record exists, it does not meet the criteria for dissemination (Montana Criminal Code Annotated 44-5-301).

Sincerely,


Sue Splain Parks
Civil Applicant Technician
Montana Department of Justice
Criminal Records and Identification Services Section

State of Montana
County of Lewis and Clark

This instrument was acknowledged before me on November 1, 2021 by Sue Splain Parks.





TELEPHONE: (406) 444-3625

FAX: (406) 444-0689

CITY 001541

720 Grand
22-0400

Punt, Tanya

From: Rindahl, Joanne
Sent: Wednesday, March 2, 2022 2:09 PM
To: Punt, Tanya
Subject: RE: apps
Attachments: The Massage Company LLC.pdf; Color0558.pdf

Also attached is a the expired license for Lima Hana Massage Education Center. They are refusing to apply for the new massage license, after several letters. If you forward on the violation notice I will add some information letting them know they can not renew the existing license. They tried to just renew. Please let me know if you have any questions.

Thank you,



Joanne Rindahl
Business License Administrator
rindahlj@billingsmt.gov

billingsmt.gov

P.O. Box 1178 • Billings, MT 59103
P 406.657.8364 F 406.247.8608

City of Billings email messages and attachments are subject to the Right to Know provisions of Montana's Constitution (Art. II, Sec. 9) and may be considered a "public record" pursuant to Title 2, Chapter 6, Montana Code Annotated. As such, this email, its sender and receiver, and the contents may be available for public disclosure and will be retained pursuant to the City's record retention policies. Emails that contain confidential information such as information related to individual privacy may be protected from disclosure under law. This message is intended for the use of the individual or entity named above. If you are not the intended recipient of this transmission, please notify the sender immediately, do not forward the message to anyone, and delete all copies. Thank you.

From: Punt, Tanya <puntt@billingsmt.gov>
Sent: Wednesday, March 02, 2022 2:03 PM
To: Rindahl, Joanne <rindahlj@billingsmt.gov>
Subject: apps

So can you email me the application for the Theresa Vondra , The Massage Company
I am going to call her in advance and set up a day and time next week to get this inspection scheduled.
Thank you



Tanya Punt
Code Enforcement Officer
puntt@billingsmt.gov



Inspector Name(s): <i>Tanya Hunt, Marshall Gilunt</i>
Date Inspected: <i>3-7-22</i>
OL Number:
Spa Massage Facility Address: <i>1311 11th St W Billings</i>

Facility Check List – BMCC 7-1900

BMCC 7-1910. Prohibitions during Operation:

- No licensed massage therapist is in the facility during open hours; *All licensed*
- Evidence the facility is used for living or sleeping; *none*
- Employees are not fully clothed or are wearing transparent clothing; *all good*
- Advertising to suggest sexual services are available at the facility; *none*
- Possession or display of sexually oriented toys, merchandise, sexual aids or contraceptives *none*
- Employees remain behind a locked door during the inspection; *no*

BMCC 7-1911. Requirements during operation

- List of current employees and independent contractors providing services at the facility; *yes*
- Copies of each massage therapists license from the State of MT *yes*
- Operate only under the business name on the COB OL License
- Exterior (entry) door must be unlocked during hours of operation, except when permitted to remain locked through a Variance from the license administrator *yes*
- Fail to open a locked interior door upon request that is not locked to protect client confidentiality/privacy or business information. *every thing open*
- Reception area visible from the exterior of the building (building glass may not be fully covered); *yes*
- Advertising lists the physical address of the facility *yes*
- A written list of services and prices for all services available in the reception area *Displayed on screen*

- Hours of operation allowed between 6 am and 10 pm *yes*
- Confirm the name of the business owner is the name of the person who holds or applied for the license *yes*
- Location is in a zone district that allows the spa/massage facility *yes*

BMCC 7-1912. Inspections

- Conspicuous display of each massage therapists' license from the State of MT *yes*
- Upon request, open all locked cabinet, storage areas or rooms for inspection *yes*

Inspector Notes:



Tracy, Karen

From: Punt, Tanya
Sent: Monday, March 07, 2022 10:31 AM
To: Rindahl, Joanne
Cc: Hoeger, Tina; Glunt, Marshall
Subject: Emailing: IMG_4690, IMG_4691, IMG_4673, IMG_4674, IMG_4675, IMG_4676, IMG_4677, IMG_4678, IMG_4679, IMG_4680, IMG_4681, IMG_4683, IMG_4684, IMG_4685, IMG_4686, IMG_4687, IMG_4688, IMG_4689
Attachments: IMG_4690.jpg; IMG_4691.jpg; IMG_4673.jpg; IMG_4674.jpg; IMG_4675.jpg; IMG_4676.jpg; IMG_4677.jpg; IMG_4678.jpg; IMG_4679.jpg; IMG_4680.jpg; IMG_4681.jpg; IMG_4683.jpg; IMG_4684.jpg; IMG_4685.jpg; IMG_4686.jpg; IMG_4687.jpg; IMG_4688.jpg; IMG_4689.jpg

Massage Company, LLC
1311 11th St West
406-208-4072
Business inspection done by Marshall Glunt and myself, Tanya Punt

Theresa M Vondra identified with Mt DL owner of the Business

This property is a Business, addressed to Massage Company, LLC Operating by appointment only. The web site is listed at Monday-Friday 9-5.

We scheduled the inspection at 9am and arrived 10 mins early. No display of sexual services, also no display of facility used for living or sleeping. There were no employee's remaining locked behind closed doors.

All LMT were available and photo'd listed.

The reception area was visible and open. Physical address of the facility was visible from the outside.

All massage options were listed via a desktop screen at the reception desk.

There were three (3) massage rooms, all very clean. Rooms included the massage table, towels and massage oils/lotions. Every room was separated by walls and doors for security.

There was a restroom open to view at request. There are lockers in the back area, by the hot sauna. Personal items of the customers could be placed inside the lockers. There were also a few employee lockers, and at a request they were opened to view and most has purses or coats.

All doors were opened on request.

Your message is ready to be sent with the following file or link attachments:

- IMG_4690
- IMG_4691
- IMG_4673
- IMG_4674
- IMG_4675
- IMG_4676
- IMG_4677
- IMG_4678
- IMG_4679
- IMG_4680
- IMG_4681
- IMG_4683
- IMG_4684

IMG_4685
IMG_4686
IMG_4687
IMG_4688
IMG_4689

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.



CITY 001547



CITY 001548



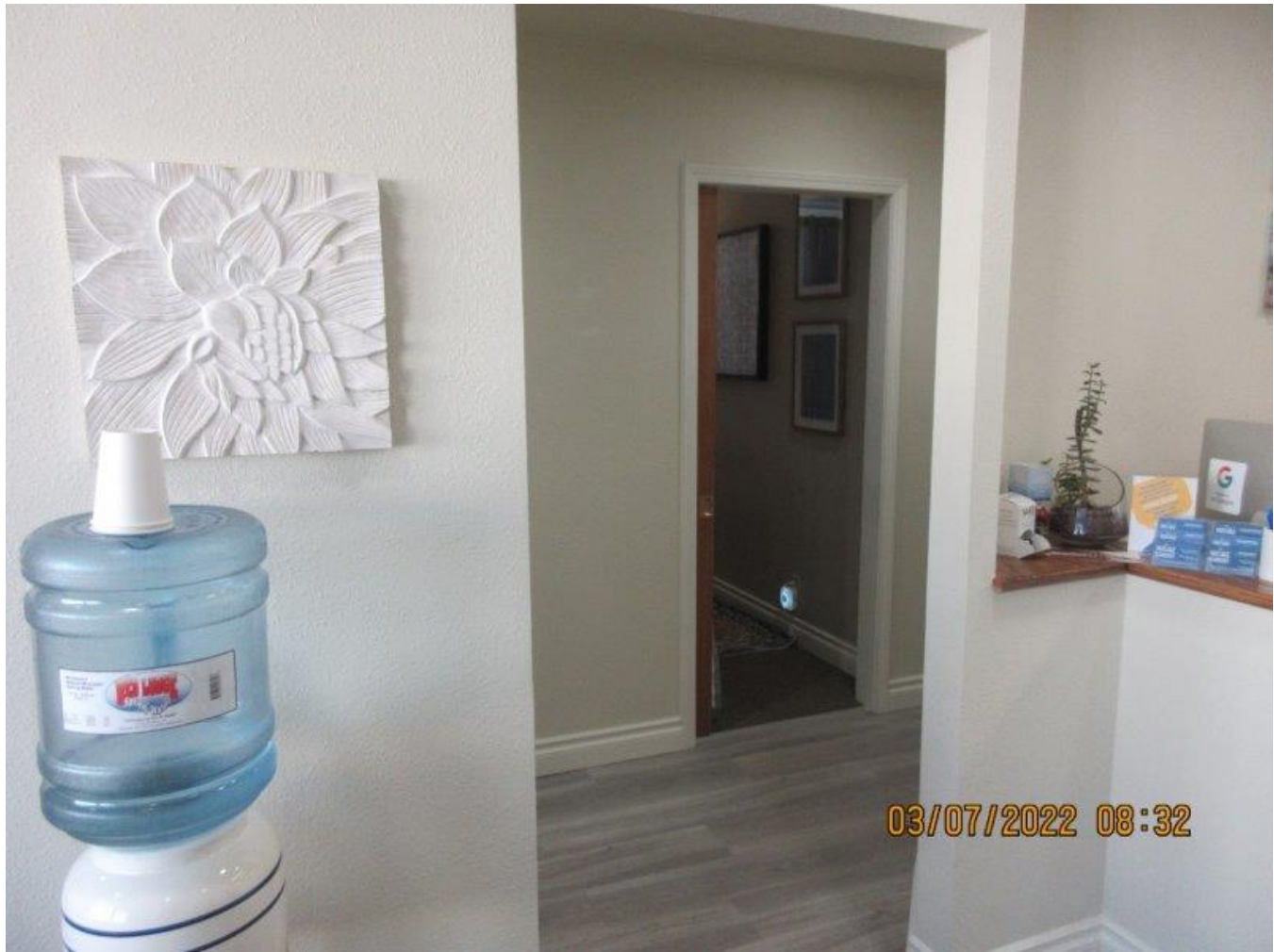
CITY 001549



CITY 001550



CITY 001551



CITY 001552

State of Montana
Business Services Division
Board of Massage Therapy

LMT-LMT-LIC-11778
Date: Active
Expires: 06/30/2022

ALEXIA GALE BERBERGARD
314 BROADWAY AVE
BILLINGS, MT 59101

Remember to maintain your online account information with a password, security question and a valid email address. You can update your account information by clicking the Account

State of Montana
Business Services Division
Board of Massage Therapy

LMT-LMT-LIC-11635
Date: Active
Expires: 06/30/2022

CELANEY RAE SHARBOND
1329 FRANK RD
LAUREL, MT 59044

Remember to maintain your online account information with a password, security question and a valid email address. You can update your account information by clicking the Account

State of Montana
Business Services Division
Board of Massage Therapy

LMT-LMT-LIC-12036
Date: Active
Expires: 06/30/2022

WILE MATTHEW BARRINGTON
1224 BURLINGTON AVENUE
BILLINGS, MT 59102

Remember to maintain your online account information with a password, security question and a valid email address. You can update your account information by clicking the Account

State of Montana
Business Services Division
Board of Massage Therapy

LMT-LMT-LIC-22301
Date: Active
Expires: 06/30/2022

AMANDA D HEPPEL
124 NEWMAN CREEK RD.
ELMO, WY 82841

Remember to maintain your online account information with a password, security question and a valid email address. You can update your account information by clicking the Account

State of Montana
Business Services Division
Board of Massage Therapy

LMT-LMT-LIC-2609
Date: Active
Expires: 06/30/2022

THE MASSAGE COMPANY
THERESA M VANDORA
371 PROSPECT HILL LN
BILLINGS, MT 59102

Remember to maintain your online account information with a password, security question and a valid email address. You can update your account information by clicking the Account

State of Montana
Business Services Division
Board of Massage Therapy

LMT-LMT-LIC-10890
Date: Active
Expires: 06/30/2022

LORETTA KATHYNN LEMMAN
80 BOX 411
BRICGAR, MT 59014

Remember to maintain your online account information with a password, security question and a valid email address. You can update your account information by clicking the Account

03/07/2022 08:42

CITY 001553



CITY 001554



CITY 001555



CITY 001556



CITY 001557



CITY 001558



CITY 001559



CITY 001560



CITY 001561



CITY 001562



CITY 001563



CITY 001564



CITY 001565



CITY 001566

POST IN A CONSPICUOUS
PLACE. NOT
TRANSFERRABLE

CITY OF BILLINGS
BUSINESS TAX RECEIPT
BILLINGS, MONTANA

Business name	THE MESSAGE COMPANY LLC		
Owner Name	THERESA VONDRA		
Location Address	1311 11TH ST W		
Bus Nbr/Class	OL-23-41039 MASSAGE FACILITY LICENSE		
Issue Date	March 08, 2022	Expiration Date	March 31, 2023
Total	\$25.00		

THE MESSAGE COMPANY LLC
321 PROSPECTORS LN
BILLINGS, MT 59105



William A. Cole
Andy Zoeller

SEE REVERSE SIDE FOR OPENING INSTRUCTIONS



Billings Pride City-wide

CITY OF BILLINGS
ADMINISTRATION
FINANCE DIVISION
P.O. BOX 1178
BILLINGS, MT 59103-1178

THE MESSAGE COMPANY LLC
321 PROSPECTORS LN
BILLINGS, MT 59105

CITY 001567

EXHIBIT
2

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

22-40453



Solo Practitioner Exemption Form

Finance Department
P.O. Box 1178 Billings, Montana 59103
406-657-8364
businesslicense@billingsmt.gov

Section 7-1900 (Ordinance 21-5757) of the Billings City Code requires that no person shall operate a massage facility without a massage facility license. The definition of the massage facility in Sec. 7-1902 excludes solo practitioners that advertise with either the therapist's name or license number and do not operate a table shower and follow the required acts and limitations of operation in. These requirements are summarized below.

If your business will be operated as a solo practitioner of massage therapy within the definition in the ordinance, please fill out this exemption form and provide the requested information.

First Name: Lynda Last Name: Larvie
State of Montana Massage Therapist License Number: LMT LIC 1085
Legal Entity Name of Business: Lynda Larvie NMT LMT
Trade Name if Different: Nurse Massage Therapist

Any other massage businesses owned previously or currently:

TABLE SHOWER

Table showers or vichy showers are only permitted if a Massage Facility License is obtained and the table shower meets the qualifications to be permitted. Any business operating a table shower, or vichy shower, is not eligible for exemption using this form.

OTHER REQUIREMENTS

Solo practitioners must also operate under the following requirements:

- No use of the facility for housing or as living quarters unless the massage or spa facility is operated as a home occupation.
- May not provide or administer massage or spa in a manner intended to arouse or gratify the sexual response or desire of either party.
- Remain clothed while administering massage services.
- List the address of the business in any advertisement.
- Doors to business to remain unlocked unless only one individual is working, or variance has been granted.
 - Restroom doors may be locked.
 - Internal doors may be locked to protect confidential client or business information.

Form Version Date 5/11/2021

- Must maintain valid state massage therapy license posted at the business.
- Where windows or glass are adjacent to an entrance, maintain a sufficient portion of clear glass that the entrance to such establishment so that the front area where patrons are greeted is visible from the outside.
- Maintain a log of the date, time, and type of massage administered.
- May not allow anyone to perform massage therapy without a valid massage therapist license.
- May only operate between 6:00 a.m. and 10:00 p.m.

I understand that I am claiming that I am exempt from the Massage Facility License requirement as a solo practitioner, or other exempt facility. Failing to have a Facility License when one is required may result in revocation of the general business license issued under BMCC Sec. 13-425. I have read the requirements of the ordinance and understand that violation of any of these requirements may result in sanctions up to and including suspension and revocation of my business license.

Linda Larvie

Signature of Business License Applicant

7/18/2021

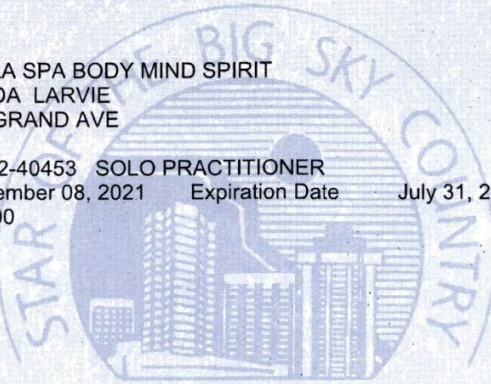
Date

check LMT 7/21/21 Joanne Rindahl

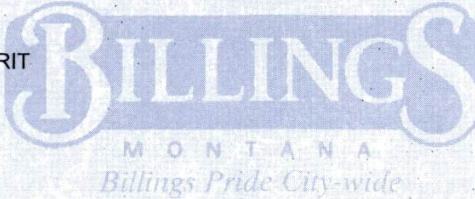
POST IN A CONSPICUOUS
PLACE. NOT
TRANSFERRABLE

CITY OF BILLINGS
BUSINESS TAX RECEIPT
BILLINGS, MONTANA

Business name	BELLA SPA BODY MIND SPIRIT		
Owner Name	LYNDA LARVIE		
Location Address	629 GRAND AVE		
Bus Nbr/Class	OL-22-40453	SOLO PRACTITIONER	
Issue Date	September 08, 2021	Expiration Date	July 31, 2022
Total	\$55.00		



BELLA SPA BODY MIND SPIRIT
629 GRAND AVE
BILLINGS, MT 59101



William A. Cole
Andy Zoeller

SEE REVERSE SIDE FOR OPENING INSTRUCTIONS



Billings Pride City-wide

CITY OF BILLINGS
ADMINISTRATION
FINANCE DIVISION
P.O. BOX 1178
BILLINGS, MT 59103-1178

BELLA SPA BODY MIND SPIRIT
629 GRAND AVE
BILLINGS, MT 59101

CITY 001935

SO-7412124-14ZF-VG

EXHIBIT

3

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

22-40612



Solo Practitioner Exemption Form

Finance Department
P.O. Box 1178 Billings, Montana 59103
406-657-8364
businesslicense@billingsmt.gov

Section 7-1900 (Ordinance 21-5757) of the Billings City Code requires that no person shall operate a massage facility without a massage facility license. The definition of the massage facility in Sec. 7-1902 excludes solo practitioners that advertise with either the therapist's name or license number and do not operate a table shower and follow the required acts and limitations of operation in. These requirements are summarized below.

If your business will be operated as a solo practitioner of massage therapy within the definition in the ordinance, please fill out this exemption form and provide the requested information.

First Name: DONNA Last Name: Podolak
State of Montana Massage Therapist License Number: 548
Legal Entity Name of Business: Donna's Massage Therapy
Trade Name if Different: _____

Any other massage businesses owned previously or currently:

TABLE SHOWER

Table showers or vichy showers are only permitted if a Massage Facility License is obtained and the table shower meets the qualifications to be permitted. Any business operating a table shower, or vichy shower, is not eligible for exemption using this form.

OTHER REQUIREMENTS

Solo practitioners must also operate under the following requirements:

- No use of the facility for housing or as living quarters unless the massage or spa facility is operated as a home occupation.
- May not provide or administer massage or spa in a manner intended to arouse or gratify the sexual response or desire of either party.
- Remain clothed while administering massage services.
- List the address of the business in any advertisement.
- Doors to business to remain unlocked unless only one individual is working, or variance has been granted.
 - Restroom doors may be locked.
 - Internal doors may be locked to protect confidential client or business information.

- Must maintain valid state massage therapy license posted at the business.
- Where windows or glass are adjacent to an entrance, maintain a sufficient portion of clear glass that the entrance to such establishment so that the front area where patrons are greeted is visible from the outside.
- Maintain a log of the date, time, and type of massage administered.
- May not allow anyone to perform massage therapy without a valid massage therapist license.
- May only operate between 6:00 a.m. and 10:00 p.m.

I understand that I am claiming that I am exempt from the Massage Facility License requirement as a solo practitioner, or other exempt facility. Failing to have a Facility License when one is required may result in revocation of the general business license issued under BMCC Sec. 13-425. I have read the requirements of the ordinance and understand that violation of any of these requirements may result in sanctions up to and including suspension and revocation of my business license.

Donna Sodalak

Signature of Business License Applicant

9-16-2021

Date

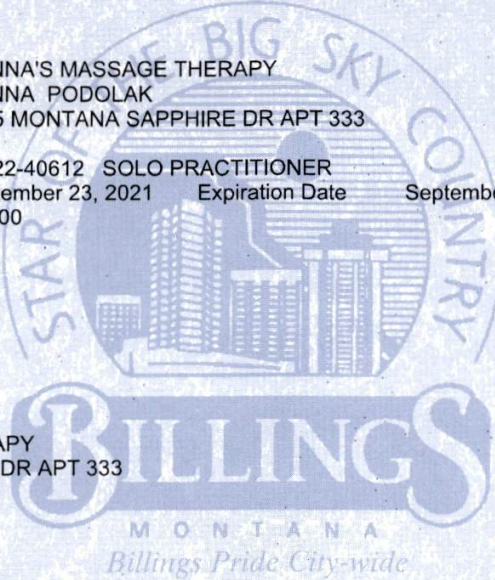
Checked LMT 9/21/22 Joanne Rindahl

POST IN A CONSPICUOUS
PLACE. NOT
TRANSFERRABLE

CITY OF BILLINGS
BUSINESS TAX RECEIPT
BILLINGS, MONTANA

Business name	DONNA'S MASSAGE THERAPY		
Owner Name	DONNA PODOLAK		
Location Address	4215 MONTANA SAPPHIRE DR APT 333		
Bus Nbr/Class	OL-22-40612	SOLO PRACTITIONER	
Issue Date	September 23, 2021	Expiration Date	September 30, 2022
Total	\$55.00		

DONNA'S MASSAGE THERAPY
4215 MONTANA SAPPHIRE DR APT 333
BILLINGS, MT 59106



William A. Cole
Andy Zoeller

SEE REVERSE SIDE FOR OPENING INSTRUCTIONS



Billings Pride City-wide

CITY OF BILLINGS
ADMINISTRATION
FINANCE DIVISION
P.O. BOX 1178
BILLINGS, MT 59103-1178

DONNA'S MASSAGE THERAPY
4215 MONTANA SAPPHIRE DR APT 333
BILLINGS, MT 59106

CITY 001928

SO-7412124 • 14ZF-VG

EXHIBIT

4

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

City Council Regular

Date: 04/26/2021
Title: Massage Therapy Business License Ordinance - Second Reading
Presented by: Gina Dahl
Department: Legal
Presentation: No

RECOMMENDATION

Staff recommends Council approve the proposed ordinance regulating massage and spa facilities through business licensing criteria on second reading.

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

On April 12, 2021, Council held a public hearing on the First Reading of An Ordinance of the City of Billings, Montana, Regulating Massage and Spa Facilities Through Business License Criteria, Providing Exemptions, Authorizing the City Administrator or Designee to Administratively Deny, Suspend, or Revoke Business Licenses and Allowing an Appeal From Such Action and Providing for Criminal and Civil Penalties Upon Conviction of a Violation in Order to Combat Human Trafficking and to Promote the Health and Welfare of the Billings Community. This Ordinance was passed on first reading following a public hearing.

Billings has a significant problem with illicit businesses operating under the guise of being massage or spa facilities. Federal Bureau of Investigations (FBI) data from 2017 tracked commercial sex ads in Montana. Bozeman and Missoula had nearly 5,000 ads, while other MT cities had between 2,000 and 3,000 and Billings had nearly 20,000. These illicit businesses are considered to be a primary source of these ads. Over the past five years, there have been between 15 and 27 illicit businesses disguised as massage facilities operating within our City on any given night.

This illegal activity is contributing to the City's crime problems. Criminal investigations of human trafficking are expensive and time-consuming. The proposed ordinance requires a massage or spa facility to submit an application for a business license. The proposed ordinance contains requirements for operation of the facility and any violation of the terms and conditions of the ordinance may result in fines or suspension/revocation of the business license. This ordinance is a low cost, yet effective, tool to chase these illegal businesses out of our community. There is no simple solution or approach that will eradicate this from our community. However, with proper implementation and enforcement, this ordinance will result in a significant reduction of these illegal businesses in our community.

ALTERNATIVES

City Council may:

- Approve; or,
- Not Approve

FISCAL EFFECTS

SUMMARY

If properly implemented and enforced, this ordinance will reduce human trafficking by making it more difficult for illicit businesses to operate under the guise of being massage or spa facilities. Additionally, it will save resources for law enforcement by providing the City an alternative process to shut down these illicit businesses, and it will drive away criminal enterprises masquerading as legitimate businesses in exchange for low cost, nominal regulation.

Attachments

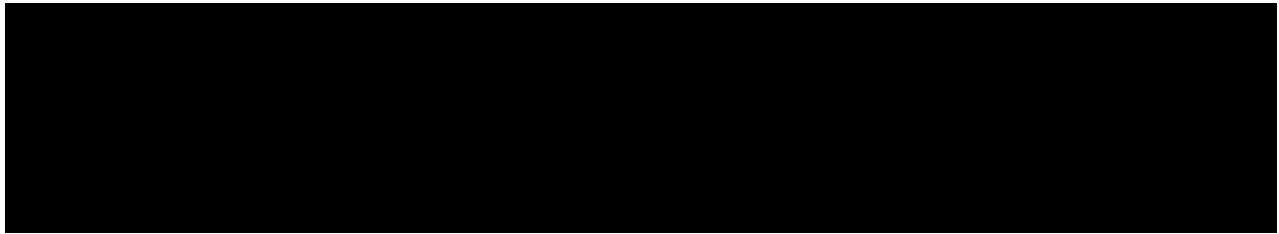
Massage and Spa Facility Licensing Ordinance

EXHIBIT

5

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD



Friday, Wyeth <FridayW@billingsmt.gov>

Friday, May 14, 2021 12:58 PM

Rochelle Keyhan <rkeyhan@collectiveliberty.org>; Meghan Carton <mcarton@collectiveliberty.org>
Cromwell, Nicole <CromwellN@billingsmt.gov>; Zoeller, Andy <zoellera@billingsmt.gov>; Dahl, Gina
<dahlg@billingsmt.gov>; Korell, Brian <korellb@billingsmt.gov>

RE: [EXTERNAL] Re: Staff Training Options for IMB Ordinance Implementation?

Rochelle,

That is all great news! We are looking forward to this workshop as well.

I am copying our Finance Director Andy Zoeller on the invoicing preference. I also am copying our City Attorney Gina Dahl and Police Captain Brian Korell so they can weigh in on the POST and CLE credit opportunity. I would think they would both appreciate this option for the workshop?

We will continue to be in touch with you and Meghan as we get the location set and other details.

Thank you.



Wyeth Friday
Planning & Community Services Director
fridayw@billingsmt.gov

billingsmt.gov

2825 3rd Ave. N
Billings, MT 59101
P 406.247.8676

*COVID-19 has changed the way the Planning and Community Services Department is conducting business. Our offices are open to the public utilizing masks and social distancing. Please visit our Department and Division webpages for more information at this link: <https://www.ci.billings.mt.us/103/Planning-Community-Services>

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CITY 001050

you are not the intended recipient of this transmission, please notify the sender immediately, do not forward the message to anyone, and delete all copies. Thank you.

Rochelle Keyhan [<mailto:rkeyhan@collectiveliberty.org>]

Thursday, May 13, 2021 6:06 PM

Friday, Wyeth <FridayW@billingsmt.gov>; Meghan Carton <mcarton@collectiveliberty.org>

Cromwell, Nicole <CromwellN@billingsmt.gov>

Re: [EXTERNAL] Re: Staff Training Options for IMB Ordinance Implementation?

Hi there,

This is great news! I let Detective Scaramucci and Amy Monsivais know, and they've both reconfirmed. We will work out travel logistics and everything within the next week so that things are locked in.

For us, next steps include finalizing a curriculum/agenda, and making sure all lecture content is updated with Montana case law and case studies (which we have already begun doing). We also would love to take the steps necessary to ensure [POST credits](#) for officers and [CLE credits for attorneys](#). If you have any feedback on either of those, please let me know -- otherwise, we will proceed with filling out the paperwork I linked for each. By the way -- if you need any incentive for people not yet committed, they should all receive 14 credits from the two day training.

After that, I think the other logistics items to work out are (1) printing (how much we want to print, whether we want to digitize, and what the process should look like to not be burdensome on you all), (2) location (you are in the process), and (3) your preferred process for invoicing (I've learned every agency is different!)

I am CCing Meghan Carton, our Strategy and Business Operations Manager, to this email in case I've missed anything. If there is anything you are curious about or wanting to make sure is in one of the immediate (instead of later) next steps, please let us know. I will be conducting training institutes at the border in Texas next week, so Meghan may respond next week if I am delayed or offline as a result.

Such exciting news - we are very much looking forward to this! Since it's an intimate group, the faculty is really excited about tailoring the entire thing to Billings and Montana proper, including pulling some proactive intel and reports, deep-dive into the specific statutes, etc.

Have a great night!

Rochelle

On Thu, May 13, 2021 at 2:31 PM Friday, Wyeth <FridayW@billingsmt.gov> wrote:

Rochelle,

We have collected a great staff response to do a [two-day training workshop on July 7 and 8](#) here in Billings.

We will have Code Enforcement, Finance, Fire, Police, Legal, and possibly City Administration staff involved. About 12 people in total is our estimate right now.

Please add this to your calendar and let us know what we can do next to move this effort forward.

We are getting a location figured out as well.

Thank you.



Wyeth Friday
Planning & Community Services Director
fridayw@billingsmt.gov

billingsmt.gov

2825 3rd Ave. N
Billings, MT 59101
P 406.247.8676

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Rochelle Keyhan [mailto:rkeyhan@collectiveliberty.org]

Friday, May 7, 2021 11:04 AM

Friday, Wyeth <FridayW@billingsmt.gov>

Cromwell, Nicole <CromwellN@billingsmt.gov>

[EXTERNAL] Re: Staff Training Options for IMB Ordinance Implementation?

Hi you two,

It was great connecting today! I wanted to let you know I checked in with Amy and Joe about availability and they are both available the week of July 5, and while Joe is available all August weeks I mentioned, Amy is only available weeks of August 23 or tentatively August 30.

I know case expense is an issue, I priced out expenses for flights in July and Montana government rate per diem for all three of us for lodging and it's around \$3,500. For just myself and Joe it would be around \$2,300. I think flight prices have gone up considerably in the last few weeks! And in August the collective flights are around \$900 cheaper - so it may also be the proximity to Fourth of July contributing to expenses.

I'm getting a sense that there is a slight preference for July because school for their children is

CITY 001052

starting in August, so less convenient. But August dates will absolutely work if it is preferable for you all and will have the biggest impact, so please don't worry about telling us so!

Let me know if there's anything else I can do on my end to facilitate/support!

Have a great weekend,

Rochelle

On Tuesday, May 4, 2021, Rochelle Keyhan <rkeyhan@collectiveliberty.org> wrote:

Hi Wyeth and Nicole,

Let's use our Google Conference Line:

(US)
[+1 414-909-4068](tel:+14149094068)
PIN: 132 267 329#

Thank you both,

Rochelle

On Tue, May 4, 2021 at 10:59 AM Friday, Wyeth <FridayW@billingsmt.gov> wrote:

Rochelle,

Okay, 10 am Friday, Eastern Daylight Time.

Let us know what number we should call, and we will call you at that time.

Thanks again.



Wyeth Friday

Planning & Community Services Director
fridayw@billingsmt.gov

billingsmt.gov

2825 3rd Ave. N
Billings, MT 59101
P 406.247.8676

*COVID-19 has changed the way the Planning and Community Services Department is conducting business. Our offices are open to the public utilizing masks and social distancing. Please visit our Department and Division webpages for more information at this link: <https://www.ci.billings.mt.us/103/Planning-Community-Services>

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City's record retention policies. Emails that contain confidential information such as information related to individual privacy may be protected from disclosure under law. This message is intended for the use of the individual or entity named above. If you are not the intended recipient of this transmission, please notify the sender immediately, do not forward the message to anyone, and delete all copies. Thank you.

Rochelle Keyhan [mailto:rkeyhan@collectiveliberty.org]

Tuesday, May 4, 2021 8:53 AM

Friday, Wyeth <FridayW@billingsmt.gov>

Cromwell, Nicole <CromwellN@billingsmt.gov>

Re: [EXTERNAL] Re: Staff Training Options for IMB Ordinance Implementation?

Hi there,

Let's do 10am.

Thank you, looking forward to it!

Rochelle

On Mon, May 3, 2021 at 3:30 PM Friday, Wyeth <FridayW@billingsmt.gov> wrote:

Rochelle,

Thank you for the reply.

Let's try for Friday – do you have 30 minutes we could schedule between 10 am and 12 pm your time?

Thank you.



Wyeth Friday

Planning & Community Services Director

fridayw@billingsmt.gov

billingsmt.gov

2825 3rd Ave. N
Billings, MT 59101
P 406.247.8676

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CITY 001054

Rochelle Keyhan [mailto:rkeyhan@collectiveliberty.org]

Monday, May 3, 2021 12:44 PM

Friday, Wyeth <FridayW@billingsmt.gov>

Cromwell, Nicole <CromwellN@billingsmt.gov>

Re: [EXTERNAL] Re: Staff Training Options for IMB Ordinance Implementation?

Hi Wyeth and Nicole,

Yes, I am on Eastern time. I would be happy to connect later this week. My Thursday from 12:30 - 4:30 ET is booked with webinars so I cannot reschedule them. I'm free to meet any time before or after that time block. My Friday is completely flexible as I only have internal meetings that can be easily rescheduled.

Please let me know a time that works best for you this week. I look forward to connecting and seeing how we might collaborate!

Rochelle

On Mon, May 3, 2021 at 2:33 PM Friday, Wyeth <FridayW@billingsmt.gov> wrote:

Rochelle,

Thank you for the quick response.

A brief call might be the easiest so we can understand better what the specific code enforcement training session would be like and if there are others here – Fire, Police, etc. that could benefit.

I am looping in our Code Enforcement Supervisor Nicole Cromwell as she and I should be on the call with you.

Are you on Eastern Time? Maybe we can schedule something for later this week if your schedule allows?

Thank you.



Wyeth Friday

Planning & Community Services Director

fridayw@billingsmt.gov

billingsmt.gov

2825 3rd Ave. N
Billings, MT 59101
P 406.247.8676

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Rochelle Keyhan [mailto:rkeyhan@collectiveliberty.org]

Thursday, April 29, 2021 10:42 AM

Friday, Wyeth <FridayW@billingsmt.gov>

[EXTERNAL] Re: Staff Training Options for IMB Ordinance Implementation?

Hi Wyeth,

Thank you for your message. Congratulations on the passage after several months of hard work!

We have in fact helped communities both with passage of ordinances as well as training investigators on how to build cases and enforce them. We have trainings catered specifically to code enforcement and fire marshalls, as well as to investigators and prosecutors. If it is focused specifically on massage parlor trafficking, the criminal and civil focus are easily merged for a mixed audience.

For example, we are hosting multiple 2 day massage parlor trafficking specific trainings this summer for civil and criminal investigators. The focus is on identifying human trafficking, open source intelligence analysis to build the case, and methods for supporting the victims throughout the process. In one jurisdiction, the 2 day training is being followed by a 1-2 day criminal operation with Detective Scaramucci's guidance and support, helping them put the ideas into practice.

I have attached a flyer with a bit more information. If any of this sounds helpful or of interest, I would be happy to answer any questions you may have or schedule a call to discuss more!

Thank you,

Rochelle

On Wednesday, April 28, 2021, Friday, Wyeth <FridayW@billingsmt.gov> wrote:

Rochelle Keyhan,

I am the Planning and Community Services Department Director in Billings and Code Enforcement is one of the Divisions I oversee.

Thank you for your compelling expert testimony at our City Council Meeting

CITY 001056

on April 12 as our Council considered the first reading of our Massage and Spa Facility Licensing Ordinance. I am convinced your testimony helped to move this important piece of our local code forward. And our Council did adopt the ordinance on second reading this past Monday night. So, it now takes effect in 60 days on June 26.

Our City Administrator Chris Kukulski shared your email contact with me as I noted in your testimony that it sounded like your organization has helped many communities implement local regulations to crack down on IMBs and human trafficking activities? I have visited your website and I am not sure if you offer training that might help our Code Enforcement officers and staff, and possibly others that are going to be involved in our implementation strategy of the new ordinance? Or if you even offer presentations from you or your staff that would be helpful for us as we get set up here and begin to interact with illicit massage businesses in Billings and work to shut them down?

I would appreciate any guidance or suggestions you may have, either to access some of your organizations resources, or if there are others we should be looking into as we move forward.

Thank you.



Wyeth Friday
Planning & Community Services Director
fridayw@billingsmt.gov

billingsmt.gov

[2825 3rd Ave. N](#)
[Billings, MT 59101](#)
P 406.247.8676

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 collective liberty

Rochelle Keyhan
Chief Executive Officer
3430 Connecticut Ave NW #11187
Washington, DC 20008
rkeyhan@collectiveliberty.org
www.collectiveliberty.org

#MasksForACause

This season, your donation can help disrupt trafficking at its root!

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Reply all
Duplicate event
Free
Don't remind me
Categorize
Private
Scheduling poll

Illicit Massage Business License Training - Collective Liberty Group - Two Day Workshop

From: Friday, Wyeth Sent on Friday, 5/14/2021 at 12:01 PM

Wed 7/7/2021 to Thu 7/8/2021

PD-1 Training Center - 4810 Midland Road, Billings, MT 59101

You tentatively accepted this meeting on 5/14/2021

St. John, Rich

Tentative

Collective Liberty Advanced ...

Hello All,

Please find attached the agenda for our two-day training next week at the PD-1 Center on Midland Road.

It is very exciting to have Rochelle Keyhan and her training team from Collective Liberty provide this training for us as we embark on combatting illicit massage businesses in Billings with our new ordinance.

I am also pleased that in addition to our own Billings Police Department we will have our State and Federal partners represented for at least part of the training by FBI Special Agent Brandon Walter, and DOJ Agent Toby Baukema.

A few housekeeping items as we prepare for next week:

- Coffee and water will be provided each day as well as some morning snacks.
- We are providing lunch on the first day (7th) for all - sandwich-type fair with vegetarian options
- Day 2 lunch is on your own
- At the end of the training on day 1 (7th) the Mayor and City Council Members are being invited to attend an informational session with Rochelle and her team from 5 pm to 5:45 pm. A few of us will stay for that, but the rest of you should feel free to leave after our training day is over.

Laptop and Tablets:
We are going to try to have plenty of extension cords and access to electricity in the training room so please bring your devices. I also believe part of the training may anticipate wifi access and computer usage?

You will receive training materials at the start of the first day, but please bring questions and challenges you may have already run into with our early implementation of the ordinance as we will have a lot of expertise in the room to discuss it with.

POST and CLE credits
There is an effort in coordination with the training team to provide for POST and CLE credits for this training session.

Please let me know if you have further questions or if you have conflicts where you will only be attending for part of the training so we can try and maximize the training sessions and have an idea of attendance each day.

If there are others that may be attending, please let me know so I can ensure we are accommodating them for training materials and the lunch and refreshments.

Thank you.

Tracking

Organizer

FW Friday, Wyeth

Attendees

Yes: 17

- Glunt, Marshall
Required
- Maddox, Wynnette
Required
- Adams, Trina
Required
- Cromwell, Nicole
Required
- toman.baukema@mt.g...
Required
- Salzman, Craig
Required
- hwalter@fbi.gov
Required
- Kukulski, Chris
Required
- Punt, Tanya
Required
- Korell, Brian
Required
- Rindahl, Joanne
Required
- Vieg, Jeannette
Required
- Tracy, Karen
Required
- Dahl, Gina
Required
- Anderson, Chantel
Optional
- Tenney, Stacy
Optional
- mschieno@co.yellowst...
Optional

Maybe: 4

- Spini, Mike
Required
- St. John, Rich
Required
- Zoeller, Andy
Required
- Iffland, Kevin
Required

No: 2

- Pardy, Thomas
Required
- Halverson, Benjamin
Optional

Didn't respond: 12

- brandon.walter@ic.fbi...
Required
- McLain, Andrew
Required
- Morgan, Todd
Required
- Rochelle Keyhan
Required
- Meghan Carton
Required
- AVedinak@mt.gov
Required
- Jones, Bethany
Optional
- Grewell, Jacquelyn
Optional

them for training materials and the lunch and refreshments.

Thank you.

- GJ** Grewell, Jacquelyn
Optional
- KB** Kneeland, Brad
Optional
- AM** Amy Monsivais
Optional
- MT** Morgan, Tyrone
Optional
- CE** Campbell, Earl
Optional

Training to utilize business regulation to root out illicit sex and human trafficking businesses disguising themselves as store front massage therapy businesses.

- Zero in on and work to screen out illicit businesses from obtaining license:
- A business applying for a license needs something from you and will be much more responsive to requests than when you have to take that license away, the burden of proof is on them at this time that they should get the license. Also, our ordinance has them request a hearing whereas a revocation, the hearing must be scheduled.
- Advantage with new program of knowing illicit operators
- Obtain rubmaps reviews – Heyrick Research can help
- Search web for advertising of operating businesses
 - Search with phone number and also by address
 - Search known sites advertising prostitution for local businesses, currently
 - Rubratings
 - Bedpage
 - Adult Search
 - Skipthegames
 - Sites change regularly with Federal actions to close them down, may take some searching to find advertisements. Businesses will likely be advertising as that is what businesses have to do, illicit or not.
- Hire a hearing officer and explain the ordinance and its purpose. That is to close businesses operating illicit operations disguised as massage. Also, that massage therapist credentials are not necessarily to be trusted.
- Review qualifications of licensed operators helping to front illicit businesses
 - Cheating on MBLEX – only provided in English and Spanish
 - Fake schools closed down
 - California unapproved list
 - <https://www.camtc.org/schools-info-find-a-school/#unapproved>
 - NCBTMP School Compliance List
 - Colorado – Majestic Vocational School, International Institute of Cosmetics, American International Beauty College
 - Check other states vocational school credentialing
 -
 - Individuals legitimately obtaining education are professionals and highly unlikely to engage in illicit activities.
 - Ask basic anatomy questions for applicants to get an idea.

- Work with state licensing agency to deal with questionable licensed therapists- check the disciplinary record. Also search applicant for activity, discipline or denial in other states.
- Review business ownership
 - Investigative Software
 - Transunion TLO – cheaper about \$50 a month min and pay by search
 - Thomson Reuters Clear – expensive but more comprehensive
 - This software will search property ownership, other business registrations, licenses in other states. Other leads for more evidence
 - Heyrick Research will also help with a data warehouse on individuals and connections to prior illicit operators.
 - Review past business operations
 - Check advertising of these operations
 - Check if any local law enforcement or administrative operations
 - Reviews on rubmaps
 - Review financials
 - We ask for six months of bank statements, to start and have them sign a consent to release financial information.
 - Trace all source of funds. Look for large deposits. Make them back up sources with documentation.
 - Check all “lenders” of large sums. Look for hidden ownership. Takes time and lots of back and forth, especially if they are hiding something.
 - Check source of source if necessary, make sure some people are not using shell businesses for placement
 - Read up on money laundering – web articles
 - Do they keep good business records, where is their money going? Is cash deposited? How are employees and contractors paid? W-2? 1099?
 - Use poor business practices as evidence of violating the law.
 - Do not issue license if you cannot verify source of funds and business demonstrates illicit nature.
- Background investigation
 - Instate background check unless state statute authorizes FBI check for specific licensing purpose.
 - Utilize police if demonstrates criminal activity to check nationwide if possible
 - Investigative software, web searches and Heyrick research
- Initial Inspection,
 - Find the same violations you would if it were licensed.
-

- Focus on suspected illicit operations
 - Goal is to disrupt the way they do business – war not battle
 - Late in week in afternoon they are busiest
 - Advantages to opening inspection with undercover request for massage
 - Find out who is conducting massage
 - Check rooms and ask customers who is giving them massage and what kind of massage
 - Foot massage/reflexology is not massage but if someone is undressed then full massage
 - May claim to be just doing foot when full massage
 - Record the inspection, either body cam, cell phone, audio
 - Claims of confusion later / language barrier
 - Removes any doubt about what was seen
 - Check massage therapist’s licenses and IDs.
 - Sometimes there will be “just a friend” in the business. – Someone working without ID
 - Do follow ups if you suspect illicit activities
 - Go with multiple people as some employees find ways to disappear, watch back door or lock doors.
 - Have google translate ready.
-
- ✓ Anyone providing massage licensed by state
 - ✓ Anyone avoiding identification – sneaking out back doors – ask questions
 - ✓ Be aware of being delayed or distracted
 - ✓ Signs of habitation – suitcases, beds, lots of clothes, full kitchen
 - ✓ Ask to demonstrate record keeping
 - ✓ Spend some time asking questions and getting clarification on who people are, why they are not licensed, get it on recording. They are off balance on the inspection.
 - ✓ Check for sex related items. Check all rooms and cabinets in service rooms
 - ✓ Clothing / attire – no lingerie
 - ✓ If no licensed personnel present, order they close the business
 - ✓ Ask them about advertisements they posted
 - ✓ Other violations, building, egress, alcohol, unpermitted construction
-
- Unlicensed practice of massage – public health risk --- summarily suspend their license
 - Create a report and case file of evidence
 - Note why you went to investigate business – Reviews/Advertising/Complaint
 - Unlicensed practice + sex based ads – pursue revocation

- File complaints with the state for aiding and abetting unlicensed practice of massage
 - Maintain records of the business and therapists associated with illicit parlors
-
- Reach out to landlord about red flags. Get them to help you close the case.
 - Warn landlords about the public nuisance.
 - Show them the reviews.
 - Let them know that no legitimate massage business will want to move in after an illicit one.

Massage Facility Investigator Training June 8, 2021

Trevor Vaughn, Manager of Tax and Licensing

Charles Keyes, Licensing Investigator

City of Aurora

CITY 001067

TWO SEPARATE BUSINESS MODELS

Illicit Sex and Human Trafficking Business disguised as massage

- Cheat requirements to look legit
- Advertise to people looking for sex services
- Utilize unlicensed personnel
- No records
- Never leaving business
- Closed door nature of message allows concealment

Massage Therapy

- Professional training and education
- Advertise to men and women for health purposes
- Licensed
- Recordkeeping
- A day profession
- They are what they say they are

CITY 001068

Proposed Ordinance Goals

- Regulate business practices: not the practice or profession of massage
- Avoid impacts to legitimate massage businesses as much as possible
- Prohibit practices specific to illicit businesses
 - Disruption of business operations, decreased profitability
 - Making things that should be illegal – illegal
- Easily spot and remove illicit businesses through inspections identifying practices of IBs instead of expensive, risky, covert law enforcement operations for misdemeanor busts

CITY 001069

Proposed Ordinance Goals

- Create a barrier to entry of illicit businesses without creating a barrier to legitimate ones
 - Legitimate business engaged in good practices should easily comply
- Detect hidden ownership through application process
- Permanent removal of illicit business from criminal network (loss of investment)

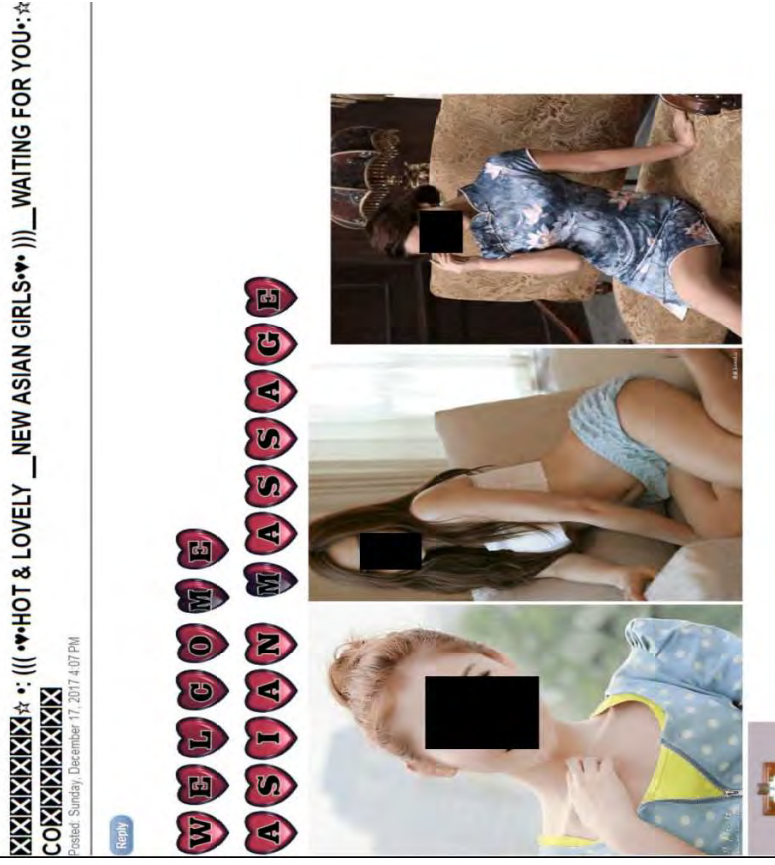


CITY 001070

Identify Illicit Spas

- Rubmaps
- Bedpage
- Adult search
- Skipthegames

- Run searches
- Phone numbers
- Address
- Heyrick research
- Screenshots



CITY 001071

Home - Denver Services - Denver massage

Post Ad Denver, CO

Report Ad

♥♥♥New Young And The Most Beautiful girls working-Top Nice Spa- Free Beautiful Table Shower

Posted: Thursday, 11 January 2018, 10:10 AM

Elite Spa Brand new top nice Spa. NO old ladies working here. Convenient location with a lots of parking available and privacy. Quiet and relaxing, professional and therapeutic. Elite massage experience. All young and the most beautiful girls working here. No Old lady. And change new young and beautiful girls.

We offer deep tissue therapeutic massage, Swedish massage, in a clean Relaxing Environment,Unscented oil,lotion (ther-apro grape seed oil,therapro sweet,Almond oil),Hot Towels,And Relaxing Music.

Massage is:
 30 Mins Massage \$35, 60 Mins Massage \$50, 90 Mins Massage \$80. Phone to call, 303-881-0205

Cash and Credit cards accepted (Visa, Master Card, Discover)
 Address, 2620 South Parker Road Suite 265 Aurora, CO 80014
 We open 7 days a week: 9:00 am to 11:00pm everyday.
 We change sheets everytime every person.
 Free nice beautiful table shower available.... Thank you! Elite Spa LLC
 2620 South Parker Rd. 80014 | google map | yahoo map

- Location: Denver, Parker, Parker and Aurora
- Post ID: 2403507 denver
- Other ads by this user:

♥♥♥New Young And The Most Beautiful girls working-Top Nice Spa-Free Beautiful Table Shower (South Parker Road and Aurora) services: massage

email to friend

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CITY 001073

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Denver Body Rubs Search

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AURORA, CO 80014



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 for
 MILFS
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 teaching how to party
 *no signup
 VIEW PHOTOS

CITY 001074

- ♥ Beautiful Asian Attendants
- ♥ Open daily from 9 AM to 10:30 PM
- ♥ Happy Hour Specials 7-close!
- ♥ Convenient Location by Dicks Sports Arena



New Blue Massage Spa Denver Colorado

CITY 001075

<p>West</p> <p>Westward.com</p>	<p>Westward.com</p> <p>Westward.com</p>	<p>Westward.com</p> <p>Westward.com</p>	<p>Westward.com</p> <p>Westward.com</p>
<p>DISCREET NIGHT</p> <p>At My Club</p> <p>For Ladies Only</p> <p>770-302-4028</p>	<p>Westward.com</p> <p>Westward.com</p>	<p>Westward.com</p> <p>Westward.com</p>	<p>Westward.com</p> <p>Westward.com</p>
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CITY 001076



Choose a

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Kansas
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Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
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Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

post ad







backpage.com and affiliated **websites have been seized**

as part of an enforcement action by the Federal Bureau of Investigation, the U.S. Postal Inspection Service, and the Internal Revenue Service Criminal Investigation Division, with analytical assistance from the Joint Regional Intelligence Center.

Other agencies participating in and supporting the enforcement action include the U.S. Attorney's Office for the District of Arizona, the U.S. Department of Justice's Child Exploitation and Obscenity Section, the U.S. Attorney's Office for the Central District of California, the office of the California Attorney General, and the office of the Texas Attorney General.

Additional information will be provided at around 6:00 pm EST on Friday, April 6, by the U.S. Department of Justice, and all media inquiries should be directed to the U.S. Department of Justice's Office of Public Affairs at 202-514-2007 and press@usdoj.gov.

April 6, 2018

NYC 0218-0001

NYC 0218-0001

CITY 001077

Initial application and Screening

- Who are the licensed therapists – do they have a residence?
- What other businesses do these people own
- What is their background
- Did they cheat? Massage knowledge, basic anatomy, schools
- Follow financials for hidden ownership
- They are asking for something from you.

- Use investigative software : Transunion TLO or Reuters Clear
- Heyrick research data warehouse

CITY 001078

Massage Knowledge

MULTIPLE-CHOICE QUESTIONS

Select the one lettered answer or completion that is best in each case. Turn to Appendix B to check your answers.

1. The sutures in the skull are examples of what kind of joint?
 - A. Synovial (diarthrosis)
 - B. Cartilaginous (amphiarthrosis)
 - C. Fibrous (synarthrosis)
 - D. Condylloid
2. A(n) _____ is a specific type of protein that catalyzes (accelerates) biologic or chemical reactions.
 - A. adenosine triphosphate (ATP) molecule
 - B. enzyme
 - C. fatty acid
 - D. monosaccharide
3. Which of the following terms describes the relationship of the thumb to the humerus?
 - A. Proximal
 - B. Distal
 - C. Internal
 - D. Palmar
4. The term *gastric* refers to what?
 - A. Tongue
 - B. Stomach/belly
 - C. Muscle

CITY 001079

Significant Cheating

- MBLEx compromised – only in English and Spanish
- Fake Schools

FOR IMMEDIATE RELEASE

Monday, June 3, 2019

Federal Indictment Charges Individuals With Long-Running Scheme To Help Applicants Fraudulently Obtain Massage Therapist Licenses

The defendants helped Chinese nationals in the United States unlawfully obtain work at massage parlors

DENVER – Two individuals who falsified education credentials and helped applicants cheat on tests to be massage license therapists were indicted by a federal grand jury and arrested, announced U.S. Attorney Jason Dunn and FBI Denver Special Agent in Charge Dean Phillips. Yongbo Shen, a/k/a Kevin Shen, age 48, originally of China and currently from Massachusetts, appeared in U.S. District Court in Colorado, and is due back on June 6, 2019, for arraignment. Marla Daniels, age 50, of Oklahoma City was arrested in Oklahoma City and appeared in federal court there where she was released on bond. She is scheduled to

CITY 001080

Massage Schools

- <https://highereducationcolorado.gov/DPOS/Students/directorycategory.aspx>
- <https://www.camtc.org/schools-info-find-a-school/#approved>
- <https://www.camtc.org/schools-info-find-a-school/#unapproved>
- <https://www.ncbtmb.org/disciplinary-actions/>
- Colorado: Majestic, International Institute of Cosmetics, American International Beauty College. All revoked

CITY 001081

Massage Schools



CITY 001082

Screening

- Check source of funds all the way to the beginning, beware of laundering
- Check backgrounds of ownership
- Check people near or involved with ownership
- Check on history of licensed therapist. Is there any discipline in any state. Did a state deny them a license.
- Check prior business operations
- Look for the evidence to deny an illicit spa a license

CITY 001083



Finance Department

Tax and Licensing Division
15151 E. Alameda Parkway, Ste. 5700
Aurora, Colorado 80012
303.739.7800

City of Aurora
Monthly Assessments - Automated Billing

October 18, 2018

Huaimei Li
Chinese Massage Spa LLC
2950 S Jamaica Ct. #100
Aurora, CO 80014

Ms. Li,
Your application for a Massage Facility License for Chinese Massage Spa located at 2950 S Jamaica Ct. Ste #100, Aurora, CO 80014 is **DENIED** under 86-441(7) for the following reasons:

1. You do not have a lease with the building owner demonstrating right to the premises as required by 86-439(6).
2. Your financial accounting is inadequate and does not allow for validation of source of funds for the business.
3. A pattern of credible facts has emerged that you are operating or attempting to operate an erotic parlor. These facts include:
 - a. Prolonged and significant advertising of females and not massage practice. Advertising also appears on websites advertising sexual services. Ads include phrases such as "young girl" and sexually suggestive photos.
 - b. Over 40 reviews of sexual services online
 - c. Attire of therapists not consistent with professional attire for a health practitioner.
 - d. Providing door code for after-hours client access to building.

Your request for a license is hereby **DENIED**, you will need to discontinue operation of the massage facility or will be in violation of 86-438(a) and potentially subject to prosecution.

Sincerely,

Trevor Vaughn
Manager of Tax and Licensing Division
303-739-7171
tvaughn@aurora.gov

CITY 001084

Screening:

“Can you confirm for me again that you will be the only employee at this business location and that your prior business is closed? I also want you to know that Aurora has no tolerance for erotic massage parlors or practice of unlicensed massage therapy and if your business engages in these activities it will be shut down.
Thank you”

REPLY:

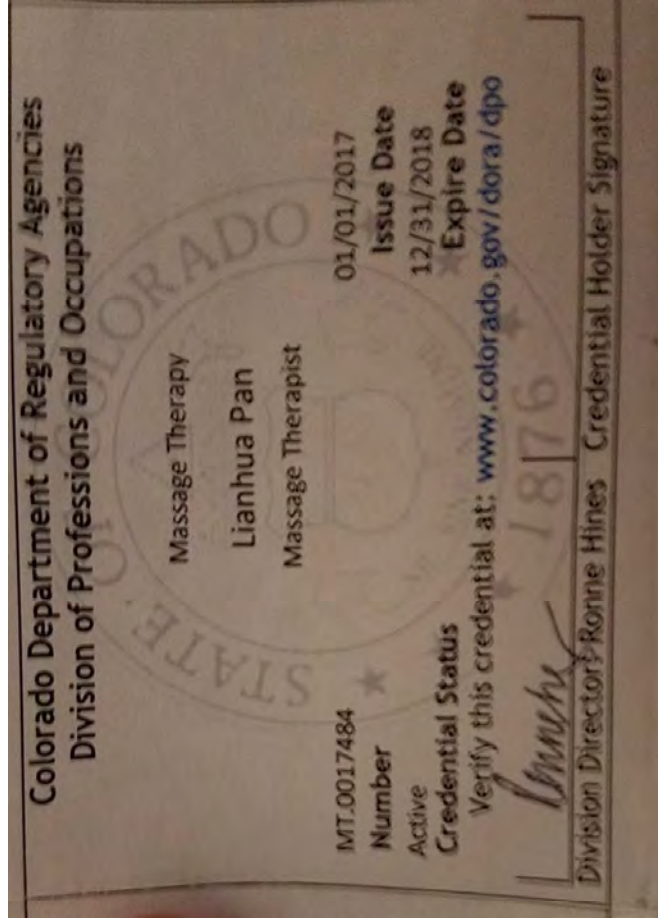
“Hi Trevor,

Happy new year, thank you for your email. Unfortunately I decide to terminate business license application. Sorry for wasting your time and thank you Linda for your great help.
You guys have a good day!

Regards,”

CITY 001085

Check Licenses / IDs and take photos to document



CITY 001086

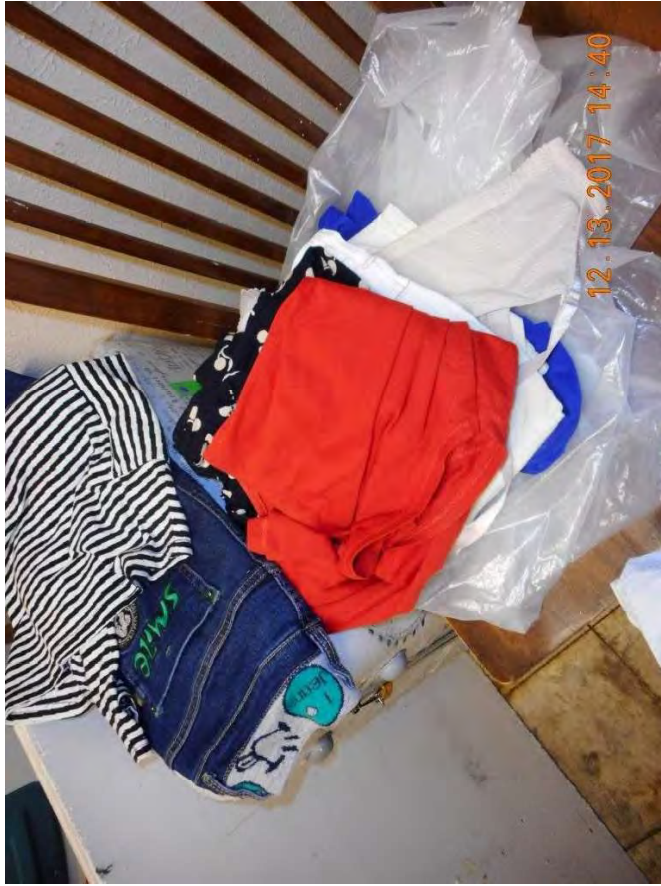
Signs of Habitation



CITY 001087



CITY 001088



CITY 001089



CITY 001090



CITY 001091

CITY 001092



Attire



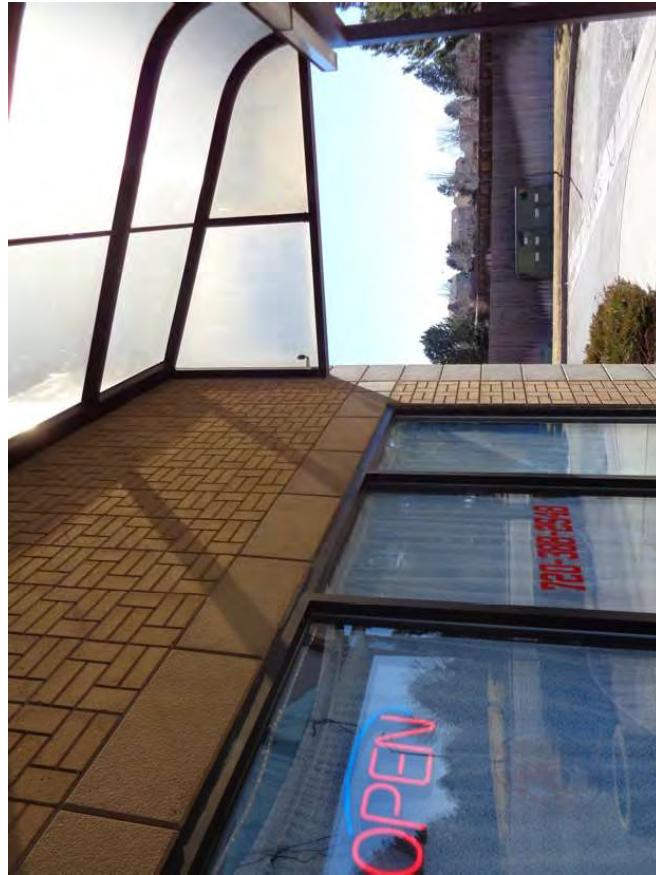
CITY 001093

Table Shower



CITY 001094

Excessive security



CITY 001095

Inspection Defenses

- Employees put on sweats or more attire
- Employees walk out of business to avoid ID
- Attempts to confuse inspector
- Employees claim to be friends or just there cleaning
- May have preplanned routine to clean hands, put on added clothing, ignore inspectors, walk out or run away
- Will contact pimp on their phones.
- If owner is not present, owner will claim no knowledge

CITY 001096

Inspection Strategy

- Body Cam, Cell phone cam, Audio recorder
- Talk to owner via speaker phone if not present
- Maybe consider sending in someone plain clothes to find out who is providing massage
- Friday afternoon busier, more chance to find operators.
- If all are licensed but still seeing sex reviews, consider more of a sting. Ask directly for illicit services, see if women can get a massage. Perhaps consider a police sting since these would be willing participants.

CITY 001097

Inspection Strategy

- If owner is present:
- If no one licensed is present. Order the business to close.
- Confront them on reviews and advertising and unlicensed practice.
See if they will admit it right then before they get a chance to change their story.
- Issue notice and then act quickly to protect the public and potential victims of the business.

CITY 001098

Documentary

- Slaves Massage Parlors in America, US 2016
<https://www.youtube.com/watch?v=q4Kipfl-A0Y>
- Follows civilian inspector in San Francisco

Aurora inspection

- C:\Users\tvaughn\Desktop\20180306_133416_ocean_foot.mp4

CITY 001099

No illicit sex and trafficking business becomes legit massage.



CITY 001100

Hearing process

- Defenses
 - Lean on interpreter and claim language barrier - just confusion
 - May admit to permitting unlicensed practice on record and then try to ask for leniency
 - Try to dismiss aggravating factors as non-relevant
 - Education (although fake) might not be admissible
 - Rub maps is hearsay (However note this the reason for your inspection)
 - Businesses begin to tell on each other

CITY 001101

Hearing process

- To successfully present case
 - Good documentation
 - Video / audio – body cam
 - Hearing officer up to speed on the code and purpose of the ordinance
- Losing is not losing
 - Business is disrupted
 - Learn and adjust
 - Illicit operation spends resources
 - May attempt to sell or other ways to subvert the law
 - Adapt as quickly as they do
- Ordinance catch-all of no erotic parlors


CITY 001102

A good report

- Note why you want to the place, online reviews, advertising, shady appearance, late night hours
- Note time and place
- Who talked with, what you asked
- Who you encountered

CITY 001103

LANDLORD EDUCATION



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 2, 2021

Smith Property Rentals, LLC
1234 Main Street, Ste. 001
Austin, TX 78700

Re: Spa Massage at 100 Center Lane, Unit A, Austin, TX 78700

Dear Mrs. Smith,

The Texas Attorney General has partnered with the Austin Police Department to address the growing problem of illicit massage businesses in the State of Texas. An illicit massage business is a massage establishment where the employees engage in prostitution – very often, because they are forced to do so. This is called human trafficking. We need the help of property owners like you to end human trafficking in the City of Austin and the State of Texas.

I have enclosed a list of “red flags” common to illicit massage businesses that will allow you to better assess whether Spa Massage may be operating a business in violation of state laws prohibiting prostitution and/or human trafficking, or out of compliance with Texas Occupations Code Chapter 455.

When reviewing the red flags, please note that Spa Massage is open until 10pm, 7 days a week. Online reviews and photos indicate that Spa Massage has a table shower, camera surveillance, and a doorman to allow entry. Additionally, the OAG has become aware that the phone number associated with Spa Massage appears more than once on a commercial sex website. Spa Massage also appears on the website RUBMAPS.ch, a review board where sex buyers can share their experiences at illicit massage businesses. Due to their offensive and explicit content, I have not enclosed the reviews with this letter, but I can provide them to you upon request. Please be warned that they are not easy to read.

We hope you will take all of the appropriate actions needed to ensure that illegal activity is not occurring on your property. We would also like to direct your attention to a few relevant provisions of Texas law:


- Texas Property Code Sec. 93.012 provides that a landlord who reasonably believes a tenant is using the leased premises or allowing the leased premises to be used for prostitution may file a forcible

detainer suit seeking possession of the property. Your lease may also allow you to recover rent for the entire lease period.

- Texas Civil Practice & Remedies Code Sec. 125.0015(6)(6), (7), (18) and (20) make the operation of an illicit massage business a common nuisance. Tex. Civ. Prac. & Rem. Code Sec. 125.002 allows the Texas Attorney General to file suit against the property, the business or the landowner to abate the nuisance.
- Texas Penal Code 20.07 makes it a crime for a person to knowingly *permit* another to use any real estate or building owned by the person to commit the offense of smuggling of persons, trafficking of persons, compelling prostitution, or aggravated promotion of prostitution.

Unfortunately, there are more than 1,000 suspected illicit massage businesses in the State of Texas. So, the sheer number of these illegal businesses makes investigating and filing suit against each one nearly impossible. For that reason, we ask that you do your part to ensure that this kind of activity is not tolerated in your community.

When you receive this letter, please contact me at the phone number or email address below so that we can talk more about how we can work together on this. I look forward to hearing from you.

Sincerely,

 John Ramsey
 Assistant Attorney General
 Human Trafficking / Transnational Organized Crime Section
 Office of the Texas Attorney General

P.S. If you would like to learn more about the operation of illicit massage businesses and the ways in which they recruit and exploit vulnerable women, a comprehensive study of the subject can be found here: <https://polmaproject.org/resources/human-trafficking-in-illicit-massage-businesses>.

Cc: Austin Police Department

CITY 001104

Breadcrumbs

- Notifying state with evidence of Practice Act Violations
- Leaving information for other cities even if not revoked
- Filing a criminal charge against the owner

Board/Program Actions

Licenses expired prior to 1990 were not converted to the current computer system, and therefore, this office cannot confirm or deny discipline information for these individuals.

Discipline

There is no Discipline or Board Actions on file for this credential.

[File Complaint](#)

[Printable View](#)

[Close](#)

CITY 001105

EXHIBIT
6

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

Billings City Council – Human Trafficking Prevention Ordinance Through Massage Business Licensing

Q&A Excerpts. Adapted from Document Prepared by End Exploitation Montana

1. Illicit Massage Businesses (IMBs) in Billings, known to be committing crimes like sex trafficking and prostitution, are already identified by law enforcement. Why can't law enforcement shut them down?

Human trafficking cases are notoriously difficult to prosecute. They require extensive investigation and are extremely expensive and time consuming. Law enforcement agencies do not have the funds or manpower to shut IMBs down one at a time by proving that human trafficking is occurring in these businesses. See FAQ #3 for more information.

2. Why can't law enforcement utilize [HB 749](#), state legislation passed in 2019, to shut IMBs down?

HB749 allowed for Department of Labor & Industry (DLI) designees or local law enforcement to check for licenses in massage businesses (codified in MCA 37-33-406, which sunsets on June 1, 2023), and it created funding for two state law enforcement officers to help combat human trafficking. Unfortunately, during the drafting process before it was enacted, HB749 was stripped of many of the protections that were originally included. DLI deals with individuals, NOT businesses. When a worker in an IMB is found to be “practicing” without a license, it is reported to DLI. DLI then writes to the individual regarding the matter. Typically, before the letter has even arrived, the trafficking victim has been relocated by their trafficker. The IMB remains untouched.

3. How will this ordinance shut down IMBs?

IMBs almost always have red flags indicating human trafficking in their business model. These include operating in the middle of the night, boarded or painted windows, women living on site, having workers not fully clothed, etc. It is much easier and more cost effective to shut down IMBs based off of these indicators than to attempt to shut them down by proving human trafficking is occurring. This ordinance makes these and other indicators officially illegal, thus allowing the city to legally shut down IMBs without the cost and time of a human trafficking investigation. Legitimate massage businesses already naturally comply with these proposed coding “regulations.”

These proposed requirements will be found in laws, but a LMT's clients will not see these requirements. Of course, there are exemptions provided; for example, if a LMT works from home, they are allowed to have sleeping quarters in their place of business, or if they are located in a building or residence that does not have glass at the front entrance, they can likewise receive an exemption from the city.

Also, the expanded license application and background check will provide necessary information about the business license applicants (see FAQ #5).

Similar ordinances passed in cities across the country have been effective in shutting down IMBs.

4. What is this going to cost LMTs?

This ordinance could cost you approximately \$40 total. That would cover a \$10 fingerprint background check and \$20-30 for the fingerprint card upon initial licensure; this is already required by many other professions. This cost would be incurred once per licensee in Billings.

If your business offers massage only, **no other costs** are incurred because the Massage Business License (\$55 per year) will replace your existing Business License (which is also \$55 per year).

Billings City Council – Human Trafficking Prevention Ordinance Through Massage Business Licensing

Q&A Excerpts. Adapted from Document Prepared by End Exploitation Montana

If this ordinance passes, your current Business License will continue to be valid until it is time to renew, at which point you will apply for the new Massage Business License instead. Follow your regular license renewal routine and begin the process before your current license expires. There is no need to close your business while applying for the new license if you begin the application process early.

If your business provides additional services (mud baths, facials, manicures, etc.) you will be required to obtain the Massage Business License (\$55 per year) in addition to the regular Business License (\$55 per year) that you already have.

5. Why is the application for the Massage Business License so robust?

The application is designed to provide the city administrators with more information about the applicant and doubles as a deterrent for a trafficker from applying for a business license.

Applications are confidential and not on public record.

Past history (residence, employment) is required in order to identify if an applicant operated a business that was shut down by the city previously, or whose residence was involved in a human trafficking case.

Some have pointed out that a criminal will simply falsify the information on the application. This would merely provide another way to prosecute the offender in the event of an investigation into their illicit business; their license can be revoked, thus shutting down their criminal business and fulfilling the purpose of the ordinance.

Having a felony does not currently disqualify an applicant from owning a massage business, and the passing of this ordinance will not change this. The application is simply asking the applicant to disclose it. This is a common request on job applications, state licensing applications, etc. In this case, the City administrators are most interested in knowing if the applicant has a prior conviction relating to human trafficking; however, as some human trafficking cases end up being prosecuted on a related charge, the application asks for all felony charges to be disclosed. Again, criminal history is not an automatic bar to a license - it is merely cause for disclosure, explanation, and any necessary investigation.

This information will only need to be filled out once, the first time this Massage Business License is applied for. When renewing the license in subsequent years, only changes will need to be updated.

6. Will code enforcement officers be able to disrupt my legitimate business and go through my things?

Code Enforcement investigations occur on a complaint basis. Code enforcement only shows up when a complaint is filed. This already applies to massage therapists and other businesses; the ordinance will not change how this process occurs. For example, if your business is in your home, placing a sign in your yard may be a coding violation. Your neighbor may file a complaint, Code Enforcement will then come to investigate the complaint, and will tell you to take your sign down. They provide warnings and time for compliance before further action is taken. The passing of this ordinance will not change this process.

Legitimate LMT's already comply with the coding requirements that would be added under this ordinance (see #3).

Billings City Council – Human Trafficking Prevention Ordinance Through Massage Business Licensing

O&A Excerpts, Adapted from Document Prepared by End Exploitation Montana

7. Will this ordinance violate HIPAA laws?

No. To the extent any information is protected by HIPAA or other privacy laws, this ordinance will not change those rules or require disclosures in violation of those rules. Law enforcement will still have to go through the same legal channels they currently have to go through to obtain patient or client records. This ordinance has gone through a rigorous vetting process with consultation from many organizations and experts, including the City of Billings legal department.

8. Will this ordinance affect massage students?

No. Massage students will still be allowed to practice in school as currently allowed under the law. See Montana Code Annotated ([MCA](#)) [37-33-404](#).

9. What is the background of this ordinance?

In 2017, Ward 4 Councilman Ryan Sullivan brought forward an initiative to City Council for City staff to prepare a City ordinance that would address the IMBs in Billings. Councilman Yakawich seconded the motion and the motion passed unanimously by City Council.

From that point, the City Attorney began researching what other cities were doing to address IMBs in their city. The City legal department contacted a large number of cities throughout the country that have adopted massage business license ordinances with successful results, and received copies of their adopted ordinances. After reviewing all of the different ordinances, the City Attorney and Assistant City Attorney developed an initial draft based on language from the various ordinances from throughout the country.

The initial draft was refined, edited, and shaped into the current version based on review by LMTs, FBI, MT Dept of Justice, the American Massage Therapy Association, Billings Police Chief St. John, Mayor Cole, local attorney Stephanie Baucus in her capacity as a volunteer in the fight against human trafficking in Billings, and Lavon Watson (former Seattle law enforcement and LMT that consults on addressing IMBs and helped with the Kent, WA ordinance).

Two public meetings were held and officially noticed so that LMTs could provide feedback to the City.

EXHIBIT

7

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

City Council Regular

Date: 04/12/2021
Title: Massage and Spa Facilities Business License Ordinance - First Reading
Presented by: Gina Dahl
Department: Legal
Presentation: Yes

RECOMMENDATION

Staff recommends Council approve the proposed ordinance regulating massage and spa facilities through business licensing criteria on first reading.

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

Billings has a significant problem with illicit businesses operating under the guise of being massage or spa facilities. Federal Bureau of Investigations (FBI) data from 2017 tracked commercial sex ads in Montana. Bozeman and Missoula had nearly 5,000 ads, while other MT cities had between 2,000 and 3,000 and Billings had nearly 20,000. These illicit businesses are considered to be a primary source of these ads. Over the past five years, there have been between 15 and 27 illicit businesses disguised as massage facilities operating within our City on any given night.

In November 2017, the Federation of State Massage Therapy Boards (FSMTB) Human Trafficking Task Force released the Human Trafficking Task Force Report. The FSMTB is an autonomous, not-for-profit organization comprised of state regulatory boards and agencies that regulate the massage therapy profession. This report was the culmination of nearly two years of study. It includes an evaluation of the prevalence and impact of human trafficking on the massage profession. The report found that between 6,500 and up to 9,000 illicit massage businesses may be active in the United States and that the "commercial-front brothel" was one of the top two venues for sex trafficking. The FSMTB recommended massage therapy facility licensing as a way to combat human trafficking in its 2017 report. The FSMTB report also states that licensing can be a useful tool in protecting legitimate massage businesses and in reducing the number of illicit businesses by providing a jurisdiction with the ability to institutionalize accountability, track illicit business movement, deny or revoke license and impose discipline on establishments.

On November 27, 2017, Council member Sullivan spearheaded an initiative, that was approved by the Council, to develop an ordinance to eliminate illicit businesses that are masquerading as massage and spa facilities in Billings. The Council's adopted priorities for 2019 and 2020 both included direct references to adopting a massage business license ordinance to assist the City's efforts to improve safety. Since that time, there have been a significant amount of resources spent on researching and drafting the proposed ordinance. Staff have met with stakeholders, including local massage therapists, and requested input and feedback on the draft ordinance in an attempt to find a mutually acceptable draft. On January 19, 2021, this was presented to Council at a work session and Council directed staff, by a vote of 9-2, to proceed with preparing a draft ordinance to be brought before Council for First Reading. The current draft has been reviewed by a subcommittee of Council as well as Administration, Legal, Code Enforcement, Finance, and the Police Department.

This proposed ordinance requires a massage or spa facility to submit an application for a business license. The application will require the applicant to provide information regarding anyone with an ownership interest in the business. The application will also require:

CITY 000461

- Proof of ownership
- Proof of control of the premises
- Previous convictions
- Previous license suspensions and revocations
- State issued massage therapist license

Solo practitioners and other professions that are exempt by state statute will not be required to obtain a license under this ordinance. This includes acupressure, reflexology, Asian bodywork therapy, reiki, and shiatsu providers. The ordinance is designed to target only those businesses who purport to provide massage therapy as its primary purpose. Gyms, barber shops, beauty salons, medical facilities, chiropractors, and other professions licensed under the laws of the state are not regulated by this ordinance.

The proposed ordinance contains limitations on the operation of facilities in sections 7-1910, such as:

- Operating without a licensed massage therapist
- Prohibits living on premises, unless it is a home occupation
- Prohibits nudity
- Prohibits sexually suggestive advertising
- Prohibits presences of sex toys, lubricant, and contraceptives
- Prohibits sexual contact
- Prohibits concealing individuals from identification

Section 7-1911 of the ordinance places requirements on the facilities, including:

- Maintain records of employees
- Maintain copies of state licenses
- Maintain records of massage therapy performed and available for inspection upon request (customers names are NOT required)
- All employees must have identification
- Keep doors unlocked (subject to some exceptions)
- Permit inspections

Any violation of the terms and conditions of the ordinance may result in fines or suspension and revocation of the business license. These requirements along with the City's inspection authority (section 13-432 and 7-1912) provides the City with a more effective enforcement tool in the fight against illegal activity. Most importantly, the requirements of this ordinance will provide a means to deny a business license from the start for those who are disguising their illegal activities as massage facilities.

This illegal activity is contributing to the City's crime problems. Criminal investigations of human trafficking are expensive and time-consuming. This ordinance is a low cost, yet effective, tool to chase these illegal businesses out of our community. There is no simple solution or approach that will eradicate this from our community. However, with proper implementation and enforcement, the enactment of the ordinance will reduce the number of these illegal businesses operating within city limits.

ALTERNATIVES

City Council may:

- Approve; or,
- Not Approve

FISCAL EFFECTS

The fee structure for this business license is similar to our current annual business tax receipt of \$50 per year. Therefore, we do not expect to see any increase in revenue as a result of adopting this ordinance. However, we do expect to reduce crime at a substantially lower cost than to rely exclusively on law enforcement to shut down the illicit businesses disguising themselves as massage and spa professionals.

SUMMARY

If properly implemented and enforced, this ordinance will reduce human trafficking by making it more difficult for illicit businesses to operate under the guise of being massage or spa facilities. Additionally, it will save resources for law enforcement by providing an alternative process to shut down these illicit businesses, and it will drive away criminal enterprises masquerading as legitimate businesses in exchange for low cost, nominal regulation.

Attachments

Ordinance - massage therapy business license

EXHIBIT

8

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

Ordinance 21-5757 Massage and Spa Facilities

Tina Hoeger
Code Enforcement Division Manager

Massage Facility License Update

Massage Facility Category	# of Licenses
Licenses Denied	5
Licenses Approved	12
Solo Practitioner Exemptions Approved	70
Facilities Closed Within City Limits	5

Massage and Spa Facility License Update

- City Council passed ordinance April 26, 2021
- 5 facilities applied and were denied (inspection/online ads)
- 12 facilities applied and were approved (inspection/license review)
- 70 solo practitioners applied and received exemption
- 1 facility voluntarily closed prior to adoption of the ordinance
- Some facilities outside of City limits have closed voluntarily

Conclusion

- Massage inspection process has been successful
- Most businesses have been cooperative and receptive
- No suspected illicit massage facilities in City limits to date
- Currently have one case pending in Municipal Court for operating without a license
- Code Enforcement initiates case for tracking purposes
- These inspections moving forward will fall under the Commercial Code Enforcement Officer II position (PSML)

EXHIBIT
9

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD



Inspector Name(s):

Date Inspected:

OL Number:

Spa Massage Facility Address:

Facility Check List – BMCC 7-1900

BMCC 7-1910. Prohibitions during Operation:

- No licensed massage therapist is in the facility during open hours;
- Evidence the facility is used for living or sleeping;
- Employees are not fully clothed or are wearing transparent clothing;
- Advertising to suggest sexual services are available at the facility;
- Possession or display of sexually oriented toys, merchandise, sexual aids or contraceptives
- Employees remain behind a locked door during the inspection;

BMCC 7-1911. Requirements during operation

- List of current employees and independent contractors providing services at the facility;
- Copies of each massage therapists license from the State of MT
- Operate only under the business name on the COB OL License
- Exterior (entry) door must be unlocked during hours of operation, except when permitted to remain locked through a Variance from the license administrator
- Fail to open a locked interior door upon request that is not locked to protect client confidentiality/privacy or business information.
- Reception area visible from the exterior of the building (building glass may not be fully covered);
- Advertising lists the physical address of the facility
- A written list of services and prices for all services available in the reception area

- Hours of operation allowed between 6 am and 10 pm
- Confirm the name of the business owner is the name of the person who holds or applied for the license
- Location is in a zone district that allows the spa/massage facility

BMCC 7-1912. Inspections

- Conspicuous display of each massage therapists' license from the State of MT
- Upon request, open all locked cabinet, storage areas or rooms for inspection

Inspector Notes:

EXHIBIT
10

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

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Transcription of Digital Recording
Billings City Council Meeting
of April 12, 2021

1 (Recording began.)

2 MAYOR COLE: Agents. So, today is the
3 first time that the city -- Billings City Council
4 has met in person since March 16, 2020, for a
5 regular business meeting. I hope you'll be patient
6 with us as we experience some technical bugs
7 during the meeting. This is the first time we've
8 met in person in that time period.

9 There are a few other items to keep in
10 mind during our meeting tonight. The microphones
11 and speakers for all computers, tablets and other
12 devices in the room must be muted or turned off at
13 all times, or there'll be a very distracting
14 feedback here in the community room. There will
15 only be one microphone picking up sound in this
16 room at any given time and that's the one located
17 right up here. They kind of -- I call it the big
18 white pizza box.

19 Please speak clearly and with reasonable
20 volume so that everyone on Zoom and in this room
21 can hear you. There's no amplification of sound in
22 this room, so you must speak loud enough for
23 people on the other side of the room to hear you.
24 The microphone, the pizza box, is hot at all times
25 and is very sensitive. So be careful what you say.

2

1 Even whispered sidebar conversations in the back
2 rows might be broadcast on Community 7 TV. It's
3 very hard for the Council members and others
4 attending on Zoom, as you can see on the screen,
5 to hear if there is more than one person in this
6 room speaking at any given time. So please, do
7 what you can not to talk over someone else and
8 please avoid informal sidebar conversations that
9 might prevent others from hearing the meeting.

10 In-person attendance by the public is limited to
11 about 15 or so people here in the community room.
12 Overflow will be allowed in the lobby, but that,
13 also, is limited so -- due to social distancing.

14 If we have a very large crowd, some
15 members of the public might need to wait in their
16 car or outside the building, using the library's
17 Wi-Fi connection or cellular connection, to
18 monitor the meeting. A television in the lobby
19 will broadcast the meeting via Channel 7 TV in
20 real time. If members of the public are seated or
21 standing here in the community room, but notice
22 that others are waiting in the lobby, I would ask
23 that you at least consider leaving the room once
24 the City Council has addressed your matter or
25 you've spoken, if you are so inclined, so that

1 others out in the lobby can enter the room and
2 still maintain social distancing, if they would
3 like to do so.

4 To slow the spread of the coronavirus,
5 Governor Gianforte's directive from February 12,
6 2021, encourages all Montanans to wear masks or
7 face coverings and to follow CDC social distancing
8 guidelines and best industry practice. To that
9 end, and for the time being, masks and/or face
10 coverings are required for all persons attending
11 the meeting in person. And Council members and
12 staff will do their best to comply with that rule.
13 However, masks do make it more difficult to
14 understand when someone is speaking, so anyone may
15 remove their mask if providing public comment at
16 the podium, or Council members and staff are
17 speaking from their seats. Since I'm often
18 interacting with the Council members and staff,
19 and the public, I hope you'll forgive me if I
20 don't always replace my mask immediately. The good
21 news is that I am now fully vaccinated.

22 A few last items about public comment.
23 During any public comment period, persons who wish
24 to offer in-person comments will be asked to speak
25 first and use the podium, if they're here at the

1 library. You'll need to speak clearly and loudly,
2 again, as there's no amplification in the room.
3 Persons who are attending virtually, using Zoom,
4 will speak second. They will need to register with
5 Zoom by following the instructions on the City
6 website and indicating which agenda item or items
7 they'll speak to. They'll need to raise -- or use
8 the "raise hand" feature on Zoom to indicate to
9 the clerk that they are ready to speak and that
10 their microphone should be unmuted. People in this
11 room will be able to hear, but not see the person
12 who is commenting via Zoom. Further instructions
13 on how to attend virtually are available on the
14 agenda and minutes page of the City website.

15 The first page of the City Council
16 packet, available online or by calling the clerk
17 during normal business hours. The old public
18 comment phone line has been discontinued, so no
19 public comments will be taken using that phone
20 number. However, anyone who does not have a
21 computer can still use -- can still call in using
22 a Zoom phone number and following the instructions
23 that appear on the City website. If anyone has any
24 questions should always feel free to call the City
25 Clerk's office at 657-8210.

1 So those are the introductory comments,
2 and with that, we can begin our meeting with the
3 Pledge of Allegiance. So please stand with me for
4 the pledge and remain standing for our invocation
5 by Council member Choriki.

6 ALL: I pledge allegiance to the flag of
7 the United States of America, and to the Republic
8 for which it stands, one Nation, under God,
9 indivisible, with liberty and justice for all.

10 MR. CHORIKI: Actually, please feel free
11 to be seated if you want to. We are not -- what
12 I'm going to do is just read off a couple of
13 quotes that I found that I think are informative
14 to the task in front of us, and give us a few
15 moments after that to think about them.

16 So, to begin, "The saddest aspect of life
17 right now is that science and technology are
18 moving faster than society gathers wisdom." Isaac
19 Asimov.

20 "Be the change that you wish to see in
21 the world." Mahatma Gandhi.

22 "Your assumptions are your windows on the
23 world. Scrub them off every once in a while or the
24 light won't be able to come in." Isaac Asimov.

25 I actually really love this next one. "If

6

1 I had asked people what they wanted, they would
2 have said faster horses." Henry Ford.

3 "In reality most human beings are not, to
4 most human beings, more important than money."
5 Thank you for sharing your thoughts and your time
6 with me.

7 MAYOR COLE: Thank you very much, Council
8 member Choriki.

9 Toni, would you call the roll, please?

10 TONI KEEHNER: Council member Shaw?

11 MS. SHAW: Here.

12 TONI KEEHNER: Yakawich?

13 MR. YAKAWICH: Present.

14 TONI KEEHNER: Neese?

15 MR. NEESE: Here.

16 TONI KEEHNER: Ewalt?

17 MR. EWALT: Here.

18 TONI KEEHNER: Joy?

19 MS. JOY: Present.

20 TONI KEEHNER: Choriki?

21 MR. CHORIKI: I am here.

22 TONI KEEHNER: Purinton?

23 MS. PURINTON: Present.

24 TONI KEEHNER: Ronning?

25 MS. RONNING: Here.

1 TONI KEEHNER: Boyett?

2 MR. BOYETT: Here.

3 TONI KEEHNER: Brown?

4 MR. BROWN: Here.

5 TONI KEEHNER: Mayor Cole.

6 MAYOR COLE: Here.

7 Toni, I believe that the March 22 minutes
8 were distributed. Correct?

9 TONI KEEHNER: That is correct.

10 MAYOR COLE: So, our only minutes for
11 approval tonight are the minutes from March 22. Is
12 there any discussion, Council, or is there a
13 motion pertaining to the March 22 minutes?

14 Council member Boyett.

15 MR. BOYETT: Thank you, Mayor. I move
16 that we approve March 22, 2021, minutes
17 (indiscernible).

18 MAYOR COLE: Motion by Council member
19 Boyett for approval. Is there a second?

20 Council member Purinton?

21 MS. PURINTON: Second.

22 MAYOR COLE: As the second, is there any
23 discussion? Any discussion on the motion? Motion
24 is for approval. If not, all in favor of approval,
25 please raise your hand. Thank you very much. It's

1 easier to do this visually, and I think I saw a
2 hand from all council members. Motion passes
3 unanimously.

4 Council courtesies. If -- Council, do we
5 have any Council Courtesies to this evening?

6 Council member Ronning and Council member
7 Yakawich.

8 MS. RONNING: Thank you, Mayor. My
9 Council courtesy is actually to thank you for the
10 outstanding job you did in the keynote for the
11 national or the Montana State (indiscernible)
12 Program. Outstanding job. So, thank you.

13 MAYOR COLE: Thank you very much. I'll
14 give you your payment later. Just kidding. But
15 thank you very much.

16 Council member Yakawich.

17 MR. YAKAWICH: Thank you, and the
18 Council. Just a shout out, Veterans Meat Locker,
19 they held their 4th annual archery event in
20 remembrance of Sergeant McNary. This event is a
21 scholarship for Sergeant McNary kids. During this
22 event, they gave over 160 bags of 12 to 15 pounds
23 each by the veterans -- bags to veterans. They
24 have a saying, the Veterans Meat Locker. "It isn't
25 a handout. It's a hand up." Thank you.

1 MAYOR COLE: Thank you, Council member
2 Yakawich. Any other Council Courtesies? Seeing
3 none, we'll move on.

4 We do have a proclamation this evening
5 for the Billings Great American Cleanup Day. I'm
6 going to read the proclamation and then we're
7 privileged to have the executive director of
8 Bright and Beautiful, Joanie Tooley, with us. And
9 we'll ask Joanie, come -- to come over and address
10 the public and the -- and the Council.

11 So the proclamation reads as follows:
12 Whereas, the Great American Cleanup is the
13 country's greatest -- largest community
14 improvement program. It kicks off in more than
15 20,000 communities each spring. This national
16 program engages more than one and a half million
17 volunteers and participants who take action in
18 their communities to create positive change and
19 lasting impact. And whereas, Bright and Beautiful
20 encourages people to improve and beautify Billings
21 and is proud -- is a proud affiliate of Keep
22 America Beautiful. And Keep America Beautiful,
23 the Nation's leading community improvement
24 nonprofit organization, strives to make every
25 community a clean, green, and beautiful place to

1 live and has established the Great American
2 Cleanup as a signature national effort.

3 And whereas, the Keep America Beautiful
4 Great American Cleanup includes more than 15,000
5 events each spring and engages more than one and a
6 half million volunteers and participants to create
7 positive change and lasting impact. And whereas,
8 the City of Billings seeks to protect its natural
9 resources and bring people together to transform
10 public places into beautiful places. And whereas,
11 the City of Billings recognizes the -- its
12 commitment to engage citizens, civic and
13 government leaders and business leaders to work
14 together to end the littering and beautify
15 America's communities.

16 And whereas, Bright and Beautiful and the
17 City of Billings are committed to elevating
18 volunteerism and motivating everyone in our
19 community to become stewards of the environment.
20 Particularly on Saturday, April 24, 2021, during
21 Billings Great American Cleanup Day. Now,
22 therefore, I, William Cole, Mayor of the City of
23 Billings, do hereby proclaim April 2021 as Keep
24 America Beautiful Great American Cleanup Month and
25 April 24, 2021, as Billings Great American Cleanup

1 Day and call upon our citizens to join in
2 activities that remove litter, promote responsible
3 environmental stewardship, and help us build a
4 better world today and for future generations.

5 This evening we're privileged to have
6 Joanie Tooley with us.

7 So, Joanie, it's all our -- all yours and
8 could you tell us how people can get involved on
9 Saturday, April 24th?

10 JOANIE TOOLEY: Absolutely.

11 Good evening, Council members and Mayor --Mayor
12 Cole. Thank you so much for the opportunity. You
13 know, we were -- we are disappointed to have to
14 cancel our Great American Cleanup last year. At
15 that time, you might remember, there was concern
16 about COVID-19 living on plastic and paper and
17 aluminum, and making it, therefore, even more
18 hazardous to handle than ordinary.

19 So, this year we decided that as long as
20 we are cautious, as long as we observe COVID-19
21 protocols to keep away from each other in the
22 process of cleaning up litter, there is absolutely
23 no reason for us not to go out and tackle some of
24 the problems that occur after the snows retreat.
25 You see the litter that's left around the city.

12

1 So, we're doing things a little bit
2 differently. Great American Cleanup is not going
3 to involve group check-in or a luncheon after
4 cleanup in the morning of the 24th. But we do
5 encourage people to go out in small groups and
6 households, to clean up in their neighborhoods.

7 If you will simply call us up or e-mail
8 us: The phone number is 248-6617; the e-mail
9 address is brightnbeautifulbillings@gmail.com.

10 Let us know you want to participate and we, I and
11 our board, will get you some nice cleanup supplies
12 and gear to borrow to do your darnedest out there
13 in and around Billings. So, that's happening on
14 the day of the 24th.

15 We've also relaxed parameters to include
16 any cleanups that people do between Earth Day,
17 which is 22nd, and Mother's Day, which is May 9th.
18 What a fantastic way to honor Mother Earth.

19 Go out and clean up. Be in touch with us,
20 we can get you supplies if you'd like them ahead
21 of time, and then please let us know how many bags
22 of litter you've filled. The generous City of
23 Billings has made roll-offs available for
24 depositing your filled bags at across the street
25 from the Community Center downtown, at Castle Rock

1 Park in the Heights and at Poly Vista Park on the
2 west end. So, a little bit different from years
3 past, and we'll also give you a hand in loading
4 your bags if it's difficult for you to transport
5 them from the place you clean.

6 So, anyway, I think that covers it. We'd
7 love to have all of you out there taking part in
8 this wonderful Billings tradition of cleaning up
9 on the last Saturday of April; or, as I said, from
10 Earth Day to Mother's Day. Look forward to seeing
11 you out there. Thank you, Mayor. Thank you,
12 Council.

13 MAYOR COLE: Thank you, Joanie. Much
14 appreciated. Thank you for your efforts.

15 JOANIE TOOLEY: Thank you.

16 MAYOR COLE: Thank you. And that
17 concludes our proclamations. Do we have any
18 Council reports from any members of the Council
19 this evening from organizations that you serve as
20 City representative on?

21 Council member Joy.

22 MS. JOY: Thank you, Mayor. Thank you,
23 Mayor and Council. I just wanted say I think the
24 email was forwarded to all Mayor the whole entire
25 Council, that the CBD has received an additional

1 2.9 million dollars for a whole -- the program in
2 HUD funding for the home program within CBD.

3 So, this is a really great opportunity
4 where we will be able to really look at and really
5 try to deal with some of the challenges of
6 affordable housing. So, I would really like to
7 extend appreciation to those members of Congress
8 that from the Montana delegation that voted for
9 it. Thank you.

10 MAYOR COLE: Thank you very much. Any
11 other Council reports? Don't see any. If I miss
12 any of the members of the Council, just give me a
13 shout out.

14 And Dave Watterson, or Brenda, we've got
15 that spare computer around. Would you fire that
16 up for me? If it's not already.

17 City administrator reports. Chris
18 Kukulski?

19 MR. KUKULSKI: Thank you, Mayor and
20 Council. So, there's a few brief items. First,
21 actually, I'm going to turn it over to the police
22 chief. He's got a couple things to say here. The
23 Chief is via Zoom. If he is not, I will cover it,
24 as we were scrambling around here this afternoon.
25 So, a couple of key proclamations, or references

15

1 tonight that could have been proclamations, which
2 is April 11th through the 17th is National Public
3 Safety Telecommunications.

4 UNKNOWN: I apologize for interrupting,
5 Chris. I can barely hear you. Can you

6 MR. KUKULSKI: Okay.

7 UNKNOWN: Can you speak up?

8 MR. KUKULSKI: Thank you. We'll try to
9 speak up from here. So, April 11th through the
10 17th is National Public Safety Telecommunications
11 Week. So, we just want to recognize all of our
12 911 dispatchers. That's a very critical part of
13 all emergency services. So, the call literally
14 starts with them and so they're a critical part of
15 our overall team.

16 It's also the Animal Control Officer
17 Appreciation Week. So, both of those on a
18 national scale, just recognizing the work that
19 they do in our organization and in our city.

20 There were 18 ex-parte communications
21 that came in after 3:00 PM. All regarding regular
22 agenda Item No. 5, that is the massage and spa
23 facilities discussion this evening, first reading.

24 Lastly, I'll just highlight a couple of
25 items for our legislative activities.

1 So, Senate Bill 385 is back over to the
2 House. So, it heads from the Senate, it made it
3 through the Senate, back over to the House. It's
4 being heard tomorrow morning. This is the bill
5 that, in its current form, will require that any
6 districts created after 2009, when the legislature
7 consolidated kind of all the district language, so
8 our District One, other transportation districts,
9 not here for Billings it's really Park District
10 One at this point. That any future districts will
11 be required each thirteen years or a shorter
12 period, they'll need to be reconsidered by the
13 electorate and voted on by the public.

14 They will be limited to an inflationary
15 growth index. I did ask that of one of the
16 amendments, that they consider over in the House
17 side is that that growth index be made on the
18 formula calculation versus the revenue. Why does
19 it matter? If you're growing as a community, in
20 any way, shape, or form, and you don't make the
21 inflation off the calculator, then that growth
22 will not be calculated in the additional revenue
23 you'll collect.

24 And then, they've gone back and forth as
25 to whether mill levies will be a part of it.

1 Currently, mill levies are not included in what
2 385 was amended to include.

3 So, that bill's tomorrow morning. The
4 only other one I'll mention is a bill -- tomorrow
5 afternoon, House Bill 464, the Mayor's going to
6 testify.

7 Interesting, it's a little known there
8 is a local option gas tax. It's been on the books
9 in Montana, legislatively, for decades. Several
10 counties, it's only at County level, so the City
11 cannot take it to the voters, but counties can.
12 Missoula County is the only successful county to
13 have done this. The statute today requires that it
14 be voted in by the citizens. Tomorrow's bill will
15 eliminate that opportunity.

16 So, to me, the irony is we have a number
17 of bills this legislative session that seek to
18 take authority away from local elected officials
19 and only give it to the electorate or the
20 citizens, if they're willing to adjust the tax or
21 assessment. In this case, that's what's on the
22 books, and now they want to eliminate that
23 possibility. And I'll tell you from a -- there
24 have been several debates, not here in my short
25 time Billings, but in my previous lives in

18

1 Montana, in both communities, as to whether a gas
2 tax was a fairer way to fund the transportation
3 system than an assessment district. Remember,
4 assessment districts only tax property owners. The
5 old tax, in theory, would tax those who use the
6 transportation system. So, I think it would be
7 unfortunate to lose that. That's tomorrow. Amy
8 and Greg will be on next week's call. They'll
9 give us an update. The trend this week, maybe
10 through the end of this session, is that there are
11 a fair amount of hearings on Monday and Tuesday,
12 and then a lot of internal work happening in the
13 middle and late part of the week. So, with time
14 sensitivities this evening, I'm just going to
15 highlight those two bills. If you have any
16 questions, be glad to answer any. That is the end
17 of my report, Mayor and Council.

18 MR. NEESE: Mayor, I have a question.

19 MAYOR COLE: Thank you, Chris. Council
20 member Neese has a question.

21 MR. NEESE: Hey, Chris, on that gas tax
22 one, you're saying that we had an option, as the
23 City, that we could have assessed the gas tax to
24 do our -- is that what I understand you're saying?

25 MR. KUKULSKI: You do not have the option

19

1 as a City Council. The County Commissioners

2 MR. NEESE: Okay.

3 MR. KUKULSKI: -- under statute, can take
4 it to the citizens of the county, and there's a
5 formula in the statute that shares the money with
6 each incorporated city.

7 MR. NEESE: Okay.

8 MR. KUKULSKI: -- and the county. So, it
9 is a -- there is a definite benefit to each
10 municipality. But again, I believe only one county
11 in Montana has voters that successfully passed it.

12 MR. NEESE: And that would have to be
13 initiated by the County Commissioners.

14 MR. KUKULSKI: The County Commissioners
15 are the only ones who can put it on the ballot,
16 and the citizens are the only ones who can vote it
17 up or down. But which we historically as a lead in
18 a city supported that motion because it is
19 squarely in the hands of the voters and it is a
20 way away from property owners and more to users.

21 MR. NEESE: And do you know how much, if
22 that was in place, how much (indiscernible) it
23 would alleviate our current assessment districts
24 for infrastructure like that?

25 MR. KUKULSKI: I do not know the dollar

20

1 amount off hand. It is substantial. I think it
2 maxes at \$0.03 or 3%. As I've looked at it for
3 Kalispell. And in Bozeman it would have -- If you
4 simply shifted whatever the collection was, it was
5 a substantial shift away from the property tax and
6 over to the user tax. I've never seen a
7 calculation for Yellowstone County or Billings.
8 Excuse me.

9 MR. NEESE: And when was that hearing?

10 MR. KUKULSKI: It is tomorrow afternoon
11 at 3:00 PM.

12 MR. NEESE: Okay. Thanks.

13 MAYOR COLE: Okay. Thank you very much.
14 We'll move on to public comment on non-public
15 hearing items. So, this is the opportunity for the
16 public to comment on anything that there is not
17 going to be a public hearing on. So, specifically
18 that will be Item 1 on our consent agenda. Item 2,
19 dealing with the library refinancing, the library
20 construction bond. And Item 6, the second read on
21 Highway 3 zone change 987.

22 Significantly, this is not the time to
23 comment on Item 5, which we're expecting plenty of
24 comment on. That's the massage ordinance. All the
25 other items, there will be a public hearing for

1 later in the meeting. So, you can wait to comment
2 on those; but if you'd like to comment on Items 1,
3 2, or 6, either in person here or on Zoom, now is
4 your time to do that.

5 We'll start, first, in the room. Is there
6 anybody who would like to comment on Items 1, 2,
7 or 6? If so, please come to the podium.

8 I'm not seeing anybody walk toward the
9 podium. So, Toni, do we have anyone who has
10 called in using Zoom or appearing on Zoom to
11 comment on Items 1, 2, or 6?

12 TONI KEEHNER: I would need our attendees
13 to raise their hand if they would like to speak on
14 those items.

15 MAYOR COLE: So, anybody who is watching,
16 please use the "raise your hand" feature on Zoom
17 to signal to Toni, our clerk, that you'd like to
18 comment on items 1, 2, or 6. While we're waiting
19 for that, if there is anybody, we'll just ask that
20 you keep your comments to three minutes, tell us
21 your name and address up front, and Toni will
22 unmute you, having seen your hand.

23 UNKNOWN: Mayor.

24 TONI KEEHNER: I have not seen any hands
25 raised.

1 MAYOR COLE: No.

2 UNKNOWN: Mayor, can you ask Toni to
3 explain how to do it, if they call in? Because
4 they may not know how to raise their hand when
5 they're actually dialed in.

6 MAYOR COLE: Okay. So, Toni, there was a
7 request that you explain how to raise your hand if
8 you called using the phone. Right?

9 UNKNOWN: Correct.

10 MAYOR COLE: So Toni, can you do that?
11 And you'll see me, eventually, once I get a
12 computer working, but you can hear me, I hope.

13 TONI KEEHNER: I can hear you. Yes. So,
14 they must dial *9 on their phone to raise their
15 hand.

16 MAYOR COLE: Okay, *9. Toni, do we have
17 anybody who has raised their hand to comment on
18 Item 1?

19 TONI KEEHNER: We do not.

20 MAYOR COLE: Okay, there is no public
21 comment on this item, then. So we will close the
22 public comment period on non-public hearing items
23 and move on to the consent agenda.

24 First, Council, are there any separations
25 from Item 1?

1 Council member Boyett.

2 MR. BOYETT: Yes. I'd like to separate
3 1B (1) and (2).

4 MAYOR COLE: Separation 1B (1) and (2).
5 That's fire station roof replacement and fire
6 station siding replacement. Thank you very much.

7 Council member Shaw-- Shawn Brown.

8 MR. BROWN: Yes, Mayor. I will be
9 abstaining from Item 1S, as in solo, (1) and (2).

10 MAYOR COLE: Thank you very much. S(1)
11 and (2). Other separations? Council, any other
12 separations this evening? Okay, don't see any so

13 Debi, that's right, Item N we really have
14 a change to. So I will separate that for a
15 separate discussion later. Thank you for calling
16 our attention to that. Any other separations?
17 Okay, don't see any.

18 Is there a motion? Council member Neese
19 and Shaw.

20 Council member Neese.

21 MR. NEESE: I make a motion to approve
22 Item No. 1, except Item 1B (1) and (2), 1S, (1)
23 and (2) (indiscernible) 1N.

24 MAYOR COLE: Thank you very much. Second
25 by Council member Shaw. Then is there discussion

24

1 on the motion? Motion is for approval of the
2 non-separated items.

3 Council member Ewalt.

4 MR. EWALT: Thank you, Mayor. Take this
5 thing off. I would like to ask a question on 1H
6 (indiscernible). And it's with the equipment
7 purchased for annual city-wide traffic signal
8 controllers. We have, Debi, we've got a lot of
9 state highways running through Billings, and I was
10 talking to Rod Nelson and he said that you guys
11 operate on different software for your signals
12 than the State does. Does that cause a problem
13 where we have city streets crossing state
14 highways?

15 DEBI MELING: So, we did look at that in
16 2013 when we selected our software and our
17 equipment that we were going to use, and we looked
18 at how compatible they were and how many places
19 that we actually did have those situations
20 occurring and decided that we did not have enough
21 issues to create or cause us to go with the other
22 type of system. This one has better service for
23 us. It works better for what we're trying to do.
24 We tend to have different issues than most of the
25 state routes. So, that's why we selected it.

25

1 It's not perfect. In a perfect world,
2 obviously, we want to combine systems with them,
3 but it does work well enough together that we can
4 keep them timed.

5 MR. EWALT: So, is there any chance that
6 we could provide the state interstate highways
7 here in Billings, our software (indiscernible)
8 theirs or -- I mean, we seem to think there's kind
9 of an issue, especially with the 27th Street light
10 (indiscernible) Montana Avenue, doesn't work well
11 with the rest of the Montana Avenue lights. Is
12 there-- Is that an issue or?

13 DEBI MELING: Well, they use a different
14 type of system, and unless they want to change all
15 of their signals over, I don't see them going to
16 our system. And like I said, we just-- we felt
17 like the compatibility issue was not enough to
18 cause us to go to the other system because of what
19 this provides us. So, while it is not perfect, I
20 do think we are able to work through some of those
21 issues. Like I said, on some of those cross
22 streets, like Montana and 1st and some of those,
23 we've been able to work through those.

24 I will certainly call over to Rod and see
25 what issues, in specific, he's talking about. It

1 might be something as easy as keeping our, you
2 know, making sure our timers get set up correctly
3 or making sure we coordinate them better.

4 MR. EWALT: One of the reasons I brought
5 it up is because I've noticed since 27th Street
6 has been redone; Montana Avenue lights don't work
7 like they did before. You got stops and goes and
8 it doesn't have any effect on the train, it's just
9 that you don't have flow of traffic. And I was--
10 I don't know if it's 27th Street light that's
11 causing it or what, but it's not like it used to
12 be, so.

13 DEBI MELING: So, Montana is also theirs,
14 though. So, Montana and 27th should be timed
15 together because those are all owned by MDT.

16 MR. EWALT: All right. Just asking. Thank
17 you.

18 DEBI MELING: Okay. I'll call him and
19 talk, to him about it.

20 MAYOR COLE: Okay. Anything other--
21 discussion on the motion? Motion is for approval
22 of the non-separated items on the consent agenda.
23 Any other discussion, Council? Just raise your
24 hand or speak up if I miss you. Not seeing
25 anything, so we'll proceed to a vote. All in favor

27

1 of the motion, which is for approval of the
2 non-separated items, please raise your hand.
3 Voting in favor are all members of the City
4 Council. Motion passes unanimously. Thank you
5 very much.

6 First separated item is Item 1B(1).
7 Council member Boyett, that was your separation, I
8 believe. Would you like to start off our
9 discussion there?

10 MR. BOYETT: Thank you, Mayor. I was out
11 looking at used cars the other day and I happened
12 to see four cars, and three of them were at one
13 price and one of them was half price. So, first
14 thing I thought is there's something wrong, but
15 when I see the bids here, I see the CNC
16 Construction from Northwest Florida and it goes to
17 Item No. 2 as well. Can someone explain?

18 It appears there's something wrong when I
19 see a bid half price. Either they're really off or
20 the other three are in cahoots saying, you know,
21 charge us too much. So, I just need an
22 explanation.

23 MAYOR COLE: Thank you very much. Jessica
24 Iverson, our Facilities Director, is here. I'll
25 turn it over to her unless, Chris, you want to

1 comment first?

2 MR. KUKULSKI: Nope. Jessica can give us
3 some feedback.

4 MAYOR COLE: Okay. Jessica Iverson, it's
5 all yours.

6 JESSICA IVERSON: All right. Thank you,
7 Mayor. Thank you, Council member Boyett, for the
8 question.

9 So, you know, oftentimes we do get a
10 variety of bids and there might be various
11 discrepancies. This one, we were concerned about,
12 and we did reach out to the bidder and we did
13 confirm that it was a responsible bid. They did
14 include the full scope of our bid documents in
15 their bid. I can't speak exactly to why it was so
16 much lower than the other ones. I do know that
17 they're eager to get into this market. They do
18 have an office in Helena, so they've been doing
19 some local work. But as far as the bid process and
20 the due diligence that we have done, we do believe
21 they are the responsible bidder.

22 MR. BOYETT: Thank you, Mayor. Can I
23 have a follow-up?

24 MAYOR COLE: Please, Council member
25 Boyett.

29

1 MR. BOYETT: Will someone be monitoring
2 them, then, on a weekly or monthly basis? You
3 just can't leave them alone, at this point.

4 JESSICA IVERSON: Yes, absolutely. We do
5 have a project manager on the project. He actually
6 talked to the contractor as well, making sure they
7 have the full scope of work, and then we have
8 facility staff that will be there on a regular
9 basis.

10 MR. BOYETT: Thank you.

11 MAYOR COLE: Thank you. Further
12 discussion?

13 Council member Ewalt.

14 MR. EWALT: Thank you, Mayor. Is this
15 contract for reroofing the Station 4, is that
16 state prevailing-wage contract?

17 JESSICA IVERSON: Yes, it is.

18 MR. EWALT: So, they know that they have
19 to pay prevailing wage?

20 JESSICA IVERSON: Yes.

21 MR. EWALT: And you're protected with a
22 performance bond?

23 JESSICA IVERSON: Yes, we are.

24 MR. EWALT: Okay, because I called a big
25 commercial contractor today and I told him that

1 this price came in at 55% of the next lowest bid,
2 the bid above it, and right away he said, red
3 flag. So, I hope you got yourself protected on
4 this because that comes from a pretty good-sized
5 commercial contractor. And he goes, 55%, it's red
6 flags all over. So, I hope you guys have got your
7 i's dotted and your t's crossed.

8 JESSICA IVERSON: Alright. Thank you.
9 Yes, we do have the performance bond in place. We
10 will have the contract in place that if they don't
11 perform, we can cash the performance bond to
12 complete the work. So we're confident in that
13 regard.

14 MAYOR COLE: Okay. Thank you very much.
15 Good discussion. Do we have further discussion,
16 questions, or a motion?

17 Council member Neese.

18 MR. NEESE: Thank you, Mayor. Jessica,
19 when you get bids like this, do you actually call
20 all references or anything like that,
21 (Indiscernible) or do you just take their bid at
22 face value with the bond?

23 JESSICA IVERSON: So, I don't know if
24 Liz, our purchasing agent, would be more suited to
25 comment, but we really have to-- We can confirm

1 with them that they bid the scope of work as
2 outlined in our bid documents. However, there are
3 only certain factors outside of that that we can
4 consider when accepting a bid. So, unless they've
5 already been excluded from bidding through some
6 other process, we can't just not accept the bid
7 using these outside factors.

8 MR. NEESE: All right. Thank you.

9 MAYOR COLE: Thank you. Further
10 questions or a motion?

11 Council member Shaw.

12 MS. SHAW: Thank you. I move to approve
13 consent agenda Items 1B (1) and (2).

14 MAYOR COLE: Thank you very much. Is
15 there a second?

16 Council member Joy. Now, discussion on
17 the motion. Is there discussion on the motion?
18 Motion is for approval consistent with the staff
19 recommendation on Item 1B (1). Discussion?
20 Seeing none

21 UNKNOWN: Chris.

22 UNKNOWN: Chris.

23 MAYOR COLE: Oh, I'm sorry. Chris
24 Kukulski.

25 MR. KUKULSKI: Sorry, Mayor, Council, I

1 just wanted the Council to know that this was a
2 red flag issue for us, which is why the calls were
3 made. And secondly, whether you're an in-city,
4 in-state, or out-of-state contractor, you will be
5 held to building to the standard. And we are
6 dealing with some issues with contractors today
7 where this team is holding folks accountable. So,
8 we just don't accept a low bid and then the
9 quality is the quality. The quality needs to meet
10 our minimum standard, whether they're in or out of
11 state. So, those actions have been taken, so I'm
12 confident that they will be taken on this case, if
13 we run into unanticipated problems. Thank you.

14 MAYOR COLE: Thank you very much. Further
15 discussion on the motion?

16 Council member Ewalt.

17 MR. EWALT: Thank you, Mayor.

18 Chris, is this a hard bid with no chance
19 of them coming back and adding to their price once
20 they get into the project?

21 MR. KUKULSKI: Well, I don't think
22 there's ever a bid where there can't be a request
23 for some kind of a change order, but we always
24 take those change orders into deep consideration.
25 Is this outside of the scope? And speculating

1 here, a roof they weren't anticipating sub
2 problems and there are problems. I mean, it's got
3 to be legit for it to be granted by the staff, or
4 I don't think I could ever tell you that there's
5 no opportunity for someone to make a claim or
6 request for a change order. Whether it, again,
7 especially when we get a red flag like this, we're
8 going to be hypersensitive to, did they just low
9 bid it as a way to get in and plan on
10 change-ordering their way up to a better price?

11 MR. EWALT: Okay. Thank you.

12 MAYOR COLE: Okay. Thank you. Further
13 discussion on the motion. Any further discussion
14 on the motion? Okay, we'll proceed to a vote. The
15 motion is for approval Item 1B (1). All in favor
16 of the motion for approval, please raise your
17 hand. Voting in favor are all members of the
18 Council. Motion passes unanimously. Thank you.

19 Next Item 1B (2). This is the same fire
20 station, but the siding replacement. Different
21 contractor.

22 Council member Boyett, this was your
23 item.

24 MR. BOYETT: Yes, Sir. I think it was
25 the same contractor, and that's what brought my

1 attention. And it's said that there was a
2 conversation with some of the bidders. Can anyone
3 explain what the conversation entailed?

4 MAYOR COLE: So, back to Jessica, and
5 just to clarify it was awarded -- the proposal was
6 awarded to a different contractor because that
7 same Northwest Florida was disqualified. So, may
8 we get a little background on that, Jessica?

9 JESSICA IVERSON: Yes, thank you, Mayor,
10 and thank you, Council member Boyett, for the
11 question. So, the same contractor that we're
12 awarding the roof contract to did bid on the
13 siding. However, their bid was exceedingly low and
14 we did have that conversation verifying the scope
15 of that portion of the project. And we determined
16 that was not a responsible bid because they did
17 not bid the full scope of the siding work. And so,
18 in that case, we could exclude it as a
19 non-responsible bid and then we went to the next
20 lowest bidder.

21 MR. BOYETT: Thank you.

22 MR. NEESE: Mayor, quick point of order.

23 MAYOR COLE: Council member Neese.

24 MR. NEESE: I thought the motion was made
25 from a party approving Item 1B (1) and (2).

1 MAYOR COLE: No, it was only for Item 1B
2 (1).

3 MR. NEESE: Everyone else remembers it,
4 that I've talked to, that it's (1) and (2).

5 MS. RONNING: I remember it as being (2)
6 as well.

7 MAYOR COLE: I'm sorry. I was repeating
8 the motion as only Item 1B (1), but you're saying
9 the original motion made by the Council member?

10 MS. RONNING: Yeah.

11 MAYOR COLE: Okay. Well, if that was the
12 motion.

13 Council member Shaw, you made that motion
14 and it was your intent to address both items; is
15 that correct?

16 MS. SHAW: It was my intent to address
17 both, but I now understand that there was a
18 follow-up question to this one. So, I don't have
19 any problem with what's happened, but I did
20 include it initially.

21 MAYOR COLE: Okay, I would suggest,
22 Council, because of that confusion, let's just
23 take them in order. It shouldn't take long,
24 especially if that was your intent. Is there a
25 motion concerning item 1B (2)?

1 Council member Joy.

2 MS. JOY: Thank you. I move we approve
3 Fire Station #4 siding replacement project. I'd
4 recommend TW Clark Construction, LLC, \$114,000.

5 MAYOR COLE: Okay. And a second?
6 Council member Shaw. Discussion now on that motion
7 for approval. Is there any discussion? If not,
8 all in favor of the motion, please raise your
9 hand. Voting in favor are all members of the --
10 Council member Choriki is not voting in -- Council
11 member Choriki is voting in favor. Okay, motion
12 passes unanimously. Thank you very much.

13 That brings us, then, to separated Item
14 1N, as in nighttime. There's got to be some better
15 military -- what's the military for

16 UNKNOWN: November.

17 UNKNOWN: November.

18 UNKNOWN: November.

19 MAYOR COLE: November? Okay. 1
20 November. I made this separation so that Debi
21 Meling can tell us if there is a correction to the
22 resolution that was emailed around.

23 Debi Meling, our Public Works Director,
24 can you walk us through the change to the
25 resolution?

1 DEBI MELING: I can. Thank you, Mayor,
2 and Council. In Section 4 of the resolution where
3 it talks about the description of the project, we
4 said the improvements included streetlights and
5 park. It actually includes streetlights and
6 roadway, so I changed the word "park" to "roadway"
7 and sent that out to all of you yesterday. So,
8 apologies for that error there.

9 MAYOR COLE: Okay. Thank you very much.

10 Are there any questions for Debi or a
11 motion relating to this item? If there is a
12 motion, we need to make sure that clearly
13 references the new resolution that changes "park"
14 to "roadway." Questions or motion?

15 Council member Boyett.

16 MR. BOYETT: Mayor, I move that we
17 approve 1N with the amended changes as stated.

18 MAYOR COLE: Okay, motion for approval
19 with "park" be changed to "roadway."

20 Council member Neese, did you have the
21 second on that?

22 MR. NEESE: Yes.

23 MAYOR COLE: Second by Council member
24 Neese. Discussion. Is there any discussion on the
25 motion for approval? Any discussion? Seeing

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1 none, all in favor, please raise your hand. Voting
2 in favor are all members of City Council. Motion
3 passes unanimously. Thank you.

4 Item 1S (1) and/or (2). Is there a motion
5 or discussion? These are the bills for the week
6 of March 1 and March 8. Council Member Brown will
7 be abstaining.

8 Council member Shaw.

9 MS. SHAW: Thank you. I move to approve
10 1S (1) and (2), with the abstention of Council
11 member Brown.

12 MAYOR COLE: Thank you very much. Second
13 by Council member Joy, and that does include both
14 of those items. Discussion on the motion. Is there
15 any discussion? If not, all in favor of the
16 motion for approval, please raise your hand.
17 Voting in favor, all members of the City Council,
18 with the exception of Council member Brown, who
19 abstained. That, then, concludes Item No. 1.

20 We'll move through, appreciate everyone's
21 moving expeditiously. We are anticipating lengthy
22 discussion on Item No. 5 and as well as public
23 comment. So, we'll want to move just as speedily
24 as is fair. Item No. 2.

25 Toni, would you read Item No. 2?

1 TONI KEEHNER: Item No. 2. Resolution
2 awarding the sale of refunding library general
3 obligation bonds. Staff recommends approval.
4 Action: Approval or disapproval of staff
5 recommendation.

6 MAYOR COLE: Thank you. I believe we have
7 a presentation by our Finance Director, Andy
8 Zoeller.

9 ANDY ZOELLER: Good evening, Mayor, and
10 City Council. Send a thumbs-up or wave that you
11 can hear me. All right. Cool. So, we I'm trying
12 to get the general obligation bonds refunded with
13 the library. We have an opportunity to refund
14 these bonds based upon favorable market
15 conditions. Interest rates have dropped since we
16 issued these in 2012 and they are callable, which
17 means we can now refund them.

18 And you know, the city has a good bond
19 rating. So, we were rated by Moody's on April 8th,
20 last week. They gave us a rating of Aa2, which is
21 very good. Some of our recognized strengths: Just
22 our regional economy, strong job growth and strong
23 finances and low debt burden. They did notice the
24 challenges with our rising public safety costs and
25 some elevated pension liabilities.

1 We opened bids today. That's why you did
2 not have the exhibit attached. It's not possible
3 to do that. We wouldn't receive bids -- you have
4 to open bids and sign within 24 hours. It's the
5 only way it can be done. We had 11 bids, which is
6 really good. The true interest costs were ranging
7 from .9% to 1.19%. So, the winning bidder is
8 Robert W. Baird, RW Baird, and we've done some
9 deals with them recently. And the result of this
10 savings will save taxpayers \$1.2 million over the
11 next 10 years.

12 Here's just kind of a summary of the
13 savings. You see it's about half a mill per year.
14 This will be reflected on tax bills starting next
15 fiscal year, if approved this evening.

16 This is the Exhibit A, that was not
17 included in the resolution. It's just that same
18 bid schedule. They're giving us, you know, coupon
19 and real rates here, and the total amount
20 borrowing was \$7,310,000, but it was at a premium.
21 So, we are getting premium payments. We will be
22 paying off the full amount of the bonds
23 outstanding. So with that, staff recommends
24 awarding the sale of the Series 2021 bonds to
25 Robert W Baird and Company. Refunding the Series

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1 2012 library bonds. If there are any questions, I
2 am happy to answer them.

3 MAYOR COLE: Thank you, Andy. The
4 proposed resolution references Exhibit A, the
5 attached winning bid, can you just put that back
6 on the screen so it's absolutely clear what it is
7 that we're approving? And that is Exhibit A.

8 ANDY ZOELLER: You bet, Mayor. There we
9 go. Yeah, this is Exhibit A. It's the bids tab
10 and they are the lowest bidder of the 11.

11 MAYOR COLE: Okay. Thank you very much.
12 Council, do have questions for Andy or a motion?
13 Council member Shaw.

14 MS. SHAW: Thank you. How exciting that
15 we finally have some news to give to constituents,
16 that we're not begging them for money, but we can
17 actually drop their taxes. I mean, well done,
18 team. That's really fantastic news.

19 I don't believe this has a public
20 hearing, so I'm going to go ahead and make a
21 motion for approval. I move to approve the
22 resolution awarding the sale of refunding library
23 general obligation bonds as recommended by staff.

24 MAYOR COLE: Thank you very much. Is
25 there a second? Council member Boyett. Motion

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1 made and seconded. Discussion, now, on the
2 motion. Is there any other discussion on the
3 motion?

4 Council member Neese.

5 MR. NEESE: Thank you, Mayor, and thank
6 you, Andy, for taking the initiative to make sure
7 that this was done. And then I agree with Council
8 member Shaw, that this is really good news to see
9 that we're actually lowering the taxes here going
10 forward. So, look forward to that. Thank you,
11 again, Andy, for getting that done.

12 MAYOR COLE: Thank you. Andy, I think we
13 all agree with that and I can't think of a more
14 fitting place to be getting this news than in the
15 Royal Johnson Community Room of the Billings
16 Public Library. If there was any doubt about the
17 value of building a new library and its usefulness
18 to our community, I think tonight underlines that
19 very well.

20 So, any other discussion on the motion?
21 Okay. We'll proceed to a motion-- or to a vote on
22 the motion for approval of the resolution award of
23 the bid. All in favor of the motion, please raise
24 your hand. Voting in favor are all members of the
25 City Council. Motion passes unanimously. Thank

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1 you.

2 Toni, would you read Item No. 3?

3 TONI KEEHNER: Item No. 3. Public
4 hearings provide the community an opportunity to
5 comment on the low-income housing communities of
6 Brush Meadow Apartments, Edgewood Apartments, and
7 Shiloh Glen as required under Section 15-6-221(2)
8 MCA. No action by Council is necessary this
9 evening.

10 MAYOR COLE: Okay. Thank you. If you're
11 saying this is déjà vu all over again, you're
12 right. We do have a presentation tonight. Wyeth,
13 are you our kind of introducer before turning it
14 over to Betsy? Could you help us out there?

15 WYETH FRIDAY: Correct. Yes, thank you,
16 Mayor, and Council. I will just really quickly run
17 through a couple of slides, as we did a couple of
18 months ago, regarding this item. And then Betsy
19 Schanno is also on the meeting tonight and can
20 answer questions as well, as needed here. So
21 this, can you see my screen now?

22 MAYOR COLE: Yes. So, we're also seeing
23 your next slide screen.

24 WYETH FRIDAY: Is that better?

25 MAYOR COLE: There we go.

1 WYETH FRIDAY: Okay, so this is the
2 public hearing as was stated by the deputy city
3 clerk for low-income tax exemption application
4 that 11 Capital has made in Montana for three
5 projects. Existing housing developments, I guess
6 I should say. They're not under construction.
7 They're existing housing developments here in
8 Billings: Brush Meadow Apartments, Edgewood
9 Apartments and Shiloh Glen Apartments.

10 And basically the exemption is for rental
11 housing, providing affordable housing to
12 lower-income tenants in the community and they're,
13 as I said, they're all in existing properties.

14 Just real quickly -- Let's move this out
15 of the way for you. So, this is -- Two of the
16 developments are up in the Heights: Brush Meadow
17 Apartments and Edgewood Apartments. And this is
18 Lake Elmo Drive right here. So, you can see the
19 two properties are right next to each other on the
20 east side of Lake Elmo Drive. And then the other
21 property is Shiloh Glen Apartments, in this area.
22 This is King Avenue West and Shiloh Road. So,
23 it's on that northeast corner of that
24 intersection, and it's that portion of the
25 residential housing in that area.

1 And so again, per the state code under
2 Section 15-6-221 (2), the process requires that
3 the City hold this public hearing to solicit
4 comment on whether the housing property meets a
5 community need. There's no other action by the
6 City aside from conducting this hearing as part of
7 the process. Unfortunately, the legal notice for
8 this item, for the February 22nd meeting, was
9 found to be in error when 11 Capital had
10 coordinated with Yellowstone County News directly
11 to run that ad, as part of their process, and
12 there was some-- an error at that point. So,
13 they've approached us again to make sure that this
14 was conducted again to make sure, then, with the
15 proper notice has been done through them and in
16 Yellowstone County News.

17 So that's the reason that you're having
18 this repeated back to you tonight. And then these
19 are the three apartment complexes. They exist, as
20 I said, and already serve the community need for
21 housing in two different areas of our city and 11
22 Capital asset manager, Betsy Schanno, is on the
23 Zoom tonight and can answer any questions. So,
24 with that I will stop sharing and -- oops.

25 MAYOR COLE: Okay. Thank you very much.

1 Wyeth, did Betsy want to comment?

2 BETSY SCHANNO: Yes. Hi there. Thank
3 you, Mayor, and City Council. I first just wanted
4 to apologize for our error and having to repeat
5 this meeting. But I just wanted to reemphasize
6 that these are existing assets and by, you know,
7 applying for this tax exemption, it does really
8 allow us to put the investment back into these
9 assets and maintain them as Section 42 assets.

10 MAYOR COLE: Okay, thank you. Council
11 members, I'm going to open it up for public
12 hearing in just a minute, but are there any
13 questions of Betsy, or Wyeth, before I do so?
14 Again, our only obligation tonight is to conduct
15 the public hearing. We make no decision. It's just
16 a public hearing to see whether to discuss whether
17 we're meeting a community housing need. Any
18 questions? Don't see any.

19 So what we'll do is we will open the
20 public hearing now on Item No. 3 to provide
21 community an opportunity to comment on the
22 low-income housing communities of Brush Meadow
23 Apartments, Edgewood Apartments and Shiloh Glen.
24 Is there any public comment, any public input
25 whatsoever on this item?

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1 First, we'll start here in the library in
2 person. If there's any member of the public would
3 like to comment on this item, please come on up to
4 the podium. And also, anybody who might be
5 watching in Zoomland, please use your "raise hand"
6 feature so that Toni knows to unmute you so you
7 can comment. But back to here in the library, is
8 there anybody would like to comment in person?

9 MR. NEESE: Mayor.

10 MAYOR COLE: Council member Neese.

11 MR. NEESE: Can the people in the foyer
12 hear that you're asking for public comment now?

13 MAYOR COLE: People in the foyer, you're
14 hearing it on television, but can you give me a
15 thumbs-up if you can hear us okay? I see
16 thumbs-up.

17 MR. NEESE: Okay, good.

18 (Indiscernible response.)

19 MAYOR COLE: Mediocre. Okay, and our City
20 Administrator is going to go out and kind of
21 monitor the situation there. Toni, we have no
22 public comment here in person. Toni, do we have
23 anybody on Zoom who would like to comment on Item
24 No. 3?

25 TONI KEEHNER: We do.

1 Hello, and welcome to the public comment for this
2 evening. You will have 3 minutes in which to give
3 your comments.

4 I have Patti Webster. Can you please
5 give your name and address?

6 PATTI WEBSTER: Sure. I'm Patti Webster,
7 4432 Lawn Lane.

8 TONI KEEHNER: Go ahead.

9 PATTI WEBSTER: Mayor Cole, and members
10 of the Council. My name is Patti Webster. I'm
11 the CEO of HomeFront, which is formerly the
12 Housing Authority of Billings. I wanted to remind
13 the Council tonight that HomeFront is here as a
14 resource for all Council members in reviewing the
15 housing projects and policy issues that might come
16 before you.

17 Under state law, housing authorities have
18 the power to study and make recommendations
19 concerning the plan of any city or municipality
20 located within its boundaries as to housing. So
21 I'm here to support you in evaluating projects
22 that come before you, even such as the one
23 tonight.

24 Just a clarification, this is not
25 low-income housing. This is tax credit housing and

1 there is a big difference. Low-income housing is
2 subsidized and tax credit housing is not. In
3 particular, I just wanted to make sure that all
4 the Council members are aware that the HomeFront
5 projects in the city of Billings, even though
6 we're a governmental entity and a nonprofit
7 developer, we pay a payment in lieu of taxes. And
8 we think that's important to pay our fair share
9 for the use of police, fire and other city
10 services.

11 As the Council considers the need for
12 additional public safety resources, as well as
13 understanding the cost of services, ensuring that
14 nonprofit housing developers are paying for a
15 portion of the use of city resources, like
16 HomeFront does, is an option for your
17 consideration. Nonprofit tax-exempt status can be
18 an attractive incentive for developers and there's
19 a critical need for additional affordable housing
20 in Billings for sure. At the same time, the
21 incentives for development should be balanced
22 against the impact on public services,
23 specifically on public safety, which we know has
24 been taxed as much as it possibly can, right, in
25 all the resources.

1 I believe that there is a path forward to
2 encouraging development, while still ensuring that
3 nonprofit housing projects, like the ones before
4 you tonight, are not unduly restraining city
5 resources. So, for example, public housing; the
6 number of public housing units we own and
7 administrate in the city are 274, and the number
8 of units they're putting before you tonight for
9 tax exempt status is 243. But yeah, we pay a
10 payment in lieu of taxes every year.

11 And so as you move forward tonight and as
12 you look at future housing projects, please know
13 that HomeFront is here as your local housing
14 authority to be a resource to the Council in
15 reviewing these types of proposals. Thank you.

16 MAYOR COLE: Thank you. Toni, any other
17 comments on Item No. 3?

18 TONI KEEHNER: I do not have any other
19 comments.

20 MAYOR COLE: Okay. We will close the
21 public comment period on Item No. 3, and that
22 also, then, concludes that item. Thank you very
23 much.

24 I'll just comment, I don't know whether
25 our technical staff has any way to turn up the

1 volume of people who are commenting by Zoom. I
2 could understand everything that Patti said, but I
3 had to strain a bit. So, if there's a way to turn
4 that up. Everybody else, I'm sure, has better
5 hearing than I do because mine is definitely
6 going, but I don't think it would hurt if we could
7 turn it up a little bit. If there's a way to do
8 that.

9 Chris.

10 MR. KUKULSKI: Mayor, Council, I would
11 also add the more we can project our voices, the
12 better. We knew this was probably a challenge,
13 for not only in this room, but there's a time
14 delay on the screen out there, which makes no
15 sense. So, they really have to rely on hearing us
16 through these doors. So, I would say, as much of
17 a hassle as it is, when you speak, you take off
18 your mask. That will make it quite a bit easier
19 to be heard and we'll just do the best we can.
20 Thank you.

21 MAYOR COLE: Thank you very much. So, use
22 your outdoor voice, as you're kindergartener
23 teacher used to tell you, even though we're
24 inside.

25 Toni, would you read Item No. 4, please?

1 TONI KEEHNER: Item No. 4, public hearing
2 and first reading ordinance granting a
3 nonexclusive franchise to TDS Metrocom, LLC for
4 cable service. Staff recommends approval.
5 Action: Approval or disapproval of staff
6 recommendation.

7 MAYOR COLE: Thank you very much.
8 Our presenter tonight, Chris, I assume is Stacy
9 Tenney?

10 Okay.

11 STACEY TENNEY: Good evening.

12 MAYOR COLE: We'll turn it over to Stacey
13 if, Chris, you don't have anything further.
14 No? Okay. Stacey, it's all yours.

15 STACEY TENNEY: Good evening, Mayor, and
16 Council members. Joining me tonight on Zoom,
17 again, is Joshua Worrell. He is the manager of TDS
18 Business Development and he spoke with you last
19 Monday night at the work session. I will begin my
20 presentation with a brief PowerPoint. I'll put
21 that on for you here. Are you seeing that?

22 MAYOR COLE: Yes.

23 STACEY TENNEY: Was I able to share that
24 with you?

25 MAYOR COLE: Yes, we can now see it.

1 STACEY TENNEY: Oh, great. Okay.
2 Tonight's presentation is introducing a
3 competitive non-exclusive cable system franchise
4 with TDS Metrocom, LLC. This is a corporation out
5 of Madison, Wisconsin. Mr. Worrell explained to
6 you that this is a family-owned company. It's
7 been in business for 50 years, but it also is a
8 subsidiary of TDS Telecom and Fortune 500
9 companies.

10 The background here is that TDS is out in
11 Madison, Wisconsin, it is a provider of cable and
12 high-speed internet services, and it has made
13 application to the City for a non-exclusive cable
14 franchise to invest \$50-60 million to lay hundreds
15 of miles of fiber optic cable to form a brand-new
16 network throughout our city. TDS is offering to
17 build this as an all fiber, which would provide
18 high-speed fiber connections directly to the doors
19 of homes and businesses. It would offer a minimum
20 of 120 cable channels, and also, along with that,
21 it would also offer the ability to have some
22 competition with Charter/Spectrum, who has been
23 the incumbent and only cable provider for very
24 many years.

25 Under the Cable Communications Act, this

1 is a federal act, it was enacted in 1934, it has
2 had several iterations since then, but basically
3 it allows state or local governments to franchise,
4 allow a cable system -- a wire system to be in a
5 public right away, and it allows the city
6 governments to grant those franchises. But in
7 recent years, probably in the last 20 years or so,
8 the federal --

9 Are you okay? Can you hear me? Am I
10 breaking up or anything?

11 MAYOR COLE: Nope, you sound great.

12 STACEY TENNEY: Oh, good. Okay.

13 The FCC, the Federal Communications
14 Commission, has provided that exclusive cable
15 system franchises are not allowed and that a local
16 governing franchising authority cannot just have
17 an exclusive cable system. It has to allow
18 competition and it may not unreasonably refuse to
19 award an additional competitive franchise. And
20 that's what we're looking at tonight, a
21 competitive franchise for cable.

22 In 2007, the Federal Communications
23 Commission also enacted a rule establishing a
24 six-month deadline for granting or denying
25 competitive cable franchise application. So that's

1 what's going on here. Back in October, TDS
2 submitted an application. You received those
3 materials in your work session packet last week. I
4 asked you to keep in mind those materials, because
5 when you start to look at whether or not to grant
6 TDS a franchise, you'll be looking at their
7 financial, their technical, and their legal
8 ability to perform.

9 So what is a franchise? Well, under
10 federal law, the definition means an initial
11 authorization or renewal issued by a franchising
12 authority, which authorizes the construction and
13 operation of a cable system. And of course,
14 franchise authority -- What is that? It's any
15 governmental entity, like the City, that's
16 empowered to grant a franchise.

17 Now, cable systems, under federal law,
18 allow for local government, like the City, to
19 grant permission to use the public right-of-way
20 for area cable wires and services. And again, the
21 franchising authority cannot allow an exclusive
22 franchise to exist. They find that it's
23 unreasonable to refuse to award competitive cable
24 franchise; and so, therefore, any application for
25 a secondary franchise in a community has to -- If

1 it is denied by the Local Franchising Authority,
2 the LFA, then such a decision may be appealed to
3 either the state or the US District Court.

4 In terms of franchise fees, the
5 Communication Act has Title VI and Title VI really
6 governs cable systems and Title VI allows for
7 local governments to receive a franchise fee of 5%
8 of the annual gross revenue within the cable
9 system's operating local area. So, for instance,
10 if you were to grant TDS a franchise, then we
11 would receive -- the City would receive 5% in
12 TDS's gross revenue from their workings in
13 Billings. Please excuse me, I'm sorry.

14 Now, the interesting thing about Title VI
15 of the Federal Communications Act is that because
16 the wire that is in the ground, running not only
17 the cable can also have non-cable services on it,
18 like broadband, the Title VI regulates that a
19 city, such as Billings, cannot extract any further
20 fees, other than that 5% franchise fee for any
21 other non-cable services. So, the only amount of
22 money the City will receive or can extract from
23 TDS, if it were to grant this franchise, is that
24 5% franchise fee.

25 Now, here again, on this slide is just a

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1 little bit more about applicant TDS Metrocom. You
2 have had the information in your packet from last
3 week, but I just kind of highlighted here for you
4 the background technical ability for TDS, their
5 legal qualifications. I got on the Secretary of
6 State's website here a couple months ago, and TDS
7 Metrocom is registered as an active Foreign Profit
8 Corporation and in good standing in Montana.

9 So, and then in terms of what they're
10 capable of doing, again, they're going to
11 construct an all fiber-to-fiber-to-home cable
12 system. This is going to be capable of providing
13 at least 120 channels of video programming. It
14 has active and passive devices, and they're
15 capable of delivering high quality digital video
16 signals meeting or exceeding FCC technical quality
17 standards, and that is, basically, the City
18 standards. If this passes muster with the FCC, it
19 certainly passes muster with the City.

20 In terms of its financial ability, you
21 have the financial affidavit and the financial
22 statement from TDS in your work session materials.
23 And finally, in terms of their construction
24 schedule, I have another slide on this, but they
25 do have a build-out schedule. And they also, in

1 terms of our community needs and interests,
2 they're bringing in competitive all fiber cable
3 system that will provide consumers with a new
4 choice of video service providers and the cable
5 system will carry a wide range of programming,
6 including the City's public education and
7 governmental access channels.

8 And I have another slide that I'll talk
9 to you a little bit about that. In terms of the
10 PEG channels, which we're on tonight with
11 Community 7, one of the -- TDS has agreed in a
12 proposed franchise to provide the City with two
13 high definition pay channels. TDS has also agreed
14 to maintain and provide the active links that are
15 required to get the broadcasting from our live,
16 from our City Council Chambers in City Hall to our
17 access provider, which is Community 7, located in
18 the Lincoln Center. And they've also agreed to
19 support the capital costs for our public
20 educational and governmental access channel. They
21 would send \$0.25, or require \$0.25 from their
22 subscribers. This would be allocated directly to
23 pay capital costs.

24 Pursuant to the federal law, in awarding
25 a cable system franchise, the cable or the

1 franchising authorities for, the City in this
2 instance, would have to allow TDS a reasonable
3 period of time to become capable of providing
4 cable service to all households in our franchise
5 area.

6 There is a plan proposed in the franchise
7 in which TDS believes is reasonable, that it can
8 build out 70% of the city within four years. Now,
9 Josh explained last week that they anticipate more
10 of an 85% build-out in two years, but this is kind
11 of the worst case scenario, I guess. This is
12 their minimum standard, which is in the franchise.
13 They anticipate building out much faster and
14 quicker and more.

15 And then in terms of both federally and
16 in our own model cable ordinance, TDS would have
17 to make its services and rates available on a
18 non-discriminatory basis and they have agreed to
19 that, and that is a term within the franchise. So,
20 in terms of competition, this slide is just a look
21 at -- we currently have a franchising placed with
22 Charter that served us very well since 2008.
23 There's nothing wrong with it. It's just that it
24 has an expiration date. That expiration date with
25 Charter has been extended for the last several

1 years. So we are in the process of attempting to
2 renew that with Charter. And the same terms with
3 TDS are primarily the same terms that Charter has
4 been extended, except for build-out, which Charter
5 is already fully built out.

6 And then TDS is committing to link us up
7 with two high definition channels and do the
8 linkage for that. And so that's just a little bit
9 different, but all the other terms would be the
10 same. So, if you look at the current Charter
11 franchise that is in effect on the books, they
12 have agreed and they pay the City of 5% maximum
13 franchise fee.

14 Similarly, TDS, if you are to award this
15 competitive franchise, they will also pay the same
16 5% maximum franchise fee. Charter right now pays a
17 25% -- well, it goes through their subscriber, but
18 their subscribers pay a 25% pay in capital support
19 fee. The City, in its terms with Charter, the City
20 Council can increase those costs, on a City
21 Council vote, up to 85% per subscriber, but for
22 the last probably 15 years that has stayed at
23 \$0.25 and TDS has agreed to those same terms.

24 Charter has two dedicated pay channels:
25 One is a high-definition channel, which was put in

1 and around 2013 after Charter took over
2 transfership from Bresnan, and they also have a
3 standard channel and those are basically kind of
4 TV sets. You know, you have your smart TV that's
5 high definition and then you have some of your
6 older television sets that don't. TDS has agreed
7 to actually two high-definition channels. So, Tim
8 Harrington, who is the manager of Community 7, he
9 helped to make sure that these pay terms are good
10 for our pay access channels and community
11 provider. And so, we kind of got his seal of
12 approval on these.

13 Charter has a density extension in terms
14 of build-out. It is the extension of cable when
15 there's ten residential units passed by 1/4 of
16 cable continuous to the distribution cable. TDS is
17 actually -- They've actually agreed to a little
18 bit more of a density extension. They're willing
19 to extend it out with seven residential units.

20 There is liquidated damages, which is
21 just if there's any kind of violations by the
22 franchise, Charter had agreed to pay liquidated
23 damages if quartered. Those were in 2008 dollars.
24 We have upped those terms and made them 2021
25 dollars, in terms of the TDS Metrocom proposed

1 franchise. We will do that with Charter as well.
2 That's what we will propose.

3 MAYOR COLE: And here, Stacey. It looks
4 like you're about done, but I'm just going to ask
5 you to kind of wrap up because we're kind of past
6 15 minutes. We need to move on.

7 STACEY TENNEY: Okay. So, let's just go
8 to your criteria that you should consider when
9 granting this franchise. So, these are the
10 ordinance requirements. These also follow along
11 the lines of federal requirements, but the
12 completeness of TDS's responses, I would submit
13 their application is very thorough and that you
14 can rely upon their financial, technical, and
15 legal qualifications.

16 They asked whether or not TDS is
17 satisfying minimum standards established by the
18 City to meet the community's future cable
19 regulated needs. I would submit that TDS does meet
20 that. And in fact, we will be getting I think the
21 cable system that isn't just coaxial lines, which
22 Charter has coaxial and I believe some fiber, and
23 TDS will be all fiber.

24 Whether TDS is able and willing to
25 provide PEG use capacity facilities and/or

1 financial support, and they are. Whether granting
2 the franchise will result in Red Line or
3 discrimination. I submit to you that it will not.
4 Whether that schedule for build-out is reasonable.
5 I submit to you that it is. And then finally,
6 whether approving the franchise would eliminate or
7 reduce competition in the delivery of cable
8 service. And approving this competitive franchise
9 would absolutely not reduce competition. It
10 would, in fact, provide competition, which is
11 something that, under the ordinance, the City is a
12 proponent of.

13 So finally, if you decide that it's in
14 the public interest to issue a cable franchise,
15 considering all of those factors, then you would
16 tender TDS the franchise. And if you decide not
17 to, then you just need to make a written ruling of
18 why not. So, thank you.

19 MAYOR COLE: Okay. Thank you.

20 Do we have a presentation from Josh, the
21 TDS representative, of any kind? Would he like to
22 wave his hand?

23 UNKNOWN: (Indiscernible) removed the
24 presentation.

25 MAYOR COLE: Yeah. And Josh, if you're

1 out there, I can't see you quite yet so.

2 UNKNOWN: (Indiscernible.)

3 MAYOR COLE: I don't know if you can
4 unmute Josh --

5 JOSHUA WORRELL: Hi, I'm here.

6 MAYOR COLE: -- Toni. There you go.

7 Josh, did you have anything for us this
8 evening and --

9 JOSHUA WORRELL: I do not.

10 MAYOR COLE: -- Stacey, we're seeing you
11 and your daughter, which is lovely, but if you can
12 unshare that. Where is that? Looks like a ski
13 hill. And a zip line maybe?

14 JOSHUA WORRELL: I believe that's
15 Stacey's screen, correct?

16 MAYOR COLE: Yeah.
17 Hey, there we go. Back to kind of like the old
18 one, but that's all right. Go ahead, Josh. Welcome
19 to our meeting.

20 JOSHUA WORRELL: Mayor, Council members,
21 thank you for having me tonight. I don't have
22 anything to add. I'd be happy to answer any
23 questions, but I think Stacey laid it out there.
24 We're excited to be entering the Billings market
25 and work towards becoming a trusted local service

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1 provider.

2 MAYOR COLE: Okay. Thank you very much.
3 That's our presentation. We'll turn it back to the
4 Council.

5 Chris, you don't -- do you have anything
6 further on this matter?

7 MR. KUKULSKI: Mayor, and Council, just a
8 few brief comments. Just wanna give two reasons
9 to strongly consider supporting this, this
10 evening. First, our citizens, business and
11 residential, for the first time in quite a long
12 time get real competition in this space. And so
13 when we talk about our economy, the return of our
14 economy from this pandemic, competition for higher
15 speed internet service, higher speed and price is
16 what we see when we talk to other communities that
17 have more than one primary service provider. So,
18 like with most businesses, this is welcome.

19 Second, you are here tonight talking
20 about the franchise fee, Stacey covered all that.
21 Cable is a shrinking customer base. I think we're
22 all maybe surprised how many people still are
23 using cable. Cable is what we get our franchise
24 fee from, though. And so in this case, having only
25 one primary provider, the City doesn't have much

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1 leverage. As Spectrum is choosing, frankly, to do
2 less and less for us as their subscriber base for
3 cable reduces. This actually gives us competition
4 there, provides us with a new agreement with TDS,
5 and we can have leverage with Spectrum to say, no,
6 we should keep the same kind of arrangement, the
7 5%, the 25 up to \$0.85 from past. So, I think
8 there's leverage there.

9 Last, I will tell you, the issue that we
10 do expect to be challenged with on both sides has
11 to do with use and the right-of-way and in
12 right-of-way permitting and our oversight of this
13 deployment. So, we've been in communication with
14 other cities. TDS is deploying several cities in
15 western United States. One which happens to be
16 making some professional investments here. So, we
17 have that dialogue. We've gotten a good reference
18 in those conversations, but they acknowledge what
19 we know to be true. You can't put 500 miles of
20 pipe mostly underground and not have some
21 challenges. So, the fee structure associated with
22 the right-of-way permits are how we'll pay for the
23 oversight of it. And it really is in both TDS's
24 best interest and ours to do that well.

25 So, I had a call Friday afternoon with

1 the CEO of TDS, as well as Josh, both talking
2 about some of their work in the Western U.S. and
3 how we can work together to make this deployment
4 go as smooth as possible. Ironically, we'd like,
5 and they would like, to see as much underground as
6 we can because of the attractiveness of that.
7 We'll have more headaches with underground than
8 above ground. So, there's some places where
9 they'll have to go above. Their preference is
10 under. And as far as complaints, you probably
11 won't hear many constituents complain about
12 another wire on a pole that already exists. But we
13 will hear and we will be dealing with issues as
14 they trench through the community.

15 Lastly, like I said, I think the
16 opportunity in this space to have competition in
17 2021 and into the future of where the economy is
18 going, where our educators from kindergarten to
19 doctoral level are getting their education online
20 more and more, this really is a critical piece of
21 infrastructure that the City is not investing in,
22 but these folks are in the private sector.

23 So, I'll close with that. Be happy to
24 answer any questions you guys have. Thank you.

25 MAYOR COLE: Thank you. Council, before

1 we open up for public hearing, are there questions
2 for Stacey, Josh, or Chris?

3 Council member Ronning.

4 MS. RONNING: Thank you. This is either
5 for, I guess, Josh or Stacey. Which one would like
6 to have that? Have the question?

7 MAYOR COLE: Why don't you just say the
8 question and then they can pick.

9 MS. RONNING: Well -- Okay, I'm just
10 going to go with you, Stacey, since you're the one
11 who originally read it, it's on your PowerPoint.
12 You said, for the non-discrimination, you said
13 economic and racial. I didn't see LGBTQ.

14 STACEY TENNEY: I believe that it is in
15 there, Council member Ronning. Let me just find
16 it here in --

17 MS. RONNING: Josh, are you able to
18 answer that question?

19 JOSHUA WORRELL: We would include that as
20 well in that. I'm sure the statute calls that
21 out. If it doesn't, I can tell you that we will
22 not discriminate based on the LGBTQ requirement.
23 But I'm pretty sure the statute would call that
24 out as well.

25 MS. RONNING: Okay. Thank you.

1 MAYOR COLE: Thank you. Other questions
2 for staff or presenter?

3 Council member Ewald. Council member
4 Purinton.

5 MR. EWALT: Thank you, Mayor. Josh, last
6 time we met with you here you kind of gave us a
7 pie-in-the-sky overview of it, and so I don't know
8 on reviews how -- if you get a lot of reviews
9 against you or for you or what, but I went online
10 and I started researching and there's a lot of
11 reviews that are saying, speed is slower than
12 promised and prices go up faster than promised and
13 some places you are the only game in town and
14 other places, once they hooked up, they decided to
15 stay with you because that was it.

16 So, I know you're the salesman for the
17 company, so that's what you're supposed to do, is
18 give the pie-in-the-sky account, but is it sort of
19 true, or are these reviews that people are making
20 on your company wrong?

21 JOSHUA WORRELL: No, those Council
22 member, thank you for that question. Those
23 reviews are 100% true, so depending on what you
24 read online, in some, where it's usually opted
25 into the spectrum with social media or anything

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1 online, we're either the best thing since sliced
2 bread or the worst thing. I will tell you that we
3 serve a lot of rural areas of the country from the
4 bottom of the Grand Canyon to islands off the
5 coast of Maine, and you are absolutely correct,
6 there are a lot of areas that we are the only game
7 in town.

8 Those areas are served on old technology
9 copper. So, a lot of those reviews depend on
10 where you're reading them. I can understand why
11 residents would be giving us those reviews.

12 Because we do have a lot of areas that are only
13 getting 5 megabit. For this particular and all
14 the other areas we've been making investments in,
15 these are only fiber built -- fastest residential
16 speeds you can get up to a gig or as we continue
17 and technology progresses, it will be multi gig.

18 So, those reviews are correct. It just
19 depends on where in the country you're reading
20 those reviews. For all of our fiber markets,
21 you'll get a different reaction than that, but
22 what you're reading is probably accurate.

23 MR. EWALT: Thank you.

24 MAYOR COLE: Thank you very much.

25 Council member Purinton.

1 MS. PURINTON: Thank you, Mr. Mayor.

2 So, Josh -- no, this is for Debi or
3 Chris. Last time we spoke about additional FTEs,
4 one was for locators and I can't remember what the
5 other position was. Do you have an estimate for
6 the one that the City would be paying for and
7 explain that to me again, please?

8 MR. KUKULSKI: Let me ask Debi. Debi and
9 I got to talk -- Now we working? Okay. Debi and
10 I got to talk about that this afternoon.

11 MS. PURINTON: Okay.

12 MR. KUKULSKI: So then Debi can kind
13 of --

14 MS. PURINTON: Thank you.

15 MR. KUKULSKI: -- (Indiscernible) this.

16 DEBI MELING: Okay. Thank you for that
17 question. So, my estimate at this time, depending
18 on how fast, the build-out is. If it went as fast
19 as Josh's describing, we'd be looking at probably
20 two to three inspectors. These are the people that
21 would review the plans and actually be on site
22 when the construction is done to make sure
23 everything's going well. And then we would have
24 one to two locators that would be locating our
25 water, sewer, storm, streetlights, signal wires,

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1 all that sort of thing. So, we probably need one
2 to two locators on staff as well.

3 The inspectors and plan reviewers, they
4 are paid for out of our permit fees, so our permit
5 structure is set up to recoup cost of services.
6 So, however long it takes us to review their plans
7 to be on site, that's how much we charge for those
8 services. Location services are charged
9 (indiscernible) drivers to the location service.
10 So, when people call in, we do it to protect our
11 infrastructure, so our locators are paid for out
12 of water sewer, storm, streets, all those funds
13 that we have, and that's how we pay for locators.

14 So, does that answer everything, Council
15 member Purinton?

16 MS. PURINTON: Do you have any idea what
17 the cost would be for those?

18 DEBI MELING: So, a locator, would be on
19 the order of a loaded cost. I'm going to say
20 \$50,000 off the top of my head. That's very rough,
21 but you're looking at something around there for a
22 locator. So, you'd be looking at one to two of
23 those. And then the inspectors are probably pretty
24 similar. Like I said, that cost will be recouped
25 out of permit fees, though.

1 MS. PURINTON: Thank you.

2 MAYOR COLE: Okay. Thank you.

3 Back to Council member Ewalt.

4 MR. EWALT: Thank you, Mayor.

5 Debi, so that is approximately five new
6 FTEs, or are these people you have on staff
7 already?

8 DEBI MELING: So, I think we need
9 anywhere between three and five, depending on how
10 fast this goes. Two to three inspectors and one
11 to two locators. We do not have them on staff. We
12 do have inspectors on staff and locators on staff,
13 but we need these in addition to move at the rate
14 that they're talking about.

15 MR. EWALT: Follow-up question, please,
16 Mayor.

17 MAYOR COLE: Go ahead.

18 MR. EWALT: So, after four years when
19 this project's done, what happens to the new five
20 FTEs that you've hired, is this part-time gig or
21 is this a full-time, and then we have to find a
22 place for them somewhere in the city?

23 DEBI MELING: So, we've talked about that
24 a little bit. Inspector-wise, we actually have an
25 open inspector position that we haven't filled. We

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1 had a retirement that we just haven't filled yet.
2 But we need another inspector. This gives us a
3 good chance to hire somebody; and then as they
4 phase out of this project, we'll put them on to
5 projects that we do in-house. That deals with one
6 of them.

7 Location-wise, I think over the course of
8 the next few years, we have in our budget that you
9 guys will see next month, we have that staff
10 growing. We're trying to add crews to do more
11 work in all of those areas. So what I can see
12 happening is, over the next few years phasing out
13 of this project and having those people move on to
14 our crews. So, their job would change, but I do
15 think over the years we have the ability to
16 assimilate those people into our staff.

17 MR. EWALT: Thank you.

18 MAYOR COLE: Okay. Thank you.

19 Further questions before we go to public
20 hearing?

21 Council member Neese.

22 MR. NEESE: Thank you, Mayor. This is
23 for Stacey, just to clarify, and I think Josh said
24 in his work session that it's not a matter of
25 "if," but "when" they hit something underground.

1 And I understand that that's, you know, things are
2 not exactly where, you know, it's not exact
3 science, but just when something like that
4 happens, is it in -- Will they make sure that they
5 actually -- all the costs will be borne by TDS to
6 replace that? Including if it's older
7 infrastructure that they hit, and including if
8 they have to dig up the road or replace some of
9 that infrastructure? And then I have a follow-up
10 question on that as well.

11 MAYOR COLE: Stacey, that was directed to
12 you, but -- and so it's all yours. Or you can pass
13 it to somebody else.

14 STACEY TENNEY: Yes, they should have to.

15 MR. NEESE: Okay.

16 MR. KUKULSKI: So, I believe that's going
17 to be in the right-of-way. I think Debi could
18 speak to how that's handled today; in that yes,
19 they'll be expected to put it back the way they
20 found it. So, as they bore through a water line
21 and a wastewater line or they cut somebody else's
22 pipe, they will be responsible for putting it back
23 and then taking care of the right-of-way impacts
24 on that.

25 MAYOR COLE: Okay, Debi Meling, two of

1 your staff have said yes. I'm assuming you don't
2 wanna contradict that. Anything you want to add to
3 that, though?

4 DEBI MELING: No, the state law and our
5 city code is very specific about all that. We are
6 covered when they get their right-of-way permit.

7 MR. NEESE: Okay.

8 MAYOR COLE: Thank you.

9 MR. NEESE: Quick follow-up on that,
10 Mayor.

11 MAYOR COLE: Go ahead.

12 MR. NEESE: So, in the Heights I
13 understand the water mains are asbestos pipes up
14 there. So, if they hit one of those, that could
15 put asbestos into the water line. Is there any
16 considerations as far as them having to make sure
17 that the residents are notified if one of these
18 pipes are hit and asbestos gets in the water?

19 MAYOR COLE: Sounds like a Debi question.

20 DEBI MELING: Sure, I'll take a stab at
21 that. First of all, I'd like to tell you kind of
22 how the process works. We do require that they
23 pothole every single crossing, which means they
24 get out there with the back (indiscernible)
25 excavator and every time they cross the water

1 line, they have to back in sat. It's a very, very
2 safe way to make sure that they don't hit those.

3 If they do hit AC pipe, every water
4 system will have a process in place by what they
5 require. We'll work with the Heights Water
6 District to talk to them about what that process
7 is and ensure that TDS knows what that process is.

8 MR. NEESE: Thank you.

9 MAYOR COLE: Thank you very much. Any
10 other questions for staff or TDS before we open up
11 for public hearing?

12 UNKNOWN: Chris has something.

13 MAYOR COLE: Okay. I don't see any,
14 so --

15 UNKNOWN: Chris.

16 UNKNOWN: Chris.

17 UNKNOWN: Chris.

18 MAYOR COLE: I'm sorry. Chris.

19 MR. KUKULSKI: Sorry, two brief
20 clarifications. One, if we don't have work for
21 these folks to do after the three years or four
22 years, I don't believe we have any mandate in the
23 contract. If there's not work for them, we would
24 have to go through some kind of layoff process.
25 But frankly, with turnover, things of that nature

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1 I think that would be unlikely.

2 And then, I apologize, I lost my second
3 point. It had to do with Ms. Purinton's Oh, I
4 know what it is. We deliberately don't charge --
5 We won't wanna charge for locates. Why would that
6 be the case? We don't want homeowners or
7 contractors to have any reason not to call the dig
8 system so we can locate lines, because we'll pay a
9 lot more money going out having to deal with
10 repairs than to have someone go out and mark that.
11 So, there is a deliberate reason why there's not a
12 charge on the locating part of the system, but
13 there is a charge on the right-of-way of work part
14 of it. Thank you.

15 MAYOR COLE: Thank you very much. We'll
16 open it up then for our public hearing on Item No.
17 4, the TDS Metrocom cable contract that -- or
18 ordinance that you've heard discussed here.

19 First, we'll look to people and anyone in
20 the library, but also this is the time where if
21 you're online on Zoom and you would like to
22 comment, please use that "raise hand" feature to
23 let Toni know that you'd like to make a comment
24 and she should unmute you. Here in the library, is
25 there anybody who would like to comment on Item

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1 No. 4, the proposed TDS Metrocom ordinance. Is
2 there anybody here in the library?

3 Don't see anybody walking to the podium.
4 So, Toni, do we have anybody on Zoom who would
5 like to comment on Item No. 4?

6 TONI KEEHNER: I have not seen anyone
7 raise their hand.

8 MAYOR COLE: Okay. We'll close the
9 public hearing then on Item No. 4. Kick it back to
10 the Council.

11 Council member Yakawich.

12 MR. YAKAWICH: Thank you, Your Honor, and
13 Council. Having conducted public hearing,
14 considered written and spoken public testimony, I
15 move to approve first reading ordinance granting a
16 non-exclusive franchise to TDS Metrocom, LLC as
17 recommended by staff.

18 MAYOR COLE: Thank you. Second? I see
19 Council member Brown. Discussion on the motion.
20 Motion is for approval. Is there any discussion on
21 the motion? Before we proceed to a vote, any
22 discussion?

23 Council member Choriki.

24 MR. CHORIKI: I just want to say on the
25 record that this is an economic game changer for

1 Billings and the county and I really look forward
2 to what the city is going to look like in a few
3 years, because of these changes. Thank you.

4 MAYOR COLE: Thank you. Any other
5 discussion? Now we'll proceed to a vote. The
6 vote, again, is in favor of approval of the
7 ordinance granting TDS cable franchise consistent
8 with the staff report. All in favor of the motion
9 for approval, please raise your hand. Voting in
10 favor are all members of the City Council. Motion
11 passes unanimously. Thank you very much.

12 MR. NEESE: Toni's on screen.

13 MAYOR COLE: I'm sorry. Council member
14 Neese.

15 MR. NEESE: Toni's on screen.

16 MAYOR COLE: Yeah, okay.

17 Toni, you are with us? Did you have
18 something for us?

19 TONI KEEHNER: I was just getting ready
20 to read No. 5.

21 MAYOR COLE: Yes, go ahead. Please take
22 us to Item No. 5.

23 TONI KEEHNER: Item No. 5, public hearing
24 and first reading ordinance regulating massage and
25 spa facilities through business licensing

1 criteria. Staff recommends approval. Action:
2 Approval or disapproval of staff recommendation.

3 MAYOR COLE: Thank you very much.

4 Our staff presentation is by our City Attorney
5 this evening, Gina Dahl. I'll just call the
6 Council's attention to our time, and also the
7 public, it's 7:12. We've had a lot of people
8 sitting here. I appreciate everybody's patience.
9 Also looks like we have probably at least 20 or 30
10 people on Zoom who may want to comment. We
11 typically take a break around 7:30. I'm assuming
12 we can get that presentation in. We may have some
13 questions and then we'll look for a break
14 somewhere around 7:30.

15 So with that, Gina, it's all yours.

16 MR. KUKULSKI: Gina is going to pull up
17 the presentation. I've got the first handful of
18 slides for those of you who participated in last
19 Wednesday's community online event. This is going
20 to be a similar presentation. There's one area
21 that's added to it. And we'll go from there. And
22 yes, Mayor, we will do our best and it will be
23 right around 7:30-7:40 time frame. And I will
24 tell you we also have, after I speak, we will turn
25 it over to Gina.

1 We've got Andy Zoeller, our finance
2 director, who handles the permitting, his office,
3 he's got a couple slides, and Chief St. John has
4 one. I also want to make you aware I've got three
5 kind of experts, if you will. One locally with the
6 FBI, you've heard from, Brandon Walter. He's here
7 tonight to testify, give you some information
8 locally. And then I've got two folks nationally,
9 who've made themselves available. So, they expect
10 to be inside of the three minutes, but I think it
11 would be a good courtesy to let them have an early
12 opportunity as some of them are from testifying in
13 Texas and other places around the nation earlier
14 today.

15 So, with that, let's just dive right in,
16 Mayor. Sorry, I'll try to look at my screen and
17 speak up here.

18 GINA DAHL: Sorry. I'm just trying to
19 figure out how to --

20 MR. KUKULSKI: There you go.

21 GINA DAHL: How to -- yeah.

22 MAYOR COLE: Very good. And Gina, I'll
23 just ask that you keep your voice up because you
24 got to remember it's gotta get out to the lobby.

25 MR. KUKULSKI: All right. So first up

1 here is, you know, why are we looking at this
2 ordinance. So I can go to the next slide, Gina.

3 GINA DAHL: (Indiscernible response.)

4 MR. KUKULSKI: So, like with many things,
5 this is one component of improving the safety in
6 Billings. We have, as has been shared, and we'll
7 share more information with you, FBI statistics
8 that show that we clearly have some challenges in
9 this area, in Billings. And as you're well aware,
10 the Council has identified this as a priority
11 since 2017, consistently, that we tackle this
12 issue. Again, I want to emphasize this is no
13 silver bullet, but it's one of numerous components
14 you'll hear us talk about relative to improving
15 safety of Billings.

16 So, next slide. So, as I mentioned, the
17 Council adopted it in 2017, so that predates my
18 time, as well as a fair amount of work that was
19 done by a working group in '18, predated most of
20 us here. But that work was moved forward
21 pre-pandemic. We were able to have a couple of
22 community meetings, as well as I think there's
23 been at least two Council work sessions. As we try
24 to figure out what's the right balance, if you
25 will, for this ordinance, and it seems numerous

1 iterations, as we have learned, listened to both
2 our local folks and our national folks who shared
3 with us some of their successes with the
4 ordinance.

5 So, do we have a problem in Billings? I
6 would tell you, I believe it is without question
7 that we have a challenge here. From my time
8 arriving in Montana in 1999, I was hired by one of
9 your first City Administrators. He was doing
10 interim work for Kalispell and he told me stories
11 about what it was like when he was managing here
12 on Montana Ave. Billings has faced a challenge in
13 this area for decades. Now, unfortunately, for
14 the industry of illicit businesses they have
15 hijacked, for lack of a better term, "legitimate"
16 massage businesses.

17 And it's very unfortunate, in as they
18 have trafficked women. As I have seen testimony in
19 support proceedings of recent, of closures here in
20 our community, I have to admit, without question,
21 it's easier to not believe these things are
22 happening in our community than to hear the facts
23 of them, see them, and wonder what can we do to
24 make a difference. So that is what we are seeking
25 to do here, to make a significant, positive impact

1 in this area, of which we hope, in the long run
2 and believe through implementation, we'll help all
3 of our legitimate businesses.

4 So, if we could go on to the next slide.
5 Some of the stats that are rather appalling here
6 is the kind of activity that you see advertised,
7 and much surprising to me, just how much bigger of
8 an issue this is for Billings than it is,
9 ironically, with Bozeman and Missoula, about 1/4
10 of us and then our other major trade areas, a
11 fraction of that. So, these are not lists that any
12 of us want to find ourselves on as we are working
13 to have our children, our grandchildren return to
14 Billings, Montana to raise their families or
15 relocate to Billings, if they want to make their
16 investments and raise their families here.

17 So next slide. There are, as we have
18 talked at length with some other communities, and
19 I will be you know, Aurora, Colorado really
20 became the -- there were numerous ordinances that
21 the study group looked at back at in '18, but
22 Aurora has really made themselves candidly most
23 available to us. And I think that, frankly, share
24 a western kind of culture as Montana. Certainly,
25 doesn't mirror us. There's not another Billings,

1 Montana out there; but as we worked with Aurora,
2 we have found and we think from evidence of law
3 enforcement's work over the decades, there are
4 some characteristics here that are different,
5 right?

6 Open all hours of the day, the "open"
7 flashing sign at 2:00 AM. I don't think any
8 legitimate massage business is advertising, open
9 at 2:00 AM. They don't have an ATM, typically,
10 at the door, the door isn't locked, and no windows
11 to see inside the business. They're not a
12 cash-only operation. And they do not have online
13 provocative ads, of which we'll show you one from
14 a business that we licensed just months ago.

15 And so, though unfortunately, we have
16 learned that many, not all, but many are licensed
17 massage therapists, so just simply having a
18 license doesn't solve the problem. In the
19 dormitory sleeping and some of the others here, I
20 won't read them all, are things we have seen
21 clearly separate legitimate from illicit, and
22 that's what we're trying to do here. We are trying
23 to minimally as possible impact the legitimate,
24 but call out the things that the illicit
25 operations are doing, so that they can be, in

1 fact, not awarded a business license, thus not
2 open for business, or have their license revoked.

3 And you'll hear the Chief later be able
4 to talk about we have many things we do in a --
5 I'm not going to get the right word -- things that
6 we do to try to deter crime. We don't only deal
7 with crime after it's happened. So, in this case,
8 we really are trying to deter as much as we can.
9 And when we can take away or not hand out a
10 business license and they can't lawfully operate,
11 then we don't have months and years of law
12 enforcement, court processing, to move these out.

13 Next slide. So, this is a hot map, for
14 lack of a better term, of what goes on and it is
15 rather disturbing, especially if you're the East
16 Coast, Florida - I grew up in the red section of
17 Southern Michigan. No one wants to be in the red
18 here, and here we are Billings, Montana, red on
19 this map.

20 If we could go to the next slide. This
21 ordinance, as I mentioned before, I think it
22 really is an avenue for us to utilize -- If it
23 does not work, we'll need to look at other
24 methods, but I have become convinced, though this
25 is not something I bring with me with experience

1 from other cities I've worked in, full confession,
2 I've not adopted three of these.

3 This is the first time I've dealt with
4 crime in this area; but as we talked with other
5 communities, they have shown us how. Aurora
6 believes they've got them all shut down in about
7 18 months. They maybe have one that they're
8 having to take through a much more extensive kind
9 of court process. If we can have that kind of
10 success, that is going to be good for Billings,
11 Montana. In my opinion, unquestionable.

12 Next slide. This is the ad. So, we
13 licensed a business in December of 2020. Within
14 weeks, here's the ad online. They meet all of our
15 criteria in Billings to operate their business.
16 The only way we can ultimately shut them down is
17 through stings, money laundering, other very
18 expensive, heavy law enforcement, heavy court
19 processes. But under our new ordinance, we do
20 talk about advertising as a component. I don't
21 believe I would be offending anyone in this room,
22 there's always a risk at it, but I doubt any
23 legitimate business is promoting themselves as a
24 massage professional in this regard. None of you
25 are.

1 So, I'm going to turn it over now to our
2 City Attorney. She's got a handful of slides here.
3 And as I said, then we've got just a couple from
4 our finance director, one for our police chief and
5 then maybe it'll be appropriate to take a break
6 and/or get those three professional testimonies in
7 before you take the break.

8 So, Gina, if you could go from here.

9 GINA DAHL: Thank you. And I'll try to
10 speak as loudly as I can. I want to back up for
11 one second to just expand on a slide that Chris
12 just talked about. There are often questions as
13 to "why can't law enforcement shut it down?" and
14 Chris talked about why that is. I also wanted to
15 address why can't we just rely on the State Board
16 of Massage Therapy to do that? Just a couple of
17 points about that is the Board of Massage Therapy,
18 they really only license the professional, they do
19 not regulate the business, they don't regulate the
20 business practices. So that leaves those business
21 practices unregulated, including ownership of
22 those businesses. So any state regulation by the
23 Board of Massage Therapy is only complaint-based
24 regarding the individual therapist. State
25 officials, they don't go around conducting on-site

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1 inspections of the business activities. I think
2 that's a really important point to remember.
3 Those are volunteer boards and they don't go
4 around the state and shut them down based on
5 business practices.

6 So, I want to get into the ordinance and
7 how the ordinance works, but first I want to talk
8 about this slide, which is based on some research
9 that is out there and research that the City did.
10 And we wanna talk a little bit about this human
11 trafficking task force report, which was put out
12 in November 2017 by the Federation of State
13 Massage Therapy Boards. The FSMTB was established
14 in 2005 and it's an autonomous, not-for-profit
15 organization comprised of state regulatory boards
16 and agencies that regulate the massage therapy
17 profession.

18 This report is the culmination of two
19 years of study, and includes an evaluation of the
20 prevalence and impact of human trafficking on the
21 massage profession. Massage therapy facility
22 licensing, was a recommendation of that report and
23 of the FSMTB. The FSMTB found that establishment
24 licensing to be a useful tool in protecting
25 legitimate massage businesses and reducing the

1 number of illicit businesses by providing
2 jurisdiction with the ability to institutionalized
3 accountability, to track illicit business
4 movement, to deny or revoke licenses, and impose
5 discipline on those establishments.

6 So, into the mechanics of the ordinance
7 that we're presenting to you. First of all, who
8 needs to apply for the license and -- pretty
9 clear -- all massage and spa facilities within the
10 city of Billings, unless they are exempted. So
11 what is a massage and spa facility? A massage or
12 spa facility means any business where any massage
13 therapy is practiced, administered, or advertised
14 in exchange for compensation.

15 So, let's talk a little bit about the
16 exemptions. It will help get a better
17 understanding. The businesses exempted include
18 solo practitioners and also any businesses which
19 do not primarily perform massages as their
20 services. So that is going to include a lot of
21 different practices, obviously they are not all
22 listed on the slide, but barbers, cosmetologists,
23 chiropractors, gyms, schools, professional/amateur
24 sports, occupational therapists, medical
25 facilities, schools. If their primary business is

1 not massage, they're likely going to be exempt
2 from the licensing requirement.

3 This ordinance incorporates the
4 exceptions listed in state law, which also include
5 Native American and faith healing, as well as body
6 work, reflexology and acupuncture, and other forms
7 of therapy modalities. So, the requirements: All
8 facilities must comply with the regulations of
9 this ordinance, even if they're exempt from the
10 application process, except from getting the
11 license. In addition, they still have to continue
12 to obtain and pay the business license tax, as
13 currently required under city code. City code
14 currently requires that any person conducting any
15 business in the city is subject to and shall pay
16 the business license tax. So, for example, if this
17 ordinance were enacted, a solo practitioner or any
18 other exempted business where listed will continue
19 to do what they've always done, that is to comply
20 with all city code, obtain their business license
21 tax. If the ordinance is adopted, then they will
22 also be required to comply with the regulations of
23 the ordinance; but again, they just don't have to
24 fill out the application. They don't have to
25 obtain the massage or spa facility license.

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1 MAYOR COLE: Thank you, Gina. I'll just
2 ask you to keep your voice up.

3 GINA DAHL: I'll do my best. The
4 ordinance also provides that additional rules may
5 be promulgated by the City to find that a practice
6 or facility is no longer exempt, if there is a
7 continued pattern of criminal behavior or criminal
8 intent that was related to human trafficking and
9 disguised as legitimate exception. So that would
10 address one of the things the City could do if the
11 business rebranded or tried to disguise itself as
12 an exempted practice. So, you could then remove
13 that exemption.

14 There are several required access, as
15 well as prohibited conduct contained within the
16 ordinance. The ordinance requires the licensed
17 massage facility to have a city-issued business
18 license. Like I said, that's always been
19 required; not a new requirement. Any person doing
20 business in Billings has always been required to
21 do that.

22 The ordinance also requires the facility
23 to maintain records of employees, to remain fully
24 clothed in performance of massage and permit
25 inspections by city inspectors. The facility must

1 maintain copies of the state licenses for each
2 massage therapist. Those licenses must be
3 available on display. Actually, the state law
4 requires them to be on display. If it's a global
5 practice, then they just need to be available for
6 inspectors.

7 The ordinance requires the facilities
8 maintain records of massage performed at the
9 facility available for inspection upon request,
10 and this log must be include the informations that
11 were on this slide, which is the date, the time,
12 the type of massage therapy administered and the
13 employee. It does not require the client's name
14 or any other personally identifiable protected
15 health information. That log must be maintained
16 for one year.

17 The ordinance requires the facility to
18 keep the doors unlocked while the facility is open
19 during the normal business hours. Of course, there
20 are several exceptions included in the ordinance.
21 A facility may lock exterior doors is the
22 facility's occupied by a single employee. If the
23 facility has more than one employee, they don't
24 fall under that exception. And if there is
25 another reason for the external doors to be

1 locked, a facility may obtain a variance. For
2 example, if there's a reason to --there's safety
3 or security of the employees or property at issue,
4 they can simply get a variance. Restroom doors may
5 be locked and other internal doors may be locked,
6 if necessary, to protect the client or business
7 information. There's no need to seek a variance in
8 those cases. However, the ordinance does require
9 the facility to open locked doors upon request by
10 inspectors. Again, this question has come up about
11 that interrupting ongoing therapy sessions. That
12 was not the intent. I do have a proposed edit for
13 you just to simply clarify that will be presented
14 at the end.

15 Additionally, for those businesses with a
16 window or glass exterior door where clients are
17 greeted, the glass must not be painted over or
18 blacked out. This is not a requirement for any of
19 those facilities that don't have that kind of
20 glass adjacent to an entrance, like if they're
21 inside of another building. The ordinance also
22 does not allow a massage facility to be open for
23 24 hours a day and only operate between the hours
24 of 6 AM to 10:00 PM.

25 So, it's a violation of the ordinance to

1 permit dormitory housing or allow the facility to
2 be a living quarters for any person. The owner and
3 family members of the massage or spa facility
4 operated as a home occupation are exempt from this
5 requirement.

6 Sexual contact or massage, which is
7 intended to arouse or gratify the sexual response
8 in either party is prohibited. Merchandise of a
9 sexual nature: Toys, aids, lubricants,
10 contraceptive items is prohibited from massage or
11 spa services. This does not restrict use or
12 possession of such items for noncommercial
13 purposes and private residence, including one used
14 for home occupation. So this ordinance essentially
15 commodifies good business practices. They are
16 practices that any business may need: Keeping
17 good records, ethical conduct, professionalism,
18 business practices.

19 So, at this point I'm going to turn this
20 over to Andy Zoeller. He's going to talk about the
21 actual license application, and then I think Chris
22 and I may have a couple slides again.

23 ANDY ZOELLER: Thanks, Gina. Yep, so the
24 license application for the facility license is --
25 the process is going to be somewhat similar to the

1 current business license, but the application
2 itself is far more extensive. Requirements are
3 laid out within the ordinance. I'll highlight on a
4 few of the items. General business information,
5 name, contact info. There are requirements --
6 background checks for all owners who own at least
7 5% of the business and some disclosure information
8 for those same owners, such as have they ever been
9 convicted of a felony, financial crime or sexual
10 offense. As I stated, they are required to submit,
11 with their application, a background check that
12 they procure from the Department of Justice. And
13 that will come with the application, as well as
14 the massage license from the State of Montana, and
15 then the application fee. So those four
16 components really make up the application.

17 The application fee -- if this is
18 approved at first reading when it comes back to
19 its second reading, there will be a resolution
20 that sets the fee at \$25 for the first year. And
21 that's because there is cost to obtain that
22 background check. Our intent was to try and get
23 it as close to the current business license fee,
24 which has a base amount of \$55. So there would be
25 no additional financial burden on businesses

1 applying for this. Renewals from one year out from
2 there would all go to \$55. And the application is
3 only needed on initial application, not every year
4 on renewal. There's additional requirements in the
5 application.

6 I'm still scrolling through it here.
7 Some employment history for owners, and then
8 information about the business location and the
9 building owner. So, when that full package is
10 submitted to the finance department, that will
11 begin the application review. We'll review the
12 application for completeness, cross reference the
13 license with the State database; and, you know,
14 just generally review it for, you know, any, what
15 may appear to be, fraudulent or manufactured
16 information. At that point, it'll get routed into
17 our workflow, which is all electronic, and it will
18 go to police, code enforcement for further review.

19 On initial application, I believe code
20 enforcement is going to do inspections as part of
21 that process, and I'm probably not going to
22 elaborate on that much more, Nicole will do that
23 -- but they will be part of the initial
24 application review and inspection. If all of that
25 goes through, they will receive their license --

1 well, either way there will be a determination
2 within 30 days. But generally, it should be -- it
3 will be within 30 days. That's all of the
4 statement at this point. I think that's all I
5 have.

6 MR. KUKULSKI: Chief St. John. This one
7 is for him.

8 CHIEF ST. JOHN: I am here. Am I
9 projecting loud enough, Mayor?

10 UNKNOWN: Yes, did you hear him?

11 CHIEF ST. JOHN: Very good.

12 MAYOR COLE: No. Yeah, we're seeing you.

13 CHIEF ST. JOHN: Okay. Well, our
14 response basically is this is shared with code
15 enforcement. Although primarily it is going to be
16 their responsibility if they run into one of those
17 red flags that you saw previously or find
18 something suspicious. They will call us for an
19 investigation and that will lead us wherever it
20 does. Currently, we have one detective to handle
21 any follow-up that either comes from code
22 enforcement, complaints or citizens. When code
23 enforcement is off duty or off for the weekend,
24 any complaints that come in will be handled by our
25 department, investigated, and/or referred to code

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1 enforcement for additional follow-up.

2 In order to help us with any cases that
3 may go criminal, we do have several networks for
4 both the state and federal officers that work in
5 this area. And I just want to say that from our
6 point of view that our objectives from the law
7 enforcement side are threefold. We want to rescue
8 victims, get them the support that they need, we
9 want to identify and arrest as many people as we
10 can, both on the supply and demand side; and
11 ultimately dismantle criminal enterprises, put
12 them out of business. That takes a complex,
13 lengthy and expensive criminal investigation, and
14 so I'm in support of any tool that helps us to
15 achieve those objectives, even if it comes in the
16 form of a business license.

17 Next slide.

18 MR. KUKULSKI: So, I think I've got the
19 last one here, Mayor, which is just kind of in
20 conclusion. So, I think we've talked, the
21 community has, for years. I hope we've shown
22 brief recognizing how much testimony we expect to
23 have. Just that this is a challenge and this is a
24 problem in Billings, Montana. And as the Chief
25 said, it is true, there are laws on the books,

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1 federal laws, state laws that can be used, are
2 used to shut these enterprises down. The challenge
3 is they are extremely time-consuming, resource
4 intensive, and expensive. And so, like with any
5 operation, if we can add simpler mechanisms; in
6 this place, removing a business license versus
7 getting somebody on money laundering or human
8 trafficking, it's going to be a far more efficient
9 and less expensive route to accomplish the same
10 end goal, which our end goal is to get these
11 illicit operations, masquerading as legitimate
12 massage businesses, to run them out of town, to
13 put them out of business. And when you hear from
14 some of our federal agents later, you'll hear,
15 these business operations, always, I'm told, start
16 with a massage. The client will first pay whatever
17 the fee is for the massage, for the legitimate
18 massage, then it goes from there into the illicit
19 area. So, we want to create that barrier, we want
20 to expose what's going on in our community, and we
21 want to eliminate it to the absolute best of our
22 ability.

23 Now, yes, the reality is this is a
24 national and international problem, but I believe
25 it's come long past due that we take our part in

1 trying to end this, make it much more difficult.
2 If I put my hat on of other city administrators or
3 city managers in the State of Montana, they're not
4 thinking about this issue. So the State of
5 Montana, they're not thinking about it enough
6 either. They have, just in last few years,
7 assigned their first two individuals and they're,
8 as I understand it, operating in our community.
9 We need them operating in our community, but we
10 also have to take our part, I believe, as a city.
11 We're going to continue to put pressure on the
12 State of Montana and the federal government to
13 help. We, ourselves, need to prove that we're
14 taking as many actions as we can in this effort as
15 well. So I'll close with that.

16 Mayor, Council, would you like these
17 three individuals to testify now? Would you like
18 to wait until after the break for them to give
19 their professional background and information? I
20 asked each to keep it to under three minutes.

21 MAYOR COLE: Okay. Thank you, Chris.
22 It's basically quarter till now, so about 15
23 minutes beyond -- if we heard from all of them
24 with little transition time in between, it would
25 probably take us to about 8:00. My inclination is

1 to take the break now, come back, we'll hear from
2 those three individuals first. See if there's any,
3 hopefully, brief questions for staff and get it
4 open to the public, who've been waiting patiently
5 and open it up for public comments. So, anybody
6 who wants to go home, can do so or go to bed,
7 could do so. So, with that, then Council, let's
8 take -- it's 7:44, we'll try to be back by six
9 minutes, as best we can, or as close to that, that
10 would be 7:50. Unfortunately, there's only one
11 restroom.

12 (Indiscernible conversations.)

13 Yeah, so we'll do the best that we can.
14 We may have to start before everybody is back, but
15 we'll do our best. So, come back as quickly as
16 you can. Thank you very much.

17 (Council Meeting Recess)

18 MAYOR COLE: Take a seat. We'll get
19 started. That'll help us sort of see who we're
20 missing.

21 (Indiscernible conversations.)

22 MAYOR COLE: Okay, are we missing Council
23 members? Council member Shaw's online, so we've
24 got everybody, right?

25 Okay. Welcome back. We'll reconvene.

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1 Thank you everybody for taking a quick break. We
2 said we've got a couple special guests, I guess.
3 We'll turn it to Chris Kukulski to introduce who
4 we've got and then we'll open up for any quick
5 questions by staff before we, hopefully, get into
6 our public hearing component.

7 So, Chris.

8 MR. KUKULSKI: Mayor, and Council, if I
9 could introduce them one at a time. First up is
10 FBI Special Agent Brandon Walter. Brandon works
11 here in our community in the state of Montana.
12 Again, with time sensitivities, I asked him to
13 come to the podium and share his information.
14 After that, I've got two other individuals I see,
15 who are on Zoom, and I'll introduce them before
16 they speak. Ms. Keyhan and Detective Scaramucci,
17 so.

18 FBI AGENT WALTER: Thank you, Mayor Cole,
19 and Council members. My name is Brandon Walter.
20 I'm a special agent here with the FBI in Billings.
21 I was tasked with addressing human trafficking for
22 the first time in 2014. At that time, I began to
23 work hand in hand with the Division of Criminal
24 Investigation and that collaboration has continued
25 to this time. I must say, at this point, that I

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1 cannot support or oppose this ordinance. That's
2 not my role. It is the role of the Council and the
3 community to make a decision on that. I can
4 provide answers to questions. I can talk about
5 what I've experienced since 2014 looking at this
6 problem in Billings. I can't talk about any
7 ongoing cases. What I can say is when we started
8 in 2015, there were approximately 15 of these
9 businesses that were doing sex under the disguise
10 of a massage business. I estimate that our problem
11 in Billings is about 50% these types of
12 businesses, the illicit massage businesses, in
13 Billings. Any other city in this state has either
14 one to three of these places. So if you do the
15 math, we have about a 5 to 10 times the problem of
16 any other city. We have federally prosecuted
17 individuals running two of these businesses, and
18 the third business owner was indicted just very
19 recently.

20 All of the federal prosecutions are
21 focused solely upon cases in which there are
22 victims, which means that there is a victim that
23 was transported into this state for the purpose of
24 commercial sex. They were prosecuted either under
25 the Mann Act or they were prosecuted using a

1 facility of interstate commerce to entice somebody
2 to come to Montana to engage in this activity. I
3 said that 50% of the problem are these businesses
4 disguised as massage businesses that are actually
5 sex businesses. The other half of our problem are
6 our kids and adults being coerced, forced into
7 commercial sex. This is happening rampantly, also,
8 so I guess what I have been focusing on -- what
9 I've been told by my supervisors to focus on are
10 the kids. And I think that would be anybody's in
11 this room, that would be their choice, also. So my
12 resources are limited by that. I will have less
13 time to focus on the illicit businesses that are
14 being discussed today.

15 What I can tell you is there have been
16 multiple businesses in this community that are
17 advertising in foreign language magazines in big
18 cities like New York and Los Angeles. Those ads
19 say, come to Billings, Montana, you don't need
20 papers to come here. That is, you don't need
21 immigration status. You don't need a massage
22 license to practice here. And individuals have
23 told us, that are victims, they have read ads that
24 say law enforcement is not a problem because they
25 don't care in Billings. I think that's about the

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1 three minutes that I have. I will stick around if
2 the Council has questions. I would be happy to
3 answer those. And again, my focus is going to be
4 deterred from this point. I'm not going to be
5 focusing as much on these businesses. However, we
6 do have two state agents in this city that are
7 stationed here and they are going to continue to
8 focus on all the problems that I've discussed.
9 Both the 50% kids and adults being victimized and
10 the individuals being victimized inside these
11 businesses.

12 MR. YAKAWICH: (Undiscernible.)

13 MAYOR COLE: Thank you, Agent Walter.

14 Before you step away, Council member
15 Yakawich.

16 MR. YAKAWICH: Thank you, your honor and
17 Council. Agent, I just wondered, what you just
18 said, with this ordinance passed, it would -- You
19 are already busy working with children, and thank
20 you for doing that, in that area, such an
21 ordinance would be able to focus more on some
22 other area that you are already -- that you can't
23 address. So, it would give us -- do you catch what
24 I'm saying?

25 FBI AGENT WALTER: Yeah, I think. I can't

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1 come down in support or opposition. I heard what
2 Chief St. John said, and it seems like he has an
3 opinion on this. I can't express that opinion. The
4 state agents that are working with me on a daily
5 basis, they cannot express an opinion either way,
6 so I'm kind of left with that.

7 MAYOR COLE: Agent, we may have some
8 other, you know, factual questions for you, so
9 don't run away, if you would. Let's hear from our
10 other two special guests and we may come back to
11 you, but --

12 FBI AGENT WALTER: I'll be here.

13 MAYOR COLE: -- we appreciate your
14 patience.

15 FBI AGENT WALTER: Thank you, Mayor.

16 MAYOR COLE: Chris.

17 MR. KUKULSKI: Mayor and Council, so I'd
18 like to introduce Detective Scaramucci. I hope I'm
19 pronouncing that correctly. You might be able to
20 pull him out of the lineup there on Zoom. He's
21 on --

22 DETECTIVE SCARAMUCCI: (Indiscernible.)
23 Can you hear me?

24 MR. KUKULSKI: Yes.

25 DETECTIVE SCARAMUCCI: Okay.

1 MR. KUKULSKI: Let me cover a brief
2 introduction and then we'll turn it over to you,
3 and I can't thank you enough for your time,
4 Detective.

5 DETECTIVE SCARAMUCCI: No problem.

6 MR. KUKULSKI: He began his career in law
7 enforcement 2004, was promoted to detective in
8 2008 with Lemon County Sheriff's Office, which is,
9 I understand it is Waco, Texas area --

10 DETECTIVE SCARAMUCCI: Yes.

11 MR. KUKULSKI: -- investigating crimes
12 against persons. Since creating a human
13 trafficking unit in 2014, Detective Scaramucci has
14 participated in job suppression events, arresting
15 over 460 sex buyers, he's further conducted sting
16 operations, resulting in the arrest of 115
17 individuals for human trafficking and related
18 offenses, which lead to the identification of 260
19 traffic victims. Detective Scaramucci has worked
20 both state and federal investigations and is a
21 task force officer with 8SI, leading to
22 investigations and arrests throughout the United
23 States.

24 He further advises and participates in
25 the sting operations throughout Texas, the United

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1 States and abroad.

2 Detective Scaramucci is certified in
3 courts of law as a subject matter expert in human
4 trafficking. He's further advised and testified in
5 the State House, the system with the creation and
6 passage of laws leading to harsher penalties for
7 human trafficking, as well as working against laws
8 that would have added further burdens on victims.
9 He's further employed as a consultant, training
10 more than 339 agencies through all 33 states, 13
11 federal agencies, branches of the U.S. military,
12 the Mongolian Federal Police and prosecutors,
13 officers and the Peruvian Prosecutor's Office,
14 along with providing technical support for their
15 human trafficking operations and investigations.

16 He is further contracted to provide
17 technical training support to the Department of
18 Justice, funded task forces throughout the United
19 States, including Las Vegas, Houston, Tampa,
20 Riverside and statewide task forces. I wish we did
21 not need him to testify tonight, but I thank him
22 for his time and would like to turn it over to
23 Detective Scaramucci. Thank you, sir, for your
24 time this evening.

25 DETECTIVE SCARAMUCCI: Yeah. Thank you.

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1 I want to keep my bio section really short and
2 just move on. So just to give you a little
3 background on my experience in illicit massage
4 businesses, I've worked these for numerous
5 jurisdictions through out the United States. I've
6 traveled extensively, assisting with their
7 operations, and how to actually work these
8 investigations. I've also worked these
9 internationally as well. One thing I want to say
10 is that the best model for combating this is
11 what's called the enhanced collaborative model.
12 It's basically everybody working together. And one
13 of the strongest points we see, that's often
14 overlooked, is the similar enforcement side of
15 this, right? So, you can't take the law
16 enforcement task force and expect them to shut
17 down the illicit trade. It's not going to work.
18 It's proven it has to be worked together. So a
19 couple of the things that I want to bring up that
20 I came across in this ordinance that I think are
21 very important is that this targets illicit
22 business. It does not target people who are not
23 committing crime.

24 One of the points that is in here is that
25 the hours of operation, for example, I would

1 venture to say in the research that I've done
2 online for massage businesses in Billings,
3 Montana, the only ones that show to be 24 hours
4 are the same ones that have sex ads and the same
5 ones that have sex reviews where men discuss in
6 great detail the sexual acts that are occurring in
7 your city. When we look at the websites, I was
8 unable to find any reputable massage therapists'
9 business in Billings, Montana, that is on a given
10 sex site. It's just not happening. When we look at
11 the buyer reviews, where they're talking about it.
12 Not one review came back to a non-illicit business
13 in Billings, Montana.

14 One of the big things that we see, it
15 sounds kind of trivial, is the ability to see into
16 lobbies. Having the windows painted, the heavy
17 surveillance on the exterior, there are not
18 regular businesses that this is occurring at, it's
19 the same businesses that we can pull using open
20 source intelligence that's happening in Billings,
21 Montana with sex ads and such reviews.

22 I think the clothing is a no-brainer,
23 right? I think if we look at what reputable
24 massage business employees are wearing, they're
25 not wearing lingerie and/or in complete nudity.

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1 One thing I want to point out is that
2 this bill -- this ordinance is addressing numerous
3 common indicators of human trafficking and using
4 them to review the totality of the overall
5 circumstance, which are very consistent with
6 trafficking to determine whether there's suspicion
7 to warrant further investigation. None of these,
8 in and of themselves, is a violation. There's not
9 one single indicator that would be regulated that
10 would inhibit the day-to-day operations of
11 legitimate businesses. There is not a single law
12 in any state that has negative impacts on those
13 who don't violate it. I do think that passage of
14 this law will lead to the closure of IMB's and
15 will likely provide safer work environments for
16 massage businesses, because men who buy sex won't
17 have the option of engaging in any of that. I
18 think, I stand better if anybody has any
19 questions. I would definitely, if I were say, a
20 Citizen your city, support the bill 100% and I
21 would definitely open the floor for anything.

22 MAYOR COLE: Detective, thank you very
23 much. I'm sure there may very well be some
24 questions from the Council, but if you wouldn't
25 mind holding on for a little bit. We'll hear

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1 DETECTIVE SCARAMUCCI: No problem.

2 MAYOR COLE: -- from our third guest
3 first.

4 Chris.

5 MR. KUKULSKI: Mayor, and the Council,
6 our third individual here is Rochelle Keyhan.
7 Rochelle is the CEO and driving force behind
8 Collective Liberty, formerly the director of
9 disruption strategies at Polaris. So, one of the
10 studies that we referenced, you'll notice, came
11 from Polaris. A department she designed to disrupt
12 human trafficking in the United States. Keyhan has
13 long been dedicated to fighting for justice.
14 Before Polaris, she spent six years as a
15 Prosecutor of gender-based violent crimes in
16 Philadelphia, where she's Bar-certified to
17 practice law. Keyhan has also served as a
18 director of nonprofit Feminist Public Works in
19 Hollaback Philly, of which she is a founding board
20 member. As an Assistant District Attorney behind
21 Champion, the need for increased investigation and
22 prosecution of human trafficking in Philadelphia
23 where she successfully prosecuted the first two
24 trials herself. As a first generation Iranian
25 American, she also speaks conversational --

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1 probably gonna get this wrong -- Farsi.

2 Throughout her career, Keyhan has been
3 well recognized for her mission-driven work.
4 Winner of the 2018 Thomson Reuters' Stop Slavery
5 Hero Award, the IAFCI Cybercrime Investigator of
6 the Year, Mass Challenge Diamond Award winner,
7 2019 Innovate for Good Challenge winner and, I
8 guess it's Next Gen Leader of the Year finalist
9 and 2019 Women's Media Center Fellow.

10 So, with that, I thank you, Rochelle, for
11 your time this evening and would ask for your
12 comment and availability for questions. Thank you.

13 ROCHELLE KEYHAN: Thank you so much. I
14 deleted the first paragraph, you did such a
15 generous job with my bio, I appreciate it. So, a
16 little bit more context on our work. To date,
17 we've trained over 7,000 investigators across the
18 U.S. on best practices for both criminal and civil
19 code enforcement actions against human
20 trafficking. And we've supported the passage of
21 over 60 new or improved civil laws related to
22 enforcing human trafficking in IMB's, illicit
23 massage businesses, including the state law in
24 Montana, as well as the Aurora, Colorado law y'all
25 have referenced.

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1 So that's work that we've been doing
2 across the country. And in my time at Polaris, not
3 only did I draft that report that you referenced,
4 but also led the National field building
5 intelligence-driven anti-trafficking
6 investigations specifically focused on massage
7 parlors across the country. And that report was
8 sort of the culmination of national-level work
9 with local-level agencies. We work with over 300
10 local agencies in rural, urban and suburban areas
11 across 45 of our 50 states. So, it's
12 representative of the message parlor trafficking
13 issue across the nation and requires collective
14 accountability. So when zoning and code
15 enforcement and Department of Health inspectors
16 identify exploitation, they must have the
17 legislative power and team to do something about
18 it. And, if they identify it, they have to be able
19 to act on it if we want to prevent further
20 invest-- further exploitation, my apologies.

21 So, in that process, we identified over
22 9000 massage parlors across the U.S. engaging in
23 illicit activity. While there are only around 40
24 that we've identified in Montana, when you look at
25 that per capita, that's equivalent to the National

1 (indiscernible) all across the nation. So per
2 capita, it is prevalent even in Montana. And when
3 we noticed that per capita prevalence being
4 equivalent across the nation, we decided to
5 investigate the business laws in every city,
6 county and state in the U.S., over 28,000
7 jurisdictions, and what we found is that only
8 around 2,000 are even regulating this. And most of
9 those laws are not good. They either don't have
10 enforcement, they don't have penalty, they don't
11 actually regulate what exploitation is happening,
12 and so they don't allow for action. This national,
13 relaxed, largely non-existent regulatory framework
14 is why traffickers are choosing the massage
15 industry as their venue of exploitation. And when
16 cities change it to regulate massage but don't
17 define massage well, you see the traffickers start
18 calling their businesses foot spas or body work to
19 then avoid any sort of penalty. So, the law must
20 be thorough.

21 And you guys have done such an incredible
22 job of listening to constituents across every
23 issue area related to this law to make sure that
24 it's representative. Other laws regulate only
25 around sexually oriented businesses, and we've

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1 seen that also as an issue. In large part because
2 it categorizes massage as something that's
3 exploited it and it makes the women who are forced
4 into any sort of sex trade that's related to the
5 message label in any way, it codifies them as
6 consenting and deprives the investigators of even
7 having that ability to investigate for
8 exploitation, because we're labeling it as
9 sexually oriented. So, in so doing, it really does
10 empower the trafficking.

11 So, we've been working, as I mentioned,
12 on those sixty laws. And some of the places that
13 we worked have been to undo the fact that it's
14 labeled as sexually oriented and shift it into an
15 actual business regulation. And I can provide a
16 case study, but I'm going to try to stay to the
17 three minutes.

18 So, Delaware would be the most notable
19 case study of that transition. So essentially the
20 strongest, most important clauses based on all of
21 that analysis and national level fieldwork have
22 been allowing effective enforcement. When you
23 focus on the things focused on in this ordinance,
24 specifically the regulation of hours of operation,
25 the requirement for visibility into the business

1 and lobby area, and a focus on the business owners
2 and operators for the regulation, not the staff or
3 workers. Those are all the most important factors
4 used in cities across the country that do have
5 this law and are enforcing it to stop exploitation
6 in a way that's as minimally burdensome on the
7 legitimate trade as possible.

8 So essentially, the lack of regulation
9 across the Nation has allowed trafficking under
10 the disguise of massage to flourish. And it is
11 urgent to pass this law that you guys have drafted
12 collaboratively. It will protect victims and tell
13 exploiters that they have no place in Montana.
14 Right now, Billings has the opportunity to join
15 the states and counties who are leading this
16 fight. And I hope you all will seize that
17 opportunity because it is the way forward. So, you
18 can lead now or follow later. And I'm really
19 grateful for the leadership y'all have been
20 showing. And I'm open to any questions you might
21 have.

22 MAYOR COLE: Thank you very much. Chris,
23 anything else before we turn it to Council and
24 also open it up for public hearing?

25 MR. KUKULSKI: No, Mayor. The only

1 additional staff information we have, if the
2 ordinance, you know, is put on the table as
3 approved, as Gina mentioned there's some
4 amendments we would suggest for clarification that
5 we've identified over the last few weeks from
6 conversations with our community. So, no other
7 testimony at the front end. Any questions we'd be
8 glad to answer and/or whenever you want to get the
9 (undiscernible) testimony.

10 MAYOR COLE: Okay. Thank you, Chris. And
11 as you just said and as you said at a break --
12 told me your preference was to deal with those
13 amendments, if there is a motion to approve, and
14 then we would get into those weeds, I guess.

15 MR. KUKULSKI: Yes, Mayor. I guess the
16 only other thing I could maybe clarify is in
17 respect to our guests. Particularly, those on Zoom
18 or here participating from out of state. I don't
19 know if it's appropriate to get questions to them
20 first, so that they can either choose to let off
21 of the call or not. That's totally your call,
22 Mayor, if you want to allow that.

23 MAYOR COLE: Yeah, no, I think that's
24 very important. They're not in our time zone. So,
25 Council, we do want to open up for public comment,

1 the hearing. They've been sitting here very
2 patiently, but before we do so, these three
3 special guests, so that they can get off our call
4 if they'd like to, do we have some questions for
5 them? Just try to keep them fairly focused,
6 because again, we do have the public hearing.
7 Council member Purinton and Council member Neese.

8 And if you can identify if you have a
9 particular recipient for your question or
10 generally to the three special guests.

11 Council member Purinton.

12 MS. PURINTON: Thank you, Mr. Mayor. So,
13 thank you to our guests and I wanted to address
14 this, whether it goes to Detective Scaramucci or
15 to Rochelle, both of you made the comment that the
16 three identifiers would be the hours of operation.
17 Well, I think there was a difference in one of
18 these; but, Rochelle, you mentioned the business
19 owner/operator and then the front entry. So, my
20 question to you is, with this type of an ordinance
21 and as you made the comment, as well, it's
22 targeting the illicit businesses, but as you may
23 or may not be aware, we have a lot of licensed
24 massage therapists here in Billings that feel like
25 they are being the ones that are targeted, if you

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1 will. So why not have an ordinance that definitely
2 attacks these businesses based on these
3 identifiers rather than on the legitimate massage
4 therapist? So, either one of you two, please.

5 DETECTIVE SCARAMUCCI: So, I can
6 definitely provide perspective to that. I mean,
7 there's no law that targets illegal activity that
8 does not subject legal people to having to go by
9 those laws as well, correct? So, you can't murder
10 somebody in the state of Montana, and that
11 (indiscernible) for murderers and people that
12 don't commit murder. They are not subject to those
13 laws. Again, it's the totality of everything that
14 you're looking at when it's the indicators. You're
15 essentially putting into practice and statute the
16 indicators that are leading up to what appears to
17 be illicit. So as an example, if you have a
18 licensed massage therapist that works from home,
19 that person is not going to be subject to not
20 having their front door locked. Right?

21 So, in that particular instance, it
22 doesn't target them at all. It's all of the
23 mitigating factors that lead to that. One thing
24 that I would even add, because I only pulled a
25 couple of those, is the conversation that came up

1 earlier about licensed massage therapists. So,
2 what you also have to remember is that not all of
3 these illicit massage businesses have licensed
4 therapists. Therefore, those businesses are
5 operating illegally and they're operating in a
6 manner that your regulating board can't even touch
7 them, because they're not licensed to withdraw
8 their license from. So, with those particular
9 people, the only teeth you have is the ability to
10 pull a business license. So, it's not that it's
11 targeting, you know, good, hard-working people,
12 it's just laying the groundwork for the ones that
13 are conducting illicit business.

14 ROCHELLE KEYHAN: I would articulate that
15 even when we engage with FSMTB and AMTA
16 state-level massage therapy boards, the lack of
17 regulation, that is allowing massage parlors to
18 flourish. There's like 9,000 massage parlors in
19 this country, and I think there's some like 15,000
20 licensed businesses within this country. It's
21 starting to become an equivalent number that it
22 subjects therapists to sexual harassment and
23 assault, because men who purchase sex from these
24 venues expect it in any massage venue and that's
25 unacceptable. It's something that-- It's a

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1 legitimate therapeutic service that's being
2 provided and needs to be preserved and protected,
3 and right now traffickers are taking advantage of
4 that. So, it might mean an additional couple
5 pieces of paperwork, but it really will make the
6 difference. And I do think that the initial
7 version of this law was very restrictive and did
8 have burden on the massage therapists. But I've
9 seen all three versions and there have been
10 dramatic amendments to make sure that it stays as
11 minimally burdensome as possible, and I hope that
12 that effort and energy is noticed.

13 MS. PURINTON: Thank you.

14 MAYOR COLE: Thank you very much.

15 Council member Neese.

16 MR. NEESE: Thank you, Mayor. And Mayor,
17 this is just talking to the procedure and you're
18 talking about these amendments that may come
19 forward before people speak. I think it would be a
20 little bit difficult to have people speak, when
21 they haven't heard what the amendments may be, and
22 I would recommend that we at least hear what the
23 amendments are. Maybe not have to take action on
24 them, but I know I read yours and I'm in agreement
25 with yours, but I don't know what Gina has to

1 present.

2 MAYOR COLE: Okay. Thank you. Point well
3 taken. Let's see if there's other questions for
4 our special guests, and then I think we can kind
5 of give a very brief rundown of that to educate
6 anybody who cares going into the public comment.

7 MR. NEESE: I do have a question for the
8 guests, too.

9 MAYOR COLE: Sure. Go ahead, Council
10 member Neese.

11 MR. NEESE: This is actually
12 (undiscernible) not for the guests but for Wyeth.
13 Wyeth, you'll be charged with the enforcement, I
14 suppose, of this ordinance, in some respects. So,
15 I got a call the other day from a constituent
16 saying that they had walked into one of these
17 facilities and were shocked at what they saw, and
18 they quickly backed out. And so, I'm assuming
19 that they would call you and report that. Is that
20 correct? Call not you but code enforcement to
21 report that.

22 So, let's say they report that to code
23 enforcement, what's your procedure? What's your
24 process? How are you going to move forward on
25 that? Or is your screen frozen and your not

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1 (undiscernible)?

2 UNKNOWN: Is this a question for me? I'm
3 sorry.

4 MAYOR COLE: No, I'm sorry.

5 ROCHELLE KEYHAN: No.

6 MAYOR COLE: This is for our planning
7 director, Wyeth Friday, who is looking very frozen
8 at the moment.

9 MR. NEESE: Is Nicole available?

10 MAYOR COLE: Hey, Nicole Cromwell, our
11 zoning coordinator is -- or lead code enforcement
12 person.

13 Nicole.

14 NICOLE CROMWELL: Thank you, Mayor Cole,
15 and Council. Hopefully, Wyeth will become
16 unfrozen. The enforcement aspect of this is
17 something that we've been talking about with City
18 Administrator Kukulski, Andy Zoeller, and then our
19 staff, as well, has received a little bit of
20 training on these types of businesses already.
21 And we're anxious, if you do pass it this evening,
22 we're going to start looking at some training,
23 creating some checklists and procedures, and
24 working with the Police Department to do that
25 collaborative enforcement, both the civil and

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1 criminal side. Of course, as you know, we are
2 resource limited, so we're going to have to juggle
3 as fast as we can, if this does go into effect and
4 we start enforcement and taking those complaints
5 from constituents at the end of June. So, we don't
6 have anything in place at this time. It's fairly
7 straightforward, as written in the ordinance, and
8 we are prepared to do a steep training curve if it
9 is passed. Thank you.

10 MAYOR COLE: Okay. Thank you.

11 Council member Yakawich.

12 MR. YAKAWICH: Thank you, your Honor,
13 Council. Rochelle, thank you, and Joseph, for
14 your hard work. I already asked this question to
15 our City Attorney, and she may respond later, not
16 right now; but I'm curious with your two-- This
17 idea of a sunset. I don't feel comfortable with
18 it, but if we put a sunset on this ordinance or
19 not, what is your opinion on that?

20 ROCHELLE KEYHAN: When you say "a
21 sunset," is it like a time limit or a moratorium?
22 I'm sorry. I just want to make sure I'm
23 understanding how you guys are --

24 MR. YAKAWICH: It could be maybe after
25 three years the ordinance stops, and it's

1 revisited again.

2 ROCHELLE KEYHAN: I think there's never
3 harm in revisiting, based on measurements.
4 However, having it automatically sunset is a bad
5 idea. These parlors, someone made a comment in
6 one of the -- I've been following the news
7 articles about this, and someone made a comment
8 how it might push the Billings trafficking into
9 another city. That might be true. They
10 communicate, they're following the laws, and
11 they're paying attention and an effective
12 regulation will stop the trafficking, right? But
13 if not every city has the effective regulation, it
14 might not stop it everywhere. And if you are a
15 city that's regulating, and then you become a city
16 that's not, you'll get rid of the problem for a
17 short period of time and then it'll come back. So,
18 I don't recommend it automatically sunseting, but
19 I don't see necessarily harm in paying attention
20 to if any of the clauses need extra teeth or less
21 teeth, based on initial implementation and
22 potentially revising. But I think an automatic
23 sunset is not a good idea.

24 MAYOR COLE: Thank you very much. Any
25 other --

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1 DETECTIVE SCARAMUCCI: I--

2 MAYOR COLE: -- questions for our --

3 DETECTIVE SCARAMUCCI: Yeah, I --

4 MAYOR COLE: Council member -- or sorry,
5 Detective Scaramucci.

6 DETECTIVE SCARAMUCCI: No, I agree 100%.
7 I think to have one automatic is a bad idea. The
8 reality is if you get to a point in the city where
9 you believe you have stopped the problem, you can
10 always go back and revisit this and remove the
11 law, right, or remove the ordinance. I don't know
12 that I would personally say that that's a good
13 idea, but that option is always there. So, you
14 know, as long as you have this on the books, the
15 reality is it saves lives. And if this is going
16 on three years from now, and I hope to God the
17 city of Billings has shut down all of the illicit
18 massage trade, but the reality is kind of like
19 Rochelle said. The neighboring cities, they're
20 going to come from there as well. So having that
21 available will really keep your license and your
22 very appropriate massage establishments going. And
23 it will really put a damper on the others. So, I
24 don't know that I would definitely say taking it
25 away within three years is a good thing, but you

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1 always have the ability to go back and take it
2 away if you choose to.

3 MAYOR COLE: Okay. Thank you. Any other
4 questions for our special guests? Council members
5 Ronning and Choriki, and then we'll try to move to
6 public comment as quickly as possible.

7 MS. RONNING: Thank you.

8 MAYOR COLE: Council member Ronning.

9 MS. RONNING: Thank you. So, I have a
10 question for Detective Scaramucci, and then for
11 Special Agent Walter. One of the items that Chief
12 St. John discussed was that while this is a code
13 enforcement ordinance or that it's directed at
14 code enforcement, that there will be participation
15 there with the Police Department. In your
16 experience, do you see, or have you had experience
17 in working these types of cases in conjunction
18 with code enforcement, some that were maybe code
19 enforcement led, and then you ended up on the
20 criminal portion of that. Can you address that a
21 bit? Thank you.

22 DETECTIVE SCARAMUCCI: Absolutely. So, I
23 will say, first off, I do task force with Homeland
24 Security investigations. So, I have both federal-
25 and state-level investigations in regards to

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1 these. The Special Agent mentioned earlier that
2 there are three, I believe, pending prosecutions
3 for trafficking within these venues. That is not
4 normal in any other jurisdiction in the U.S., I
5 can tell you that right now, for there to be
6 federal investigations and prosecutions.

7 When we do state level and we do
8 multi-state operations, if code enforcement has
9 the ability to, in like a circumstance similar to
10 you guys if you do enact this ordinance, I
11 absolutely 100% have them come along on everything
12 because I can go in and execute search warrants, I
13 cannot pull business licenses. I can go in and do
14 victim interviews, I cannot make them shut down
15 that day.

16 So, there are many things earlier where I
17 discussed more of an enhanced collaborative model,
18 where each little part of this wheel is what's
19 really making it go round. And I think coupling
20 civil and criminal investigations, in my
21 experience, I've shut down 100% of the illicit
22 massage trade in my jurisdiction. Not one has ever
23 reopened in another jurisdiction, and it's because
24 we've gone at it with teamwork, both criminally
25 and civilly. So, I think it's hugely important to

1 have them involved.

2 ROCHELLE KEYHAN: And I want to say when
3 Joe says, it's not normal, he means they're doing
4 a really good job compared to most jurisdictions
5 across the country, because that level of
6 investigation and prosecution is not happening
7 consistently.

8 DETECTIVE SCARAMUCCI: Yeah. No, that is
9 definitely -- huge props to the federal
10 authorities that are taking this on, because that
11 is not seen anywhere. Even with some of the most
12 aggressive U.S. attorneys, that's very uncommon in
13 a very good way.

14 ROCHELLE KEYHAN: Yeah.

15 MS. RONNING: Thank you. And then I have
16 a follow-up question for --

17 MAYOR COLE: Go ahead.

18 MS. RONNING: -- Special Agent Walker.
19 So Special Agent, some of the conversation that
20 we've seen is that Billings has not defined the
21 scope of human trafficking in these illicit
22 massage businesses, that we don't have data to
23 show that human trafficking is happening in these
24 illicit massage businesses. Can you address that?
25 Can you address, first of all, you've already

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1 stated that illicit massage is, sorry, illicit --
2 human trafficking is happening within these
3 businesses. Can you define why we don't
4 necessarily have real data on human trafficking
5 within the illicit massage businesses and how do
6 we get that data?

7 FBI AGENT WALTER: I guess we'll have to
8 go back to the three owners that have been
9 prosecuted, or the three businesses whose owners
10 have been prosecuted. The federal government is
11 not at all interested in prosecuting prostitution.
12 We're not involved in that. That's a misdemeanor
13 crime. Every single, in those two cases that
14 provide examples, one of them is still pending and
15 the other one has been completely adjudicated.
16 That trafficker is in federal prison right now.
17 The federal government does not prosecute owners,
18 where there are not victims. It all depends on
19 how you define human trafficking. Did these
20 victims know, when they responded to an ad, when
21 they were recruited to come here, did they know
22 that they were coming here for sex? I don't know
23 the answer to that. What I know is that, when
24 we've asked owners and when we've asked victims,
25 did you know you were coming here for sex? The

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1 answer across the board has been, it was never
2 discussed. So, there are owners that believe that
3 everybody knows that these places are for sex; and
4 therefore, if you are coming here, you know that.

5 I don't know the answer to how many
6 didn't. I know that some of them didn't, and I
7 know that some of them did know they were coming
8 here for sex. But we have never and will not be
9 prosecuting anybody for prostitution. We are only
10 prosecuting people for bringing people across
11 state lines to perform illegal sexual activity.
12 That has been what we have focused on.

13 MAYOR COLE: Okay.

14 MS. RONNING: Thank you.

15 MAYOR COLE: Okay. Thank you very much. I
16 think we need to move on. So, the public has been
17 waiting awfully long, and I know we're going to
18 have at least an hour of public testimony. It's
19 already 8:30, so it's going to take us to 9:30. So
20 I think we really need to move on.

21 There was a request by Council member
22 Neese for a quick review of what possible
23 amendments might look like. I have submitted some
24 to Council members. They'll have a hard copy. And
25 if any member of the public is interested in this,

1 I'll bust through them. There's hard copies in
2 front of Chris Kukulski, our City Administrator,
3 over there.

4 What I have suggested is changing the
5 section that says that it is the exemption for
6 solo practitioner. That now says that applies
7 where there is a licensed massage therapist, but
8 to say only one licensed therapist. Otherwise,
9 there could be a facility that might have a dozen
10 therapists and as long as one of those was solo
11 practitioner, the whole business would be exempt.
12 So that's, again, only one license massage
13 therapist.

14 I think most of these don't change the
15 intent. They're intended just to clarify the
16 language. There is, in the section dealing with
17 revocation of license, it says now that if you
18 have false qualifications, that's a grounds for
19 revocation. We've changed that just to just
20 information. A broader definition or a broader
21 term.

22 Now, in the section dealing with the
23 appeal, that the time for filing an appeal is
24 based on the revocation, but there may be other
25 types of a decision besides just the revocation.

1 So, I've changed that to be more general to just
2 refer to the license administrator's decision or
3 that would be the proposal.

4 And then lastly, dealing with the
5 sections on affirmative defenses, that was unclear
6 to me. So, I've suggested language that would make
7 it clear that affirmative defense is not
8 available, if it is someone who materially
9 participated in creating duress or coercion of
10 another person that resulted in a violation of the
11 article. Now it was unclear, could you have duress
12 -- I mean, you always would know of your own
13 duress. And this is just clarifying that that
14 applies to where you know about and participate in
15 the duress of somebody else.

16 Gina, can you give a quick summary of
17 what, in general terms, you were talking about for
18 possible amendments.

19 GINA DAHL: Sure. (Undiscernible) I have
20 a couple of slides that might be helpful. So,
21 I'll try to share them for you here.

22 UNKNOWN: Did our special guests go?

23 MAYOR COLE: I think so. In just a
24 second. Yeah, thank you for reminding us.

25 Gina are you ready?

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1 GINA DAHL: Yes.

2 MAYOR COLE: And our special guests, I
3 don't want to cut off Council, was there anybody
4 who had a really important question for our
5 special guests before we give them our great
6 thanks and -- but give them permission to leave?
7 Anything critical there?

8 Council member Purinton, quick.

9 MS. PURINTON: One of the questions I
10 had, and I think Joe, is when you were going
11 through your topics, one of them had to do with
12 the Johns. Why are Johns not prosecuted for
13 solicitation?

14 DETECTIVE SCARAMUCCI: So, I've actually
15 been in my state senate all day discussing this.
16 We do prosecute them. Here's part of the problem
17 with that, back to Robert Kraft case. The only
18 way to really get a John, is to catch them on
19 video. No reasonable department is going to insert
20 that video to do that. One thing I will say that
21 is a very productive tool is for law enforcement
22 to get the traffic stops of those buyers leaving
23 and attempt to compel them to testify that they
24 are, you know, in fact, buying sex. That could
25 help build out cases and that's a very victim-

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1 centered way of doing that. There are tons of
2 buyer review boards that we follow. Where you're
3 at is absolutely no different. I can get on
4 Billings, Montana right now -- and even going back
5 to the data question that I believe one of the
6 Councilwomen asked -- working with Rochelle's
7 organization, they have tons and tons of data
8 supporting all of that. So, buyer operations are
9 really something that the departments have to set
10 out to be very specific about. In my
11 jurisdiction, we absolutely targeted the heck out
12 of them.

13 There's some different momentum that
14 Rochelle could touch on where license plates are
15 being taken of buyers in these businesses and
16 letters are sent to the house that your vehicle
17 was found to be in a place suspected of human
18 trafficking. You know, different buyer deterrence
19 techniques as well. So your question, generally,
20 is part of a very large conversation going on
21 nationally, but I absolutely think that buyers
22 should be targeted.

23 MS. PURINTON: Thank you.

24 MAYOR COLE: Thank you. Gina, you've got
25 your slides up now?

1 Council member Choriki, quickly.

2 MR. CHORIKI: Yeah, Mr. Mayor, before the
3 experts leave, I do have two questions.

4 MAYOR COLE: Quickly, sure.

5 MR. CHORIKI: First one, I hope is pretty
6 straightforward and a simple one. I'm assuming,
7 and I just want to make sure that I'm right on
8 this assumption, that when code enforcement is
9 called in because of the complaint, that the
10 information gathered by code enforcement can be
11 used for further criminal investigation.

12 ROCHELLE KEYHAN: Yes, that's true.
13 That's usually true for any code enforcement
14 operation of any kind, any official enforcement of
15 any kind, that it's available to be subpoenaed.

16 MR. CHORIKI: Okay. And so this is a
17 broader question. Are we seeing use of the
18 business license, in general, being used to
19 investigate businesses in situations like this
20 where it's no longer something that is a direct
21 consequence of the business but a larger social
22 issue?

23 ROCHELLE KEYHAN: Usually, these parlors
24 are not going to file for the business license.
25 And that's going to be really easy for you to

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1 enforce, because they're going to be operating
2 without a business license. So that's the majority
3 of the partners that I work with. How we're seeing
4 it used.

5 Joe, is it different from your
6 experience? Or are you --

7 DETECTIVE SCARAMUCCI: Yeah. So, I can
8 tell you that we worked a very large case in
9 several cities that do have the business licenses.
10 It's phenomenal because you'll have the people
11 that are on the business license; and then from an
12 investigative standpoint, criminally, you then
13 want to follow your money, right? You want to see
14 where all of that dirty money's going, because
15 eventually it goes to the traffickers. There's no
16 question about it and when you're able to show the
17 money movement going to the person that's on that
18 business license, who's IP addresses posting sex
19 ads and all of these other wonderful things, it
20 builds an incredible case. And really at the core
21 is that business license, because they're using
22 their government-issued ID, right? I believe the
23 Special Agent said earlier that, and you see this
24 in most jurisdictions, they say, "Hey, the police
25 aren't really paying attention. They don't really

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1 care." These owners don't have to hide anything
2 currently. So, they're very, very routinely
3 putting their name on paper government-issued
4 items.

5 MR. CHORIKI: (Undiscernible.)

6 ROCHELLE KEYHAN: Is that every case
7 you've seen, they have a license, or that's only
8 when they have bothered to file for a license?

9 DETECTIVE SCARAMUCCI: Those are the ones
10 where they have bothered to file for the license.
11 On the ones that weren't, we've just been able to
12 walk in with code enforcement, interview all the
13 potential victims, and code enforcement was able
14 to pull their building permits because they didn't
15 have licenses, but they were able to legally shut
16 them down.

17 MR. CHORIKI: So that actually wasn't the
18 question I was asking. What I'm concerned about,
19 and wondering is if -- In my opinion, this is an
20 expansion of the use of the business license
21 beyond just regulating what you are doing in the
22 business itself. So, like if you are a restaurant,
23 you know, we're looking to see whether or not
24 they're following healthy food procedures. In this
25 case, what we're doing is we're using the business

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1 license in order to actually deal with other
2 larger social issues. So, my question is, is this
3 the beginning of a larger trend, where it uses the
4 business license for enforcement of larger
5 issues?

6 DETECTIVE SCARAMUCCI: No. I mean if
7 we're saying a larger social issue is human
8 trafficking. That's a huge social issue. But it's
9 a issue of public health. I mean, there are many
10 other things we sit here and talk about. Are we
11 using that as --

12 MR. CHORIKI: I don't disagree with that
13 at all. I do not disagree with that at all. But
14 what I'm saying is that we're regulating an
15 industry that is not doing bad things in order to
16 get to the people that are doing the bad things.
17 And I'm wondering if you're seeing that as a
18 trend?

19 DETECTIVE SCARAMUCCI: Every regulation
20 from every industry regulates people not doing bad
21 things to target people doing bad things. I cannot
22 think of a single entity that regulates any form
23 of trade that doesn't also affect people doing
24 good things. It ensures that when people do bad
25 things, they can be held liable.

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1 MR. CHORIKI: Okay --

2 ROCHELLE KEYHAN: In a recent Philly
3 article --

4 MAYOR COLE: (Undiscernible).

5 ROCHELLE KEYHAN: -- that I read, it said
6 there's --

7 MAYOR COLE: Rochelle. Rochelle, I think
8 we've got --

9 ROCHELLE KEYHAN: -- close to 15,000
10 parlors --

11 MAYOR COLE: Rochelle, would you --

12 ROCHELLE KEYHAN: -- but there's 9,000
13 (undiscernible) ones --

14 MAYOR COLE: Rochelle, can you hear me?

15 ROCHELLE KEYHAN: -- and 15,000 legal --

16 MAYOR COLE: Rochelle, can you hear me? I
17 think -- I don't think you were able to hear.

18 Sorry, I think we got an answer.

19 Council member Choriki, I don't think
20 it's going to be productive for further inquiry.
21 Gina, go ahead, give us your amendments quickly.

22 GINA DAHL: So, the first edit that I am
23 suggesting is just the definition section. There
24 are a couple definitions included in the ordinance
25 that originally referenced (undiscernible) before

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1 it was changed by re-code. Those are just some
2 citing references and it's to the definition
3 sections right here. So, Section 7-1902 sub-(i)
4 and sub-(r).

5 The next edit is with regard to the logs
6 -- the books and records and logs. I just added a
7 sentence at the end to make it very clear that the
8 log and other books and records may not include
9 any protected health information of clients.

10 The next one is to Section 7-1911, this
11 is with regard to the locked doors. Again, just a
12 clarifying sentence to indicate that the
13 inspections are not intended to interrupt a
14 treatment session that is in progress, except that
15 a treatment session lasting two hours or more may
16 be interrupted, and that just mirrors the state
17 code language.

18 And finally, another section which
19 references the records and books. I added the
20 same sentence to just make it very clear that the
21 books, records, and logs of all massage therapy
22 may not include any protected health information
23 of clients. And that's all the --

24 MAYOR COLE: Okay. Thank you, Gina. I
25 think it was very helpful. Now, we will open it

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1 up for public comment. Thank you for your
2 patience, members of the public, I think you'll
3 agree though, an awful lot of information is come
4 across in the last hour and a half. This is your
5 opportunity for public comment. We're, again,
6 going to open it up for anybody who is in the room
7 first, and then we'll look to anybody who is on
8 the screen, on Zoom, at that time. And I'll give
9 you some warning if you're a Zoom caller, to raise
10 your hand, but it's going to be a while before
11 just people who are in the room who want to
12 testify. We'll ask you to keep your comments,
13 preferably to less than three minutes; but because
14 we've advertised that, we'll let you go for three
15 minutes at least for a while. It's quarter to 9,
16 so I do expect at least an hour of public
17 testimony. I will encourage you, once you've heard
18 a point made, to just kind of remind us that you
19 agree with that, but not go into too much depth.
20 Try to offer new testimony as much as possible.
21 With that, you can -- We won't separate the
22 proponents from opponents. Just come up to the
23 podium and we'll need your name and your address.
24 And then, again, try to keep your comments to less
25 than three minutes. Our Council member Joy is

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1 going to play timer here, and we appreciate that
2 for her doing that.

3 So with that, anybody -- and if you do
4 notice, there are people out there and you can
5 leave and give them a chance to come inside,
6 please think about doing that. I won't insist on
7 it, but if you can.

8 Please. Go ahead. Who's first?

9 UNKNOWN: We have one person who is
10 needing to leave, but we would really like them to
11 speak if we can get him up here.

12 MAYOR COLE: That would be great. Please
13 tell that person to come forward.

14 UNKNOWN: I'm going to grab them real
15 quick, so if someone else wants to go
16 (undiscernible) while she's grabbing him.

17 MAYOR COLE: Okay. If there's somebody
18 else with a comment, go ahead and take the podium.
19 Again, your name and address, please.

20 KATHY KERCHECK: Kathy Kercheck, 443
21 Broadwater. I want to point out that the City just
22 presented 5-year-old data to justify the relevance
23 of this ordinance. I find this questionable.

24 Ms. Ronning, I know you asked Mr. Walters
25 to answer that question. I did not hear any

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1 answers in his answer.

2 Mr. Kukulski, you said it starts with a
3 legitimate massage every time, then it goes into
4 an extra. You just tied my profession to illicit
5 sex. I find that appalling and, quite frankly,
6 insulting. I'm appalled by this proposed
7 anti-human trafficking ordinance. I find human
8 trafficking to be a horrific crime, but I'm
9 shocked that elected Council members and City
10 administrators are willing to use such an
11 unconstitutional ordinance to fight it. Are you
12 all willing to trample on my rights as a private
13 business owner and the privacy rights of my
14 clients to do so? It makes me wonder, have you
15 been bullied into supporting this ordinance by
16 those who it has become a personal and a moral
17 agenda for? It feels very much like rules for
18 thee, but not for me.

19 Miss Ronning, you are a self-employed
20 photographer. This career also involves one-on-one
21 meetings with clients. Who regulates you? Who
22 regulates your profession? What I'm about to state
23 has been confirmed by more than one attorney, Mr.
24 Felton, and medical professionals, a city
25 ordinance cannot supersede federal law. Privacy

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1 laws still apply, and you do not have the
2 authority to access my client's private
3 information. I'm providing a service that is a
4 medical therapy. You cannot access a treatment
5 area without an invitation or a warrant. Any area
6 beyond the reception area is a treatment area that
7 falls under privacy laws. Mr. Felton tried to
8 enforce mass mandates and COVID protocols, but his
9 inspectors were not above privacy laws, and were
10 not allowed access. I have every right to lock my
11 door to ensure my safety and that of my client. My
12 business is not a high traffic or a high
13 population business. My doors cannot be required
14 to be unlocked during business hours.

15 For the record, should this ordinance
16 pass, I will have to obtain this license to
17 legally keep my business open. I will be forced
18 into this agreement with the City under duress. I
19 do not agree with the terms of the licensing.

20 It has also been brought to my attention
21 that Ms. Ronning may have a personal interest
22 and/or financial gain if this ordinance should
23 pass. I believe Ms. Ronning should recuse herself
24 in this matter, as it is a clear conflict of
25 interest. Thank you.

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1 MAYOR COLE: Thank you very much. Next.
2 The person who needs to go, is that person
3 available?

4 UNKNOWN: No.

5 UNKNOWN: No.

6 (Further undiscernible responses.)

7 MAYOR COLE: Okay. Thank you, then.

8 UNKNOWN: Mayor, will you remind people
9 to step back just a little bit so that their face
10 (undiscernible) --

11 MAYOR COLE: Okay, I see it.

12 UNKNOWN: -- can watch up there.

13 MAYOR COLE: Okay. Great. Thank you.

14 Okay. Yeah, I was just reminded in order
15 to get your face on the little mic -- or the
16 camera, you're going to have to just step back a
17 step from the podium. Next. Go ahead.

18 JULIE SOLBERG: I won't need to stand
19 back. I'd like to thank you, Mr. Mayor, and
20 Council members and officers and everybody that's
21 put so much effort into this and into
22 understanding. I mean, what a difficult position
23 with sex trafficking. I approve everything that
24 you're doing.

25 MAYOR COLE: And again, we need your name

1 and address, please.

2 JULIE SOLBERG: I apologize. Julie
3 Solberg, 1820 Garrett Rd. So, thank you for all
4 your hard work and efforts that you did, and I
5 agree with what you're doing. Thank you.

6 MAYOR COLE: Thank you very much. Next.

7 TERESA THORMAHLEN: Hi, my name is Teresa
8 Thormahlen, 2725 Cornell Circle, Billings,
9 Montana. I am a member of OUR and that's sex
10 trafficking portion and I give them money to
11 disband this horrible act that is going on. But I
12 also feel that I am being attacked and put into a
13 position of making me a prostitute at my business,
14 and I've been doing this for 24 years.

15 In 1979, Tokyo Sauna opened, and they
16 just shut down in 2017 or '19, one of them.
17 Prostitution is against the law. There were sting
18 operations to put them down and they never shut
19 them down. Shame on our city. Dedication to our
20 police officers who fight this, and they are going
21 to take time to come to us, legitimate places, to
22 shut us down and make sure. As they all said,
23 it's all on the website. Target them, put a task
24 force together. We have tried to work with you.
25 We've tried to give you examples of things, and

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1 you just keep shutting us down. I am appalled
2 that you don't take us as credit, like we don't
3 know what we're doing.

4 Human trafficking is against the law in
5 Billings. Prostitution is against the law.
6 Teamwork, where's your teamwork with us? Have you
7 met with all of us? No, you haven't, and you do
8 have an agenda. And I'm sorry you haven't worked
9 with us.

10 MAYOR COLE: And ma'am, I just ask you
11 try not to make your comments personal --

12 TERESA THORMAHLEN: Sorry.

13 MAYOR COLE: -- as you wouldn't want us
14 to make those personal to you. But go ahead -- go
15 ahead.

16 TERESA THORMAHLEN: It is personal to me.

17 MAYOR COLE: Absolutely, we understand.

18 TERESA THORMAHLEN: It is very personal
19 to us.

20 MAYOR COLE: We understand completely.

21 TERESA THORMAHLEN: It's very personal to
22 each of us. Each of us who have tried to get out
23 of this prostitution name. We work with the
24 insurance company. They won't want to pay us
25 because they think we're prostitutes. We work hard

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1 on our clients to make them feel better and you
2 put us right back into that. I've had two clients
3 that I've worked on for years come into my office
4 and say, "Is there any screaming going on?" And
5 they've been coming to me for years because they
6 saw the great article in the Billings Gazette.
7 Thank you.

8 MAYOR COLE: Next. Is there any further
9 testimony?

10 PAULA LARSON: So, Paula Larson, 1212
11 Grand Ave in Billings here, and I'm not a massage
12 therapist, but I'm an esthetician, and I guess my
13 concern is that it's going to bleed over into
14 other areas like that because I do full body
15 waxing. My clients would not want to be, you know,
16 busted in on, I guess, in the middle of a service
17 like that, and I support -- well, I've always
18 worked in the salon. The same thing, 20 plus
19 years. And I feel like there's a better way to do
20 that than this. I just don't -- Like what they were
21 saying up there. There's no reason to - I'm
22 nervous, I should have wrote this down. But
23 basically there's a better way to handle it than
24 going through the licensing, I felt like. You
25 shouldn't have to do that. It is very in violation

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1 of people's rights, the constitution. All of it.
2 So, that's my concerns.

3 MAYOR COLE: Thank you very much. Next.

4 TERRA HELRAND: Terra Helrand. My
5 business address is 2619 St. John's and I do live
6 in Laurel.

7 MAYOR COLE: And I would just ask you to
8 keep your voice up so we can hear you.

9 TERRA HELRAND: Okay.

10 MAYOR COLE: Thank you.

11 TERRA HELRAND: I'm a licensed massage
12 therapist in Billings. I work in an office with
13 four other total therapists. We are all
14 independent contractors, sole proprietors, and "by
15 appointment only" therapists with almost 80-plus
16 years of experience. With their office, the
17 ordinance states that we must keep our door
18 unlocked. We do not have a receptionist, so the
19 door will be completely unattended during
20 treatment sessions. We have no idea who is coming
21 in and out while we are working. I have discussed
22 the unlocked door with my liability insurance
23 company, State Farm. If there was an incident of
24 crime, theft, or harm and the door was unlocked
25 and unattended; whereas, if the door had been

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1 locked, that may have prevented delayed or
2 deferred the incident, there is a great
3 possibility that I may not be covered. This would
4 open myself up and my family up to severe loss and
5 possible lawsuits that we could possibly never
6 recover from. I could apply for a variance, but it
7 is not clear who gets them or for how long you can
8 have it. Will they still be able to get this
9 variance when new city officials, in that decision
10 seat, would make that call? Who and how many
11 people can apply for these variances? How do we
12 know there wouldn't be a fraudulent situation of a
13 sex parlor getting a variance because somebody was
14 paid off? This ordinance, in its own way, is
15 unconstitutional, and it's been proven that way
16 and opens up the City for possible lawsuits. Do
17 you really think the taxpayers need to pay for
18 more infamous City of Billings lawsuits that the
19 City will most likely lose at the duress of these
20 small businesses?

21 The ordinance is poorly written, and
22 criminals are smart. They don't follow the law in
23 the first place. Why would you think creating more
24 laws would help? Proper guidelines and procedures
25 are not clearly written in place to navigate all

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1 the massage business types. I cannot support this
2 ordinance and you shouldn't either. After 3 1/2
3 years, if this ordinance is of dire need, as has
4 been expressed, then there was plenty of time to
5 pound the pavement into our city and look at all
6 the types of massage businesses and make a clear
7 plan on how law-abiding massage therapists can
8 navigate this, based on their particular business
9 scenario. And at that point, I think you probably
10 would have had a lot of us on your side to help
11 navigate on how we should all be a part of this.
12 But what was described before was because we were
13 not involved, and we had asked to be involved. The
14 communication was not there. And this is probably
15 why you have the feedback that you are getting
16 from us. For the record, should this ordinance
17 pass, I will obtain this license to legally keep
18 my business open. I will be forced into this
19 agreement with the City under duress. I do not
20 agree with the terms of this licensing, and I ask
21 you, vote no. Don't pass an ordinance that is
22 unclear on how law-abiding massage therapists can
23 actually practice this and follow this. Thank you.

24 MAYOR COLE: Thank you. Next. Next.

25 JENNIFER ROTH: My name is Jennifer Roth.

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1 I'm at 611 Burlington here in Billings. I have
2 been told by City officials that this ordinance
3 does not apply to me, and the City is not coming
4 after me or legitimate massage therapists. Please
5 tell me where, in this 16-page ordinance, that is
6 explicitly stated, because the wording and
7 verbiage is clear as mud, even after three years
8 of rewriting it. When you write an ordinance, it
9 pertains to everyone in the ordinance, not just a
10 select few. There are so many things wrong with
11 this ordinance. I know it, you know it, everybody
12 knows it. Yet, here we are, with the City still
13 trying to push an ordinance that does nothing to
14 stop the illicit sex parlors. All in the name of
15 fighting human trafficking. We have laws and
16 ordinances already available that are not being
17 used. Excessive duty laws, prostitution laws, a
18 Billings ordinance of dormitory dwelling and
19 commercial buildings and the infamous House Bill
20 749, that allows any law enforcement officer to
21 enter any massage business and check for a valid
22 state massage therapy license. And the KULR 8
23 article on April 21st, 2019, referring to HB749,
24 Councilman [sic] Ronning said, quote "this bill's
25 passage was a game changer for Montana," end

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1 quote, and "this legislation would help give law
2 enforcement the tools they need to crack down on
3 illicit massage businesses." If these were the
4 tools needed, then why is the City not already
5 using these laws that can and will work to stop
6 these illicit sex parlors?

7 Establishment licensing has been enacted
8 in cities all over the United States and every one
9 of these cities still struggles with the criminal
10 endeavors of these illicit sex parlors after
11 enacting them. Experts are saying that a massage
12 establishment licensing does not stop these
13 criminals. It only negatively impacts licensed
14 massage therapists. When are we going to listen
15 to the experts, and stop going off on the agendas
16 of a few personal people? The City has touted
17 that they crafted this ordinance off the Aurora,
18 Colorado ordinance because their city licensing
19 administrators stated that they got rid of their
20 illicit sex parlors 100% in three years it's been
21 active.

22 Truth is, they really haven't. Local and
23 rural massage therapists have stated to me that
24 these illicit sex businesses are still everywhere,
25 most just move two miles down the road to Denver,

1 out of the Aurora city limits. So, is moving
2 illicit sex parlors out of city Billings limits
3 really a win-win for human trafficking? If this
4 ordinance is enacted, it will put licensed massage
5 therapists out of business. We already had four
6 massage therapists close down their practices.
7 COVID hit them hard enough, when this final
8 ordinance draft came out it was the final straw,
9 and they would not allow their clients'
10 information and their own privacy to be
11 compromised. We have more that are looking for
12 work for the same reason, if the ordinance is
13 passed.

14 Councilwoman Kendra Shaw, you, a
15 colleague, and I had a conversation about this
16 ordinance in January. I told you they would put
17 some license massage therapists and body workers
18 out of business. You disagreed, told us to reread
19 the ordinance because we were misinformed. You
20 also have stated in an e-mail to this fellow
21 colleague that "I would never support an ordinance
22 that would put a bunch of small businesses out of
23 business. That would be terrible." A vote yes to
24 move this ordinance is putting small business out
25 of business.

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1 MAYOR COLE: Thank you very much. Next.

2 ALEX JOPELA: My name is Alex Jopela,
3 2116 Broadwater Ave. I've been a licensed massage
4 therapist here in Billings for almost six years;
5 and if the edits that were brought up to us
6 tonight do take place, that would make me an
7 exemption by the solo practitioner exception. So,
8 I could take some time to tell you everything that
9 I don't support in this ordinance, but instead I
10 think I'm just going to ask you to listen to my
11 colleagues, who this does really affect. I'm just
12 going to ask that when you vote on this tonight,
13 that you vote according to the voice of the people
14 who have called, who've emailed, and who've showed
15 up here tonight. I ask you to vote the way you
16 were elected and vote according to the majority of
17 the people who are speaking up about this. Thank
18 you.

19 MAYOR COLE: Thank you. Go ahead.

20 NICOLE MICHAELSON: My name is Nicole
21 Michaelson, 3375 Dover Lane. The proposed
22 ordinance requires the release of all records,
23 other logs and financial records. This is a HIPAA
24 violation. As a healthcare provider, I want to put
25 on record that I am not comfortable in violating

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1 any HIPPA laws. If you come into our medical
2 facility, you will not only be violating my HIPPA
3 laws, you will also be violating my doctor's HIPPA
4 laws, as well. Are you prepared for this?

5 Many of you have stated numerous times
6 that the ordinance would not affect legitimate
7 LMT's. If this is true, protect us. The City needs
8 to provide each massage therapist a template form
9 to give to our clients stating that the client
10 understands the City has access to any and all of
11 their information at any time. This also needs to
12 include the City's liable proclamation being
13 rebuilt, not the massage therapists'. Massage
14 therapists should not have to take the fall and
15 repercussions for breaking HIPPA laws, and the
16 Montana Privacy Acts due to a poorly written
17 ordinance.

18 As I've stated in my emails, I commend
19 the City and the Human Trafficking Task Force for
20 trying to combat human trafficking. It is an
21 honorable thing they're trying to accomplish, but
22 involving any legitimate business in this
23 ordinance, not only is it unfair, it is
24 discriminatory and unconstitutional. It concerns
25 me how willingly the City Council is to pass an

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1 ordinance that will harm small businesses and how
2 they want to overregulate legitimate massage
3 therapists to shut down 13 illicit businesses.

4 How many women in Billings have been
5 coerced into the illicit sex parlors? And how many
6 women have actually come forward and complained
7 that they have been coerced into illicit sex
8 parlors in our city?

9 City members, your job is to protect us;
10 and if you vote for this ordinance, you have
11 failed. For the record, should this ordinance pass
12 and if I have to obtain and follow the license to
13 legally keep my business open, I will be forced
14 into this agreement with the City under duress. I
15 do not agree with the terms of this licensing.

16 I would also like to add; if Councilwoman
17 Penny Ronning has any personal, political, or
18 financial gain, or is involved in any other human
19 trafficking task force, she needs to recuse
20 herself. This is a conflict of interest.

21 MAYOR COLE: Thank you very much. Next.
22 Next.

23 JENAE BAILEY: Hi. My name is Jenae
24 Bailey, 443 Broadwater Ave. First, I just would
25 like to express my extreme sorrow for anybody,

1 woman, man, or child that has ever been put into
2 any form of sex trafficking or human trafficking.
3 I'm a small business owner. I'm a cosmetologist,
4 so this doesn't affect me, but I feel that it
5 could have the potential to slowly trickle down
6 into my business. I'm a sole proprietor, I'm by
7 myself, I'm in a one-on-one position with my
8 clients at some points; and so this may eventually
9 kind of overreach into my business.

10 After sitting here for, you know, 2 1/2
11 hours and listening to the couple expert
12 witnesses, I think that they have just driven home
13 a couple of good points to me that this is not a
14 city issue, this is a national issue. Both of
15 them, the last two, have said specifically that
16 these businesses will move on to other areas. They
17 will move out of the city and go into different
18 communities or become foot spas or just change
19 their name. I think you guys are -- it's going to
20 penalize these legitimate massage therapists, and
21 I vote absolutely no to this ordinance. Thank
22 you.

23 MAYOR COLE: Thank you. Next.

24 ERIC HART: Eric Hart, 2009 Patricia
25 Lane. In the newspaper article dated October 1st,

1 2020 --

2 (Multiple voices exclaiming.)

3 ERIC HART: -- says --

4 MAYOR COLE: Chris, next time you pay the
5 bill?

6 ERIC HART: -- that Ronning's efforts to
7 involve the Police Department and CPS led nowhere.
8 Their lack of response made her very angry. She
9 realized it wasn't because they didn't care, but
10 because they lacked the resources. The end of the
11 article says, human trafficking is a community
12 problem and needs community solutions within from
13 law enforcement, educators, the faith community,
14 beauty salons and tattoo parlors, as well as the
15 medical community. Mayor, and Council, you have a
16 member who admits there's a lack of resources. She
17 also leaves out the one group of professionals
18 this ordinance is directed at in the list of
19 groups where input should come from. She also
20 admits there's a lack of resources. Are you all
21 hoping the City can now gain resources by making
22 legally practicing therapists pay for those
23 resources? It is not okay to make one small group
24 of businesses -- business owners pay for a global
25 problem.

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1 There's also an e-mail from a Council
2 member that says how would you like the City
3 Council to go after the customers of businesses
4 offering massage? Why would you go after any
5 business' customers? It's so sad to hear the City
6 Council is trying to harm small business. Last
7 year was hard enough. Both City Attorney Gina
8 Dahl and City Administrator Chris Kukulski have
9 stated the intent of this was not to go after
10 legally practicing massage therapists. However,
11 the problem is that neither of them, nor any of
12 you on the Council have any say if this passes.
13 That may not be the intent, but the City is
14 required to follow up on a complaint. Code
15 enforcement isn't going to say, "Oh that complaint
16 was against Eric. He's fine. Don't worry about
17 it." You know the City is required to follow up,
18 and this ordinance gives the authority to enter
19 massage therapy business at any time; states all
20 rooms, cabinets and storage areas shall be subject
21 to inspection and shall make a complete set of
22 books and records available for inspection. This
23 ordinance has personal agendas, possible
24 individual monetary gain, fights rights to privacy
25 and sets the City up for lawsuits. This must be no

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1 vote.

2 Also, the City has been given numerous
3 experts saying this ordinance does not work. Why
4 were they not invited to this meeting tonight?
5 Only the ones that are supporting it. It's sad
6 that the City only represents one side. There are
7 legal businesses here in Billings. One of the
8 comments made was that there's nobody in Billings
9 that shows up on road maps. There are actually
10 legal businesses showing up on road maps. I'm sure
11 that you all know that nothing illegal is
12 happening in Ritual Salon.

13 (Multiple conversing voices.)

14 DESTA FIX: Hi, my name is Desta Fix. My
15 address is 662 Aries Ave., Billings. I've heard a
16 lot of talk about cooperation tonight, but none of
17 the bill has shown any of the input that the
18 massage therapists have been given or that they
19 are giving. I would encourage any of you to point
20 to any of this bill that has come directly from
21 any of the massage therapists here. You guys have
22 talked about how you licensed a business that is
23 very obviously advertising for sex, but you say
24 there's nothing you can do about it. Well, why
25 can't we use that state law that was just put in

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1 that says that anyone can go in there and check
2 their licenses? It's really easy to check their
3 licenses; and if they're not doing that, then that
4 should put them in violation of their business
5 license as well. If that's not already part of it,
6 why can't we put that in there instead of making
7 this -- put it all on us as a massage therapists?
8 I also support everything else that everyone else
9 has said so far tonight. And there are legitimate
10 businesses that are listed on those. Rituals is by
11 far the most visible one, but it's not exclusively
12 that. And you know, it sounds like it's a funding
13 issue. If the cops can't afford to prosecute it,
14 the code enforcement just said that they're going
15 to have problems funding this. So how are we
16 actually going to make it effective if there's no
17 funding for it? Why don't we just go and instead
18 try and give the cops more funding for being able
19 to go after these businesses? That's what I have
20 to say tonight. Thank you. Oh and I'm opposed, in
21 case you didn't get that.

22 UNKNOWN: Me too.

23 MAYOR COLE: Thank you very much. Next.

24 KIM GARTNER: Good evening. My name is
25 Kim Gartner. I live at 1918 7th St. W. I've been

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1 a licensed massage therapist in Billings for 28
2 years, and I agree with what the very emotional
3 testimony of the lady that said, you know, we came
4 from a position where we got a lot of snickers
5 from people, because we were considered sex
6 workers way back when. And we worked hard to get
7 out of that. We worked very hard. And now the
8 snickers are coming back because of all the papers
9 and everything that's coming in. And I don't
10 appreciate it, because as somebody who's worked
11 darn hard, I've put in a lot of time to get good
12 education and I don't like the treatment I'm
13 getting. I support small businesses, I support
14 sole practitioners, I support solo proprietors, I
15 support therapeutic massage, I support medical
16 massage, I support reflexology and I support
17 energy balancing.

18 I come from a ranch background and
19 growing up, there wasn't a lot of treatment plans
20 for people who got bucked off a horse or, you
21 know, fell off the barn or whatever they did.
22 They're ranch accidents. And I felt that massage
23 therapy really helped fill that void, especially
24 in this area where we're very limited to only, you
25 know, basically drugs or surgery. Not saying

1 anything bad or wrong with that, but I think that
2 there is a void that massage therapy does fill.
3 And I feel that this would somehow limit us from
4 doing that.

5 I also feel that if we have to allow
6 people to see our medical records, that would, you
7 know, some people said it be a violation from
8 HIPAA. I will not allow my medical records to be
9 viewed by anyone because that's only something
10 that my client has given to me. And also, about
11 this fee that we're going to get. Do you guys
12 realize that most massage therapists are at
13 poverty level? We don't make a lot of money. This
14 is a gift of love that we do for people. We don't
15 make a lot of money at this, so you want us to put
16 another burden or another bill on us? We're
17 already being taxed. Gas prices are going up and
18 now we're going to have to put out more on a very
19 small group of people, and I don't agree with
20 that. I also work in a salon, and I don't
21 understand, you know, there's hairstylists in
22 there and then me, I do massage and we share
23 clients. There's clients that go to the massage --
24 there're clients who go to me and get their
25 haircut. There's haircut that come over to get a

1 message, and I'm supposed to put a license number
2 underneath my name, but they don't have to. And I
3 have to go have a background check at the Police
4 Department and they don't have to, but we walk
5 through the same door, we used the same washing
6 machines, we use the same bathroom, but yet I have
7 to be treated different than that hairstylist.
8 And no disrespect to any of the hairstylists. I
9 just don't feel like I should be treated or
10 separated because I'm the same. I'm working in a
11 salon.

12 And I also believe, too, that, you know,
13 with all due respect to Aurora, Colorado, we are
14 Montana. We don't do things the way anyone else
15 does. We are the wild west. We forge our own
16 paths. So I think that we need to redo this,
17 rethink this, come up with a better solution,
18 because I don't think this is a correct solution
19 and I do not support this ordinance. Thank you.

20 MAYOR COLE: Thank you very much. Next.
21 Anybody else before we go to Zoom? Thank you.

22 TIFFANY WARDELL: Hello. I'm Tiffany
23 Wardell. My address is 1309 Daybreak in Billings,
24 and I would like to address an example that has
25 been circulating regarding the comparison of this

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1 ordinance to the regulation of another industry.
2 Specifically, plumbers. And the example given by
3 some LMT's, they state that if a plumber came into
4 your house and stole your pipes or whatever, that
5 the law enforcement would be in charge of finding
6 and charging that plumber or that company. And
7 that the whole plumbing industry wouldn't have to
8 be regulated and shouldn't be regulated. There are
9 some flaws to this comparison. The first one is
10 that in Billings we don't have plumbers trapping
11 homeowners under coercion. We don't have plumbers
12 forcing them to act against their will because we
13 are talking about people. Not items. It's a big
14 difference.

15 Secondly, we don't have forced homeowners
16 or trapped homeowners living in fear, and maybe
17 it's an imagined fear, but living in fear of being
18 penalized by law enforcement if they turn to them.
19 But they will be the ones who are penalized for
20 having a rogue plumber controlling them.

21 Third, and we don't have people in
22 Billings paying for this entrapment of other
23 homeowners by these criminal plumbers.

24 Fourth, we don't have dozens of plumbing
25 businesses in our town operating underneath this

1 clearly criminal business model. If this were the
2 case, I would hope that City Council would
3 regulate plumbers as well. As you can see, this is
4 a terribly unjust and expertly hidden business
5 model, because there are no laws to address the
6 business model of illegal plumbers hiding amongst
7 legitimate ones.

8 Lastly, the other argument is that the
9 only businesses being regulated are massage
10 therapists. That is just not true. Regulation is
11 in every industry, especially in the medical
12 field. Businesses are regulated at the national,
13 the state, and the city level all the time.

14 Occasionally, even within their own
15 industries. Since no one likes regulation, laws
16 rarely regulate an entire group of people, but are
17 uniquely targeted to the problem specific to the
18 criminal activity that they are seeing in that
19 industry. This has not been regulated by any
20 political body in our jurisdiction as of yet.
21 Therefore, the crimes are persisting. The state
22 has made it clear that this is a Billings problem,
23 which it is, and will not get involved. I am not
24 naive enough to think that this will solve all
25 human trafficking in our city. But it is one of

1 many tools that we desperately need. So please get
2 law enforcement more money, I totally support
3 that; but please, also pass this ordinance so that
4 they have some tools to close down the illicit
5 plumbers who -- I mean massage businesses. Thank
6 you.

7 MAYOR COLE: Thank you. Next.

8 DANIELLE ADELMAN: Hey you guys. I am
9 Danielle Adelman, 2004 Louise Lane. I do not
10 support the ordinance as written, but that does
11 not mean that I support the human trafficking --
12 the issues that are going on at that. I believe
13 that the ordinance has a good base, a foundation,
14 but we just need to work on it. We just need to
15 work on the lingo of it. If we could, like, not
16 encourage and put words in people's mouths or
17 plant seeds that make, like, myself and licensed
18 massage therapists sound like adult entertainment,
19 or sex rings are part of, like, the spa areas,
20 that would be great.

21 I'm also presenting the petition that we
22 massage therapists have put out. We Have over 500
23 signatures, almost -- actually, we have over 600
24 signatures. 570 of them are from Billings,
25 Montana, and we have a couple of the outside, like

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1 Laurel and Warden and people that actually come
2 into Billings for massage, or other sort of like
3 shopping and everything like that.

4 So, this is what the petition has said.
5 "We, the undersigned, opposed the massage
6 establishment licensing ordinance proposed by the
7 City of Billings, Montana. Establishment
8 licensing treats massage therapy as adult
9 entertainment, not the healthcare profession that
10 it is. While human trafficking and prostitution
11 may be a problem in Billings, imposing additional
12 regulation and licensing fees on a profession
13 infiltrated by this criminal activity is not an
14 effective way to address the problem. Criminals
15 will play the system, leaving legal practicing
16 therapists to pay for a regulatory scheme that
17 will not impact human trafficking or prostitution.
18 There are other creative solutions to the problem
19 that do not unfairly discriminate against legal
20 practicing massage therapists." Thanks.

21 MAYOR COLE: Thank you very much. Next.
22 Any other speakers before we go -- If your next
23 speaker can be kind of ready to go, that will kind
24 of speed us up. Go ahead.

25 TOM LARSON: Well, I'm sort of winging it

1 here. I hadn't planned on standing --

2 MAYOR COLE: That's fine.

3 TOM LARSON: -- in front of you. So, my
4 name is Tom Larson. My wife works at 1212 Grand.
5 I'm just standing up and speaking because I know
6 some of these gals here fairly well. If you
7 haven't already figured it out, these are not
8 human traffickers. If you've not looked at them
9 (undiscernible), not a threat to society. They're
10 just legal businesspeople doing good a job and
11 what they need to do. And if you want to know
12 about human trafficking, and honest to God, you
13 want to go after it, you've got three guys back
14 here that can tell you who, what, where, when,
15 why, how to go after them and go get them. This
16 just isn't the group to attack. You guys seem to
17 be politically astute on some things. If you want
18 people to give you a good public opinion, quit
19 treating these people like something you scrape
20 off the bottom of your shoe. If you haven't
21 figured it out, you've got an FBI guy that stands
22 up here and he does a pretty good job. He's got a
23 good public opinion, but his influence in this
24 town is about this big compared to this group of
25 people right here. They'll speak highly of you if

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1 you treat them good and they will not if you treat
2 them bad, and so far, you haven't treated them
3 very well. So, I suggest you change that. That's
4 all I got.

5 MAYOR COLE: Next.

6 KATE FREEDMAN: Whom do I give an address
7 to? Kate Freedman, at 3835 Ave. E. I got to get
8 my little timer here ready, so I don't be over.
9 The State has made it clear; this is a Billings
10 problem. So that means that the burden of coming
11 up with a solution falls on you. All industries
12 are subject to regulation: Airlines, financial
13 institutions, day-cares. Kids were using Sudafed
14 to create methamphetamine. That's not Sudafed's
15 fault; but to curb criminal activity, regulations
16 were created to control Sudafed purchasing.
17 There's no problem with milk, so therefore, milk
18 doesn't need to be regulated in this way. That
19 would be overregulation. These criminals are not
20 hiding in hospitals, in dental offices, in nursing
21 homes, and they can't because of regulations.
22 They're hiding in massage. As a Republican, I
23 oppose overregulation, but at the same time we
24 can't have a free-for-all. Regulations must be
25 crafted carefully and as minimally as possible,

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1 while still getting the job done. Most of these
2 regulations massage therapists already comply
3 with. There are some inconveniences, but the City
4 has balanced these inconveniences with the
5 benefits to law enforcement. This city is housing
6 businesses with women inside and they're being
7 issued City business licenses. This is asinine.

8 I lost my place. In dental hygiene, each
9 day, there's an hour turning in paperwork. These
10 charts and notes are legally required. An hour
11 worth. Which is why I'm left dumbfounded and
12 slack jawed when I hear this recordkeeping
13 requirement is an undue burden. This takes two
14 minutes of paperwork. All industries are subject
15 to regulation. What matters is criminal activity
16 are at hand. And my question for City Council
17 members is this, what makes the massage industry
18 so special that they should not have to deal with
19 regulations to address criminal activity happening
20 in their industry? Because the language is
21 offensive? Because paperwork's a bummer? The
22 City is not after massage therapists. That is the
23 one-sided propaganda being fed to this community.
24 These are conspiracy theory arguments and police
25 will not be investigating them, will not be going

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1 through their records. It's just absurd.

2 I own a car dealership. We got a car
3 stolen just about a few weeks ago and the officer
4 that told us, you know, that we reported this to
5 said, "You know, I'll put it into the system and
6 if it shows up in a traffic accident, we'll let
7 you know." These law enforcement do not have time
8 to go investigating legitimate businesses. They
9 just have bigger fish to fry.

10 MAYOR COLE: Thank you very much. Next.
11 Next speaker.

12 KIM SOLBERG: Hi, my name is Kim Solberg.
13 4515 Rimrock. And I've brought with me today,
14 from my office -- I work in a medical office here
15 in town -- our HIPAA compliance folder. It's red
16 for a reason, because it's very serious. The
17 penalty for getting caught with any patient
18 information out is \$10,000 immediate penalty. I
19 wanted that to be known. Even though I appreciate
20 the amendment that was included tonight, I'm not
21 sure that would blanket cover the issue that might
22 become a problem for patient information. I
23 brought, also, the HIPAA agreement, the actual
24 form, and I'd like to read just a little bit of
25 that. The very first sentence says "I understand

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1 that my business has a legal responsibility to
2 protect patient privacy. To do that, we have to
3 safeguard the privacy and security of patient
4 information." At the end of this document, it says
5 "I understand the violation of this agreement may
6 result in disciplinary action and this may include
7 civil and criminal legal penalties as a result of
8 the final privacy rule issued by federal
9 government." So, that is my first concern.

10 Second concern, I wonder what the City
11 thinks about the cost of putting through the
12 fingerprinting, if there is a substantial cost
13 there.

14 And also, my third final concern is,
15 where do we draw the line? I, myself, have been
16 prescribed massage through a chiropractic office,
17 through a physical therapist office. They're
18 practicing in those offices. Are they going to be
19 included, also? So, thank you for my
20 (unintelligible).

21 MAYOR COLE: Thank you. Next. Any
22 further public comments from the library? Go
23 ahead.

24 DR. OLIVO: Hi, my name is Dr. Elizabeth
25 Olivo. My address is 3631 Colin Drive. I am a

1 nurse practitioner. I was born and raised here in
2 Billings, and I think I was in 7th grade when I
3 first heard those nasty jokes about happy- ending
4 massages. And I think at that age, probably most
5 girls would be horrified at the idea of what was
6 happening kind of down the street from my school.
7 To know that there were women inside these
8 businesses who are being forced to commit sex acts
9 on strange men, it was kind of too hard to
10 believe. At the time, I didn't understand why law
11 enforcement, or why our city, wasn't able to do
12 anything about this. Well, now, 20 years later,
13 we're at the same place. Where law enforcement
14 and the City haven't been able to do anything to
15 close these businesses.

16 We all go about our day-to-day lives and
17 the victims remain in these spas that are open all
18 night, that have boarded-up windows, and locked
19 doors.

20 Now, I've worked as a nurse and a nurse
21 practitioner in women's health in our community
22 for eight, going on nine years. I've seen women
23 who are victims of human trafficking. I've seen
24 women who have been abused and raped. Women with
25 black eyes and busted lips and bruises all over

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1 their bodies. We know that these women are out
2 there. We know that in these businesses, they
3 don't speak English often. They don't have a voice
4 and they're literally amongst the most vulnerable
5 people in our communities. These businesses are
6 being run by criminals. We know that they're not
7 the same businesses as legitimate massage therapy
8 businesses. They're being run by criminals under
9 the name of massage, and they're getting their
10 licenses legally from our City.

11 In healthcare everything you do is
12 regulated. Everything I do, I weigh the risks and
13 benefits as members of government. Your job is
14 kind of similar to mine. You have to weigh the
15 burden and the benefit of these regulations. Your
16 responsibility to the public to make decisions
17 weighing these burdens and benefits of the
18 regulations that you're voting on. The burden in
19 this case? It is. It's more paperwork, it's
20 fingerprinting, it's background checks, and it's
21 recordkeeping. This is standard stuff in
22 healthcare. Charting and recordkeeping -- that's
23 standard of adhering to HIPAA is standard. This
24 isn't government overreach. I think it goes
25 without saying that we've let this go on long

1 enough in our city. You just heard the testimony
2 and recommendations from actual experts. You have
3 the ordinance in front of you and you have the
4 ability to do something about it. Now, I hope
5 that you can stop this ongoing joke in Billings.
6 And the benefit here is giving a voice to the
7 voiceless. Thank you.

8 MAYOR COLE: Thank you. Next.

9 BRITTANY HOMER: Hello, Mayor, and
10 Council members. My name is Brittany Homer, 950
11 Bluegrass. I am the executive director and
12 founder of a local nonprofit organization whose
13 mission is to end all forms of sexual
14 exploitation. I've been involved in anti-human
15 trafficking work nationally and internationally
16 through the National Center on Sexual
17 Exploitation, empowering the one, Operation
18 Underground Railroad, the Safeguard Alliance and
19 more. I've also been a SANE advocate for victims
20 of sexual assault right here in Billings. I've
21 seen the trauma and I know its long-term effects.
22 As such, I have a vested interest in what the City
23 is doing to combat human trafficking. A crime that
24 is one of the most egregious ways one human can
25 trample on the innate dignity of another.

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1 I feel for the LMT's, I feel for the
2 scariness of this. When your livelihood is facing
3 new regulations, I can understand why that might
4 feel scary, but I believe that crime follows the
5 path of least resistance; and right now there
6 is -- and that's why they are being taken
7 advantage of by this illicit business.

8 I'd like to spend my time drawing your
9 attention to one of the latest studies on the
10 illicit massage industry, which I believe will
11 give you some insight into why you should
12 implement this ordinance. This is a study done by
13 an organization called Street Grace. Their study
14 sought to estimate the scope of the illicit
15 massage industry and concluded with very specific
16 policy recommendations. These recommendations
17 included in establishment licensing that would
18 require business owners to successfully pass a
19 criminal background check, as well as prohibit
20 obstructed windows, lewd advertising, and
21 individuals living on the premises. They recommend
22 mandating hours of operation, licensure display, a
23 list of services with prices, a record to include
24 the name of the massage therapist, a type of
25 massage, date, and time. And many of these

1 recommendations are exactly what's proposed in
2 this ordinance and will make almost no changes to
3 what legitimate massage therapists are doing in
4 their businesses. This piece of legislation is in
5 line with what many experts in the field are
6 advocating as we heard from earlier testimonies.

7 One other recommendation that is worth
8 noting is including ease of entrance policies for
9 those who want research-based implementation and
10 regulations. It is there in that Street Grace
11 study.

12 Furthermore, we are not pioneering an
13 untested method. The City has done extensive
14 research to see what kinds of regulations have
15 worked in other cities. As we've heard earlier
16 today, with solid street tested evidence that this
17 type of legislation will shut down these human
18 trafficking establishments and leave these
19 legitimate massage therapists, able to continue
20 operating their businesses. We've seen the
21 research, we have the evidence, and it's time to
22 act on it. City, state, and federal law
23 enforcement have all said they need more tools to
24 fight human trafficking. This is not only legally
25 sound, but fiscally responsible, this tool that

1 you have the power to give. So please vote in
2 favor of curbing the sexual exploitation,
3 victimization, and degradation of women that is
4 happening every day. Right in our midst.

5 MAYOR COLE: Thank you. Good timing.
6 Next, please.

7 ERIN WALKER: Hi, I'm Erin Walker, 6287
8 Canyon Woods Drive. When I hear some massage
9 business owners say they are offended that their
10 profession is being associated with human
11 traffickers and pimps, I want to jump up and say,
12 "me too." How dare these criminals hijack the name
13 of massage and pretend to belong. It is high time
14 that we address this. When it comes to being
15 offended about language in the ordinance, the
16 ordinance is differentiating between sex parlors
17 and legitimate massage businesses. That's the
18 entire point. Let's take a step back here. How
19 about instead we get offended about the women who
20 would continue to be trafficked and abused because
21 some in the massage community don't want sexual
22 terms fraternizing with massage in the Montana
23 code. Where no one except law enforcement or
24 attorneys will ever see or care.

25 More to the point, it's tragic that the

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1 owners of these illicit businesses, who profit off
2 exploiting women, have an entire group here
3 fighting their battle for them, and you can bet
4 that these criminals are watching to see what the
5 result here tonight is. Will we spread out the
6 red carpet and invite another 40 years of
7 criminality and abuse in our community, or will we
8 tell them that they are no longer welcome here?

9 In all this conversation, oftentimes
10 there's a big, gaping hole, and it's the victims
11 of these establishments who are being abused and
12 hurt. There's a bigger story here than the gripes
13 of the small contingent of the Billings residents
14 who clearly have a conflict of interest. Many of
15 the concerns we've heard tonight are not
16 substantiated. Let's talk less about imagined
17 consequences and more about current consequences.
18 This past week I watched a part of a virtual
19 Congressional briefing, and I listened to a
20 firsthand account of Shandra Woworunto, who is the
21 CEO of Mentari, a human trafficking survivor
22 empowerment program, as she described her
23 experience of being lured from Indonesia with
24 promises of a job in the U.S., then kidnapped and
25 sold into sex slavery in a country where she was

1 unfamiliar, she had no friends, and she didn't
2 know the language. She explained how she was
3 sex-trafficked in what she termed as massage
4 parlors. Her story is tragic enough to bring tears
5 to your eyes, and yet she assured everybody on
6 that Congressional briefing that her story is not
7 uncommon. These are the people who are forgotten.
8 These are the people who are voiceless. They are
9 the ignored, and they will continue to be until
10 our citizens and community begin to care enough
11 about them, share their story, and enact change.
12 It's the responsibility of the Billings City
13 Council to put an end to this abuse in our
14 community. We have seen, we have heard, we can no
15 longer say we didn't know. Thank you.

16 MAYOR COLE: Thank you. Next. Any other
17 testimony here from the library?

18 SUSAN CARLSON: First, I'd like you not
19 to start that for just one second, because the
20 person that had to leave had just something really
21 brief he wanted to share with you. His name is
22 Dave Evans. He said he waited two and 1/2 hours
23 and he just couldn't wait any longer. He was on
24 the Yellowstone County -- he was a deputy sheriff
25 in Yellowstone County, who's on the Yellowstone

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1 County Human Trafficking Task Force and Drug
2 Special Unit. Sorry, I probably messed that all
3 up. He's a friend of mine and he did some
4 investigation for me this past week on the count
5 of brothels in Aurora, Colorado. He easily came up
6 with 58 that he could confirm. 58. So obviously
7 this kind of an ordinance is not working in
8 Colorado. That's what he had come to tell you.

9 MAYOR COLE: Okay. Go ahead and start
10 your (undiscernible).

11 SUSAN CARLSON: All right. Well, I would
12 like to address why this is so contentious with
13 massage therapists, for starters. One of the first
14 things was when Mayor Cole told us -- asked us,
15 actually, to take one for the team. The other
16 night when Chris Kukulski laughed about maybe
17 sunsetting it if it didn't work, that it was no
18 big deal, was very offensive to massage
19 therapists. And we asked questions of Gina -- and
20 I'm sorry I don't have your last name -- and we
21 were told that you didn't have the answers.

22 This ordinance is very poorly written. It
23 doesn't address --

24 MAYOR COLE: And I'm sorry, did we get
25 your name and address?

1 SUSAN CARLSON: I'm sorry. Susan Carlson
2 and my office is on 13th St. West. This ordinance
3 is poorly written. It's called the massage
4 ordinance. It's not a massage ordinance. It's a
5 brothel ordinance. The two have nothing to do
6 with each other. The fact that people use that
7 term doesn't mean a thing, because massage is
8 clearly defined by the State of Montana. So,
9 people who are using that term that don't have
10 massage licenses or are doing criminal businesses,
11 need to be addressed just that way, as criminals.

12 Chief St. John has said that he doesn't
13 have the manpower or the funds. Jeremy House, and
14 I believe he's the Assistant Chief, said this
15 isn't a high priority for them. The only thing
16 this is going to do is harass legally practicing
17 massage therapists. We've been told by Gina and
18 Chris Kukulski that massage therapists don't have
19 to follow -- or won't be affected by this
20 ordinance. You cannot have an ordinance that
21 addresses massage therapists and then say we're
22 not after you. You can't guarantee us that. That's
23 like saying anybody who's speeding in a white car,
24 we're not going to stop you. We're only going to
25 stop the people that are speeding in a yellow car.

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1 It's ridiculous. Look, the ordinance is a
2 disaster. I've actually practiced in the city of
3 Billings since the early '80s. I've been a massage
4 therapist since 1978. My daughter's a massage
5 therapist, my granddaughter's a massage therapist,
6 my mom was a massage therapist. I don't believe
7 any of us ever took money for sex. So, none of us
8 are sex workers. This ordinance does not address
9 sex workers, it addresses massage therapists. I
10 think it is belittling, it's demeaning. I don't
11 know how many of you have an ordinance that tells
12 you have to cover your genitalia before you come
13 to these meetings. I'd like to see that one. I'm
14 so angry, I just probably should shut up before I
15 make a mess of things. I don't believe that you
16 have our best interest at heart, or the public's
17 best interest at heart. Some of these people just
18 want to have their vote count because they stood
19 up -- Oops, sorry. They stood up against
20 prostitution. We're all against prostitution and
21 human trafficking. We're also against this
22 ordinance.

23 MAYOR COLE: Thank you. David, can we
24 get you to put the -- or Brenda. Thank you.
25 Next. Any other testimony from here in the

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1 library? I'm not seeing any, so out there in the
2 Zoomland.

3 Toni, go ahead. If you're watching by
4 Zoom, use that "raise hand" feature and then Toni
5 will unmute you and put you on. Do we still have
6 people watching, Toni, who have their hands up?

7 TONI KEEHNER: We do.

8 MAYOR COLE: Go ahead and put them on.

9 TONI KEEHNER: May I please have your
10 name --

11 MAYOR COLE: And this is a good
12 opportunity, I think everybody hopefully has been
13 listening, just because the hour's late, we don't
14 want to shut down input, but we'll just ask you to
15 keep your comments as short as possible and also
16 cover new ground, if possible.

17 So Toni, it's all yours.

18 TONI KEEHNER: May I please have your
19 name and address?

20 DAVID REAY: David Reay, 3668 Jasper Park
21 Drive.

22 TONI KEEHNER: Go ahead.

23 DAVID REAY: First, exemption for sole
24 proprietors with regard to locking doors.

25 Protections for personally identifiable client

1 information, addresses concerns stated by many of
2 the opponents. The fact that opponents continue
3 to voice these concerns means that they're not
4 reading the language. These opponents also fail
5 to understand that they will continue to be
6 governed by HIPPA. This legislation will not
7 affect your clientele.

8 Second, as an attorney, I am subject to
9 background checks. We can all agree that an
10 attorney should undergo background checks to
11 protect their clients. Likewise, just as my client
12 deserves to know that they're safe my care, the
13 public deserves to know their massage parlor is a
14 safe place to obtain medical services.

15 Third, some say these parlors will just
16 move out of Billings if you interfere with their
17 illicit sex trade, but is that bad? Isn't that the
18 point? If Billings sets a precedent, other
19 communities can follow suit. So, will this Council
20 set a precedent, or will they just let it go on to
21 the next generation?

22 In conclusion, if we want to make
23 Billings a better place, it's going to take work.
24 Montana Board of Massage Therapy has not fixed
25 this problem. So, this City Council bears the

1 burden of fixing this problem or leaving it for
2 another 40 years. Thank you.

3 TONI KEEHNER: Thank you for your call.
4 May I have your name and address, please?

5 JENNIFER MERECKI: Jennifer Merecki, 3737
6 Rosebud Drive, in Billings.

7 TONI KEEHNER: Go ahead.

8 JENNIFER MERECKI: So, I want to, since
9 we are short on time, I'll address just a few
10 things that these opponents have voiced over and
11 over again. The locked door, covered. It's not
12 an issue. The regulations and licensing, I don't
13 know what industry that's a healthcare industry
14 that's not regulated. I've got to tell you, I was
15 a nursing home administrator, which is the highest
16 regulated industry in the United States, even
17 above hospitals. I also ran little rural
18 hospitals, and these regulations are nothing. So
19 you have to have a license on the wall. Most
20 medical professionals do. You have this whole
21 issue with HIPPA. You guys in the City Council
22 have already addressed that HIPAA will not be
23 violated. That's a dead issue. This is something
24 that will set us apart from sex and the human
25 trafficking trade. The massage therapy business

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1 has been the joke, as others have said, about the
2 happy endings and those kinds of things. That is
3 something that is extremely harmful for my
4 business. I own my own business, so I want to
5 protect my business. So, if I have to have another
6 sheet of paper, which I already have. Everything
7 that has been talked about in this ordinance I
8 already do. It is not a big deal. So, I will keep
9 it short. I am open for any Council member that
10 needs any advice or help, because I have been
11 involved. I don't know what this small group is
12 saying that they have not been, but I've been
13 involved. So, I just want to make it perfectly
14 clear that a lot of the things that were said this
15 evening is not the majority of massage therapists
16 in Billings. As a matter of fact, I know more that
17 are very much in favor of this ordinance than they
18 are opposed.

19 So, I would hope that the City Council
20 would help protect our massage businesses and our
21 massage licenses by making us legitimate in the
22 eyes of the city and the state. I will go ahead
23 and spend the rest of time. Thank you.

24 TONI KEEHNER: Thank you for your call.
25 May I get your name and address, please? Hello?

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1 I'm not seeing anybody there. I'll go to the next
2 one.

3 May I get your name and address, please?

4 THERESA VONDRA: Theresa Vondra. I'm in
5 Ward 2.

6 TONI KEEHNER: Do you feel comfortable
7 giving your address?

8 THERESA VONDRA: Not necessarily, no.

9 TONI KEEHNER: Okay, go ahead.

10 THERESA VONDRA: I have been a massage
11 therapist for 16 years, but more importantly, I am
12 born and raised in Billings, Montana. Since I can
13 remember, these illicit businesses have been here
14 and have been a problem. When State licensure was
15 passed, our hope was to make change, not only with
16 the legitimacy of our own profession but to help
17 stop these illicit businesses from claiming to be
18 massage. Unfortunately, we had a hard five-year
19 fight and we had to make compromises to be able to
20 get our licensure to pass.

21 I will admit we need to make some changes
22 on our State licensure to really stop these
23 illicit businesses from staying open. However,
24 that being said, I do not support the City spa
25 ordinance. Not only does this ordinance lump our

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1 profession in with an illegal sex entertainment
2 industry, but it makes us prove our innocence over
3 these illicit businesses. This ordinance lacks
4 clarity and has gray areas that will leave too
5 much up for interpretation.

6 I have a receptionist, she's on site, at
7 times when other therapists are not in the office.
8 According to this ordinance, there is some clarity
9 that needs to be set forth so that I don't have to
10 shut my business down every time I don't have a
11 licensed therapist on site.

12 Under Section 7-1911 part C, I have a
13 huge issue with this section. One, I was told
14 when asked about this being a HIPAA violation,
15 that I wouldn't have to share client names. And
16 this would mean that I would have to keep a
17 completely separate set of books that would have
18 no client name information on it. I feel that that
19 would raise more red flags if I had a code
20 enforcement or police officer in my facility.

21 Two, I find it odd that the lawyer who
22 put this ordinance together stated she wasn't
23 familiar with HIPAA. I would feel that if you are
24 helping write an ordinance that has an impact on
25 HIPAA, that you should be well-versed in this law.

1 I did some research and found that I would have to
2 comply and share records without consent from my
3 clients if this was enacted. I morally do not
4 agree with this section, and I feel like I was
5 lied to in regards to what they knew about the
6 HIPAA compliance.

7 Another area is the clarity of what
8 constitutes promptly. Again, when I asked about
9 this, I was told that the rules are not meant for
10 me but are to go after these illicit businesses.
11 But I'm sorry, if you're going to require me to
12 apply for this license, then I would expect that
13 you're going to uphold the same standards for me,
14 as with anyone else.

15 TONI KEEHNER: Your time is up. May I ask
16 you to please wrap up?

17 THERESA VONDRA: Yes. I feel if you're
18 going to enforce an ordinance, there needs to be
19 clarity, there needs to be specifics; and because
20 of that, I do not feel that this ordinance should
21 be passed at this point in time. I do feel that we
22 need to take more action on a state and federal
23 level. Thank you.

24 TONI KEEHNER: Thank you for your call.

25 May I have your name and address, please?

1 CHELSEA WINTERHOLLER: Chelsea
2 Winterholler, 1709 East Thunder Mountain Road.

3 Thank you, Council members, for hearing
4 my comment tonight. When I first came across this
5 ordinance, I was very skeptical, to be honest, and
6 then I spent some time educating myself on the
7 impact that it will have on legitimate massage
8 therapists. I have spent the last three years
9 fighting for human trafficking victims in Billings
10 and across the world, and I know that this
11 ordinance is a step in the right direction to help
12 the victims of trafficking and to help our
13 community.

14 I want nothing but the best for our
15 massage therapists. And I do believe that getting
16 the illicit businesses out will actually
17 strengthen the legitimate massage professionals in
18 our community, while also helping to protect the
19 people being victimized in this awful way. I
20 support Chief St. John and all of the other
21 testimonies that we have heard tonight. I hope we
22 can all work together for the common good and I
23 want this ordinance to move forward. Thank you.

24 TONI KEEHNER: Thank you for your call.
25 May I have your name and address, please?

1 MEAGAN FARNSWORTH: Meagan Farnsworth,
2 531 Avenue D.

3 TONI KEEHNER: Go ahead.

4 MEAGAN FARNSWORTH: There's an article
5 that's been circulating from Fort Worth Business
6 that's been used as evidence that massage
7 therapists should not be regulated to address
8 illicit massage businesses. And if you just read
9 the headline, did a quick skim and listen to their
10 quotes, you might think this article backs up
11 their claim. It's a very long article and I'm not
12 sure if you have the time to read it, but the
13 devil is in the details. The author, Dr. Vanessa
14 Bouché, is criticizing what Texas is doing to the
15 massage industry, and I believe it is a
16 misapplication to use for criticism of what is
17 happening in Texas to criticize what Billings is
18 doing.

19 Two or three minutes requires brevity, so
20 I'm going to try to give an overview by giving
21 some other key details from the article. It states
22 that by 2019 Texas legislation, there were 25
23 different bills to address IMB's, things like
24 increasing required education hours from 300 to
25 500. Dr. Bouché states that IMB's often get their

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1 licenses fraudulently. So, adding education hours
2 will be entirely ineffective and only burden
3 legitimate therapists. Several examples of useless
4 regulations are listed. Texas is unloading several
5 rounds of ammo into the darkness and hoping one
6 hits the illicit massage industry. That is what
7 she is criticizing in her article.

8 Many of these regulations deal with the
9 State Massage Therapy Board. This is a completely
10 different approach. You are comparing apples and
11 oranges. And also note there is a newer study
12 that came out of Georgia on the illicit massage
13 industry. They give policy recommendations that
14 are right in line with what Billings is doing.
15 Establishment licensing. In fact, they recommend
16 even more regulation than this ordinance,
17 including parking lots and lighting. Guess who is
18 at the top of the list of the four contributors?
19 Dr. Vanessa Bouché.

20 Things the opposition is saying should
21 not be taken at face value. We need to be thorough
22 in our research, instead of listening to
23 out-of-context quotes. We need to listen to our
24 experts, because the massage community is not an
25 objective party. Thank you.

1 TONI KEEHNER: Thank you. We have
2 someone that's using an older version of Zoom.
3 Looks like Mark Freedman. So, I need to promote
4 him to a panelist in order to let him talk.
5 Mark, can you hear me? Mark?

6 MARK FREEDMAN: Can you hear me now?

7 TONI KEEHNER: Yes. May I have your
8 address?

9 MARK FREEDMAN: (Unintelligible) Okay.
10 Mark Freeman, 3035 Avenue E.

11 TONI KEEHNER: Go ahead, Mark.

12 MARK FREEDMAN: Okay. First of all, I'm
13 blown away. How anybody could oppose this? That
14 is mind-boggling. When you have the ability to
15 save women that are being raped and murdered at a
16 zero burden almost. So, it's been really
17 frustrating how the public perception of this
18 ordinance has been twisted. That recent Gazette
19 article did not even pretend to report on the
20 other side of the story and victims are being
21 overlooked, as always.

22 Women are being brutalized. I've heard
23 the stories from an oral surgeon who would be
24 called out in the middle of the night to repair
25 broken jaws and cracked teeth on these women. We

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1 can look at the court records of our very own
2 Scott Petry, the owner of two IMB's here. We can
3 see the court transcripts, a close-to-home example
4 of how the trafficking occurs. One of these women
5 testified she was forced to have sexual contact
6 with 25 to 30 men a month. About ten of these
7 being in their (undiscernible) to over 66 years
8 old.

9 Heyrick Research, a leading authority on
10 traffic and research, explains how it works. They
11 get recruited, resulting in owing huge travel
12 debts to the traffickers. They then keep a
13 straight portion of their earnings but are forced
14 to pay from that room and board in the building
15 they are not allowed to leave, to pay for all the
16 food that is brought in, and transportation as
17 they're forced to another IMB. They pay for
18 supplies, such as condoms and lingerie. They're
19 charged high interest. The system is purposely
20 designed to keep them trapped. It's called debt
21 bondage and is an effective psychological tool
22 that traffickers use, and there are currently no
23 laws on the books to allow for inspection, to
24 allow code enforcement or law enforcement to go
25 in.

1 There's a gaping hole in the story the
2 public is not hearing. LMT's really don't have any
3 expertise on this issue because they're not sex
4 trafficking victims. It's the law enforcement
5 that are the experts in the human trafficking
6 investigations and attorneys who are writing the
7 law who know what will stand up in court.

8 So here we are, with the knowledge that
9 criminal activity is taking place, with the
10 knowledge that women are being victimized, with an
11 ordinance that is legally sound, vetted by
12 authorities and minimally burdensome to the
13 industry it impacts, tested on the streets of
14 Aurora and fits the City's budget.

15 So, if not this, then what is your
16 solution? We all know how much this city loves
17 mill levies. The scope of this criminal
18 enterprise has truly grown beyond our
19 comprehension and we need every tool at our
20 disposal. Thank you.

21 TONI KEEHNER: Thank you.
22 Jennifer, can I have your name and address,
23 please?

24 JENNIFER SANCHEZ: Jennifer Sanchez, 6093
25 Ironwood Drive, Billings, Montana.

1 TONI KEEHNER: Go ahead.

2 JENNIFER SANCHEZ: I'm calling in support
3 of the well- thought-out massage ordinance. The
4 proposed regulations are so minimal that I cannot
5 fathom why some massage therapists and their
6 clients are in such an uproar, except after
7 hearing some of the half-truths and fear mongering
8 that is being spread, I guess I'm not surprised.
9 Nothing spreads faster than a lie fueled by fear.

10 These are just three of the misleading
11 assertions I've heard. First, some random person
12 can file a bogus complaint on my business and the
13 City will shut me down. Not true. Legitimate
14 massage businesses are not the target here, and
15 the City is not out to get them. The way code
16 enforcement works is not going to change. They
17 will still give warnings and wait a reasonable
18 amount of time for compliance. More to the point,
19 legitimate businesses already comply with these
20 requirements. This has been explained numerous
21 times, but this fear is still being perpetuated.

22 Second, police will be able to barge in
23 on a massage session when my client is naked and
24 vulnerable. Not true. The City Attorney has
25 repeatedly said that this ordinance will be

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1 updated to say that a massage in session will not
2 be disrupted unless it lasts over two hours. Yet
3 some vocal therapists continue to spread this to
4 their clients to fan the flames of outrage.

5 Last, LMT's were not part of the process.
6 Not true. There were public forums held with LMT's
7 meant to foster productive conversation on how to
8 address these criminal businesses, but local
9 opponents undermined these efforts by hijacking
10 the meetings, bullying attendees, and shutting
11 down the conversation before it began. If
12 Facebook has taught us anything, it's that it
13 doesn't seem to matter if it's true as long as
14 it's loud.

15 For example, tonight I heard someone say
16 they don't want to have to lock their door. The
17 truth is they are allowed to file for an exemption
18 to lock their front door. Your understanding is
19 not at the mercy of those with personal agendas.
20 You have heard from law enforcement, city
21 officials, subject matter experts and other cities
22 who have testified to the efficacy of this
23 ordinance. You have the whole story. This is not
24 City versus LMT's. This is City versus
25 traffickers. This ordinance will help massage

1 therapists now and in the long run.

2 Several years ago, my daughter and I went
3 into a massage place for a foot massage, which
4 ended up being way more. I had to squeeze my legs
5 together, so I wasn't touched in my privates. It
6 made me never want to go to any type of massage
7 place ever again. This was in Billings and my
8 story is not even close to what thousands of
9 people go through. If this civil ordinance is
10 passed, I will feel much safer giving massage
11 businesses another chance. I know other people
12 agree with me.

13 Please be willing to take a stand.
14 Positive change is good and promising. It is
15 time. Thank you.

16 TONI KEEHNER: Thank you. Okay, the next
17 speaker has a phone number that ends in 2489.

18 May I have your name and address, please?
19 Can you hear me?

20 We'll come back to them. The next
21 speaker --

22 JOHN MUELLER: Can you hear me now?

23 TONI KEEHNER: Oh, yep.

24 JOHN MUELLER: Can you hear me?

25 TONI KEEHNER: Yes. Your name and

1 address, please.

2 JOHN MUELLER: Sorry. I didn't know you
3 had to press * (unintelligible.)

4 TONI KEEHNER: Your name and address.

5 JOHN MUELLER: John -- John Mueller, 1021
6 Yellowstone Avenue #2.

7 TONI KEEHNER: Go ahead.

8 JOHN MUELLER: Yeah, I absolutely oppose
9 all illicit parlors and everything. Government's
10 role is to protect the rights of the people and
11 this ordinance does not do that. This will only
12 lead to more regulation, and I don't think it will
13 be very effective to stop sex trafficking. All's
14 they have to do is find someone that can pass the
15 background check to get a business license. I
16 think there's more effective ways to do it that
17 don't impede the rights of starving small
18 businesses. Give the police officers -- you know,
19 it's already illegal for prostitution. Sorry.

20 Why can't they do, you know, send some
21 no-knock warrants. Get some legislation and
22 policies out there that they can go into these
23 parlors? Everybody knows where they are. You can
24 point them out when you're driving. Why not give
25 officers the tools so that they can go into those

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1 businesses that doesn't affect the legit
2 businesses?

3 So, I don't know. I would say let's not
4 vote on that. That's all I got. Thank you.

5 TONI KEEHNER: Thank you for your call.
6 Okay, our next caller ends in 7784. Can you please
7 unmute yourself? May I have your name and
8 address?

9 KELLY ADKINS: This is Kelly Adkins.
10 Billings Heights.

11 TONI KEEHNER: Okay. Go ahead.

12 KELLY ADKINS: I've been a massage
13 therapist for 26 years. Part of that in Billings,
14 Montana. And I have written several times into
15 the Council and I'm against sex trafficking. In
16 my 26 years I've had very little people soliciting
17 me for illegal sexual acts. It happened and we had
18 to kick them out; and luckily, I have worked in a
19 very well-established wellness studio.

20 Since January, I'm amazed at the number
21 of texts and phone calls I have gotten soliciting
22 me for such type of massage, which I've never done
23 in my life.

24 I'm a veteran massage therapist. My
25 practice is closed, it's hard to get into my

1 practice. I have a lot of professionals, I get a
2 lot of referrals from doctors, PTs, other
3 therapists. I don't know how my number got out
4 there. I want to protect the young massage
5 therapists coming on board. I believe this
6 ordinance could do more and not just be limited to
7 massage therapy. They know the problems, the
8 windows, the hours, and why does it have to be
9 limited to just massage therapist and spa
10 ordinances? Why can't it be expanded to more
11 businesses? And that's been part of my complaint
12 this whole time, is that it can be looked at more
13 businesses. So therefore, they're not rewriting
14 this ordinance every couple of years as the
15 illicit businesses mimic and chameleon into
16 different types of businesses.

17 So, I hoped the current ordinance, as
18 written, and I'm current proposed ordinance, and I
19 would like it to be relooked at. That's all I
20 have. Thank you.

21 TONI KEEHNER: Thank you.

22 May I please have your name and address?

23 Stephanie Baucus, can you please unmute yourself?

24 Your name and address?

25 STEPHANIE BAUCUS: Hi, can you hear me?

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1 TONI KEEHNER: Yes.

2 STEPHANIE BAUCUS: Sorry, I almost
3 couldn't unmute myself. Sorry about that. It's
4 Stephanie Baucus, 4528 Highline Dr., Billings,
5 Montana 59106.

6 TONI KEEHNER: Go ahead.

7 STEPHANIE BAUCUS: Well, thank you for
8 having me back here, and thanks to everyone for
9 your comments. The City of Billings has known for
10 decades that prostitution and pimping, trafficking
11 and many other crimes, financial and violent, are
12 happening in IMB's right on our streets. But
13 because investigations are hard, expensive, we
14 have limited police resources targeting people to
15 cooperate, it's hard to get probable cause or have
16 reasonable suspicion, which is what you need for
17 law enforcement investigations, and because
18 getting law enforcement involved into
19 investigating these folks basically leads to
20 further victimization for the victims. Because of
21 these things, the City has not been able to do
22 much of anything to stop the proliferation and the
23 operation of these IMB's.

24 The other approaches that I've heard
25 since the last City Council work session that some

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1 licensed massage therapists suggested, they all
2 rely on law enforcement. If there were other ways
3 to shut down IMB's, the City would have used them
4 already. Because they rely on law enforcement,
5 they would put us right back here in the place we
6 are today.

7 Instead, we have an option, we've seen it
8 work in other places. One of the things that I've
9 heard since the work session is that many folks in
10 the licensed massage community are afraid. They
11 are afraid that the ordinance will hurt them, and
12 they've argued that there are other ways to shut
13 these places down.

14 Many speculate that the ordinance could
15 create an extra burden to them. But since the
16 City eliminated any extra fees and, since that
17 time, all the burden amounts to is basically some
18 paperwork, mostly done only once for each
19 business, and actually not done for each licensed
20 massage therapist, it's done for each business.
21 So, with no extra burden, no extra cost, the
22 burden is nearly miniscule. That burden pales in
23 comparison to the regulations on other healthcare
24 professionals, like doctors and pharmacists, and
25 even pales in comparison to the regulations on

1 cosmetologists.

2 It's narrowly tailored. Some folks
3 tonight have said that it should be broader and
4 include other businesses. And if that's the case,
5 it can certainly be expanded, but that's not a
6 reason to throw this ordinance out.

7 City Council, this is an easy decision.
8 You should stand for law and order. Stand in
9 opposition to human trafficking. Stand up for what
10 we value in our community. Stand up to these
11 criminals. Paperwork is not worse than human
12 trafficking. It is way past time for Billings to
13 take action, to drive these IMB's out of town.

14 Many of you know that a massage parlor
15 massacre occurred at an IMB in Atlanta, which is
16 tragic. The motive according to the suspect was
17 that he had a sex addiction, and he went into that
18 IMB knowing what was happening there. There's --

19 TONI KEEHNER: (Unintelligible)

20 STEPHANIE BAUCUS: -- nothing to say that
21 that couldn't happen in Billings. Please stand up
22 to these IMB's and actually do something.

23 This has been years in the making of
24 trying to find the best way to solve the problem
25 that we all know exists with the least burden on a

1 fine profession, that are honorable folks. Just
2 like many of us in our professions are as well.
3 And with the Board of Massage Therapy --

4 TONI KEEHNER: (Unintelligible) -- your
5 time is up.

6 STEPHANIE BAUCUS: -- had an instance to
7 look at this issue, they put in a new
8 regulation --

9 TONI KEEHNER: Okay, thank you.
10 (Unintelligible)

11 STEPHANIE BAUCUS: -- Section 902, that
12 was put in 2012 --

13 TONI KEEHNER: May I have your name and
14 address, please?

15 DEBORAH KIMMET: Yes. My name is Deborah
16 Kimmet and I am from Missoula. I am executive
17 director of the Business League for Massage
18 Therapy and Bodywork, and we have several
19 constituents in the Billings area. And, you know,
20 this really is an emotional issue and I thank the
21 Council for taking the time to hear us out on
22 this. I just have to make some comments about
23 some of the testimony and some of the things that
24 came up.

25 Let's talk first about Atlanta. One of

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1 the businesses that was involved in that was not
2 an illicit business and that is our concern, is
3 that being lumped in with these illicit
4 businesses, the way that the ordinance does, can
5 put us in danger. And in fact, someone mentioned
6 the article out of the Fort Business -- the
7 business thing that was written by a human
8 trafficking expert. I'd like to speak to that. I
9 actually have exchanged emails with that
10 individual, her name is Dr. Vanessa Bouché, and
11 she is very clear that massage therapists are
12 being scapegoated by these types of ordinances,
13 that these ordinances don't work, and that they
14 overburden massage therapists. And so, I wanted
15 to talk about just some of the burdens for a
16 second.

17 First of all -- well, actually let me
18 talk about something else first. The Federation
19 of State Massage Therapy Boards, that report was
20 completely condemned by the professional
21 associations. One of which you should have gotten
22 a letter today, from the ABMP, basically saying
23 that Aurora is not effective, and you already
24 heard testimony on that tonight.

25 We also have heard from someone saying,

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1 "Oh yeah, most massage therapists are actually for
2 this." Well, we have polled as many massage
3 therapists as we could find, which was about half
4 of the estimate of what we found in Billings, or
5 what we estimate based on state statistics, and
6 117 of those 123 massage therapists opposed the
7 ordinance. So, it's not just a small group of
8 people. It's 117, of which is close to half of
9 the number of massage therapists here.

10 Also, to talk about the changes, this
11 ordinance is not ready for prime time and, in
12 fact, one the changes that's in there about the
13 log, it says -- the new change in the ordinance is
14 "The log and other books and records may not
15 include any protected health information of
16 clients." So, now are you mandating that massage
17 therapists can't put that information in their
18 stuff? Are you mandating that? It's poorly
19 written. It's poorly worded. It's very vague.

20 There's other things in there that are
21 constitutional issues, like for example, Law
22 enforcement and code enforcers can enter the
23 business at any time, whether or not there's
24 complaint and they can look for anything they want
25 to look for. Now, the last time I checked, the

1 Constitution says that you have to have probable
2 cause and a warrant for that, or a warrant for
3 that kind of thing. And those are concerns that we
4 have as a group on this.

5 TONI KEEHNER: (Unintelligible) -- your
6 time is up. Could you please wrap it up?

7 DEBORAH KIMMET: I appreciate your time.
8 I'll wrap it up here. I just want to say that
9 these ordinances don't work to curb the problem.
10 We've provided other solutions to you that do not
11 involve law enforcement. And we're hoping that you
12 would listen to the national experts and please
13 vote no on this proposal. We'd just really
14 appreciate it.

15 TONI KEEHNER: Thank you. We have
16 another person who has an older version of Zoom.
17 So, I need to promote them to a panelist in order
18 to speak.

19 Are you able to hear me? Can you unmute
20 yourself?

21 (Unintelligible response.)

22 TONI KEEHNER: Perfect. May I have your
23 name and address?

24 LAUREN SANFORD: Lauren Sandford and it
25 is Ward 2.

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1 TONI KEEHNER: Go ahead.

2 LAUREN SANFORD: Okay. There's a problem
3 in the massage industry. The professional class
4 community did not create the problem, but a lack
5 of regulation has created a refuge for human
6 trafficking. The heartbreaking testimonies of the
7 few victims who have managed to escape are eerily
8 similar. Asian women recruited with promises of a
9 better life. Once here, they come under the
10 control of the trafficker. Their papers are taken,
11 they can't get out, they have a language barrier.
12 They did not come here willingly to perform sexual
13 acts. The traffickers ensure that they will give
14 them these pitiful wages and give them food and
15 rent. It's called debt bondage. This is coercion.
16 This is the very definition of human trafficking.

17 Each woman has different tales, but over
18 and over again, each victim has the same story,
19 and this is happening here in Billings, Montana.
20 You better believe these criminal business owners
21 are watching you to see if they can stay, to see
22 what the City is going to allow. Policies vary
23 across the country and those with the weakest
24 policies attract the most crime.

25 That being said, great care must be taken

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1 to the balance of regulation and burden. This
2 ordinance does just that. Zoom out and really look
3 at these regulations. These are minimal, far less
4 than most healthcare professions, but these are
5 things that fake massage businesses consistently
6 do not do and cannot do because they are integral
7 to their business model. They need sexually
8 suggestive advertising to attract patrons. They
9 need the women contained and living on site. They
10 need locked doors to keep the wrong eyes out.

11 Real massage businesses can comply with
12 these regulations. (Inaudible) hoping they already
13 do. But illicit massage businesses cannot. They
14 cannot comply with these regulations. Places with
15 the weakest policies attract the most crime.
16 (Inaudible) is like a welcome home for these
17 illicit businesses who have profited off the
18 sexual degradation of women for 40 years.

19 Business industry is subject to
20 regulation when public safety or criminal
21 enterprises are concerned. Both are certainly the
22 case here. So City Council members, are you going
23 to make Billings a place for human trafficking and
24 human traffickers to congregate? Or this stops,
25 right now. You have the choice to make a vote

1 right now. Thank you.

2 TONI KEEHNER: Thank you.

3 May I have your name and address, please?

4 MELANIE TRIPP: Hi, my name is Melanie
5 Tripp. My address is 7535 Entryway Dr.

6 TONI KEEHNER: Go ahead.

7 MELANIE TRIPP: Council, I hear a lot of
8 passion and anger from opponents tonight. Many of
9 them say they not only oppose the ordinance, but
10 also oppose human trafficking. If they brought
11 this passion to fighting human trafficking, we
12 could get a lot done to end trafficking in
13 Billings.

14 I am a chair on Redstone projects. I'm
15 co-chair on Prevention Apprentice Committee for
16 the Human Trafficking Task Force, and I'm also
17 President of (undiscernible) Club in Billings.
18 The problem here is there is a machine of
19 propaganda behind the opposition that insists they
20 will not settle until no ordinance, whatsoever,
21 that includes massage therapists, exists. This is
22 sad, but it is the truth. Who supports the
23 ordinance? Who is a part of fighting it? Who has
24 attended the task force meetings? BPD, FBI, DOJ,
25 victim service organizations, many public -- many

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1 people in the public and businesses. None of the
2 opponents, but they insist that they are seriously
3 worried about human trafficking.

4 Regarding licensing, my husband and I
5 have owned multiple businesses here in Billings.
6 20-plus years in security. My business
7 understands the amount of crime that happens in
8 the city and how it has changed. We also know what
9 it is like to be regulated and get background
10 checks. By law, and I'm now required by the State
11 license, but also State fire and security licenses
12 for each employee and three for our company. They
13 require background checks, which forces us to
14 prove we are not criminals. Kind of makes it
15 sounds like they are lumping us with thieves and
16 burglars now, doesn't it? We're not offended when
17 they ask us if we have had past felonies or
18 criminal activity. In fact, no one I've met in my
19 industry minds at all. We don't feel like they are
20 targeting us. I don't feel belittled or demeaned,
21 and neither do any of my team members. I
22 understand it is something we must do for our
23 business.

24 The fees for these licenses range between
25 150 to 250 each, that expense of the small

1 business for 10 to 12 people, times two for each
2 employee, plus three for the company. This must
3 be renewed every year and I'm happy to do it and
4 see it as an important part of letting clients and
5 city state know we are trustworthy. On top of the
6 licenses, if anyone asks me to prove we are not a
7 human trafficking organization, I would say yes,
8 absolutely. Where do I sign up and how can I help?

9 Background checks, licensing and drawing
10 lines between criminals and legitimate business --
11 legitimate industries is necessary and what we
12 must do to prove we are the real deal. The lines
13 the massage ordinance will draw is a change to the
14 city and massage therapists can make that states
15 and shows they do believe human trafficking exists
16 in illicit massage and it's abhorring and should
17 not be allowed. People here opposing the ordinance
18 are fighting human traffickers' battle for them.

19 The worst part of the story is while this
20 spa ordinance debate drags on for the three years,
21 the safety of our city declines. Human
22 traffickers bring violence, crime, gangs, and
23 drugs to our city. They spread violence,
24 especially against women and girls. And brings
25 generational trauma that spreads like a disease.

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1 On many reviews and data of the crime
2 rate in Billings is depressing. Ask yourself, do
3 people really care about women working in illicit
4 massage businesses, and if not, why? When do the
5 concerns of massage therapists take precedence
6 over human rights violations? Should this even be
7 a debate? And how did our society get to a point
8 where it cannot recognize an evil of the worst
9 kind that stands before us in our own city and in
10 the light of day for countless years and doing
11 nothing?

12 TONI KEEHNER: (Inaudible) -- timing
13 factor. Are you about done?

14 MELANIE TRIPP: I am done. Thank you so
15 much.

16 TONI KEEHNER: Okay. Thank you. I do not
17 have any more people requesting to speak.

18 MAYOR COLE: Okay. Thank you, Toni. Thank
19 you for your efforts. We will then close the -- If
20 there are no other comments from the public, we'll
21 thank everybody, close our public comment period.
22 The public hearing on this ordinance. Again, thank
23 you to everybody. That was a bit of a marathon,
24 but I think we all learned a lot and appreciate
25 everybody's sincerity and hard work, and I think

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1 it was just extremely valuable.

2 It's 10:23, Council. We can discuss how
3 we want to proceed. This is Item 5. We still have
4 one other item tonight. You know, we can press
5 ahead. We do not have a motion at this point. We
6 do need to, at some point, have discussion on the
7 possible amendments. I guess my inclination is to
8 press ahead while we're here. So --

9 UNKNOWN: How about a break?

10 MAYOR COLE: Oh, you want break? There's
11 a concept. (Indiscernible comments.)

12 MAYOR COLE: Yeah, no, absolutely, let's
13 do it. It's 10:23. We'll try to come back around
14 10:30 or as close to that as we can. Thank you.
15 (Indiscernible conversations.)

16 (Council Meeting Recess)

17 MAYOR COLE: If we could all take our
18 seats. We'll get started again. A little bit of a
19 scheduling issue. Item No. 6 is still following
20 this, if Jeff Kanning and Erin Heringer are still
21 awake. We apologize. We know that you need to be
22 on a regular agenda. If you want to speak with
23 Wyeth Friday -- or Wyeth, maybe you could give
24 them a call offline. If they have a different
25 proposal for, you know, have to -- wanted to delay

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1 their item, in which case we could potentially
2 release them, but I'm afraid they'll just have to
3 sit tight if they want to get it, Item No. 6,
4 dealt with tonight. But let us know, Wyeth, if you
5 come up with a different solution, just pop your
6 camera on and we'll interrupt whatever we're doing
7 on Item No. 5, but Item No. 6 is still out there
8 and we offer our condolences for anybody
9 interested in Item No. 6.

10 With that, we will reconvene. Thank you,
11 everybody. We need something to discuss here. So,
12 is there a motion pertaining to this item?

13 Council member Ronning.

14 MS. RONNING: Thank you. Having conducted
15 a public hearing, considered written and spoken
16 public testimony, I move to approve the first
17 reading ordinance regulating massage and spa
18 facilities through business licensing criteria as
19 recommended by staff.

20 MAYOR COLE: Thank you very much. Is
21 there a second? Council member Yakovich. Thank
22 you very much.

23 Council member Ronning, would you like to
24 speak to your motion?

25 MS. RONNING: Yes, thank you. First of

1 all, I really, truly want to thank Ryan Sullivan
2 and the City Council of 2017. Ryan Sullivan is the
3 Council member that brought this initiative
4 forward and has been supportive and been helping
5 ever since, even though he resigned and had to
6 move to Texas. So, I really want to thank former
7 Councilman Ryan Sullivan. I want to thank Bruce
8 McCandless and Chris Kukulski, Gina Dahl, Brent
9 Brooks, Wyeth Friday, Andy Zoeller, and Chief St.
10 John for their continued support towards the work
11 on this ordinance for many years. You're very
12 dedicated to it. Thank you.

13 So, I want to address a couple of things
14 that were said. First of all, I have absolutely no
15 financial benefit whatsoever in the fight against
16 human trafficking. I probably pay out all of my
17 money to actually be in this fight. I don't get
18 any benefit from it. It is a passion of mine. So,
19 it's something I believe in, and I'll fight for
20 it. Just like I believe in and fight for The
21 Energy Commission that I brought forward. LGBTQ
22 equality that I brought forward. Many different
23 issues, and that's why I ran for office. It's also
24 what I ran on. I ran on this platform. So, I just
25 want to thank everyone.

1 I think there were a number of items that
2 were addressed that we'll probably get to in the
3 question and the discussion period, at least I'm
4 hoping we'll be able to address those. So, I think
5 that there were some good points that were brought
6 up and I want to make sure that we get those
7 addressed.

8 I realized that LMT's are very angry with
9 me; and if there's someone you need to hate and
10 you want to direct it to me, you're more than
11 welcome to do that. I'm not sure why, but you're
12 more than welcome to do that. I will wear the
13 fight against human trafficking with a badge of
14 honor. So, I'll put it in the skies, I'll wear it
15 with a badge of honor.

16 But it's important to note that I firmly
17 believe in small business. I was raised in one, I
18 have one. I've been raised with the benefits of
19 massage therapy and continue to get massage
20 therapy and truly appreciate the medical benefits
21 of that. And we'll absolutely support you in that.
22 I truly hope, and one of my goals is, to get the
23 illicit massage business off your back and get
24 that completely cut from your legitimate
25 profession. So that's what I'm in this seat to do

1 and that's what I hope to do. Whether this
2 ordinance passes or not, I'll continue that fight.

3 I have some other things that I'm sure
4 that we'll address through some questions. But
5 those are some of the issues that I wanted to
6 bring up. So, thank you.

7 MAYOR COLE: Thank you very much.

8 Council member Yakawich, you made the
9 second, did you want to speak to the motion?

10 MR. YAKAWICH: I'll pass right now your
11 Honor.

12 MAYOR COLE: Okay. Thank you.

13 Okay, Council, we've got an opportunity for
14 further discussion or amendments. I guess what I
15 propose is that we address some of those kind of
16 technical amendments.

17 Gina, you had your list there before.
18 During the break you said that you wanted to
19 change some of the language based on the testimony
20 from Deb Kimmet and maybe others. Can you run us
21 through your amendments, and we'll see whether
22 there's a motion adopting any of these?

23 GINA DAHL: Sure. Sharing this again.

24 So, I have taken into consideration some
25 of the comments and have come up with what I think

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1 is a bit better language with regards to the HIPAA
2 issue. It's never been the intent of this
3 ordinance to request any protected health
4 information, and so I'm simply trying to include
5 additional language to make that very, very clear.
6 And Deb Kimmet had, her comment -- had a point
7 about the language that was added. So, my
8 suggestion at this point is to add this sentence
9 that I've highlighted, which says "any protected
10 health information may be redacted from the log
11 and any books and records provided subject to this
12 article" instead of this sentence.

13 I think that that would address that
14 issue. Even more clear, that you do not have to
15 keep two versions, two books, two sets of
16 anything. They can simply redact the protected
17 health information. That should address that
18 issue. And the other edits that I set forth
19 earlier remain the same, so I can go through those
20 again, if you feel it necessary.

21 MAYOR COLE: If you would quickly, and
22 then I'll ask Council if there's a member of
23 Council who is interested in making a motion to
24 adopt one, or all, of these amendments.

25 GINA DAHL: Okay. So, the first

1 amendment is to 7-1902, subsection, (i) and (r) to
2 simply correct the reference to 27-611(c)(20)
3 change it to 27-1803 A. Subsection (r), same
4 thing, the citing reference needs to be changed to
5 the newly adopted code Section 27-1803 A.

6 MR. NEESE: Mayor.

7 GINA DAHL: The second one was the one I
8 just went through was 7-1911 subsection C, to add
9 that sentence about the protected health
10 information. Oops.

11 And the next edit was to 7-1911,
12 subsection F to clarify that -- add the sentence
13 "However, an inspector or law enforcement officer
14 may not interrupt the treatment session that is in
15 progress, except that a treatment session lasting
16 two hours or more may be interrupted." Add that
17 sentence.

18 And then finally, to add the sentence I
19 referenced just a moment ago to Section 7-1912
20 "any protected health information may be redacted
21 from the log and any books and records provided
22 subject to this article," to, again, clarify that
23 we are not seeking any protected health
24 information.

25 MAYOR COLE: Okay. Thank you. So, you've

1 seen Gina's proposed amendments.

2 Council member Neese, what was your
3 comment?

4 MR. NEESE: I'll make the motion to
5 adopt, amending the motion to these amendments.

6 MAYOR COLE: Thank you very much. Second,
7 by Council member Brown. Discussion on the motion
8 to amend.

9 Council member Brown.

10 MR. BROWN: Thank you, Mayor. Gina, one
11 of the questions that I've got on this protected
12 health information, you know, that's more than one
13 piece of information. So, does that mean they
14 don't have to have a client name, Social Security
15 number, phone number, address? They have to have
16 none of that in there?

17 GINA DAHL: Anything that's protected
18 health information under HIPPA, which is generally
19 medical records and personally identifiable
20 that's including their name. Anything that's
21 going to identify them with their medical records
22 that's -- And as healthcare providers, they are
23 fully aware of what protected health information
24 is, so.

25 MR. BROWN: Well, like you say, that

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1 that's more than just one thing, you know -

2 GINA DAHL: Right.

3 MR. BROWN: In this case, that would mean
4 they don't have to supply any of the information
5 for it, correct?

6 GINA DAHL: Correct.

7 MR. BROWN: So, they don't have the
8 client's name on that log, they don't have to
9 have --

10 GINA DAHL: Nope.

11 MR. BROWN: -- phone numbers, anything on
12 there?

13 GINA DAHL: Nope.

14 MR. BROWN: Okay. Thank you, Gina.

15 GINA DAHL: Yep.

16 MAYOR COLE: Okay. Thank you.

17 Council member Neese, on the motion to
18 amend.

19 MR. NEESE: Thank you, Mayor.

20 So Gina, this log, if it's not going to
21 have any information on it. What information will
22 it have on it? Because if it's not identifiable
23 information --

24 GINA DAHL: Well, not personally
25 identifiable information, but it will need to

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1 contain the date and the time, the --

2 MR. NEESE: Procedure.

3 GINA DAHL: -- the type of massage
4 therapy provided, as well as the employee who
5 provided it. I believe those are the four pieces
6 of information that are required in our ordinance.

7 MR. NEESE: Okay.

8 GINA DAHL: In our proposed ordinance.

9 MR. NEESE: Okay. All right. I
10 understand. Thank you.

11 MAYOR COLE: Okay. Thank you.

12 Council member Purinton.

13 MS. PURINTON: Thank you. So, what I'm
14 trying to understand in this part of why there was
15 that misconception that they were going to have to
16 provide clientele information. So, if all they
17 have to provide is this log of date, time, type of
18 massage, and name of employee, that relates to the
19 facility. It doesn't relate to clientele. So, to
20 me, to add all of this information in about all
21 books to be available to law enforcement or code
22 enforcement, I think that's stretching it so that
23 it does make it where it's not clear. And that's
24 been a big issue with the massage therapists,
25 especially those that do therapeutic massage,

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1 because they do have health orders for those. So,
2 I'm just saying, why go beyond this log to me?

3 I mean, there's no -- from what I'm
4 seeing and from, I think, something that you said
5 the other day at the town hall, that, I mean to
6 me, you can write it on the spiral notebook.
7 There's no particular form that has to be filled
8 out. Other than just this information, there's
9 nothing that is -- Oh, I can't even think of the
10 word -- you know, this is the only information, so
11 why go through the HIPAA thing at this point?

12 GINA DAHL: Well, because I think their
13 logs contain HIPPA information and so they needed
14 that clarification, but the proposed ordinance
15 does request a complete set of books and records
16 in the event that there is an investigation and
17 there is a need to verify that this log is
18 actually accurate, and they are actually doing
19 what they are saying they're doing. That meant
20 not just their other books and records. That may
21 be financial records.

22 Again, this is only going to be - I can
23 imagine that that's not going to happen very
24 often. It's certainly not going to happen for the
25 ones who are abiding by the law and conducting

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1 good business practices. But the intent is not to
2 take out books and records. We certainly want
3 them to have a complete set of books and records
4 available, if we need to inspect those.

5 But to your point about the log, the
6 objection that I was hearing from them was that
7 that log did contain their name, so they were
8 concerned about that. That would be identifying a
9 person. That would be protected health
10 information -- a piece of protective health
11 information.

12 MS. PURINTON: But my understanding, with
13 the log, is that it's never contained client
14 information. It contains more information about
15 the massage therapist, or the person that's
16 performing the massage and the business, the
17 facility, because that's what this is supposed to
18 be, is a facilities license. So, whenever you
19 added that "and all other books," I think that
20 just really muddied the water on that. And that's
21 why I'm saying, why does that even have to be in
22 there? If you want a log of just this information
23 that you're talking about that's under C, then why
24 do you have all the other, you know, we also have
25 access to all these other books?

1 GINA DAHL: We want the rest of that
2 information to be subject to inspection. I'm
3 sorry. Perhaps I'm not following the question.
4 Somebody else can help me out here; but, first of
5 all, the log may contain protected health
6 information, and I think that was part of their
7 objection. Because if it contains their name,
8 then that would be protected health information.

9 MS. PURINTON: But it doesn't contain
10 their name. It doesn't dictate --

11 GINA DAHL: The way they keep it may.
12 That was their objection. What I heard in
13 objection is that, "If I keep a log, I'll have to
14 keep two logs. One that has -- like I can't
15 provide you their appointment book because it's
16 got their name in it."

17 MAYOR COLE: Okay. We'll move on. Further
18 discussion on the motion to adopt these
19 approximately four amendments that Gina went
20 through. Is there further discussion on the motion
21 to amend before we proceed to a vote? I don't see
22 any, so we'll move to a vote on the proposed
23 amendment. If that is clear, all in favor of the
24 motion made by Council member Neese, seconded by
25 Council member Brown, please raise your hand.

235

1 Voting in favor are Council members Cole, Boyett,
2 Joy, Ronning, Yakavich, Brown, Choriki, Shaw, and
3 Neese. Voting in opposition, please raise your
4 hand. Voting in opposition are council members
5 Ewalt and Purinton. Motion passes.

6 So that is now the amended motion. I'll
7 move on to the proposed amendments that I
8 mentioned earlier in the meeting. I don't have a
9 nice slide. I apologize for that. That would be
10 helpful, I know, but they are contained in the
11 e-mail from me of today at 10:15 AM, copies of
12 which were available to the public and also
13 distributed. And the clerk has this, so there's no
14 question about the amendments. I'll make this as
15 a package, and see if there is a second for them
16 as a package.

17 The Sections 7-1902(o)(1) to change the
18 sentence that says, "a place of business where a
19 licensed massage therapist practices as a solo
20 practitioner." The word "a" would come out and in
21 its place substitute "only one."

22 Second, changing Section 7-1913(a)(2),
23 the sentence that says, "that the qualifications
24 set forth in the application utilized to obtain a
25 massage or spa facility license were materially

1 inaccurate," et cetera. Change the word
2 "qualifications" to the word "information" and
3 "were" to "was."

4 Third, in Section 7-1913(b), where it
5 says that the "appeal is to be 20 days after
6 written notice of revocation," change the word
7 "revocation" to the "license administrators
8 decision."

9 And lastly in Section 7-1919(a), insert
10 the word "material" in front of "participated in
11 creating the duress," and delete at the end the
12 words "or who knew, or should have known of the
13 existence of the duress or coercion" and replace
14 that with the phrase "of another person that
15 resulted in violation of Section 7-1904 or
16 7-1910."

17 That's the motion. Is there --
18 (Inaudible motion made.)

19 MAYOR COLE: Okay. Thank you for putting
20 that up. Is there a second to that motion? Council
21 member Neese has the second. Discussion on that
22 motion to amend. Is there any discussion on that
23 motion to amend?

24 Council member Neese.

25 MR. NEESE: Thank you, Mayor.

1 And I believe, Gina, you can address
2 this. I think you have reviewed this and looked at
3 the Mayor's email and agree with these changes,
4 that they're more clear in what this is
5 expressing. Is that correct?

6 GINA DAHL: Yes, I think those are all
7 appropriate changes.

8 MAYOR COLE: Thank you very much. Any
9 other discussion before we proceed to a vote on
10 that set of amendments? Seeing none, we'll vote.
11 All in favor of that group of amendments, please
12 raise your hand. Voting in favor are Cole,
13 Boyett, Ewalt, Joy, Ronning, Yakawich, Brown,
14 Choriki, Shaw, Neese and Purinton. So, that motion
15 passes unanimously.

16 You now have before you, then, an amended
17 version of the ordinance. Council, how would you
18 like to proceed? Further discussion on the now
19 amended motion.

20 Council members Neese and then Boyett.

21 MR. NEESE: Thank you, Mayor. Gina, some
22 of the conversation was about expanding this and
23 that's my concern is -- In fact, some of them said
24 we should expand it. And my concern is that if it
25 could be expanded in some fashion or another, can

1 you speak to how this could, or should, or may be
2 expanded in the future?

3 GINA DAHL: When you say expanded, are
4 you referring to --

5 MR. NEESE: Include the other businesses,
6 industries, across the city.

7 GINA DAHL: Okay. Well, thank you for
8 the question. Honestly, I feel like I can't answer
9 that because, at this point, I am, myself, not
10 aware of other businesses or industries where this
11 issue would need to be addressed. But it would be
12 totally appropriate to address that, if and when
13 that were to occur. It may not, depending on what
14 business or industry it were expanded to, it may
15 not be appropriate to amend this particular
16 ordinance. It may be necessary to create a
17 separate ordinance. But if it was a related
18 business or industry that could be incorporated
19 into this ordinance, I think that that may be
20 appropriate.

21 MR. NEESE: Thank you.

22 MAYOR COLE: Okay. Thank you.

23 Council member Boyett.

24 MR. BOYETT: Thank you, Mayor. Going
25 back to the log, Gina. By itself, the log will

1 mean nothing. I could make up a log every day and
2 just put down information. Without a subpoena for
3 the financial records, you wouldn't be able to
4 compare it anyways, so why even waste your time
5 with the log?

6 GINA DAHL: Well, I guess I -- No, I'm
7 not sure that I think it would be a waste. I
8 think that we're asking for their legitimate
9 business records. I suppose you're correct. That
10 if they're going to go to the trouble of creating
11 a log that looks legitimate, I suppose we may not
12 know that, but this ordinance does, in fact,
13 require and request that a complete set of books
14 and records be available upon request, and that is
15 part of the reason to ensure that they are, in
16 fact, doing what they say they are doing.

17 So, if the log is purporting that they
18 have given this many messages on this particular
19 day, their revenue generated from that should
20 match up and everything should reconcile.

21 WYETH FRIDAY: Mayor and Council, this is
22 Wyeth.

23 MAYOR COLE: Yeah. Thank you Wyeth, go
24 ahead.

25 WYETH FRIDAY: If I can just add to Gina,

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1 in answering the question from Council member
2 Neese.

3 One of the things that it requires in the
4 log, is the name of the employee administering the
5 massage therapy, and I think what our expectation
6 is that because it also requires that each of the
7 massage therapists have their licenses visible at
8 the facility, that we would look at the log and
9 look at that, and see if the actual people, you
10 know, that that matches up. Obviously, you know,
11 things could always be worked on, but that one, I
12 think, makes it a little more difficult, if they
13 were not having the same people doing what they
14 show their licensures to be doing.

15 So anyway, just to add that to what we're
16 looking at.

17 GINA DAHL: Thank you, Wyeth.

18 MAYOR COLE: Okay. Thank you.

19 Council member Neese.

20 MR. NEESE: I'd like to add to that. If
21 you actually look at the massage, the state law
22 for the massage therapists, they are required to
23 keep records and list all of what we require and
24 also more, so that information is going to be
25 recorded by them and all we are looking for is

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1 just those four items. And then I agree with
2 Gina, if there's an issue and we need to subpoena
3 it, then all this information should match what we
4 were looking at it for.

5 MAYOR COLE: Okay. Thank you. Further
6 discussion on the motion.

7 Council member Brown --

8 MR. BROWN: I just want to --

9 MAYOR COLE: -- and then Council member
10 Joy.

11 MR. BROWN: I just want to clarify. So,
12 when we're saying that all their records have to
13 be available, now we're talking subpoenas. So, if
14 we have to subpoena, this has no teeth. Is that
15 correct?

16 GINA DAHL: I don't think that we would
17 have to subpoena the records if this ordinance was
18 enacted.

19 MR. BROWN: Okay. So, I guess I just
20 want to point out that they would not have the
21 subpoena to get those records, correct?

22 GINA DAHL: Correct.

23 MR. BROWN: Okay. Thank you.

24 MAYOR COLE: Thank you.

25 Council member Joy.

1 MS. JOY: Ah, thank you, Mayor, and
2 Council. I really don't have a question, and I
3 think we're at discussion points. So, I'm going
4 to go ahead and make my comments as to why I'm
5 going to support this motion, this amended motion,
6 with the additional language and clarifications.
7 And I'd really like to say, I really do appreciate
8 the people who came forward to testify this
9 evening. There's a tremendous amount of emotion
10 that goes along with people who do things that
11 they really care about. When they feel like
12 they're helping another person, they really care
13 about what they do, and that's a very good thing.

14 At the same time, we have to address the
15 issue of these illicit massage parlors\spas. We
16 do have to address that. We can't, as a city,
17 have members of our community, regardless of how
18 they came to be here, abused, mistreated,
19 exploited, and for us to say nothing or do nothing
20 to help them would be an absolute crime on our
21 part.

22 So, I do want to acknowledge that massage
23 therapists really have a lot of passion for what
24 they do, and they care about that. And they
25 really do not need to have their reputation or

1 their occupation be tainted by what is illegal and
2 what is clearly criminal on the part of spas that
3 are bringing women in, abusing them in horrible
4 and unimaginable ways.

5 So, I would like to say that this
6 ordinance has gone through a lot of revisions.
7 When I first saw it-- and I would like to also
8 thank Council Member Ronning, since 2018, this has
9 been a real passion of hers, and I've had a
10 tremendous education on the problems that these
11 spas really pose for our community, and I really
12 commend her for her outreach and work on those.
13 But it has gone through a lot of revisions, and
14 the first time I saw it, boy, I really didn't like
15 it. It had things in it that, really, I could
16 stand at that podium and get very passionate about
17 what I didn't like about that ordinance. But I
18 think this has gone through a process of trying to
19 accommodate some of the issues that have come up.

20 Is it perfect? Is everyone satisfied?
21 Absolutely not. Does it look like it first looked
22 when I saw it? Absolutely not. And I'm very glad
23 for that, because we would not want to have had
24 that ordinance talked about in this room the way
25 it was written the first time I saw it. So, I

1 think we've come a long ways. Is it perfect? No.
2 Can massage therapists be an industry that is not
3 regulated? No. Everybody gets regulations, and I
4 understand that as small businesses you have a
5 particular interest in not having your business
6 impacted by regulations that are overburdening. I
7 understand that. I think that's part of the
8 accommodation that this ordinance is trying to
9 make, in terms of the fees that are being charged
10 in order to make that commiserate with what it
11 would take for a small business to continue its
12 viability. So, I think that's very important.

13 But the question is, how do we really
14 impact human trafficking? If we decide this
15 ordinance isn't good enough and it has
16 objectionable things, that means we do nothing,
17 and that's totally unacceptable, too. It's not
18 acceptable to ignore what's happening in our
19 community. So that also is not acceptable. But
20 what is very, very clear, and this is a very, very
21 important part of this, that since 2018 and
22 through successive budgets has been an issue, is
23 how we fund our public safety. And I'm very glad
24 that there has not been a single person who has
25 come up here and said I'm all for human

1 trafficking. I don't care about anything about
2 what's happening in our community. No one has said
3 that. Everyone has said exactly the opposite.

4 What can we do to impact this crime and
5 protect women and help these women who are in such
6 desperate situations? No one has said, I don't
7 care, I'll turn a blind eye to it. Absolutely not.
8 I have not heard that from anyone. So, what can we
9 do to have that impact? And I was very happy to
10 hear people who came forward and said, I'd be
11 willing to pay more for our public safety if we
12 can have an impact on this. I was very happy to
13 hear that.

14 So, I don't hear -- actually, people have
15 said "opponent." I really don't hear that. What I
16 actually hear is everyone concerned and caring
17 about what we know is not a good thing happening
18 in our community. And if people are willing to
19 step up and say, I'm willing to pay more for
20 public safety to have an impact on this issue,
21 that makes me very happy that I see a community
22 that wants to rally and come together on an
23 important value that we want to uphold. An
24 important value of the dignity and the freedom,
25 and the value of every member of our community,

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1 whether they choose to come here or whether they
2 were trafficked into this community.

3 So, I'm very happy with the comments that
4 have been made. So, I think that there is a lot
5 for us to do, and we do have limited resources,
6 but I think this can actually be an important
7 rallying point. If we see a need in our community
8 and we see violations of human rights and dignity
9 in our community, we can rally to change that. We
10 don't have to be the Billings, Montana that has
11 the most number of trafficked people in our
12 community. We can be the community that actually
13 addresses that and invests in the kinds of law
14 enforcement, public safety, whatever it takes to
15 have that positive impact. So, I will support the
16 motion. Thank you.

17 MAYOR COLE: Thank you very much, Council
18 member Joy.

19 Chris, can I ask you a question? I've
20 said before that I'm very sympathetic to arguments
21 that this problem could, in theory, be solved
22 through more law enforcement, because I think
23 that's true, but it is expensive. It's not easy.
24 We've had discussions. Do we have a commitment
25 from City administration and the Billings Police

1 Department, though, to commit more resources than
2 have been devoted in the past to helping to solve
3 this problem, if this ordinance is passed so that
4 we can have more of an all-the-above-type
5 response? And if so, what would that additional
6 effort look like, in general terms, recognizing
7 that we are not going to be able to devote massive
8 resources to this problem?

9 MR. KUKULSKI: So, the answer's
10 absolutely.

11 In working with the Chief, as he said earlier,
12 we're comfortable with the resources we have, that
13 half of a full-time detective can be dedicated to
14 this effort. I think the recognition that this is
15 a violent crime places it appropriately with any
16 other violent crime, and violent crime takes
17 priority over nonviolent crimes. So, with what we
18 have today, the Chief has communicated that that's
19 the increased effort he feels can be squarely
20 dedicated to it. And I do believe, when we talk
21 about our public safety, increase investments --
22 you know, code enforcement has always been on the
23 table, as well as other components.

24 So, I believe, based on the conversations
25 specifically with Trevor and Aurora in

1 coordination, in working with the Chief and
2 talking to how we coordinate currently with the
3 State of Montana and the FBI, that we can
4 absolutely and will make a difference on multiple
5 fronts in this area. And we will ask, as a part of
6 the next public safety conversation, that we
7 further increase some of those components, and you
8 will be the determiners as to whether we get that
9 right balance there.

10 But we're not just relying on this
11 ordinance and a code enforcement officer to be the
12 sole implementer here.

13 MAYOR COLE: Okay. Thank you.
14 Council member Boyett, Ewalt and Purinton.

15 MR. BOYETT: Thank you. There were a
16 couple of items that came up during the
17 presentations tonight I wanted to make clear.

18 Maybe this would be for Wyeth, it sounds
19 kind of crazy, but what is your definition of a
20 complaint? Does that mean that I can drive by a
21 business and say, "Oh, I think there's sex
22 happening there," and you're going to go storming
23 into the business, or what do you need from a
24 complaint in order to start an investigation?
25 That's my first question.

1 MR. KUKULSKI: Wyeth, can you -- Sorry.

2 WYETH FRIDAY: Yep, I'm here.

3 MAYOR COLE: Yeah, Wyeth, go ahead.

4 WYETH FRIDAY: Mayor, and Council, and
5 Council member Boyett. I think we would very much
6 be looking at the couple of sections in the
7 ordinance that have the requirements for operation
8 and what they would have to be following. So, I
9 mean, if you went by and all the windows were --
10 you know, the windows were all blocked and
11 couldn't see anything, and something like that
12 which is spelled out in the ordinance, or as --
13 and we've talked about this with Chief St. John,
14 as well. If, you know, the facility was open and
15 it's midnight, then that, again, is clearly
16 spelled out in the ordinance. Those would be
17 things that we would then be following up on,
18 based on that complaint.

19 So, we would be very much looking at
20 those couple of sections that list out those
21 requirements and what's allowed or not allowed for
22 them to operate.

23 MR. BOYETT: Thank you. And then my
24 second question is for you, also, Wyeth, is that
25 realizing that the code enforcement is not

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1 proactive, it's complaint-based; and according to
2 the testimony here, apparently everybody knows
3 where these businesses are, what is your plan to
4 attack them right off the bat and not sit back and
5 wait for a complaint?

6 I think all this work's gone into this;
7 we shouldn't just do nothing. I think you need
8 to, in my mind, have a plan to go out and hit 10
9 or 12 businesses right away. Do you have that in
10 mind?

11 WYETH FRIDAY: Council member Boyett,
12 Mayor, and Council. Yes, we've been discussing
13 that with finance, and legal, and police, and city
14 administration, in terms of how this will move
15 forward, if it's passed, and we've agreed that we
16 have to be proactive in this case, in this
17 situation. So, both, with after it takes effect.
18 And we're going to be notifying businesses,
19 working with finance on that piece, but also being
20 proactive at that initial licensing application
21 process, to do some on-site inspections. And then
22 be following up, obviously, at that same time with
23 complaints, but being proactive with the licensing
24 process right away. I mean, we're going to have
25 to do that to have this be effective.

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1 So, it's going to be a more proactive
2 portion of what we do than what we've been doing
3 with other code violations in the past.

4 MR. BOYETT: Thank you.

5 MAYOR COLE: Thank you.

6 Council member Ewalt and Purinton.

7 MR. EWALT: Thank you, Mayor. I got to
8 try to follow up on that, what Council member
9 Boyett was talking about. There's, what, 10 or 13
10 of those in the city right now, and they fall
11 under the three categories that you already named
12 off, Wyeth. So, why do you need to wait to have a
13 license filled out to go in and get the three
14 common things that -- The closed windows, and the
15 ATM machine, and the locked doors? Why do you
16 need to wait to have a license filled out to
17 pursue those issues?

18 WYETH FRIDAY: Council member Ewalt,
19 Mayor, and Council. We don't necessarily need it
20 filled out, but we would start with those
21 different pieces. So, the first thing is that all
22 these businesses must have a license and must make
23 application for that. So that could be the first
24 thing that we could be notifying them of, that you
25 must get this license. And then we also, at that

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1 point, if they are coming in for the license,
2 would be potentially doing inspections. Or if
3 they don't, then we're going to be going and
4 following what, you know, if they don't have a
5 license, now they're out of compliance, and then
6 looking at the other issues.

7 So, either way we're going to be pursuing
8 them to figure out where are they falling in the
9 situation. Are they actually going to get a
10 license, or are they not? And if not, then
11 they're also going to be not compliant.

12 MR. EWALT: So, they're not a complaint
13 anyway. So, under Section 7-1913(A)(3), it says
14 the State has revoked the massage therapy license
15 of the licensee. So, if the State can revoke the
16 license, why do we need this to have a license
17 that needs to be revoked, if the State can do it?

18 We got two State employees that are
19 working in Billings right now, the way I
20 understood earlier this evening. So, what's the
21 hold-up? Everybody knows where these places are.
22 So, why don't they do something about it?

23 WYETH FRIDAY: Council member Ewalt,
24 Mayor, and Council. I'm not sure if that's
25 directed just for me, but I guess that's part of

1 what we would be looking at for the requirements.
2 So after, again, this has to be enacted and in
3 place. If that were the case, then we would be
4 both following up on what's, you know, do they get
5 a license from us, what's their status with the
6 State. There would be that investigation and
7 research to determine what the situation is, and
8 then we would proceed, whether it was to, you
9 know, cite them because they don't have the
10 license, or that they're not getting the license,
11 or whether they're already out of compliance
12 regardless. And maybe there's something at the
13 state level that would also, like that, come into
14 play, if they don't have their State license.

15 So, there's several levels that we would
16 be going through. I think the key here is that
17 this is new, and that we will be proceeding
18 through and being very methodical about what the
19 requirements are, what we do in the research and
20 investigation to then deal with these, so that
21 they go well in the sense that we, you know,
22 address them correctly and deal with the
23 violations.

24 MR. EWALT: So, may I continue, Mayor?

25 MAYOR COLE: Sure. Go ahead.

1 MR. EWALT: Okay. So, in Chief St.
2 John's letter, second paragraph about halfway
3 through it says, "candidly speaking for the PD, it
4 is a low priority. We know they are out there,
5 but they are difficult to police. Investigations
6 are challenging. Victims fail to cooperate and do
7 not trust law enforcement. Currently, a
8 successful prosecution is beyond our resources,
9 specialization, and scope. All critical when you
10 are investigating criminals who are business
11 savvy, well-organized, adept at hiding resources,
12 and changing tactics."

13 What will this ordinance change about
14 that? Is the police going to all of a sudden have
15 a high priority on it? Are these businesses not
16 going to be as savvy as they are, these criminal
17 businesses? Are they going to be less adept at
18 hiding their resources?

19 MAYOR COLE: Council member Ewalt, who's
20 the question directed to?

21 MR. EWALT: Well, whoever can answer it.
22 I don't know.

23 (Unintelligible responses.)

24 MAYOR COLE: Okay. Gina or Chris, did
25 you want to --

1 CHIEF ST. JOHN: Mayor, Council, Council
2 member Ewalt. It's not going to change the scope
3 of what we need to do to put a criminal case
4 together. It's going to give us another tool to
5 access the information and evidence that we do
6 need to bring a case together. You know, we hear
7 that we keep turning a blind eye to the sole
8 priority, that we don't pay attention. Frankly,
9 you know, we need to prioritize, based on the
10 resources we have.

11 We had 22 deliberate and negligent
12 homicides last year. I have one investigator
13 working over 1900 domestic abuse cases. I had 57
14 child pornography cases, and, to my knowledge, we
15 had two trafficking complaints. And I hear as so
16 many emails that people are getting about, "Oh,
17 all this activity's going on, people are coming
18 and going." Not one person, to my knowledge, has
19 called the Police Department and complained. So,
20 the situation that Detective Scaramucci -- I
21 probably butchered his name there -- related, that
22 is a full-time proactive unit that does that, what
23 he described is what our drug and street crimes
24 unit do. They follow people, they get license
25 plates, they stop them, they drive by, they

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1 hangout.

2 In the meantime, our officers are running
3 from call to call to call. So, based on what our
4 tasking and staffing is right now, a low priority.
5 I mean, it doesn't send a good message, but the
6 fact of the matter is that's just where we're at.
7 If you give us a complaint, we will follow up on
8 it, whether it comes from code enforcement,
9 whether it comes from our observation, whether it
10 comes from a citizen. If Council mandates, and
11 administration does, we can work it full time, but
12 understand something's got to give. I hope that
13 answers your question.

14 MR. EWALT: Okay. And so, then, in your
15 third paragraph you go on to say that you have the
16 one investigator and you've only received one
17 complaint. So, are we -- is that the only
18 complaint we're going to get once we get this
19 message ordinance passed, if it passes?

20 You've only received one complaint, and
21 that was after the publicity of the IBM ordinance.
22 So, are the complaints that low on these issues?

23 CHIEF ST. JOHN: Well, Council member,
24 yes, they are. Again, it's very difficult to get
25 victims to come forward. They're not calling.

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1 The customers or the johns, they're not
2 complaining about stuff. People they're not
3 driving by all the time, giving us phone calls
4 about the nefarious activity. So, there's just
5 low victim and citizen interest to file
6 complaints.

7 When code enforcement, fire department,
8 if they're in, and us now are involved with
9 another tool, you know, we can be complainants, as
10 well. And I would venture to say whether or not we
11 make a case, at least we're looking into things
12 where things were not being looked at before. And
13 again, it's a tool for us. To get the law
14 enforcement involved, it's labor-intensive, and
15 it's expensive, and it takes a long time.

16 And so, like I said, if we could
17 accomplish, you know, providing relief for
18 victims, and make a few arrests along the way, and
19 disrupt and dismantle, I'm all for that if we can
20 do it with a business license.

21 MR. EWALT: Business license, in addition
22 to the State license, you're saying?

23 CHIEF ST. JOHN: Certainly. But if I
24 understand right, the State license only pertains
25 to the individual therapist. The City license is

1 in relation to the business and requirements
2 therein on how you're going to have them operate.
3 Two separate entities.

4 MAYOR COLE: Okay.

5 MR. EWALT: (Unintelligible.)

6 MAYOR COLE: Thank you.

7 MR. EWALT: Can I continue, please?

8 MAYOR COLE: We should move on, but
9 Council member Ewalt, you've got another, maybe
10 wrap-up question, or another question?

11 MR. EWALT: Well, I got a couple more
12 points that I'd like to make. It's against City
13 ordinance to sell medical marijuana in the city of
14 Billings, and supposedly there's only supposed to
15 be one that's legally being able to do it. Do you
16 believe, Chief, that there's only one place that
17 you can buy medical marijuana in the city?

18 CHIEF ST. JOHN: I don't have any
19 licensed --

20 UNKNOWN: (Unintelligible objection.)

21 MAYOR COLE: Yeah.

22 UNKNOWN: (Unintelligible) discretion
23 on --

24 MAYOR COLE: Council member Ewalt, can
25 you make your point on how that's germane to this

1 issue?

2 MR. EWALT: Well, I don't like to make
3 ordinances that aren't enforced or can't be
4 enforced.

5 And then, getting to my final thing is,
6 if you are really against human trafficking, if we
7 do this in the city of Billings, and you refer to
8 it more than once, that these people are just
9 going to move, you're not stopping human
10 trafficking. All you're doing is repositioning it
11 in another place, underground, or outskirts of the
12 city of Billings.

13 We got all kinds of county property
14 inside the city limits of the city of Billings,
15 and they can just move there, and we have no
16 control over it because that is now county, not
17 city of Billings. So, you're really not stopping
18 human trafficking, you're just moving it. And so,
19 for that reason, I can't support this ordinance,
20 because it's not doing what it's supposed to do.

21 I'm against human trafficking, but moving
22 it is not against it. All you're doing is letting
23 the criminals get by with what they want to do.

24 MAYOR COLE: Okay. Thank you.

25 Council member Purinton.

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1 MS. PURINTON: Thank you. With regard to
2 some of the things that you were talking about,
3 Chris. You were talking primarily about law
4 enforcement. It's my understanding that this
5 ordinance is a civil ordinance that will be
6 addressed through code enforcement. If code
7 enforcement runs into an issue, or it's after
8 hours, then law enforcement has said that they
9 will address whatever issues come up. So, I guess
10 even continuing on with that, it's my
11 understanding that law enforcement has not been
12 able to do anything, just for the pure and simple
13 fact that the laws aren't there. The state laws
14 aren't there. Federal laws don't allow local law
15 enforcement to do their job. So, I'm concerned
16 about that wonkiness, if you will, between code
17 enforcement and law enforcement.

18 As I've mentioned before several times,
19 that in the opening paragraph -- excuse me -- it's
20 talking about providing for criminal and civil
21 penalties upon conviction.

22 And then, Chief, you just said that these
23 convictions are very, very difficult criminally.
24 So, we keep putting the criminal element in there,
25 and I have a real concern about how we're just

1 kind of meshing too many things. Detective
2 Scaramucci made the comment about having code and
3 law enforcement officers work in tandem, but I
4 don't think in the state of Montana that we have
5 that capability at this point.

6 So, am I saying -- you know, the Chief
7 has said it, you know, he's been accused of the
8 Police Department turning a blind eye. I
9 absolutely do not believe that. They know what's
10 going on, and I think within their limitations
11 with what they can do, they're doing a darn good
12 job. Because they're looking, human trafficking
13 has not just gone on at these places. I mean,
14 it's everywhere in the city, and it's not just
15 attacking the Asian women that have been enticed
16 to come over here, for whatever reason, it is also
17 our children, our young girls in Billings are
18 being trafficked. So, I think our community has
19 turned a blind eye all these years.

20 I applaud what the OUR gals do, and they
21 know I have a lot of respect for what they do, but
22 I think we need to start looking at State
23 enforcement or state laws or legislature. It's
24 not just a Billings problem. I think that's a
25 cop-out to say it's a Billings problem, if our

1 legislators won't look at it a little bit more
2 seriously than that.

3 So, I guess that's my spiel, but one of
4 the other things that I really wanted to address
5 was when we talk about victims of human
6 trafficking and we're going to shut down these
7 brothels and everything, what happens to the
8 victims? As far as I know, we have no victim
9 services for these people.

10 I think, Penny, you probably could
11 address that, or even Brandon. But so, you shut
12 down the brothels, what are you going to do with
13 these girls or these women? Because they're
14 considered victims, you have got to do something.
15 So, do we have something in place that we can
16 address that?

17 And I guess that is a question, Chris, to
18 you.

19 MS. SHAW: Point of order, your Honor.
20 This isn't before us tonight. I mean, I'm very
21 empathetic and I agree that's an important
22 question, but that's not --

23 MS. PURINTON: It's on the ordinance.

24 MS. SHAW: (Indiscernible argument.)

25 MS. PURINTON: It's part of the

1 ordinance.

2 MAYOR COLE: Yeah. I appreciate it.
3 But, Chris, go ahead and try to answer the
4 question and we'll try to move on, but it's
5 related.

6 MR. KUKULSKI: So, too, what I think is
7 the last question regarding victim services, I
8 don't have any involvement. I don't know what our
9 community, Yellowstone County, offers specifically
10 for victim services in this area. I struggle, and
11 maybe this doesn't -- Knowing that it's going on
12 and not doing anything about it for fear that the
13 victims won't have a better choice than they
14 currently have. I don't believe that. I think
15 shutting these operations down provides those
16 opportunities, but I would have to look to law
17 enforcement, the court system, other social
18 services to know what is out there to help these
19 victims in these circumstances.

20 MAYOR COLE: Okay. Thank you for that.
21 Anybody who has not addressed the amended motion
22 who would like to do so before we proceed to a
23 vote?

24 Council member Ronning. You're
25 allowed --

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1 MS. RONNING: Thank you.

2 MAYOR COLE: We have a rule that allows
3 two comments; so, it's all yours.

4 MS. RONNING: I just want to make sure we
5 really clarify, because there was a speaker before
6 us who was very impassioned about her belief that
7 it would be an additional fee. I just want us to
8 be really, really clear and make sure that these
9 businesses and the licensed massage therapists who
10 testified tonight and those that may be watching.
11 Andy, if you could just really clear that up and
12 make sure it's crystal clear that there is no
13 additional fee. This is the exact same price that
14 a regular business license is that they would
15 already have if they are a business and this is a
16 business license.

17 MAYOR COLE: Andy Zoeller.

18 ANDY ZOELLER: Yeah, Council member
19 Ronning, Mayor, and Council. The current base
20 business fee is \$55, and it goes up from there,
21 but that's the base minimum fee, is \$55. Our
22 understanding is the background check is right
23 around \$30. It might be plus or minus a dollar or
24 \$0.50, but right around 30 bucks. So that's why
25 we are recommending lowering that annual

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1 application fee to \$25 for the first year, because
2 they'll have \$30 on the background check, and then
3 \$25 on the application. The combined fee there is
4 \$55, which should match the renewal for an
5 application that currently exists today.

6 MAYOR COLE: Okay.

7 MS. RONNING: Thank you.

8 MAYOR COLE: Thank you for that
9 clarification.

10 Council member Choriki and then Council
11 member Brown.

12 MR. BROWN: Thank you, Mayor.

13 Andy, this is for you, as well.

14 (Indiscernible interruptions)

15 MAYOR COLE: Yeah. I'm sorry, Council
16 member Brown, I recognized Council member Choriki
17 first.

18 MR. BROWN: Oh, I'm sorry. Okay. Go
19 ahead.

20 MAYOR COLE: Council member Choriki?

21 MR. CHORIKI: I just want to make a
22 couple of comments. One, I really want to commend
23 staff for doing a really good job of listening to
24 the issues that people are coming up with and
25 addressing them. I really like the fact that this

1 is focusing on the businesses and that the
2 individuals who are being involved in this are no
3 longer having to comply with this ordinance. I
4 think that is a very, very important shift in how
5 this has been and how it's rolling out.

6 Having said that, however, it still
7 bothers me that we're using the business license
8 and requiring people to say you can come into my
9 business and look to see if I'm doing something
10 illegal, when the type of thing that we're trying
11 to manage is not the type of thing that that
12 business is engaged in. Yes, I get the confusion
13 between the two and all of that, but it, to me, is
14 just a really bad precedent to sit there and say
15 that, like, in order to get a business license, I
16 have to say that the City, the State can come in
17 and inspect and see if I am doing something
18 illegal.

19 Admittedly, this one doesn't say that,
20 but it doesn't also say that they can't come in
21 and do some follow-up and say that I found
22 something else that they're doing illegal and use
23 that information in order to get a search warrant
24 and start criminal proceedings. It bothers me. I
25 would really prefer it if we get written down

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1 specific things that said that businesses should
2 not do, which identify the sexual and trafficking
3 practices that we don't want to see, and then say,
4 "Hey, okay. If someone has a complaint and thinks
5 that this is going on, then we can go in and look
6 at that." At least then we're not targeting one
7 small industry.

8 We're sitting there and saying, "Hey,
9 everybody has to comply with these laws." To me,
10 that is still a bad solution because I don't --
11 you know, I've been sitting here and staring at
12 the 4th through 8th Amendments in the Bill of
13 Rights and trying to wrap my head around how I can
14 support that and support those amendments, and I
15 just can't. It just doesn't work for me. It's
16 too much of a shortcut for law enforcement, and I
17 can't support it. Thank you.

18 MAYOR COLE: Thank you very much.

19 Council member Brown.

20 MR. BROWN: Thank you, Mayor. And Danny,
21 I apologize for stepping on you there.
22 Andy, the question that I've got is two things, I
23 think. First, with the business license. Sole
24 proprietors still need to have a business license,
25 but they don't need to do the background check and

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1 all of that, correct?

2 ANDY ZOELLER: Correct. They would
3 continue to follow the same process they do today.

4 MR. BROWN: Okay. The second part, then,
5 is: Okay. So now they've got the business
6 license. I don't want people to think that sole
7 proprietors still don't have to comply with the
8 ordinance. They still have to comply with the
9 ordinance. And maybe that's not your answer,
10 Andy, I don't know, but I think there -- I'm
11 afraid there's a misconception here that they
12 don't have to comply with the background check and
13 all of that, but they do still have to comply with
14 all of the ordinance.

15 ANDY ZOELLER: Council member Brown,
16 Mayor, and Council. I'll take a stab at that. You
17 are correct. They do have to comply with the
18 requirements of the ordinance, just not the
19 application requirements. We intend, on having as
20 much as we can in a one-page brochure that we hand
21 out with it that says, "Hey, you know, here's your
22 simplified application, which exists today, and
23 then be aware all these requirements exist, as
24 well. No covered windows, the log, everything we
25 talked about today," to help notify them that they

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1 still have to comply, but they don't have to fill
2 out the long application.

3 MR. BROWN: Okay. Thank you, guys, for
4 clarifying that.

5 MAYOR COLE: Okay. Thank you very much.
6 Council member Shaw.

7 MS. SHAW: Thank you. This is really
8 fast. I won't make the big speech, everyone's made
9 it. You know, strong cases on both sides. I do
10 support this ordinance.

11 Gina, my question is for you. We heard
12 from a number of public commenters and people
13 saying that they consider this unconstitutional,
14 see it as unconstitutional. Obviously, you're not
15 a constitutional law expert and I'm not asking you
16 to be, but I would like to get that on the record.
17 Would you speak to answering that question, a
18 little bit about Basically, I'm asking, is this
19 unconstitutional? Take it away.

20 GINA DAHL: Thank you, Council member
21 Shaw, and Council. No, I do not believe that this
22 ordinance is unconstitutional, and all of the
23 opponents were simply saying if this was
24 unconstitutional in a very broad sense. The only
25 specific contention that I've ever heard was a

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1 council member asked about this being a violation
2 of the equal protection clauses of the
3 Constitution, and it is not a violation of equal
4 protection.

5 Basically, equal protection is that the
6 law must treat similarly situated individuals in a
7 similar manner. An injured party has to
8 demonstrate that the law issue has discriminated
9 against them impermissibly by impermissibly
10 classifying them and treating them differently
11 based on that classification. And this ordinance
12 is specifically provided for under Montana law.
13 It's a valid exercise of police power. It has a
14 substantial bearing on the public health and
15 safety and morals, general welfare of the
16 community. Like I said, it's specifically
17 authorized by Montana law. Any classifications
18 made in this, there's a reasonable basis for that.
19 So, there is no equal protection violation. And,
20 in my opinion, there aren't any other
21 constitutional violations that are implemented by
22 this ordinance.

23 MAYOR COLE: Okay. Thank you. Further
24 discussion on the motion.

25 Council member Yakawich and Purinton.

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1 MR. YAKAWICH: Thank you, Mayor, and
2 Council. Truly, you all are endurers. One of our
3 longer stretches here. I really appreciate those
4 who spoke today, too, because I've never had a
5 massage therapist, but I can truly believe that
6 they do a great job. They're very important, and
7 obviously, because there are so many in the city.
8 I respect them like physical therapists, like
9 others in that profession of medical. So, I'm
10 learning a lot more about them, as well, and I
11 admire their hard work and effort.

12 I do want to thank the Councilman --
13 Council person Ronning. She's invested a lot on
14 this here and taken a lot of hits, and I
15 appreciate her resilience. Great resilience. And
16 as well as the City Administrator and our City
17 Attorney, you are making more than us, so you get
18 hit harder sometimes, but thank you for your hard
19 work and that.

20 So, I don't want to -- you know, I have a
21 lot of things I'd like to say, but obviously I
22 support it and I really just wanted to share this
23 idea of burden and benefit. That was quite
24 enlightening to me. It's like, as a Council, you
25 know, this is one of these decisions that we're

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1 going to look back and say, "Oh, we did a good job
2 where we did." For me, I've done this, this is
3 my eighth year. This is a significant vote. It
4 will have a significant ramification. I only can
5 see good from this here, because, you know, we
6 actually are respecting the massage therapists so
7 much, that we want them to be background-checked
8 and fingerprinted, so that they'll be safe and
9 secure themselves.

10 I have some kids who are teachers. So,
11 one of them said to me, you know, it makes --
12 teachers have to be background-checked and
13 fingerprinted. That it just made sense to them, or
14 it made sense to this one. But then I segue into,
15 I'm checking on fingerprints. So, I'm talking
16 with the person who does fingerprints today,
17 right? Does fingerprints for all the city. He
18 said, medical people actually have to get
19 fingerprinted twice. You got banks, you got people
20 working with minors, everybody working gets
21 fingerprinted, so it's really not a big deal,
22 really, when you think about it. And so, when
23 we're thinking about, not trying to burden them,
24 but actually just saying, "Hey, it's something
25 that everybody, pretty much everybody, is doing."

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1 Whether you do sensitive information at a bank or
2 whatever. That they are massage therapists, and
3 they want to be in the medical area, then we
4 should acknowledge that and encourage them to have
5 that same kind of background check as a medical
6 profession.

7 So, I think this is just a positive
8 thing, and what I want to wrap my mind around is
9 an enhanced collaborative model. What a cool
10 idea. We're working together. We're taking the
11 city to another level, I think, in that. I
12 totally have trust in Mr. St. John. I do. Okay.
13 You can call me prejudice, but I really like the
14 guy, I like his staff. He does a great job, he's
15 doing drug enforcement. He's changing a lot and
16 his leadership has done a lot.

17 Mr. Kukulski and Gina, you know, she's
18 just starting out here, so it's hard to pick on
19 her. I mean, she's just learning the ropes here,
20 right? But I have trust in Mr. Wyeth Friday. I
21 have trust in Craig Salzer. You know, we have
22 quality leadership in our city. So, I'm not afraid
23 that they're going to come and bust down some
24 doors. These people are very professional. They
25 know what they're doing, and they'll approach it

1 wisely.

2 So, I just like this, that we're sending
3 a message to the community. We're letting them
4 know that we're for a positive and healthy
5 community, and this is just moving it forward.
6 We're not persecuting, we're not beating up on
7 anyone, we're just trying to make it better.

8 And finally, there's a lady, young lady,
9 I think she's about 70 or so. She didn't tell me
10 how old she was. She was No. 7 in getting the
11 massage license. So, she said I could talk about
12 her. So, if she's listening, she inspired me the
13 most, 'cause she said, "Mike, I've been doing this
14 a long time. It's not that the request is not
15 insurmountable. Really, to do the book work, to do
16 some of this back -- It's not as overwhelming as
17 it's being portrayed." And from her view, after
18 doing this for 50 years -- I think it was 50 years
19 she's been doing massage therapy -- she's all for
20 it. And that inspired me that it's not -- We're
21 doing good rather than oppressing or belittling or
22 demeaning another occupation.

23 So, thank you, Council, for letting me
24 share, and I know it's not always an easy
25 decision. I admire each of you sitting here trying

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1 to digest it. Thank you. Thank you, Your
2 Honor.

3 MAYOR COLE: Thank you very much.

4 Council member Purinton, then Council
5 member Neese.

6 MS. PURINTON: Well, (indiscernible) do
7 we have a motion on the --

8 MAYOR COLE: We do. I've had -- Was that
9 amended twice? So, the motion is for approval,
10 subject to those two groups of amendments.

11 MS. PURINTON: Okay. So, I have another
12 amendment that -- Can I do that?

13 MAYOR COLE: Sure.

14 MS. PURINTON: Okay.

15 MAYOR COLE: Let's make the motion.

16 MS. PURINTON: Okay. So, I would move
17 that there is a two-year sunset. Whenever the
18 sunset was brought up, and I think it was,
19 Detective Scaramucci said, "Well, I guess it
20 depends on what you're doing it for." To me, the
21 two-year sunset absolutely puts the burden, --

22 MR. NEESE: (Indiscernible interruption)

23 MS. PURINTON: -- if you will, on code
24 enforcement --

25 MAYOR COLE: I apologize, we have a point

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1 of order, so I will have to listen to it.

2 What's the objection?

3 MR. NEESE: She's making a motion. She
4 needs a second before she can speak to it.

5 MAYOR COLE: Good point. Sure.

6 MS. PURINTON: Okay.

7 MAYOR COLE: So, but we've got the
8 concept, might have to worry about the language,
9 but I think we got the concept.

10 MS. PURINTON: Sunset for two years.

11 MAYOR COLE: Is there a second for the
12 motion?

13 MR. NEESE: I'll make a second to -- for
14 discussion.

15 MAYOR COLE: Okay. So there's a second.
16 Go ahead, then --

17 MS. PURINTON: Thank you.

18 MAYOR COLE: -- Council member Purinton.

19 MS. PURINTON: So -- (indiscernible) take
20 this off or not.

21 Anyway, to me, it puts the burden of
22 actual enforcement of this ordinance, that the
23 work is done. And it doesn't mean, whenever you
24 say "sunset," it doesn't say terminate it. It
25 says, you sunset it, so that in two years you come

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1 back, you evaluate.

2 Chris, you made the comment even on the
3 news station, "Hey, if it doesn't work in 18
4 months, we'll take it off." Well, I think you
5 have to have a little bit more refinement to that
6 statement. But I do think that it shows that
7 you're progressing, that it's working. If it's
8 not working, then you re-revaluate. Why is it not
9 working? Do we not have the laws? What is the
10 reason it's not working? And if it is working,
11 okay. Then you keep it on the books and you can
12 make it permanent, or whatever you do after the
13 two years.

14 So, I would suggest that you definitely
15 have a sunset on it.

16 MAYOR COLE: Okay. So, motion was made
17 and seconded. Discussion now on the motion.

18 It's obviously not in specific
19 terminology, but the concept should be fairly
20 straightforward. I assume the idea would be that
21 you give Gina, as the City Attorney, the
22 opportunity to then find the appropriate place to
23 include that kind of automatic repeal two years
24 after the effective date. Maybe in the effective
25 date, Section 2 or someplace else, so --

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1 MS. PURINTON: Mr. Mayor?

2 MAYOR COLE: Council member Purinton.

3 MS. PURINTON: It would be under Section
4 4. After Section 4 to Section 5. And I was
5 basing it on the sense that that was provided in
6 the House Bill 7-496, whatever it was, and
7 basically it just says that it would sunset after
8 two years from the day of adoption.

9 MAYOR COLE: Okay.

10 MS. PURINTON: I think that you'd
11 terminate Section 1, which is the whole thing.

12 MAYOR COLE: Okay. So, the motion is to
13 add a new Section 5 that would accomplish that.
14 Okay. Discussion on the motion. I'll look at my
15 screen. Is there any discussion on the motion?

16 Council member Shaw.

17 MS. SHAW: Thank you. I really feel very
18 strongly that a sunset is a really bad idea and
19 I'm going to oppose it. A couple of reasons:
20 First, as I believe Chris mentioned in the
21 beginning, this problem has been going on in our
22 community for decades. Certainly, my entire
23 lifetime. I think putting a two-year cap on a
24 problem that's taken decades is extremely
25 problematic.

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1 The second point is that Council can
2 sunset this at any time. Any Council can repeal
3 this at any time they want to. If in two years the
4 Council wants to repeal it, they can do it. So, to
5 me, I don't see the need to do this, and I think
6 it's going to cause more harm than good. Because
7 if I put myself in the mind of somebody who runs
8 one of these illegal businesses, I think, "Oh, two
9 years, okay. I'll go set up business somewhere
10 else and then I'm going to come back."

11 MAYOR COLE: Okay. Thank you for the
12 discussion.

13 Council member Ronning and Neese.

14 MS. RONNING: Thank you. No, I won't
15 support a sunset either. House Bill 749, which was
16 changed to a different house number, House Bill
17 number, this year, actually, the State of Montana,
18 repealed the two-year sunset that was on that
19 bill. And Representative Zolokov actually was
20 there to testify in support of the repeal of the
21 sunset which was his original bill.

22 So yeah, I won't support a sunset. We
23 already have tools in place to repeal an
24 ordinance, and I guess I would like to hear City
25 Attorney Dahl's comments on a sunset.

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1 MAYOR COLE: Gina --

2 MS. RONNING: Thank you.

3 MAYOR COLE: -- and then Council member
4 Neese.

5 Do you want to comment, Gina?

6 GINA DAHL: Sure. Mayor, and Council. I
7 do not think sunset and automatic repeal would be
8 a good idea. Generally, for the same reasons that
9 have been stated. This is a forty-year problem,
10 two years isn't very long. I agree that if this
11 were automatically repealed in two years, I think
12 the businesses would just creep back in. They're
13 going to want to go where the environment is
14 tolerating their illicit businesses. If there's no
15 regulations, we would just be making it hospitable
16 for them again. And this is a hub, this is where
17 they want to be. So, two years isn't very long to
18 wait for that.

19 MS. RONNING: Thank you.

20 MAYOR COLE: Yeah, thank you.
21 Council member Neese.

22 MR. NEESE: Thank you, Mayor. Creating
23 regulations is always tough for me. I think one of
24 the speakers mentioned, you know, the Republican
25 name. It goes against them, and this kind of goes

1 against me just creating regulations.

2 The City created the cell phone ordinance
3 several years ago and I still see people, you
4 know, on their cell phone. I don't think that's
5 worked, but yet you don't see the City Council
6 repealing that. There's countless in number of
7 ordinances we probably need to go through, that we
8 haven't updated.

9 A sunset doesn't necessarily mean that it
10 will sunset. The sunset means, if Council is
11 forced to look at it and say, "Hey, did this work?
12 Is this working? Should we keep it or is this not
13 working and we need to let it sunset?" Rather than
14 putting the onus on the Council to bring something
15 back to review, or the staff to bring it back to
16 the Council for review, this would then, you know,
17 really require the staff to bring it to the
18 Council to review, to say, "Hey, this is working,
19 and we did a good job."

20 Some of the testimony, although we didn't
21 hear it from, you know, the experts, we have some
22 people saying that these organizations still are
23 in those cities. I don't know. I didn't go to
24 those websites and look, they said they did, and
25 they found them. So, I take them at their word,

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1 but I like that that does appeal to me as far as
2 the sunset. If this thing is working in two
3 years, and I'm on the Council in two years, I
4 would vote to keep it going because it's working.
5 If it's not working, then we'd have to address it
6 at that time, and maybe change it to make it work.

7 MAYOR COLE: Council member Neese, you
8 said something that was confusing to me, because
9 my understanding of the word "sunset" was repeal.
10 So then, after two years, it would automatically
11 repeal, and you suggested that your understanding
12 is that it would require a review and the default,
13 I guess, would be continuity in continuing. So, I
14 guess we need to ask for clarification from the
15 party that made the motion.

16 Council member Purinton, is your motion
17 to require a review after two years, or is your
18 motion that the ordinance goes away and terminates
19 after two years?

20 MS. PURINTON: Review.

21 MAYOR COLE: Okay. I guess I would say,
22 let's use the terminology "review," not "sunset"
23 in that.

24 Council member Neese, you made the
25 second, so I assume that's consistent with your

1 intent then, as well.

2 MR. NEESE: So, the sunset, as I
3 understand, the Council would be required to then
4 reapprove the ordinance.

5 Is that correct, Gina?

6 GINA DAHL: I'm not familiar with this.
7 This is new to me. Sunset, in my experience, has
8 meant an automatic repeal. You are all creating
9 something different here, so you are going to have
10 to be specific with the language that you want.

11 MR. NEESE: And Council, then, would have
12 to, if you wanted to continue that, to say, "Hey,
13 we want to continue this," and then just bring the
14 same ordinance back for approval before it
15 sunseted.

16 GINA DAHL: So, it sounds to me like what
17 you're suggesting is an automatic sunset, unless
18 the Council takes some action. So, this doesn't
19 sound --

20 MR. NEESE: Well, would the difference
21 between that and an automatically --

22 MAYOR COLE: Council member Neese. I'm
23 going to rule this discussion as out of order
24 because the Movant has already clarified that she
25 meant review. So, I don't know what you meant by

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1 a second --

2 MR. NEESE: Yeah.

3 MAYOR COLE: -- but the Movant said
4 review. So, what that means is that we review it
5 after two years. That doesn't mean it repeals, it
6 doesn't mean it terminates. That's the motion,
7 automatic guaranteed review, but only review.
8 Did --

9 MR. NEESE: I'll accept the Movant's
10 change.

11 MAYOR COLE: Okay. And so, are you
12 saying you're keeping your second or withdrawing
13 your second?

14 MR. NEESE: I'll keep my second.

15 MAYOR COLE: I'm sorry?

16 MR. NEESE: I'll keep my second.

17 MAYOR COLE: Keep this second. So that
18 is the motion.

19 Council member Yakawich.

20 MR. YAKAWICH: Thank you, You Honor, and
21 Council. I see this as a very bad decision. And
22 one reason is, it takes so much energy to get
23 where we're at right now. In theory, a lot of us
24 are going to be off Council and some of you will
25 be running for re-election or whatever.

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1 It's a very bad idea. We've had so much
2 energy here to get to this point to, in two years,
3 with new Council, without Miss Ronning, without --
4 I mean without the energy, you guys are going to
5 be thinking about other things besides this. It
6 just seems premature. That would be my word,
7 "premature." Thank you.

8 MAYOR COLE: Okay. Further discussion,
9 then, on the clarified motion.

10 I'm going to recognize Council member
11 Joy, just because, Council member Ronning, you did
12 speak before, albeit on what we understood to be
13 different. So, we'll come back to you.

14 Council member Joy and Ronning.

15 MS. JOY: Thank you. I will not support
16 the motion for an automatic review in two years'
17 time. If we expect legitimate massage therapists
18 to go through this process of learning how to
19 comply with new regulations, if we ask them to
20 keep the log, if we ask them to do all those
21 things and then two years' time kind of throw the
22 ball in the air and say "Gosh, what'll we do now,"
23 we've really then asked them to do something that
24 then we may not be intending on continuing? If
25 we're going to ask someone to do this, then we

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1 should make that commitment to have the impact on
2 human trafficking and not try to review it and,
3 essentially, throw the ball back in the air and
4 see what happens. Thank you.

5 MAYOR COLE: Thank you.

6 Council member Ronning and Boyett.

7 MS. RONNING: Thank you. So, I won't
8 support this either, but I think if there's going
9 to be a review, then there needs to be a standard
10 set by which is acceptable to say this, the
11 ordinance, is working. There needs to be very
12 clear language as to what the movement is and what
13 she wants in regard to that review. That there
14 must be 5 of 11 illicit massage businesses shut
15 down. There must be -- What's the standard by
16 which the judgment is going to be in two years? I
17 guess that would be my question. I don't support
18 it anyway, but that would be my question. So,
19 thank you.

20 MAYOR COLE: Thank you very much.

21 Council member Boyett.

22 MR. BOYETT: I kind of like the idea that
23 in two years the staff will come back and say,
24 "This has really been a good ordinance. We've
25 actually closed down 10 or 11." Or at the same

1 time, if they come back and say, "I haven't done
2 any," that would tell us whether this worked or
3 not. I like the idea of a review, versus sunset,
4 to force the Council to look at something that's
5 been this important.

6 MAYOR COLE: Thank you very much. Further
7 discussion on this amendment.

8 Council member Brown.

9 MR. BROWN: Thank you, Mayor. I don't
10 think I'm going to support this motion. You know,
11 honestly, tonight I didn't know how I was going to
12 vote. I really didn't. I waffled on this so many
13 times. You know, my concern is this is a slippery
14 slope. Once we start doing this with business
15 licenses, where are we going to go next? What's
16 going to happen next? You know, I like to think
17 that we're all better than that. Future Council
18 members will be better than that.

19 But what did sway me tonight was I was
20 hearing a lot from the massage therapists, you
21 know, that they've had trouble getting out of
22 that, you know, giggles and, you know, things like
23 that because they're masseuses or whatever. You
24 know, and in my experience, the best way to get
25 out of that is to regulate yourself and be above

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1 what you're trying to fight. Okay? If you want to
2 get out of that and you don't want to be giggled
3 at, you don't want to be laughed at, you don't
4 want those kinds of things, then you got to rise
5 above that, and the way to do that is regulate
6 her, right?

7 So, my fear would be that if we do enact
8 this, we do vote for this, you know, two years is
9 not going to do that. It's going to take that long
10 to really just get things moving, to get things
11 actually moving forward and the public understand
12 that, you know, these guys are regulated, They are
13 the real deal. And I think it'll take a couple of
14 years.

15 So, I think that I'm going to support the
16 ordinance, but I don't think that I can support
17 the sunset in two years. I just think it'll take
18 longer, and I don't want to take the chance that
19 it's just abolished, because I'll be long gone. I
20 mean, not dead, I hope, but --

21 (Multiple indiscernible comments.)

22 MAYOR COLE: We hope not either.

23 MR. BROWN: Guess I'd better clarify
24 that.

25 MAYOR COLE: Okay. All right. Further

1 discussion on the proposed amendment.

2 I intend to vote against it, but a review
3 is a lot less difficult than a total termination.
4 I just hate to give the illegal massage businesses
5 reason to think that this might go away after two
6 years. My best-case scenario is that they're not
7 going to want to comply and try to get the
8 license. There's a lot of reasons it's going to be
9 very, very difficult for them to do that. So, the
10 best-case scenario is that they just go away.
11 Because if they don't get a license, it's going to
12 be very easy to shut it down. It's black and
13 white. And if they think that, "Well, if we hang
14 out for two years, maybe this is going to go
15 away," I would just hate to give them that
16 possible lifeline or that they might interpret it
17 that way.

18 So anyway, any other discussion on the
19 proposed mandatory review before we proceed to a
20 vote?

21 Council member Choriki.

22 MR. CHORIKI: I'll just say that, in my
23 opinion, every ordinance that we do should have
24 clear criteria for what success or failure means
25 in measurable ways and that they should be

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1 reviewed on a regular basis. So, while I don't
2 support the overall thing -- a thing? Motion, I
3 do support this amendment.

4 MAYOR COLE: Okay. Thank you very much.

5 Are we ready to vote, Council? Any other
6 comments before we proceed to a vote? Not? Okay.
7 So, the motion is the proposed mandatory review
8 period after two years. That would be the
9 amendment. Those in favor of Council member
10 Purinton's motion, please raise your hand. Voting
11 in favor are Council members Boyett, Ewalt,
12 Choriki and Purinton. Voting in opposition,
13 please raise your hand. Voting in opposition are
14 Council members Cole, Joy, Ronning, Yakawich,
15 Brown, Shaw, and Neese. So, the amendment fails.

16 We're back to the underlying motion that
17 was also amended. Further discussion on the
18 underlying motion.

19 Council member Neese.

20 MR. NEESE: Council member Brown
21 convinced me on that last vote, but thank you.
22 You know, Penny brought this to my attention I
23 think sometime last summer. She gave her
24 presentation that had her come and talk to a group
25 of people. And I was, as well as they were,

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1 educated on what's happening in our city. And
2 frankly, I was pretty shocked that it was as bad
3 as it was. We heard some of the stories tonight.
4 So, I appreciate that this is being brought before
5 the Council.

6 This ordinance, when I first looked at
7 it, it was a lot of work. It was going to be a
8 lot of work for the massage therapist, and it was
9 targeting them individually, and I really did not
10 like that at all. I dug into the state laws,
11 looked at it. A lot of the problem is, the state
12 laws themselves, are not enforcing them. It
13 doesn't give the City the power to enforce them.
14 And we have to have an ordinance so we can enforce
15 them. So, I think that this, now that it's been
16 changed, there's been a lot of good compromise,
17 and I think it targets what it should. It targets
18 the facilities and doesn't target individuals. I
19 will support this.

20 Again, it's difficult for me to vote for
21 more regulation, but I think in this case, as
22 Councilwoman Joy said, is we have got to do
23 something. There is a problem in the city; and if
24 we don't do something, we're, you know,
25 contributing to that. And so, I think this is

1 going to do it. As people have said, it's not
2 going to solve it. I think it's going to be one
3 little tool.

4 It may drive them out of our city. That
5 means maybe Laurel is going to have to have
6 something like this to stop it in their city or in
7 the county or somewhere like that. To where they
8 have to follow suit so that we can stand as a
9 community to get rid of this type of thing that is
10 happening in our community. So, I will support
11 this.

12 I appreciate the staff going through a
13 lot of work to try and get massage therapists
14 involved. They've held a lot of meetings and I
15 hope we get good support of our Council on it and
16 in the community. So, thank you very much.

17 MAYOR COLE: Thank you very much. Any
18 further discussion on the underlying, now-amended
19 motion before we proceed to a vote?

20 Council member Purinton.

21 MS. PURINTON: I just have a question
22 that hasn't been addressed, which is, what is the
23 financial impact for the City? Because we've
24 talked about training of code enforcement. At
25 first the fingerprint check was \$25 and then Andy

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1 said he thought it was closer to \$30. I know that,
2 I guess, those details will come out in the second
3 reading, but what does the City foresee with code
4 enforcement, with the Police Department, with the
5 licensing, what is the financial impact?

6 MR. KUKULSKI: So, we do not expect to
7 generate any additional revenue from this.

8 MS. PURINTON: Okay.

9 MR. KUKULSKI: We've been criticized on
10 both sides now. This fee is not to generate
11 revenue to cover enforcement. If you recall, you
12 know, the concept is that for the first 12 months,
13 we actually reduced the fee. That's going to
14 reduce our revenue coming in for permits, because
15 they have to pay the State of Montana Department
16 of Justice for their (indiscernible). When I
17 looked on the DOJ site, I think it was \$15 to \$30.
18 So, I don't know precisely what it is, but we were
19 seeking to make it cost neutral on that.

20 I think the only cost, you would say
21 direct costs, we will incur, is we will do some
22 training with our code enforcement folks. We've
23 had Trevor in Aurora offer to help us in that
24 regard. We've had offers from some of our folks
25 who have helped us out tonight. And so, I don't

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1 expect that to cost us tens of thousands of
2 dollars. But I do believe we will spend thousands
3 properly training our folks to be able to enforce
4 this at the code level.

5 Now, the overall net effect of that is
6 less than to do it with law enforcement. So, I
7 think that that's been an easily misunderstood
8 component tonight, is we do believe, black and
9 white, we can shut you down -- or if this passes,
10 you don't have a business license, then you can't
11 operate. So direct cost for training, no
12 additional revenue from the licensing of it. The
13 licensing has never been meant to cover the total
14 cost, I don't think. I'm told that licensing
15 business tax, technically, hasn't been changed in
16 decades.

17 MS. PURINTON: So, what is the estimation
18 of how many facility licenses you will have to
19 issue?

20 MR. KUKULSKI: Well, if you just pull the
21 number of business licenses that include spa or
22 massage in their name, I believe Andy has told me
23 the number is right around 75 to 80. That's with
24 the name. If you take the sole practitioners and
25 all the exclusions out, I believe that number will

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1 be substantially less than that. But I don't have
2 a precise number that will be worked through with
3 the definition tonight, so.

4 MS. PURINTON: Thank you.

5 MAYOR COLE: Okay. Thank you very much.
6 Further discussion.

7 I'll just second what you've heard many
8 times, which is this is a very different ordinance
9 than it was, even a few months ago, and that's
10 largely because of the objections of the licensed
11 massage therapists. And so, I thank you for your
12 efforts on that. There's no longer a requirement
13 that you post a sign that says "no sex sold here,"
14 or whatever the whole language was. The solo
15 exemption for businesses is a huge deal. The fact
16 that the fee is awash and no additional fee over
17 regular business license cost. The variance
18 option for not having locked doors is a big deal,
19 that you don't have to lock doors, if you only
20 have one license massage therapist. Again, a
21 major change. And that there are no criminal
22 penalties anymore, unless you're running, truly, a
23 sex business is another major step forward to make
24 this that much less intrusive for licensed massage
25 therapists, legitimate licensed massage

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1 therapists, while still giving the opportunity for
2 code enforcement to shut down the IMB's and to
3 prevent the IMB's from even applying for one of
4 these licenses. So, I think we've come a long ways
5 because of the hard work of many people, staff
6 included. Shout out to Council member Ronning,
7 for her years of hard work here.

8 So, further discussion before we proceed
9 to a vote? Any further discussion? If not,
10 hopefully the underlying motion is now clear with
11 those two sets of amendments. We'll proceed to a
12 vote, then.

13 I'm sorry, Council member Choriki, did
14 you have your hand up?

15 No? Okay. So, if you're in favor of the
16 motion for passage, please raise your hand. Voting
17 in favor are Cole, Boyett, Joy, Ronning, Yakawich,
18 Brown, Shaw, and Neese. If voting in opposition,
19 please raise your hand. Voting in opposition to
20 are Council members Ewalt, Choriki, and Purinton.
21 Motion passes on first reading 8 to 3.

22 Thank you very much, everybody. That was
23 a lot of hard work. It's after midnight. Everybody
24 can go to bed, except for the Council and people
25 who still have Item No. 6.

1 UNKNOWN: Your honor. Your honor, Jeff
2 Kanning and Erin are still on.

3 MAYOR COLE: Okay. All right. So, we've
4 now moved to tomorrow, so we'll try to move though
5 this next item as quickly as possible.

6 Jeff, wake up out there, you know.

7 Toni, are you still awake? If you are,
8 would you please read Item No. 6?

9 TONI KEEHNER: Second and final reading,
10 ordinance for zone change 987, a zone change from
11 agricultural to heavy commercial on Tracts 1A and
12 1B on COS 1889, located east of Billings Flying
13 Service at 3655 AJ Wayne. Aviation Properties,
14 LLC, owner; Collaborative Design Architects,
15 agent. Approval of the zone change and adoption of
16 the ten criteria. Action: Approval or disapproval
17 of staff recommendation.

18 MAYOR COLE: Okay. Thank you.
19 Do we have a staff presentation by Nicole or
20 anybody else on this item? Wyeth.

21 WYETH FRIDAY: Yeah, Mayor, and Council,
22 just very briefly, not a full presentation here,
23 but this item is on your regular agenda. This was
24 approved on first reading on March 22nd by a
25 unanimous vote of the Council, but because there

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1 has been a valid protest, we needed a super
2 majority to approve it, so that occurred on first
3 reading. So, we were working with City legal
4 advice to put this on the regular agenda, since it
5 needs that same super majority vote for second
6 reading. So that's really the main reason you have
7 it tonight like this on your regular agenda.

8 So, with that I'd be happy to answer any
9 questions; and, as you know, Erin and Jeff are
10 here as applicant and agent, as well.

11 MAYOR COLE: Okay. Council members
12 Yakawich and Neese, did you have something before,
13 or --

14 Let me just ask, does the applicant have
15 any presentation on this item? Jeff or Erin?

16 ERIN HERINGER: No, we didn't --

17 JEFF KANNING: (Indiscernible) Councilmen.

18 MAYOR COLE: Okay. So, nope.

19 All right. Then, Council member Neese
20 and then Council member Yakawich.

21 Council member Neese.

22 MR. NEESE: Thank you, Mayor. I move to
23 approve the second reading for zone change 987 and
24 adoption of the ten criteria as recommended by
25 staff.

1 MR. YAKAWICH: Second.

2 MAYOR COLE: Okay. And Council member
3 Yakawich made the second. So, the motion is for
4 approval consistent with staff recommendation on
5 second reading. Discussion now on the motion. Is
6 there any discussion?

7 There is no public hearing on this item
8 that was on first reading. Any discussion? If
9 not, we're going to proceed to a vote. Maybe we
10 can drag this on until tomorrow, Wednesday.

11 Okay. All in favor of the motion, please
12 raise your hand. Voting in favor of the motion
13 are all members of City Council. Motion passes
14 unanimously.

15 Jeff, Erin, you get the award for most
16 patient of the meeting.

17 ERIN HERINGER: I'm going to award myself
18 with an extra cup of coffee in the morning. Thank
19 you, everyone.

20 MAYOR COLE: Well-deserved, sorry to keep
21 you.

22 MR. BROWN: Shows their commitment.

23 MAYOR COLE: Yes, this shows commitment.
24 Okay. That concludes Item No. 6 of the regular
25 agenda.

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1 We still have public comment on
2 non-agenda items. There are -- there's nobody
3 left. We've scared them all off in the library to
4 make public comment.

5 Do we have any Zoom commenters, Toni, for
6 public comment on non-agenda items?

7 TONI KEEHNER: I have not had anybody
8 raise their hand.

9 MAYOR COLE: Okay. Thank you. Any
10 Council initiatives?

11 Then, with that, we are adjourned.
12 Thank you, everybody. Good job. Thank you for your
13 work.

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15 (Recording Ends.)
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**EXHIBIT
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Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

Kevin Iffling, 30(b)(6)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

THERESA VONDRA, ET AL.,

Plaintiffs,

v.

Case Number
CV-22-30-BLG-KLD

CITY OF BILLINGS,

Defendant.

30(B)(6) DEPOSITION UPON ORAL EXAMINATION OF
CITY OF BILLINGS BY
KEVIN IFFLAND

BE IT REMEMBERED, that the 30(B)(6)
deposition upon oral examination of CITY OF BILLINGS,
by KEVIN IFFLAND, appearing at the instance of
Plaintiffs, was taken at the offices of Fisher Court
Reporting, 2711 1st Avenue North, Billings, Montana,
on Wednesday, September 20th, 2023, beginning at the
hour of 9:00 a.m., pursuant to the Federal Rules of
Civil Procedure, before Deborah L. Fabritz, Court
Reporter - Notary Public.

Kevin Iffling, 30(b)(6)

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ALSO PRESENT: Gina Dahl, City Attorney

Kevin Iffling, 30(b)(6)

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I N D E X

EXAMINATION OF KEVIN IFFLAND

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DEPOSITION EXHIBIT NUMBER

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<u>Exhibit 7</u>	Plaintiffs' Notice of 30(b)(6) Subpoena of City of Billings.....	6
<u>Exhibit 8</u>	Complaint for Declaratory and Injunctive Relief.....	13

Kevin Iffling, 30(b)(6)

1 WHEREUPON, the following proceedings were had
2 and testimony taken, to-wit:

3 * * * * *

4 KEVIN IFFLAND,
5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. WOISLAW:

9 Q. Would you please begin by stating and
10 spelling your name for the record?

11 A. Yeah. My name is Kevin Iffland.
12 K-E-V-I-N, I-F-F-L-A-N-D.

13 Q. And what is your title?

14 A. Assistant city administrator.

15 Q. Is that for the City of Billings?

16 A. Correct.

17 Q. Do you understand the oath you just took?

18 A. I do.

19 Q. Do you understand that your statements
20 here carry the same force as they would in a
21 courtroom?

22 A. I do.

23 Q. Is there anything that would prevent you
24 giving me your full attention today?

25 A. No.

Kevin Iffling, 30(b)(6)

1 Q. Are you on any medications that would
2 affect your memory or focus?

3 A. No.

4 Q. Next I would like to ask you -- sometimes
5 I can speak very quickly. So if -- if a question is
6 unclear because of my phrasing or because you didn't
7 catch it, I would like to ask you if you would agree
8 to please just stop me and ask me to repeat the
9 question or clarify it?

10 A. I will.

11 Q. And if you need a break at any point,
12 please just let me know. I understand that
13 depositions are stressful, speaking under oath in
14 general, but doing so with a full bladder is much
15 more uncomfortable. So would you agree to just let
16 me know if you need a break?

17 A. I will.

18 Q. Have you ever been deposed before?

19 A. I have.

20 Q. And what was that in relation to?

21 A. My career as a law enforcement officer.

22 Q. Have you ever been convicted of a felony?

23 A. No.

24 Q. Have you ever been convicted of a crime
25 involving lying, cheating, stealing, or dishonesty?

Kevin Iffling, 30(b)(6)

1 A. No.

2 Q. Do you understand that you have been
3 designated by the City of Billings to testify on
4 specific topics?

5 A. I have.

6 Q. I'm handing you a document that has been
7 marked Exhibit 7.

8 A. Thanks.

9 (Whereupon, Exhibit 7 was
10 marked for identification.)

11 BY MR. WOISLAW:

12 Q. Could you take a moment to look at that
13 document and then look back at me when you have
14 reviewed it.

15 Is that document familiar to you?

16 A. Yes.

17 Q. Have you had a chance to review this
18 document before today?

19 A. I have.

20 Q. And are you prepared to speak as the
21 designated representative of the City with respect to
22 the topics covered in this notice?

23 A. I am to the best of my ability.

24 Q. Are there any topics in this document that
25 you are not prepared to testify?

6

Kevin Iffling, 30(b)(6)

1 A. No.

2 Q. What else did you do to prepare for this
3 deposition today?

4 A. I reviewed the city ordinance. I reviewed
5 state law in regards to this matter. I reviewed
6 council minutes where this topic was discussed. And
7 I had conversations with our licensing agent.

8 Q. Did those council minutes include a city
9 council session that was held on April 12th, 2021,
10 concerning the ordinance?

11 A. I believe so.

12 Q. Can you give me a description of your role
13 at the City of Billings?

14 A. So my role as assistant city
15 administrator, I oversee six -- directly oversee six
16 departments, including police, fire, IT, library,
17 airport, and parks and rec, along with four divisions
18 to include fleet services, parking division, building
19 division, and facilities division.

20 Q. And what are the qualifications for that
21 role?

22 A. The qualifications were obviously
23 management and supervisory experience in that role.
24 At the time of -- when I accepted the position, a
25 master's degree was preferred, so there's some

Kevin Iffling, 30(b)(6)

1 educational requirements, and then general overall
2 experience with city government.

3 MR. WOISLAW: Do you guys still have a
4 copy of this?

5 MR. FAGAN: Yes.

6 BY MR. WOISLAW:

7 Q. I'm handing you a document that has
8 previously been marked as Exhibit 1. Would you take
9 a look at that and then look back at me when you have
10 familiarized yourself with it.

11 A. Okay.

12 Q. Is that the ordinance you reviewed in
13 preparation for your testimony today?

14 A. It is.

15 Q. Is that the ordinance by the City of
16 Billings concerning massage businesses?

17 A. It is.

18 Q. And if I -- I'm going to be referencing
19 the ordinance several times today. If I say "the
20 ordinance," will you understand that I'm talking
21 about this document?

22 A. I will.

23 Q. Saves me repeating a very long title
24 several times.

25 Okay. I want to ask you some questions

Kevin Iffling, 30(b)(6)

1 about this ordinance and the City's approach to
2 administering and enforcing it and using it,
3 including background of the policy behind it.

4 What spurred the City in the first
5 instance to develop this ordinance?

6 A. This originally came about in 2017 by
7 council initiative from Council Member Sullivan, and
8 it was to devise an ordinance to address the problem
9 of illicit massage businesses that we had in
10 Billings.

11 Q. Can you tell me what that -- what that
12 term illicit massage business means?

13 A. It means that in Billings we had
14 significant prostitution or human trafficking
15 businesses masquerading as massage therapy
16 businesses. And so his initiative was to go out
17 there and look for options in dealing with that.

18 Q. So that's your -- these businesses that
19 you're describing, that's what you're referencing
20 when you say illicit massage businesses?

21 A. Correct.

22 Q. And so this ordinance was an effort to
23 shut those illicit massage businesses down?

24 A. Shut those down and be proactive in not
25 allowing them to start.

Kevin Iffling, 30(b)(6)

1 Q. And what was different -- what did the
2 City believe would make this ordinance more effective
3 than the law enforcement policies and practices that
4 were in place at the time?

5 A. So for several years, law enforcement has
6 been impacted significantly by lack of resources. So
7 that was -- you know, one of the issues that was
8 brought forward, is there other ways that we can
9 combat human trafficking, sex trafficking in Billings
10 outside or in conjunction with or alongside of any
11 law enforcement services.

12 Q. Has it been effective in shutting down
13 illicit massage businesses?

14 A. Absolutely.

15 Q. Can you describe how you measure that
16 effectiveness?

17 A. Absolutely. So two things: The FBI was
18 tracking ads for illicit massage businesses in the
19 Billings and state of Montana area, specifically one
20 FBI agent that I recall, and the ads were in the
21 20,000 range prior to this ordinance being enacted.
22 After the ordinance was enacted, those ads
23 significantly decreased according to the FBI that
24 conducted that indication.

25 Secondly, we had -- once the ordinance

Kevin Iffling, 30(b)(6)

1 took effect and applications were having to be
2 submitted, we had, to the best of my recollection, 10
3 -- 10 to 15 businesses that were operating prior to
4 the ordinance that did not apply via application
5 once this ordinance was enacted. And then
6 subsequently, there was, I believe, five businesses
7 that had submitted an application that were denied
8 licenses because there were significant indicators of
9 an illicit massage business being operated at those
10 locations.

11 Q. And has the ordinance resulted in saving
12 some of those police resources for other tasks?

13 A. Yes.

14 Q. I would like to talk about the way that
15 the ordinance itself works, mechanically. So can you
16 explain how the application and licensing process
17 works from the beginning?

18 A. Absolutely. So the applicant has to
19 basically fill out an application form and submit if
20 it's their initial application a \$25 fee with that.
21 And along with that, they do have -- on initial
22 application, they do need to submit fingerprints, so
23 fingerprint cards. They get turned over for a
24 criminal history check.

25 That then goes to our licensing agent in

11

Kevin Iffling, 30(b)(6)

1 the finance department. They review the application
2 for, you know, any -- against the ordinance for
3 anything that is in conflict there.

4 From that point, the licensing agent gives
5 that information to code enforcement. Code
6 enforcement then schedules an inspection of that
7 business that put in the application. The inspection
8 is conducted by code enforcement, and the results of
9 that inspection are turned back to the licensing
10 agent to make a determination on either approval or
11 denial or further follow-up information from the
12 applicant.

13 Q. So for applicants that are applying for a
14 massage therapy or facility business license under
15 the ordinance, the City always conducts an initial
16 inspection?

17 A. Correct.

18 Q. Are those initial inspections scheduled
19 with applicants?

20 A. They are.

21 Q. Uniformly?

22 A. Uniform, can you describe -- what do you
23 mean?

24 Q. Are they uniformly or categorically or in
25 all cases scheduled with the applicants?

Kevin Iffling, 30(b)(6)

1 MR. WOISLAW: B as in boy, yes.

2 BY MR. WOISLAW:

3 Q. Would you take a look at that document in
4 attachment B, and then look back at me when you have
5 familiarized yourself with it.

6 A. Okay.

7 Q. Is this the standard form or a true and
8 accurate copy of the standard form that is used for
9 business owners to apply for licenses under the
10 ordinance?

11 A. Yes.

12 Q. I would like you to flip back to
13 attachment A. Review that and look back at me when
14 you're ready.

15 Is this a true and accurate copy of the
16 form that is used by the City of Billings to approve
17 solo practitioner exemptions from the ordinance?

18 A. Yes.

19 Q. And that form is used to exempt solo
20 practitioners merely from the definition of massage
21 or spa facility. Is that correct?

22 A. So I'm not sure I completely understand
23 the question. This form is used if there is one
24 licensed massage therapist and they're asking for
25 that exemption under the ordinance.

Kevin Iffling, 30(b)(6)

1 Q. And that exemption is from being treated
2 as a massage or spa facility. Is that correct?

3 A. Correct. They don't -- they don't get
4 exempt from the application of the ordinance, just --
5 you know, they still have to follow the rules of the
6 ordinance. But this is for the solo practitioner
7 exemption, yes.

8 Q. And the reason for that is to ensure that
9 they understand that they are -- that they have to
10 comply with the ordinance?

11 A. Correct.

12 Q. If you could hand that to Deb. Thank you.
13 We were talking about initial inspections
14 under the ordinance. Does the City also conduct
15 inspections of licensed businesses after that initial
16 inspection?

17 A. They have.

18 Q. Does the City have any policy related to
19 deciding when a postlicensure inspection takes place?

20 A. We do not have any policy. We just follow
21 the outline of the ordinance.

22 Q. Are you aware of how many postlicensure
23 inspections have taken place?

24 A. I don't know a specific number. I just
25 know that they have occurred.

Kevin Iffling, 30(b)(6)

1 Q. Have they been driven in response to
2 complaints?

3 A. They have.

4 Q. Each one of them?

5 A. I believe either a complaint or a
6 follow-up. I could get that information if needed.
7 but I am aware that they have occurred.

8 Q. When you say follow-up, what do you mean
9 by that?

10 A. If -- if there was something that was
11 found or needed to be discussed further in the
12 initial application, you know, there could be --
13 there could be an opportunity then to do a follow-up
14 inspection.

15 Q. Based on what is found in the initial
16 inspection?

17 A. Correct.

18 Q. So the City doesn't conduct any -- any
19 postlicensure inspections just to see if a business
20 is in compliance without a complaint?

21 A. To my knowledge, I'm not aware of any that
22 have been -- that have been done like that. It's
23 been a complaint or there's been information that's
24 came in that warranted an inspection.

25 Q. Has the City done any inspections of

Kevin Iffling, 30(b)(6)

1 treatment logs required to be kept under the
2 ordinance?

3 A. I'm not -- I'm not familiar, I guess, if
4 the logs -- the ordinance does outline that we can
5 look at the logs was the -- you know, because they're
6 required to keep certain information. So it does --
7 the ordinance does give that inspection of those
8 logs. And I'm not certain if they have looked at the
9 logs. It would be noted on the inspection sheets, I
10 believe.

11 Q. So there's no general City policy
12 outlining how frequently unannounced on postlicensure
13 inspections are conducted to ensure compliance with
14 either that recordkeeping requirement you were
15 talking about or any of the other requirements of the
16 ordinance?

17 A. There is no City policy. We just rely on
18 the ordinance.

19 Q. Does the City have any policy that would
20 limit the frequency of inspections of a business
21 after it's licensed?

22 A. There is no policy. Again, we just rely
23 on the outline of the ordinance.

24 Q. And does it have any policy limiting the
25 frequency of inspections of those who have qualified

Kevin Iffling, 30(b)(6)

1 for solo practitioner exemptions?

2 A. No. Again, no -- no internal policy or
3 policy on it. We just rely on the ordinance.

4 Q. Does the City have any policy limiting the
5 scope of those inspections aside from what is written
6 in the ordinance?

7 A. No. There's no -- there's no policy.
8 Again, we just rely on the ordinance that does limit
9 the scope.

10 Q. How does the City train its personnel on
11 this ordinance?

12 A. So there has been, you know, two trainings
13 that I'm aware of that City personnel that are
14 responsible for this ordinance, have attended. So
15 there's been training -- training conducted in those
16 areas.

17 Q. And those trainings were specific to
18 enforcement of the ordinance?

19 A. To the best of my knowledge, it was in
20 regards to some indicators for illicit massage
21 businesses, what to be looking for, things of that
22 nature, yes. Again, we use the ordinance as the
23 outline in our guideline for, you know, how we
24 implement, you know, the enforcement of that
25 ordinance.

Kevin Iffling, 30(b)(6)

1 Q. But the trainings were for the purpose of
2 educating personnel for the City who might have
3 something to do with enforcing the ordinance and
4 doing inspections. Right?

5 A. Inspections and licensing, yes.

6 Q. Did you review any documents related to
7 those trainings before today?

8 A. I did.

9 Q. And which documents did you review, if you
10 could tell me?

11 A. It was on a June of 2021 training. I
12 believe there was an outline of what was covered in
13 that training, and there was also, I believe, a
14 PowerPoint presentation that was used in that
15 training.

16 MR. WOISLAW: Gerry, you guys should
17 already have a copy of that.

18 MR. FAGAN: We do.

19 BY MR. WOISLAW:

20 Q. I'm handing you a document that has been
21 previously marked Exhibit 2. Would you take a look
22 at that and then familiarize yourself with it and
23 then look back at me.

24 A. Okay.

25 Q. Is that one of the documents or group of

Kevin Iffling, 30(b)(6)

1 documents that you looked at before today?

2 A. It is.

3 Q. And is that the June 2021 -- are those the
4 documents referencing the June 2021 training that we
5 were just discussing?

6 A. Yes.

7 Q. Thanks. You can give those back to Deb.

8 A. Okay.

9 Q. Do you remember whether -- whether the
10 police were there at that training, any police
11 officers?

12 A. I believe there was.

13 Q. Do you remember whether anyone from the
14 FBI was present?

15 A. I wouldn't recall that.

16 MR. WOISLAW: I would like to take a brief
17 recess, about ten minutes. Thank you.

18 (Whereupon, a break was then
19 taken.)

20 BY MR. WOISLAW:

21 Q. We have just resumed after a short recess.
22 Mr. Iffland, I would like you to pick up Exhibit 1
23 there in front of you, the ordinance. I have a
24 couple of questions for you.

25 So starting on page 10, you'll note

Kevin Iffling, 30(b)(6)

1 section 7-1911 titled Requirements During Operation.

2 A. Okay.

3 Q. And then that goes down. It says "Every
4 massage or spa facility licensee shall" and then it
5 enumerates subsections by lower case letters. I have
6 some questions for you about subsection C.

7 A. Okay.

8 Q, If you could go ahead and read subsection
9 C and then look back at me when you have done so.

10 A. Okay.

11 Q. I would like to ask you about the log that
12 that subsection requires massage businesses to keep.
13 What's the City do with that -- with information from
14 those logs that it collects?

15 A. To my knowledge, they just inspect that.
16 I don't know if they do anything further, but they're
17 just, you know, looking for the items that are
18 contained in the ordinance, the date, time, and type
19 of massage therapy administered, and the name of the
20 employee.

21 Q. And what are employees of the City looking
22 for when they look at that log?

23 A. Exactly for that type -- that type of
24 information.

25 Q. For what purpose?

Kevin Iffling, 30(b)(6)

1 A. To determine if there's any indicators for
2 any illicit massage activity occurring there.

3 Q. Does the City have any data or document
4 retention policies regarding documents like these if
5 they were collected from a massage business?

6 A. They do.

7 Q. Could you explain those to me?

8 A. I believe it's through the city clerk's
9 office that does all the record retention, and I
10 would have to get you that information of how long
11 these are retained.

12 Q. Would they be available to public records
13 requests?

14 A. Almost anything the City does is available
15 for that request. And then the legal department
16 determines, you know, what -- what falls under that
17 requirement for public records.

18 Q. Is there any reason you can articulate
19 that the City would deny a public record request
20 aimed at obtaining information that the City got from
21 these logs?

22 A. I would have to confer with legal on that
23 because they're the ones that normally make that
24 determination.

25 Q. Are you aware that any requests such as

Kevin Iffling, 30(b)(6)

1 that have been made?

2 A. Not to my knowledge.

3 Q. Are you aware of whether the City has
4 obtained any documents as a result of inspections
5 under this subsection?

6 A. I'm not aware if we have actually taken
7 photocopies or logs and put them into the record, no.

8 Q. Are you aware of whether the City has
9 conducted any of these inspections of these logs?

10 A. I don't know specifically what information
11 they have looked at in the logbooks. I could
12 certainly get that information for you.

13 Q. Does the City require during initial
14 inspections that -- that the employees conducting
15 those inspections look at these logs?

16 A. I would have to go back and look at the
17 checklists of what they look at. There's a
18 standardized checklist of what the inspectors are
19 looking for.

20 Q. Okay. Thanks. You can put the document
21 down.

22 A. Okay.

23 Q. I have a few questions about any other
24 ways that massage therapy businesses or solo
25 practitioners of massage therapy are -- are treated

Kevin Iffling, 30(b)(6)

1 by the City through its laws and regulations and
2 ordinances.

3 Other than this ordinance, are there any
4 laws that the City enforces that -- or any policy the
5 City enforces that treat massage therapists
6 differently from other people?

7 A. Could you restate that question again.

8 Q. I can. It was a mouthful, wasn't it?

9 Does the City have any policies or enforce
10 any laws that treat massage therapy businesses or
11 massage therapy practitioners different from any
12 other practitioner or any other business?

13 A. We have the ordinance that was created
14 that does, yes.

15 Q. Aside from the ordinance, nothing?

16 A. This -- to my knowledge, the City doesn't
17 have any other ordinances or policies, no.

18 Q. Does the City coordinate with the state
19 massage board with respect to inspections of massage
20 businesses in the city?

21 A. So the state massage board is responsible
22 for the individual and not the business in the
23 massage therapy area. And there is a state code that
24 indicates that law enforcement can inspect licenses
25 and -- of a massage therapy business.

Kevin Iffling, 30(b)(6)

1 Q. Just so I understand, what do you mean
2 when you say that the state massage board is
3 responsible for the individual and the City with this
4 ordinance is responsible for the business? Could you
5 explain what you mean by that?

6 A. Absolutely. So the state massage board
7 licenses the individual for massage therapy. There
8 has to be a license and there's requirements for that
9 license. But they are licensing the individual, not
10 a business. Like, you know, whatever that business,
11 you know, name would be or something, they're not
12 licensing the business. They're licensing the
13 individual to conduct massage therapy.

14 Q. Thank you. So the City does not
15 coordinate with the state massage board for its
16 inspections that it does under its state authority?

17 A. The ordinance does give us that option to
18 coordinate with other departments to include the
19 state massage board if needed, whether that would be
20 from verification of licensing or something of that
21 nature. And, again, then the state massage board and
22 law enforcement can work under the state code.

23 Q. Has the City ever used this authority?

24 A. Not to my knowledge.

25 Q. Are you aware of whether any massage

Kevin Iffling, 30(b)(6)

1 therapists or their businesses have been inspected by
2 the state massage board?

3 A. I'm not aware of that information.

4 MR. WOISLAW: I don't have any other
5 questions at this time.

6 MR. FAGAN: Let's take a quick break.

7 THE WITNESS: Okay.

8 (Whereupon, a break was then
9 taken.)

10 EXAMINATION

11 BY MR. FAGAN:

12 Q. So we're back on the record at almost ten
13 after. For the record, I'm Gerry Fagan. I'm one of
14 the defense counsel for the City in this case.

15 Kevin, I wanted to ask just a couple of
16 follow-up questions to give you a chance to clarify a
17 couple of responses. You had talked with Daniel
18 about whether the City collects patient records
19 during these inspections and then could it be subject
20 to public records requests and those kind of things.

21 Have you had a chance to find out more
22 about what the City does with its review of patient
23 logs?

24 A. I have.

25 Q. What have you found out?

26

Kevin Iffling, 30(b)(6)

1 A. So during our break, I was able to contact
2 Joanne, which is our licensing agent in the finance
3 department, to inquire about that. And the code --
4 the ordinance is specific on, you know, what we can
5 -- you know, what they're required to check, which is
6 date and time and massage therapy thing that was
7 performed and the employee that did that.

8 We do not collect, get any sort of patient
9 information or any protected health care information
10 off of that. So that would not go, you know, to the
11 City in this inspection.

12 Q. So are the -- in the patient logs that are
13 required to be kept, is the patient's name required
14 to be stated in that log or just the services?

15 A. Just the services.

16 Q. Okay. So just to be clear, the City is
17 not gathering patient records from these inspections
18 then. Is that correct?

19 A. That's correct.

20 Q. In a public records request that the City
21 could be subject to, do those contain privacy
22 protections for individuals that might be in those
23 communications?

24 A. It could, yeah, protect, you know, the
25 individuals, again, in a public records request.

Kevin Iffling, 30(b)(6)

1 Q. Let's talk briefly, too, about you were
2 asked some questions about postlicense approval
3 inspections by the City under the ordinance. Do you
4 recall those questions?

5 A. I do.

6 Q. Okay. And I just want to clarify on that.
7 Has the City, to your knowledge, done any inspections
8 of any massage business that has been approved
9 initially?

10 A. No.

11 Q. So of those approved businesses under the
12 ordinance, they have only been inspected once at
13 application?

14 A. Correct.

15 Q. Any follow-up inspections that you were
16 talking about, what were those inspections about?

17 A. They were either, you know, had not been
18 issued a license, you know, or, you know, they were
19 some other business, you know, that were inspected
20 because there was indicators of these illicit massage
21 businesses, but they had not been licensed at that
22 point.

23 Q. And has the City conducted any inspections
24 under this ordinance of solo practitioners?

25 A. No.

Kevin Iffling, 30(b)(6)

1 Q. That's all the questions -- I'm sorry.

2 A. And I'll clarify that one more. So no
3 inspections under this ordinance, but they are
4 subject -- potentially subject to fire inspections,
5 things of that nature that any other business would
6 be subject to.

7 Q. Thank you for clarifying that point too.

8 MR. FAGAN: That's the all the questions I
9 have, Kevin. Thank you.

10 MR. WOISLAW: We don't have any redirect.

11 MR. FAGAN: So you're done, Kevin.

12 (Whereupon, the deposition
13 concluded at 10:11 a.m.)

14 SIGNATURE RESERVED.

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Kevin Iffling, 30(b)(6)

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DEPONENT'S CERTIFICATE

I, CITY OF BILLINGS 30(b)(6) by KEVIN
IFFLAND, the deponent in the foregoing deposition, DO
HEREBY CERTIFY, that I have read the foregoing - 29 -
pages of typewritten material and that the same is,
with any changes thereon made in ink on the
corrections sheet, and signed by me a full, true and
correct transcript of my oral deposition given at the
time and place hereinbefore mentioned.

KEVIN IFFLAND

Subscribed and sworn to before me this
_____ day of _____, 2023.

PRINT NAME: _____
Notary Public, State of Montana
Residing at: _____
My commission expires: _____

Kevin Iffling, 30(b)(6)

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C E R T I F I C A T E

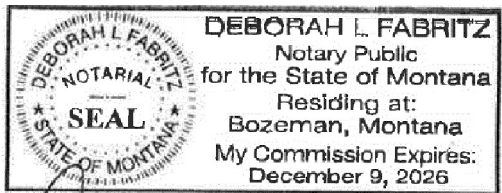
STATE OF MONTANA)
 : SS
COUNTY OF GALLATIN)

I, Deborah L. Fabritz, Registered Professional Reporter and Notary Public for the State of Montana, residing in Bozeman, do hereby certify:

That I was duly authorized to and did swear in the witness and report the deposition of KEVIN IFFLAND, in the above-entitled cause; that the foregoing pages of this deposition constitute a true and accurate transcription of my stenotype notes of the testimony of said witness, all done to the best of my skill and ability; that the reading and signing of the deposition by the witness have been expressly RESERVED.

I further certify that I am not an attorney nor counsel of any of the parties, nor relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on this 30th day of September, 2023.



Deborah L. Fabritz

\$				
\$25 (1) 11:20				
A				
ability (1) 6:23	always (1) 12:15	11:19	case (2) 21:5;26:14	commission (1) 30:24
able (1) 27:1	applicant (2) 11:18;12:12	begin (1) 4:9	cases (1) 12:25	communications (1) 27:23
Absolutely (4) 10:14,17;11:18; 25:6	applicants (3) 12:13,19,25	beginning (1) 11:17	catch (1) 5:7	Complaint (4) 13:13;16:5,20,23
accepted (1) 7:24	application (13) 11:4,7,16,19,20,22; 12:1,7;13:2,6;15:4; 16:12;28:13	behind (1) 9:3	categorically (1) 12:24	complaints (1) 16:2
according (1) 10:23	applications (2) 11:1;13:4	best (3) 6:23;11:2;18:19	certain (2) 17:6,8	completely (1) 14:22
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EXHIBIT
12

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

Tina Hoeger

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

THERESA VONDRA, ET AL.,

Plaintiffs,

v.

Case Number
CV-22-30-BLG-KLD

CITY OF BILLINGS,

Defendant.

DEPOSITION UPON ORAL EXAMINATION OF
TINA HOEGER

BE IT REMEMBERED, that the deposition upon oral examination of TINA HOEGER, appearing at the instance of Plaintiffs, was taken at the offices of Fisher Court Reporting, 2711 1st Avenue North, Billings, Montana, on Tuesday, September 19th, 2023, beginning at the hour of 1:30 p.m., pursuant to the Federal Rules of Civil Procedure, before Deborah L. Fabritz, Court Reporter - Notary Public.

* * * * *

Tina Hoeger

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Tina Hoeger

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<u>Exhibit 5</u>	Facility Check List - BMCC 7-1900.....	13
<u>Exhibit 6</u>	Facility Check List - BMCC 7-1900 dated 10/29/2021.	22

Tina Hoeger

1 WHEREUPON, the following proceedings were had
2 and testimony taken, to-wit:

3 * * * * *

4 TINA HOEGER,
5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. WOISLAW:

9 Q. Hello. My name is Daniel Woislaw, and I
10 represent the plaintiffs in this matter of Theresa
11 Vondra, et al., versus City of Billings.

12 Would you mind stating and spelling your
13 name for the record.

14 A. Sure. It's Tina Hoeger, T-I-N-A. The
15 last name is H-O-E-G-E-R.

16 Q. And what is your title?

17 A. Code enforcement division manager.

18 Q. Is that for the City of Billings?

19 A. Yes.

20 Q. I just have some preliminary questions I
21 want to get through, and then we'll go into sort of
22 your background and then get into some questions
23 about the controversy that we're here to discuss
24 today.

25 So first, do you understand the oath you

Tina Hoeger

1 just took?

2 A. I do.

3 Q. Have you ever been deposed before?

4 A. Yes.

5 Q. And what were you deposed related to?

6 A. My prior law enforcement career, I had
7 been deposed in a case.

8 Q. Were you a police officer?

9 A. Yes.

10 Q. Here in the City of Billings?

11 A. Yes.

12 Q. So you understand the statements that
13 you're going to give carry the same force as if we
14 were in a courtroom?

15 A. I do.

16 Q. And is there anything that would prevent
17 you giving me your full attention today?

18 A. No.

19 Q. Are you taking any medications that would
20 affect your memory or focus?

21 A. No.

22 Q. Next, I just like to make sure, because I
23 can talk very quickly sometimes, that if you don't
24 understand a question or you need me to repeat it or
25 for Deb to repeat it, would you please just agree to

5

Tina Hoeger

1 let me know?

2 A. I will.

3 Q. And also if you need a break at any time
4 -- we're probably going to take at least one break
5 during the deposition, but if you need a break,
6 please let me know and we can take one.

7 A. I can do that.

8 Q. It's stressful enough to have to give
9 statements under oath, but it's bordering on cruel
10 and unusual punishment to do so with a full bladder.
11 So please just let me know.

12 Next, have you ever been convicted of a
13 felony?

14 A. No.

15 Q. Have you ever been convicted of a crime
16 involving lying, cheating, stealing, or dishonesty?

17 A. No.

18 Q. There could be some objections today to
19 questions that I ask. Do you understand that unless
20 counsel instructs you not to answer it, you're going
21 to need to go ahead and answer it?

22 A. Sure.

23 Q. Have you ever used a different name --

24 A. Yes.

25 Q. -- other than the one you gave?

Tina Hoeger

1 Was that a maiden name?

2 A. That is my maiden name.

3 Q. That is your maiden name.

4 A. I was married before.

5 Q. Okay. And what was your married name?

6 A. The last one was Meder, M-E-D-E-R, and the
7 one prior to that was Walsh.

8 Q. W-A-L-S-H?

9 A. Yes.

10 Q. Thank you. When did you become the code
11 enforcement division manager for the City of
12 Billings?

13 A. January 10th, 2022.

14 Q. And what are the qualifications for your
15 current role as the code enforcement division
16 manager?

17 A. I had to have a degree, prior supervisory
18 capacity. There was -- that was two of the major
19 ones as far as that.

20 Q. Did you do anything to prepare for the
21 deposition today?

22 A. I reviewed the ordinance and reviewed
23 materials that apply to the ordinance.

24 Q. And what materials did you review?

25 A. Well, I'm sure you have a copy of a short

7

Tina Hoeger

1 policy that's in the code enforcement manual, so I
2 looked at that.

3 Q. Is that policy 3-3?

4 A. I believe it's 3-3.

5 Q. Did you review any other -- did you review
6 any other materials or documents in anticipation of
7 this deposition?

8 A. Yeah. I looked through some of our cases
9 and I looked at the application.

10 Q. Which application?

11 A. For the license.

12 Q. For whose license?

13 A. Just the generic one --

14 Q. The generic application form?

15 A. -- so I could familiarize myself again
16 with the license.

17 Q. Okay. So could you just give us an
18 overview of what the role of your job is with the
19 City of Billings, what the code enforcement division
20 manager does?

21 A. I oversee seven officers, and we are
22 tasked with enforcing over 22 different city
23 ordinances, one of which is this ordinance.

24 Q. I'm handing you a document that has
25 previously been marked Exhibit 1.

Tina Hoeger

1 A. Uh-huh.

2 Q. Would you just glance at that, familiarize
3 yourself with it. You certainly don't have to read
4 the whole thing word for word, but just familiarize
5 yourself with it. And then look back at me when you
6 -- thank you.

7 Is this the ordinance you were
8 referencing?

9 A. Yes.

10 Q. And this is the ordinance related to
11 licensing and inspections of massage businesses in
12 the City of Billings?

13 A. Correct.

14 Q. And your division is responsible for the
15 enforcement of this ordinance?

16 A. We are responsible for the inspection and
17 if there's any violations, yes.

18 Q. So I'm going to refer to "the ordinance"
19 in quotations -- the ordinance quite a bit today. So
20 if I say "the ordinance," will you understand I'm
21 talking about this one?

22 A. Yes.

23 Q. Okay. It will save me a lot of words. If
24 you look at the title there, it's quite long. I'd
25 prefer not to say that every time.

Tina Hoeger

1 Q. You've just been handed a document marked
2 Exhibit 4. Would you take a look at that, and when
3 you have reviewed it, just take a look back at me.

4 Are you familiar with this document?

5 A. I am.

6 Q. Can you tell me what it is?

7 A. It's a policy I wrote to establish some
8 guidelines as we moved forward in the massage and spa
9 ordinance.

10 Q. And you drafted the policy originally?

11 A. I did.

12 Q. Has it been revised since this version was
13 created?

14 A. No.

15 Q. Is this the only policy that your division
16 has related to the ordinance?

17 A. Yes.

18 Q. Are there any other policies that you're
19 aware of within the City of Billings that relate to
20 the ordinance?

21 A. The guidelines set out in the ordinance is
22 what we follow closely.

23 Q. So there are no written policies that
24 limit the scope of inspections under the ordinance
25 other than the language in the ordinance that you

Tina Hoeger

1 rely on?

2 A. We follow the ordinance as far as the
3 scope of what we're supposed to do. This policy was
4 basically to document what we do as far as a case.

5 Q. And are there any -- are there any -- any
6 written policies that you follow in the code
7 enforcement division that would limit the frequency
8 of inspections of a business that is licensed under
9 the ordinance?

10 A. I don't understand the question.

11 Q. I'm happy to -- to clarify that.

12 Are there any written policies that would
13 prevent your division from doing more than one
14 inspection of a business that is licensed under the
15 ordinance?

16 A. A specific ordinance or a specific policy?

17 Q. A specific policy.

18 A. Telling me how many times?

19 Q. Yes.

20 A. I follow the ordinance and there is not
21 anything in there about that.

22 Q. So nothing beyond the ordinance with
23 respect to the frequency of inspections of
24 businesses?

25 A. Not that I'm aware of.

Tina Hoeger

1 (Whereupon, Exhibit 5 was
2 marked for identification.)

3 BY MR. WOISLAW:

4 Q. I have just handed you a document that has
5 been marked Exhibit 5. When you have a chance,
6 please take a look at that and then look back at me
7 once you have familiarized yourself with it.

8 Is that document familiar to you?

9 A. Yes.

10 Q. Can you tell me what it is?

11 A. It's the checklist we use during the
12 inspection of the facility.

13 Q. And that's the inspection used for -- I'm
14 sorry. That's the checklist that you use for
15 inspections of businesses under the ordinance?

16 A. Correct.

17 Q. Is this used in every inspection?

18 A. For this ordinance?

19 Q. For this ordinance.

20 A. Yes.

21 Q. Is this checklist limited to use in
22 initial licensing inspections, or does it also apply
23 in -- in inspections of businesses that have already
24 been licensed?

25 A. This is what we use when we do the initial

Tina Hoeger

1 inspection at the application level. There are
2 occasions when a facility is not licensed and the
3 inspection needs to be done.

4 Q. What process do you follow when the
5 facility is not licensed?

6 A. It's usually complaint driven, so we're
7 sent to inspect the business.

8 Q. Do you seek consent for those searches --
9 for those inspections?

10 A. What do you mean?

11 Q. So when you do an inspection of a facility
12 that has not been licensed under the ordinance, how
13 -- how do you gain entry to those businesses?

14 A. Well, we follow the ordinance as its
15 written. So we would go there during business hours
16 and explain to them why we are there.

17 Q. And what authority do you rely on to do
18 the inspections?

19 A. Under this ordinance.

20 Q. And is the practice to tell businesses or
21 business owners that you're going to search them or
22 to ask if you can search them?

23 A. We're not necessarily searching them.
24 We're doing an inspection. So we will go and explain
25 the reason why we are there and proceed most always

14

Tina Hoeger

1 -- actually always with cooperation.

2 Q. After you explain the reason why you're
3 there?

4 A. Uh-huh. Yes.

5 Q. And that's in reference to the ordinance
6 authorizing an inspection? When you explain the
7 reason, are you explaining that the ordinance
8 authorizes the inspection?

9 A. Yes. So when we are sent under a new
10 application, we let them know why we're there. They
11 already actually know because in the application it
12 lists what will transpire.

13 What I was previously referring to was if
14 they're not licensed and we receive a complaint, we
15 use the same checklist. And we explain to them why
16 we're there because perhaps they're not aware of the
17 ordinance.

18 Q. So next, I want to talk about a business
19 that has already had its initial licensing
20 inspection.

21 A. Okay.

22 Q. It's already licensed and the department
23 -- your division is going to do an inspection of that
24 business. Do you use the same checklist for those
25 inspections?

Tina Hoeger

1 A. Why would I be doing another inspection if
2 they're already licensed? Did I receive a complaint?

3 Q. So if you -- my question was, if you do an
4 inspection of a business that has already been
5 licensed, whether there's a complaint, whether there
6 isn't, whatever the reason is that you're doing an
7 inspection of the business --

8 A. Uh-huh.

9 Q. -- that's already been licensed under this
10 ordinance and you're doing an inspection under the
11 ordinance, is this the same checklist that your
12 division would use?

13 A. Yes. So if we're out there and it's
14 already been properly licensed, we are out there
15 because there has been either a violation or a
16 complaint, and we will utilize this list.

17 Q. So I want to talk a little bit about those
18 inspections, inspections of businesses that have
19 already been licensed under the ordinance and you're
20 using the ordinance to do an inspection of those
21 businesses.

22 What drives those inspections? What
23 causes your division to inspect a massage business
24 that's already been licensed under the ordinance
25 after the initial licensing inspection?

Tina Hoeger

1 A. A complaint or violations are forwarded to
2 us.

3 Q. Where do the complaints come from?

4 A. A lot of the complaints we receive are
5 online, and they're anonymous. It could also be an
6 observed violation.

7 Q. Can you explain what you mean by an
8 observed violation?

9 A. For example, if it is observed by one of
10 my code officers that they are operating outside of
11 hours or -- I mean, if there's a violation that is
12 observed. And that's rare.

13 Q. But it happens?

14 A. I believe once.

15 Q. I just want to clarify what you mean by
16 once. When you say once, are you referring to there
17 has been one instance in which operating outside of
18 hours has formed the basis for a complaint that
19 spurred a later inspection, or are you saying there's
20 only been one of these postlicensure inspections?

21 A. The first one.

22 Q. All right.

23 A. So there has been one occurrence where we
24 observed that the business was actually -- and I'll
25 correct myself. It wasn't that they were outside of

17

Tina Hoeger

1 hours. It was that they did not have a license. So
2 the inspection was done, I think, within a few days
3 of that.

4 Q. Have there been any other businesses --
5 have there been any businesses that have already been
6 licensed under the ordinance that you have done
7 inspections on other than initial licensing
8 inspections?

9 A. I would have to look through the records.
10 If there have been, there have been -- you could
11 count them on one hand.

12 Q. So who decides when one of these
13 inspections happens other than the initial licensing
14 inspections? You mentioned -- you mentioned earlier
15 that you had an officer out in -- out who observed
16 something happening. There was a complaint generated
17 in response to that.

18 A. Uh-huh.

19 Q. And an inspection took place.

20 A. Uh-huh.

21 Q. Who approves those, if anyone?

22 A. I don't know what you mean by approve.
23 But if -- my officers are tasked by ordinance that if
24 there's a violation, that they have the duty to look
25 into it. So I mean, that's part of their

Tina Hoeger

1 responsibility.

2 Q. So there's no central -- there's no
3 central approval power that you have over code
4 enforcement officers doing these inspections?

5 A. You mean when a complaint comes in?

6 Q. Yes. So a complaint comes in. An officer
7 can go investigate?

8 A. I don't have to approve the complaint
9 before they do it, no, if that's what you're asking
10 me.

11 Q. Yes.

12 And the officers, they don't have to get
13 your permission to do these inspections?

14 A. They have my permission under the
15 responsibilities of their job.

16 Q. They don't need your specific permission
17 for any specific inspection under the ordinance?

18 A. No.

19 Q. So I want to direct your attention to this
20 Exhibit 5. I would like to refer you to the second
21 page. And above inspector notes where it says BMCC
22 7-1912, inspections, there's a second bullet point
23 that reads "Upon request, open all locked cabinet,
24 storage areas, or rooms for inspection."

25 My question about this is whether this

19

Tina Hoeger

1 limits searches -- inspections of these businesses
2 only to areas that are locked?

3 This says "Upon request, open all locked
4 cabinet, storage areas, or rooms for inspection."
5 Does that mean this is limiting your inspectors to
6 only searching those areas that are locked?

7 A. No.

8 Q. So they search other areas that are not
9 locked?

10 A. Yes.

11 Q. And how do they determine which areas to
12 search?

13 A. There's a list of items to look at in the
14 ordinance, and that's what this checklist is based on
15 as well. So for instance, they talk about the lobby
16 area. They talk about having the services posted
17 that they offer. There are limits to areas such as
18 where there's business records or things like that,
19 but they follow the letter of the ordinance when it
20 comes to what they look at.

21 Q. Are the inspectors required to look in
22 every room in every area of a business that they do
23 an inspection of under the ordinance?

24 A. I want to look at the ordinance for a
25 second here.

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1 Q. Well, I'm asking whether -- let me clarify
2 that question. I'm asking whether your division
3 requires inspectors to look in every area of a
4 business that is -- that is being inspected under the
5 ordinance.

6 A. I'm not quite exactly sure what you're
7 asking me.

8 Q. When your inspectors --

9 A. Am I asking them to do something outside
10 of the ordinance? No.

11 Q. My question was whether -- whether you're
12 requiring the officers for the code division when
13 they do an inspection under the ordinance, do you
14 require them to search every area in -- in a
15 business?

16 A. I require them to search whatever is
17 required in the ordinance.

18 Q. You mentioned earlier about complaints
19 generating inspections of businesses under the
20 ordinance. If you have -- for all of the businesses
21 that are already licensed, do you require a complaint
22 before you do a second inspection?

23 A. That is how additional inspections are
24 generated currently, yes.

25 Q. So your division doesn't do any

Tina Hoeger

1 unannounced inspections without a complaint?

2 A. Correct. Or a license application.

3 Q. Have you received any guidance or
4 communication from anyone in the City telling you not
5 to have your division do -- do inspections after a
6 business has been licensed?

7 A. No.

8 Q. Are you aware that anyone in the City in
9 code enforcement, police department, or anywhere else
10 has been informed not to do inspections of businesses
11 that have already been licensed under the ordinance?

12 A. I'm not aware of that.

13 (Whereupon, Exhibit 6 was
14 marked for identification.)

15 BY MR. WOISLAW:

16 Q. I have just handed you a document marked
17 Exhibit 6. Would you take a look at that,
18 familiarize yourself with it, and then look back at
19 me when you're ready.

20 Are you familiar with this document?

21 A. It's an older inspection.

22 Q. And is this a document reflecting an
23 inspection that was carried out under the ordinance?

24 A. Yes.

25 Q. And is this the same facility checklist as

Tina Hoeger

1 Exhibit 5? And I'll hand you Exhibit 5 as well.

2 A. It appears to be.

3 Q. So I want to ask you based on the
4 inspector notes in this inspection report. I want to
5 follow up on some earlier questions I had about the
6 way that businesses are searched.

7 So I would just like to refer you to the
8 language here in inspector notes. The second
9 sentence, it says, "She let us into every area of the
10 place and let us open up every drawer."

11 My question to you is whether this is --
12 this is standard procedure for the -- for your
13 division is to open every drawer in a business?

14 A. This inspection occurred before I even
15 worked there, so I don't have any -- I really don't
16 have any input on this one.

17 Q. Well, let's talk about now with the
18 current inspectors. What term do you prefer for your
19 employees at the City? Inspectors? Officials?
20 Officers?

21 A. They're officers, code enforcement
22 officers.

23 Q. I'll use that term then.

24 A. Okay.

25 Q. So for your officers in the division, are

Tina Hoeger

1 they given broad latitude to decide how to conduct,
2 the -- in terms of whether they open every drawer or
3 some drawers in a business when they do a licensing
4 inspection?

5 A. The way that we are doing it now is it's
6 by the letter of the ordinance. I don't know what
7 they did initially when the ordinance went into
8 effect. I wasn't part of the division then.

9 Q. Let's take a step back for a moment then.
10 How -- how do your officers decide whether to open
11 one drawer or another one in a business when they do
12 an inspection?

13 A. I would have to ask the commercial code
14 officer. He follows the letter of the ordinance. He
15 looks at those cabinets that are in the massage
16 rooms. I don't believe he's looking in anything that
17 is sensitive in nature to the business.

18 Q. So you don't have any policies beyond the
19 ordinance, in the letter of the ordinance to instruct
20 officers in determining which drawers to open and
21 which areas to search or inspect in a business under
22 the ordinance?

23 A. We try to closely follow the ordinance and
24 how it's written.

25 Q. So each officer is using their own

Tina Hoeger

1 judgment in compliance with the ordinance?

2 A. No. I have a specific officer tasked with
3 these now. Prior to that, there was three officers
4 that were primarily handling these.

5 Q. And what officer is that?

6 A. Todd Morgan.

7 MR. WOISLAW: I would like to take a brief
8 recess, about 10 minutes.

9 THE WITNESS: Sure. Great.

10 (Whereupon, a break was then
11 taken.)

12 BY MR. WOISLAW:

13 Q. Okay. So Ms. Hoeger -- am I pronouncing
14 that correctly?

15 A. Yeah.

16 Q. Okay. I just realized I hadn't addressed
17 you by your name in awhile, so I wasn't sure if I had
18 it right.

19 I want to go back for a moment to initial
20 licensing inspections, and I would like to ask you
21 what the procedure is for how your division schedules
22 those with -- with applicants under the ordinance.

23 A. Okay.

24 Q. Could you just like take me through that?

25 A. We generally receive the application from

25

Tina Hoeger

1 the licensing division and then -- for example, now
2 Todd gets them, and he'll go out and do the
3 inspection during business hours.

4 Q. Does Todd coordinate with the business
5 owners to schedule a time with them?

6 A. Sometimes. Not always.

7 Q. Are you aware of whether any business
8 owners, when they haven't scheduled the inspections
9 themselves or been given notice, have turned away
10 Todd or another officer from your division?

11 A. I'm not aware of that, no.

12 Q. Has your division done any inspections of
13 solo practitioners under the ordinance -- solo
14 practitioner massage therapists under the ordinance?

15 A. I think it's been all facilities since I
16 started there. I would have to look back in the
17 records, but I believe solo is -- they are excluded
18 from that in the ordinance. But I would have to
19 double-check.

20 Q. Are you aware of whether there were any
21 inspections of solo practitioners before you came
22 into the division?

23 A. I'm not aware.

24 Q. What coordination, if any, does your
25 division engage in with respect to massage businesses

Tina Hoeger

1 or illicit massage businesses with the Billings
2 Police Department?

3 A. I'm not sure what you're asking me.

4 Q. I'm asking whether the division
5 coordinates at all with the Billings Police
6 Department with respect to inspecting massage
7 businesses or investigating illicit massage
8 businesses?

9 A. Do they go with us?

10 Q. Is there any coordination between your
11 division and the Billings Police Department?

12 A. No.

13 Q. Has your -- has your division sent any
14 complaints as a result of inspections done under the
15 ordinance to the Billings Police Department?

16 A. To the task force, yes.

17 Q. Which task force is that?

18 A. It would be DCI that they have a --

19 Q. What does that stand for?

20 A. Department of Criminal Investigations.

21 Q. And what are they tasked with? What is
22 the Department of Criminal Investigations tasked
23 with?

24 A. Well, the local unit that is working with
25 some human trafficking issues.

Tina Hoeger

1 Q. And has that task force sent your division
2 any complaints with respect to --

3 A. No.

4 Q. -- businesses?

5 A. No. Not that I'm aware of.

6 Q. Are you familiar with the term illicit
7 massage business?

8 A. Yes.

9 Q. Can you explain to me what that term means
10 to you?

11 A. It would mean that there is human
12 trafficking going on, sexual activity, things that
13 are not legal in the profession of a legitimate
14 massage facility.

15 Q. And have inspections done by your division
16 uncovered any suspected illicit massage businesses?

17 A. Yes.

18 Q. Do you know how many?

19 A. Not an exact number.

20 Q. How many can you remember?

21 A. I know there has been a few that did not
22 meet the inspection. There were some things in there
23 that were questionable. So when the inspection was
24 completed, that was referred back to the licensing
25 administrator.

Tina Hoeger

1 Q. And so all of the inspection reports go to
2 the licensing administrator? Was that the term you
3 used?

4 A. Yeah.

5 Q. And who is that?

6 A. That would be Joanne.

7 Q. Joanne Rindahl?

8 A. Yes.

9 Q. Could you spell her name.

10 A. It's R-I-N-D-A-H-L, I believe.

11 Q. And is Joanne, J-O-A-N-N-E?

12 A. Possibly. I don't know if there's an E or
13 not. I can't remember.

14 Q. That's okay. And those -- any of those
15 businesses that were -- that were flagged after an
16 inspection as possibly be illicit massage businesses
17 after the inspections, none of them were issued
18 licenses. Right?

19 A. That is up to Joanne's division. So we do
20 the inspection, give her the results of the
21 inspection, and then it's determined in her offices
22 whether they're going to approve the license or not.
23 We're just the vehicle for the inspection.

24 Q. But you're not aware that any of them were
25 later licensed?

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1 A. I would have to look back again and maybe
2 communicate with her.

3 Q. Your division is tasked, I believe you
4 said earlier, with enforcing the ordinance?

5 A. Uh-huh.

6 Q. In the ordinance -- and I will refer you
7 -- that's Exhibit 1. I think you have a copy there.

8 A. I do.

9 Q. I'll refer you to section 7-1910 on page
10 9, which is prohibitions during operation.

11 A. Uh-huh.

12 Q. And on the next page, on page 10,
13 subsection M prohibits operate an erotic parlor
14 within the city. When your officers or now Officer
15 Todd Morgan is doing inspections, is he looking for
16 evidence that a business is an erotic parlor?

17 A. He's looking for any evidence of things
18 that don't belong in a massage facility, like condoms
19 and vibrators and things of that nature that are of a
20 sexual nature that should not be there.

21 Q. So he looks anywhere those things could be
22 found?

23 A. Correct.

24 Q. Are your officers, and now perhaps only
25 Todd Morgan, but are any of your officers trained

Tina Hoeger

1 specifically on enforcing this ordinance?

2 A. Yes. As I mentioned before, there were
3 three that were performing these inspections, and
4 they were the three that went through the training.
5 That occurred prior to me becoming the division
6 manager.

7 I will also note that Todd does not do
8 these inspections alone. He will bring a second
9 officer with him. So it's never just him. He will
10 bring someone else.

11 Q. Is that other person -- will they have
12 gone through the training?

13 A. Sometimes it's one of the others.
14 Sometimes it's not. Generally, Todd will lead the
15 inspection, and that other officer will be there to
16 assist.

17 Q. Have any officers, including Todd, been
18 trained since you took over as division manager? By
19 been trained, I mean been trained on enforcing the
20 ordinance.

21 A. No. We haven't done an updated training,
22 but it's certainly something that I would consider
23 doing as a refresher.

24 Q. Are any of the materials from the training
25 shared with new officers who are going to be doing

Tina Hoeger

1 these inspections with Todd?

2 A. No. Now that it falls under his job
3 responsibility as the commercial officer, and since
4 he's gone through the training, he primarily will do
5 the inspections. And he will bring newer officers
6 along when there's the occasion so that they can see
7 what it looks like basically.

8 Q. So they're learning from Todd now?

9 A. Sure.

10 Q. Remind me -- and I'm sorry if I already
11 asked you this -- when you started as division
12 manager.

13 A. January 10th of '22.

14 Q. And you haven't attended any of the
15 trainings. These were all before you took over?

16 A. Correct.

17 Q. Do you or Todd place any particular
18 emphasis or focus or priority on any parts of this
19 ordinance over other parts and how you go about
20 enforcing it? Do you have priorities that you focus
21 on?

22 A. I'm not sure exactly what you mean by
23 that, but we follow the checklist. We follow the
24 ordinance. We are concerned that -- we want to make
25 sure that people aren't being used improperly in our

32

Tina Hoeger

1 city.

2 Q. Has your division coordinated at all with
3 any federal agencies or agents --

4 A. No.

5 Q. -- with respect to the ordinance --

6 A. No.

7 Q. -- or illicit massage businesses?

8 A. No.

9 Q. Have you coordinated at all with the State
10 Board of Massage Therapy?

11 A. No. I believe a copy of that licensing is
12 what is initially required when they apply. And,
13 again, that's handled through finance.

14 Q. But your division doesn't have a channel
15 of communication with the State Board of Massage
16 Therapy?

17 A. No.

18 Q. Are you aware of whether the state board
19 has done any inspections under their own authority of
20 any businesses in Billings?

21 A. I'm personally not aware, no.

22 Q. And the City or your division hasn't
23 coordinated with them on any inspections?

24 A. No.

25 Q. Is this ordinance -- the ordinance I'm

Tina Hoeger

1 referring to is Exhibit 1. Is that the only document
2 relating to -- does that contain the only
3 restrictions on people who practice massage therapy
4 in the city of Billings that your division enforces?

5 I know that was a mouthful. I can repeat
6 it.

7 A. Yeah. If you could.

8 Q. Yeah. Are there any other laws or
9 regulations related to massage therapy that your
10 division enforces in the city of Billings?

11 A. Outside of this ordinance?

12 Q. Outside of this ordinance.

13 A. Not that I'm aware of.

14 Q. Has your division ever sought a search
15 warrant for an inspection or a search of a massage
16 therapy business or a business that was suspected to
17 be an illicit massage business?

18 A. No.

19 MR. WOISLAW: I don't think I have any
20 further questions at this time. Do you guys want
21 to --

22 MR. FAGAN: Why don't we take a quick
23 break, and we'll talk, five or ten minutes.

24 THE WITNESS: Sure.

25 (Whereupon, a break was then

Tina Hoeger

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taken.)

MR. FAGAN: Okay. Just for the record, we're back after a short break. The City doesn't have any questions of Tina.

MR. WOISLAW: We don't have anything further.

(Whereupon, the deposition concluded at 2:44 p.m.)

SIGNATURE RESERVED.

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Tina Hoeger

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DEPONENT'S CERTIFICATE

I, TINA HOEGER, the deponent in the foregoing deposition, DO HEREBY CERTIFY, that I have read the foregoing - 35 - pages of typewritten material and that the same is, with any changes thereon made in ink on the corrections sheet, and signed by me a full, true and correct transcript of my oral deposition given at the time and place hereinbefore mentioned.

TINA HOEGER

Subscribed and sworn to before me this _____ day of _____, 2023.

PRINT NAME: _____
Notary Public, State of Montana
Residing at: _____
My commission expires: _____

Tina Hoeger

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C E R T I F I C A T E

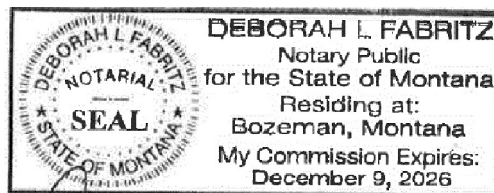
STATE OF MONTANA)
 : SS
COUNTY OF GALLATIN)

I, Deborah L. Fabritz, Registered Professional Reporter and Notary Public for the State of Montana, residing in Bozeman, do hereby certify:

That I was duly authorized to and did swear in the witness and report the deposition of TINA HOEGER, in the above-entitled cause; that the foregoing pages of this deposition constitute a true and accurate transcription of my stenotype notes of the testimony of said witness, all done to the best of my skill and ability; that the reading and signing of the deposition by the witness have been expressly RESERVED.

I further certify that I am not an attorney nor counsel of any of the parties, nor relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on this 30th day of September, 2023.



Deborah L. Fabritz

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EXHIBIT
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Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

Lynda Larvie

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

THERESA VONDRA, DONNA
PODOLAK, LYNDA LARVIE, and
ADAM POULOS,

PLAINTIFFS,

CASE NO.
CV 22-30-BLG-KLD

vs.

CITY OF BILLINGS,

DEFENDANT.

DEPOSITION UPON ORAL EXAMINATION OF

LYNDA LARVIE

BE IT REMEMBERED, that the deposition
upon oral examination of LYNDA LARVIE, appearing
at the instance of the Defendant, was taken at the
offices of Fisher Court Reporting, 2711 1st Ave.
N., Billings, Montana, on Friday, September 22,
2023, beginning at the hour of 9:35 a.m., pursuant
to the Federal Rules of Civil Procedure, before
Sharon L. Gaughan, Registered Diplomate Reporter,
Certified Realtime Reporter, Certified Realtime
Captioner, and Notary Public.

Lynda Larvie

1 A. It's my spa, my massage business there,
2 Bella Spa Body-Mind-Spirit.

3 Q. How long have you owned the building?

4 A. I bought it in 2005.

5 Q. So I thought I saw something about
6 renting space, but you don't rent space for your
7 business?

8 A. I have rented space to professional
9 estheticians, hairstylists in the past, yes.

10 Q. Do you do that now?

11 A. Actually, I don't. That's a vacancy
12 right now.

13 Q. Okay. Do you have a license to do
14 cosmetology or any other licenses?

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Lynda Larvie

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DEPONENT'S CERTIFICATE

I, LYNDA LARVIE, the deponent in the foregoing deposition, DO HEREBY CERTIFY, that I have read the foregoing - 199 - pages of typewritten material and that the same is, with any changes thereon made in ink on the corrections sheet, and signed by me, a full, true and correct transcript of my oral deposition given at the time and place hereinbefore mentioned.

LYNDA LARVIE, Deponent.

Subscribed and sworn to before me this _____ day of _____, 2023.

PRINT NAME: _____
Notary Public, State of
Montana
Residing at: _____
My commission expires: _____

SG/BB - Vondra et al. V City of Billings

C E R T I F I C A T E

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STATE OF MONTANA)
 : SS
COUNTY OF YELLOWSTONE)

I, Sharon L. Gaughan, RDR, CRR, CRC and Notary Public for the State of Montana, residing in Billings, do hereby certify:

That I was duly authorized to and did swear in the witness and report the deposition of LYNDA LARVIE in the above-entitled cause; that the foregoing pages 1 - 169, line 21 of this deposition constitute a true and accurate transcription of my stenotype notes of the testimony of said witness, all done to the best of my skill and ability; that the reading and signing of the deposition by the witness have been expressly reserved.

I further certify that I am not an attorney nor counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on this, the 28th day of September, 2023.

Sharon L. Gaughan

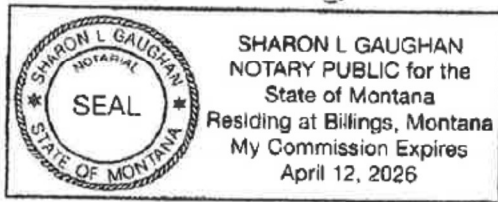


EXHIBIT
14
REDACTED
EXCERPT

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

THERESA VONDRA, DONNA Cause No. CV 22-30-BLG-KLD
PODOLAK, LYND
LARVIE, and ADAM
POULOS,

Plaintiffs,

vs.

CITY OF BILLINGS,

Defendant.

DEPOSITIONS UPON ORAL EXAMINATION OF
DONNA PODOLAK

BE IT REMEMBERED, that the deposition upon oral examination of DONNA PODOLAK, appearing at the instance of the Defendants, was taken at the offices of Fisher Court Reporting, 2711 1st Avenue North, Billings, Montana, on Friday, September 22, 2023, beginning at the hour of 3:19 p.m., pursuant to the Montana Rules of Civil Procedure, before Barbara J. Batts, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public.

* * * * *

Donna Podolak

1 [REDACTED]
2 [REDACTED] [REDACTED]
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18 [REDACTED] [REDACTED]
19 [REDACTED] [REDACTED] [REDACTED]
20 [REDACTED] [REDACTED]

21 Q. And so what else don't you like about the
22 ordinance?

23 A. Well, they're going to enter my home if
24 they open the door to my apartment, and they're
25 going to see a kitchen, a living room, and a

Donna Podolak

1 bedroom. And if they'd make a quick turn to the
2 right, there's a bathroom, and the massage room is
3 right across that hall, which is really a short
4 little space.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
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Donna Podolak

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DEPONENT'S CERTIFICATE

I, DONNA PODOLAK, the deponent in the foregoing deposition, DO HEREBY CERTIFY, that I have read the foregoing 124 pages of typewritten material and that the same is, with any changes thereon made in ink on the correction sheet and signed by me, a full, true and correct transcript of my oral deposition given at the time and place hereinbefore mentioned.

DONNA PODOLAK

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2023.

Notary Public State of Montana
Print Name _____

Residing in:

My Commission expires:

BB - VONDRA VS. CITY OF BILLINGS

**EXHIBIT
15
EXCERPT**

Vondra, et al., v. City of Billings

*Case No. CV 22-30-BLG-
KLD*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

THERESA VONDRA, DONNA PODOLAK, LYNDA
LARVIE, and ADAM POULOS,

Plaintiffs,

Cause No.

vs.

CV 22-30-BLG-KLD

CITY OF BILLINGS,

Defendant.

DEPOSITION UPON ORAL EXAMINATION

OF

ADAM POULOS

BE IT REMEMBERED, that the deposition upon oral examination of Adam Poulos, appearing at the instance of the Defendants, was taken in Billings, Montana, on September 21, 2023, beginning at the hour of 2:02 P.M. MST pursuant to the Federal Rules of Civil Procedure, before Mary (Rainey) Stockton, Certified Shorthand Reporter and Notary Public.

Adam Poulos

1 Q. And who was that?

2 A. Theresa.

3 Q. Was that before the ordinance was enacted?

4 A. I believe, yes.

5 Q. And what did you hear?

6 A. Just the parameters of what was being
7 proposed.

8 Q. Okay. Was that your first awareness that the
9 City was concerned about human trafficking or
10 prostitution?

11 A. I don't know if it was the first, but it might
12 have been.

13 Q. Do you recall hearing, when you first heard
14 about it from Theresa Vondra, why the City was
15 interested in doing a massage ordinance?

16 A. I don't recall if I knew the why.

17 Q. She just told you that they were?

18 A. Uh-huh.

19 Q. All right. So, when did you meet Theresa
20 Vondra?

21 A. It would have been, I would say, October of
22 2017.

23 Q. And that's a pretty specific date. I saw that
24 in your discovery responses, too.

25 Was there an event that caused you to start

Adam Poulos

1 seeing her?

2 A. Yes.

3 Q. What was that?

4 A. An accident at the ranch.

5 Q. And what ranch was that again?

6 A. The Bar Diamond Ranch.

7 Q. And what happened at the accident?

8 A. I wrecked a UTV, a side-by-side, and sustained
9 a neck injury.

10 Q. Was that sort of a workmen's comp covered
11 injury?

12 A. I believe it was, yes.

13 Q. Was there any personal injury claims filed in
14 that?

15 A. As far as -- I mean, I believe it was claimed
16 under workmen's comp.

17 Q. Because you were an employee of the ranch at
18 the time?

19 A. Correct.

20 Q. All right. And do you know how long workmen's
21 comp covered you getting massages for --

22 A. I paid out-of-pocket.

23 Q. Sorry. Hang on one second. I just want to
24 make sure we finish the question.

25 So, you did not get any workmen's comp

Adam Poulos

1 insurance for Vondra's services?

2 A. No.

3 Q. Okay. So, what was workmen's comp covering?

4 A. It would have been later on the next spring
5 when I wasn't having any improvement in the condition.

6 And so, then I sought more in-depth treatment.

7 Q. Not by Ms. Vondra?

8 A. No.

9 Q. From other healthcare providers?

10 A. Correct.

11 Q. So, was October of 2017 when you first met
12 Theresa Vondra?

13 A. Yes.

14 Q. And you paid out-of-pocket for massages?

15 A. Yes, ma'am.

16 Q. And so you said, I believe, that you were
17 seeing her a few times a week or something?

18 A. Yeah, there for awhile it was pretty
19 consistent.

20 Q. And how often do you see her now?

21 A. Oh, my schedule changed quite a bit. So, it's
22 hit or miss. Lately, once a month.

23 Q. And what does she do when you work with her
24 now currently?

25 A. Massage.

Adam Poulos

1 Q. Can you tell me a little bit more about that?
2 Like, what kind of massage?

3 A. Therapeutic massage.

4 Q. I don't know what that means either, I'm sorry
5 to say.

6 Is it working with a certain area --

7 A. Usually.

8 Q. -- of your body?

9 What area is that?

10 A. My trouble areas. I've got two or three
11 troubled areas that she works on.

12 Q. Do those all relate to your accident?

13 A. Some of them do, yes.

14 Q. What are your troubled areas?

15 A. Upper back/lower back.

16 Q. Anything else?

17 A. Neck.

18 Q. And have you ever been to a massage therapist
19 before Ms. Vondra?

20 A. I believe one other time.

21 Q. Just on a one --

22 A. It was once.

23 Q. One time?

24 A. Yeah.

25 Q. And who was that?

Adam Poulos

DEPONENT'S CERTIFICATE

I, ADAM POULOS, the deponent in the foregoing deposition, DO HEREBY CERTIFY, that I have read the foregoing pages of typewritten material and that the same is, with any changes thereon made in ink on the corrections sheet, and signed by me, a full, true and correct transcript of my oral deposition given at the time and place hereinbefore mentioned.

ADAM POULOS, Deponent.

Subscribed and sworn to before me this
day of , 2023.

PRINT NAME:

Notary Public, State of

Residing at:

My commission expires:

MLS - Theresa Vondra, et al v City of Billings

124

Adam Poulos

C E R T I F I C A T E

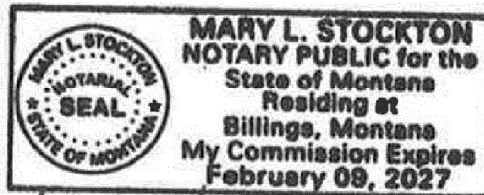
STATE OF MONTANA)
 : SS
COUNTY OF YELLOWSTONE)

I, Mary L. (Rainey) Stockton, CSR No. 746,
and Notary Public, residing in Billings, do
hereby certify:

That I was duly authorized to and did swear
in the witness and report the deposition of
in the above-entitled cause; that the
foregoing pages of this deposition constitute a
true and accurate transcription of my stenotype
notes of the testimony of said witness, all done
to the best of my skill and ability; that the
reading and signing of the deposition by the
witness have been expressly reserved.

I further certify that I am not an attorney
nor counsel of any of the parties, nor a relative
or employee of any attorney or counsel connected
with the action, nor financially interested in
the action.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my notarial seal on October 3, 2023.



Mary L. Stockton

EXHIBIT
16

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

Richard St. John

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

THERESA VONDRA, ET AL.,

Plaintiffs,

v.

Case Number
CV-22-30-BLG-KLD

CITY OF BILLINGS,

Defendant.

DEPOSITION UPON ORAL EXAMINATION OF
RICHARD ST. JOHN

BE IT REMEMBERED, that the deposition upon oral examination of RICHARD ST. JOHN, appearing at the instance of Plaintiffs, was taken at the offices of Fisher Court Reporting, 2711 1st Avenue North, Billings, Montana, on Tuesday, September 19th, 2023, beginning at the hour of 9:00 a.m., pursuant to the Federal Rules of Civil Procedure, before Deborah L. Fabritz, Court Reporter - Notary Public.

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Richard St. John

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APPEARANCES

ATTORNEYS APPEARING ON BEHALF OF THE
PLAINTIFFS, THERESA VONDRA, ET AL.:

Mr. Daniel T. Woislaw, Esq.
Pacific Legal Foundation
3100 Clarendon Blvd., Suite 1000
Arlington, VA 22201

and

Mr. Ethan W. Blevins, Esq.
Pacific Legal Foundation
839 W 3600 S
Bountiful, UT 84010

and

Mr. Alexander J. Smith, Esq. (via Zoom)
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, CA 95814

and

ATTORNEYS APPEARING ON BEHALF OF THE
DEFENDANT, CITY OF BILLINGS:

Mr. Gerry P. Fagan, Esq. and
Ms. Stephanie Baucus, Esq.
Moulton Bellingham, PC
27 North 27th Street, Suite 1900
Billings, MT 59103-2559

ALSO PRESENT: Gina Dahl, City Attorney

Richard St. John

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I N D E X

EXAMINATION OF RICHARD ST. JOHN

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Mr. Gerry P. Fagan.....	32

E X H I B I T S

DEPOSITION EXHIBIT NUMBER

PAGE

<u>Exhibit 1</u>	Ordinance 21-5757.....	7
<u>Exhibit 2</u>	Illicit massage business license training City 001061-001105.....	17
<u>Exhibit 3</u>	Transcript of a Digital recording taken from proceedings recorded on April 12th, 2021.....	26

Richard St. John

1 WHEREUPON, the following proceedings were had
2 and testimony taken, to-wit:

3 * * * * *

4 RICHARD ST. JOHN,
5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. WOISLAW:

9 Q. Hello. My name is Daniel Woislaw. I
10 represent the plaintiffs in the case of Theresa
11 Vondra, et al., versus City of Billings.

12 Would you mind just stating and spelling
13 your name for the record, please.

14 A. Sure. It's Richard, R-I-C-H-A-R-D; middle
15 initial W; last name St. John, S-T, period, J-O-H-N.

16 Q. Would you state your title?

17 A. I'm the chief of police in Billings,
18 Montana.

19 Q. For the City of Billings?

20 A. Correct.

21 Q. And have you ever been deposed before,
22 Mr. St. John?

23 A. Yes.

24 Q. I presumed as much given your background.
25 And so you understand the oath that you just took?

Richard St. John

1 A. Yes.

2 Q. Are you prepared to answer my questions
3 today?

4 A. Yes.

5 Q. Is there anything that would prevent your
6 full attention to answering my questions?

7 A. No.

8 Q. And are you on my medications that would
9 affect your memory or focus today?

10 A. No.

11 Q. Next I would just like to address breaks.
12 If you need a break at any point, please just let me
13 know and we can take one. I know answering questions
14 under oath is, you know, anxiety-inducing enough.
15 It's more difficult if you have a full bladder. So
16 please just let me know if you need a break, and we
17 can take one.

18 I also ask that if you don't understand a
19 question -- sometimes I can speak very quickly. If
20 you don't understand a question, please stop me. Can
21 you agree to do that?

22 A. Yes.

23 Q. And ask me to repeat any questions that
24 you might find unclear.

25 A. Yes.

Richard St. John

1 Q. So counsel for the City may object at
2 various times. I'll ask that you give them an
3 opportunity to do that, and then when the objection
4 is finished, if they haven't asked you to not answer
5 the question, that you proceed to answer the
6 question.

7 A. Understand.

8 Q. Mr. St. John, did you do anything to
9 prepare for this deposition?

10 A. I met with City's counsel and reviewed
11 some documents.

12 Q. And what documents did you review?

13 A. I reviewed the ordinance itself and then
14 some other transcripts from public hearings that had
15 taken place in regards to the issue.

16 Q. I'm going to hand you a document,
17 Mr. St. John. And that's just been marked as number
18 1 -- Exhibit Number 1.

19 Would you just take a look at that.
20 Familiarize yourself with it and then look back at me
21 when you're ready.

22 MR. FAGAN: Hey, Daniel. Do you have a
23 copy for us?

24 MR. WOISLAW: Yes. I'm sorry. Here you
25 go.

Richard St. John

1 (Whereupon, Exhibit 1 was
2 marked for identification.)

3 THE WITNESS: This appears to be the
4 ordinance at issue here identified as 21-5757.

5 BY MR. WOISLAW:

6 Q. Throughout this deposition I'm going to
7 ask a number of questions about this ordinance. If I
8 say "the ordinance," will you understand that I'm
9 talking about this ordinance 21-5757?

10 A. Yes.

11 Q. Thank you. Okay. Thank you. Did you
12 discuss the testimony that you're going to give here
13 today with anyone other than counsel prior to today?

14 A. No.

15 Q. Did you meet with counsel prior to this
16 deposition?

17 A. Yes.

18 Q. Did you do anything else to prepare?

19 A. As I indicated, looked at some documents.

20 Q. How long have you been the chief of police
21 for the City of Billings?

22 A. Since 2006.

23 Q. What are the qualifications for that job?

24 A. Well, obviously, you have to -- our
25 requirements are education, so master's or above. I

7

Richard St. John

1 have obviously 20-plus years of experience, a myriad
2 of disciplines within law enforcement, graduate of
3 the FBI National Academy and numerous professional
4 classes.

5 There was a selection process at the time.
6 I was the interim for quite some time and at the end
7 of that process was made the chief, and that was in
8 2006.

9 Q. And what are the responsibilities of your
10 job as chief of police?

11 A. Well, essentially, I'm responsible for all
12 enforcement actions, local, city, and state, for the
13 City of Billings. We do overlap a little bit with
14 our federal partners that requires some deputization
15 by U.S. Marshals, but we do have some authority
16 there. But essentially, it's providing law
17 enforcement services for the City of Billings proper.

18 Q. When you say enforcement actions, you're
19 referring to law enforcement?

20 A. Exactly.

21 Q. And does your job entail weighing in on
22 policy of the city council -- at city council
23 hearings on proposed legislation, for example?

24 A. Yes.

25 Q. And you said earlier that you had reviewed

Richard St. John

1 some transcripts from testimony that you had given to
2 -- at the city council sessions. Is that correct?

3 A. Yes. Just one document.

4 Q. What was the date of that city council
5 hearing that you reviewed the testimony for?

6 A. I don't recall.

7 Q. You have past experience, you said, as a
8 police officer for 20 -- was that 20 years you were a
9 police officer?

10 A. I've been a police officer for 43 years.

11 Q. And were you a police officer in Billings?

12 A. Yes. My entire career has been here.

13 Q. And did you have experience as a police
14 officer investigating and enforcing laws related to
15 prostitution, human trafficking?

16 A. Prostitution earlier in the career and
17 then not so much in human trafficking. Ended up in
18 an administrative position, so not doing the
19 investigation side of things.

20 Q. Did you investigate as a police officer
21 any illicit massage businesses?

22 A. No.

23 Q. Do you understand what I mean when I say
24 illicit massage businesses?

25 A. Yes.

Richard St. John

1 Q. Can you explain how you understand that
2 term?

3 A. My understanding of that is that you have
4 what is deemed to be illegal activity, whether it's
5 prostitution, whether it's trafficking, whether it's
6 sex acts, under the auspices of a massage parlor or
7 spa or similar business. That's my understanding.

8 Q. And what are your responsibilities now as
9 chief of police with respect to investigating illicit
10 message businesses?

11 A. Well, I don't have any direct involvement
12 in investigating. I don't -- if something is going
13 to be controversial, if something is going to end up
14 being an issue for the city council or
15 administration, then I might be notified of
16 something. But other than that, I have a myriad of
17 division commanders that oversee direct
18 investigations and operations.

19 Q. Do you set the policies related to how
20 resources are spent on different areas of law
21 enforcement; for example, investigating illicit
22 message businesses?

23 A. I set the policy for where we spend our
24 resources, yes.

25 Q. Do you have any personnel at the police

Richard St. John

1 department that are specifically tasked to
2 investigating illicit massage businesses?

3 A. No.

4 Q. Had you previously had staff at the -- at
5 the police department who are specifically tasked to
6 investigating illicit massage businesses?

7 A. No.

8 Q. Do you have any staff at the police
9 department who are tasked specifically toward
10 coordinating with the City in its investigation of
11 illicit massage businesses?

12 A. No.

13 Q. Do you have anyone at the department who
14 is tasked with coordinating with the City with
15 respect to the ordinance?

16 A. I won't say a person. Our detective
17 division is responsible to coordinate with code
18 enforcement specifically.

19 Q. And how exactly do they coordinate with
20 code enforcement with respect to the ordinance?

21 A. So what -- what, generally code
22 enforcement will contact the police or contact our
23 detective division or vice-a-versa if we end up in a
24 situation where we think there may be some illegal
25 activity. So if, for example, somebody calls the

11

Richard St. John

1 police department and we respond and we see some
2 indicators, then we will refer that to code
3 enforcement and if code enforcement gets -- is
4 investigating something and they see something that
5 may be illegal, then they will contact the police
6 department. So we coordinate that way on the best
7 approach on how we deal with things.

8 Q. So just so I understand, if the police
9 department -- when the police department receives a
10 complaint about an illicit massage business, you
11 reach out to code enforcement to tell them about
12 this?

13 A. We respond and we gather information as --
14 as much as we can, and then that case is referred to
15 our detective division who in turn is the point of
16 contact with code enforcement and, again, depending
17 on what the nature of the complaint is and what the
18 officers may find.

19 Q. Sure. And those detectives, they
20 coordinate with code enforcement. Is that correct?

21 A. Correct.

22 Q. And what is the -- what is the purpose of
23 that coordination postcomplaint?

24 A. Well, I think to make sure that -- you
25 know, that the area that is reported is not something

Richard St. John

1 that is covered by -- by the ordinance. We want to
2 let the code enforcement know of potential ordinance
3 violations. The police department does not write a
4 lot of ordinance citations and things of that sort.
5 A lot of that is related to code enforcement issues.
6 We do a few but not a lot. So that's a code
7 enforcement issue.

8 If we find something that is clearly
9 illegal and a violation of state statute, then, of
10 course, that is going to be in our -- in our
11 bailiwick. And then that's where we will move
12 forward with enforcement or investigative actions.

13 Q. Is there anything that prevents the police
14 department from issuing code citations for violations
15 of the city code and ordinances?

16 A. No.

17 Q. Including the ordinance?

18 A. Correct.

19 Q. Does the -- does your department
20 coordinate -- I'm sorry. Let me repeat that.

21 You mentioned earlier your department
22 coordinates with federal officials in investigating
23 illicit massage businesses?

24 A. We have one detective that is assigned to
25 a human trafficking task force which is essentially a

Richard St. John

1 federally operated FBI program.

2 Q. And in your experience as chief of police
3 or before that, has the City of Billings -- so your
4 police department, has the Billings police department
5 sought search warrants for illicit massage
6 businesses?

7 A. No.

8 Q. So you're saying the -- just so I
9 understand, the department -- the Billings police
10 department has never sought a search warrant to
11 search an illicit massage business in Billings?

12 A. To my knowledge, we have not sought a
13 search warrant for the IMB.

14 Q. Has the department -- have any personnel
15 from your department participated in any inspections
16 that have been conducted by the City under the
17 ordinance?

18 A. To my knowledge, no.

19 Q. Is there anyone at the police department
20 who -- who would have better knowledge than you on
21 whether your department -- any personnel from your
22 department have participated in such inspections?

23 A. No. Because I have asked this question of
24 staff, whether we have done anything, and it has been
25 the same. To their knowledge, no.

14

Richard St. John

1 Q. Is there any written policy at the police
2 department that prevents your department from
3 participating in those inspections?

4 A. No.

5 Q. Is there any such policy that would
6 prevent the department from conducting inspections
7 under the ordinance itself?

8 A. No.

9 Q. So when your department does seek search
10 warrants -- and I know you mentioned that you haven't
11 sought any for illicit massage businesses. But in
12 general, when your department seeks search warrants,
13 are those typically ex parte hearings before judges
14 where there is no opposing counsel or party present?

15 A. For the most part, yes.

16 Q. How quickly can you get a search warrant
17 for -- for a suspected criminal business if you
18 needed one quickly?

19 A. I would say that we would be able to get
20 one within a day or two.

21 Q. Does your department ever use telephonic
22 means to acquire search warrants?

23 A. We do. Generally for fatal accidents for
24 blood draws is where we see that the most. And then
25 I don't know for sure, but I would assume if we had

Richard St. John

1 something exigent, that the detectives would use
2 that. But for the most part, no. They have time and
3 fill it out and get it presented.

4 Q. Are there -- so when you need to get these
5 telephonic warrants, for example, can you do that at
6 any hour?

7 A. Yes.

8 Q. Even in the middle of the night?

9 A. Yes.

10 Q. On weekends?

11 A. Yes.

12 Q. Do you remember participating in any
13 trainings after the -- after the ordinance passed
14 related to enforcement of the ordinance?

15 A. I vaguely remember somebody coming out,
16 talking to staff and/or our officers about the -- the
17 ordinance and how it was intended to work and some of
18 the things to be looking for and reporting
19 mechanisms. I'm not quite sure what -- when or what
20 that format was, but I seem to remember that.

21 Q. Do you recall whether that was in June of
22 2021?

23 A. I do not.

24 MR. WOISLAW: Would you mind marking this
25 document for me.

Richard St. John

1 (Whereupon, Exhibit 2 was
2 marked for identification.)

3 BY MR. WOISLAW:

4 Q. I would like you to take a moment and
5 review the document that I just handed to you which
6 has been marked as Exhibit 2. Take your time and
7 then just look up at me when you're done reading it.

8 Thank you, Mr. St. John. I would like you
9 to look at that first page which at the bottom says
10 City 001061. Do you see your name on the right
11 column?

12 A. I do.

13 Q. Does this reflect -- refresh your
14 recollection of whether you attended a training on
15 June 8th, 2021?

16 A. Well, yes.

17 Q. Does this document reflect materials that
18 you received related to that training?

19 A. Yes. Now that I look at it, it does look
20 familiar.

21 Q. You mentioned that some other staff were
22 in attendance other than yourself. Do you remember
23 what other departments or government agencies were
24 there?

25 A. I just -- just glancing at the list, if

17

Richard St. John

1 that's acceptable.

2 Q. I would like you to answer from your
3 memory first, and then we can look at it if you don't
4 recall.

5 A. Yeah. Well, obviously, the police
6 department had representatives there. Code
7 enforcement would have been there. I would think
8 probably some of our policy body would have been in
9 attendance.

10 Q. Do you recall whether anybody from the FBI
11 was there?

12 A. I don't recall but very possible.

13 Q. Do you remember whether anyone from the
14 DOJ was there?

15 A. Don't recall.

16 Q. I would like you to review that first page
17 and see if that refreshes your recollection. When
18 you're done reviewing, just look up at me.

19 A. You need bigger print.

20 Q. Did that refresh your recollection?

21 A. Well, it confirms my -- my belief on who
22 was there, but --

23 Q. Okay. We can move on. What was -- where
24 was this training held if you recall?

25 A. If I recall, it was at the library.

Richard St. John

1 Q. Is there a property known as PD-1?

2 A. Yes. And that would be the -- another
3 place that we did have some meetings at as well.
4 That would be a police facility.

5 Q. Okay. And you said you don't recall, but
6 you think it might have been held -- this meeting
7 might have been held at the library?

8 A. Yeah. There were meetings at the library,
9 and there were meetings at PD-1, so I don't recall.

10 Q. Okay. Some of the meetings were at the
11 library and others were at PD-1?

12 A. Correct.

13 Q. And PD-1, you said, is a police facility?

14 A. It's a police facility, yes.

15 Q. And could you tell me a little bit -- with
16 respect to this training on June 8th that we're
17 talking about, what was the purpose of that?

18 A. My recollection was that it was an
19 introduction and an overview of the problem at hand
20 and some solutions that other cities had come to that
21 had been successful, gave some examples, and then a
22 lot of dialogue and question and answer following --

23 Q. When you say the problem at hand, is that
24 the illicit massage business problem?

25 A. Human trafficking and the sex trade

Richard St. John

1 specifically.

2 Q. And was the Billings ordinance discussed,
3 the ordinance that --

4 A. The ordinance itself? I don't recall.

5 Q. I want to talk a little bit about -- about
6 the ordinance and -- and police or City
7 investigations of illicit massage businesses. How
8 does -- how does the police department distinguish
9 between a legitimate massage business and an illicit
10 massage business?

11 A. We don't. We will obviously through our
12 training and increased awareness brought about by,
13 for example, training sessions and then things we
14 have told our officers, things to look for related to
15 behaviors, related to things that you might see at a
16 particular business. But other than that, I mean,
17 what we're --

18 Q. Can you tell me about those behaviors? Go
19 ahead and answer.

20 MR. FAGAN: You're kind of cutting him
21 off.

22 BY MR. WOISLAW:

23 Q. Okay.

24 A. Good enough.

25 Q. If you would like to finish your -- if you

20

Richard St. John

1 would like to read back the former question,
2 Mr. St. John, you can finish answering if you would
3 like.

4 A. So the behaviors I'm referring to would be
5 when -- and this was not only to our officers but to
6 the public as well, to tell -- you know to have
7 people be aware. Where you might see a male and a
8 young female that doesn't look to be of a family-type
9 setting or a parent setting, somebody that is not
10 allowed to speak for themselves, people that are
11 closely guarded.

12 You have residences that have blacked-out
13 windows or aluminum foil on the windows. You see
14 homes that have an inordinate number of residents.
15 Those sort of things is what I'm referring to, that
16 are basically, you know, red flags that you
17 potentially have a trafficking situation.

18 Q. Does the ordinance in any ways make it
19 easier for your department to enforce prostitution,
20 sex trafficking, human trafficking laws in general?

21 A. Make it easier? No. I don't think it --
22 doesn't make it easier. Doesn't make it harder.
23 We're going to act on the facts at hand, refer it
24 appropriately either to code enforcement or if we
25 have criminal -- evidence of criminal activity, then

21

Richard St. John

1 we're going to move on that.

2 Q. Have you received any evidence of criminal
3 activity from code enforcement inspections under the
4 ordinance?

5 A. To my knowledge, no.

6 Q. What is the source of most complaints that
7 the City receives against illicit massage businesses?

8 A. In general would be citizens who live
9 nearby one of these businesses that are calling about
10 -- about activity that is taking place, people coming
11 and going, afterhours business, and those type of
12 things. So it's a complaint-initiated action.

13 Q. Prior to the passage of the ordinance, was
14 it a priority in how you distribute the resources of
15 your department to investigate illicit massage
16 businesses?

17 A. No.

18 Q. And why is that?

19 A. At the time -- and, you know, we have a
20 serious problem with violent crime. We have a
21 serious problem with methamphetamine and fentanyl,
22 and that is where the balance of our resources are
23 focused at this point.

24 Q. In comparison to other areas of the law
25 you enforce -- that your department enforces in

Richard St. John

1 Billings, how resource intensive is investigating
2 illicit massage businesses?

3 A. It's very resource intensive. I mean,
4 you're dealing with, you know, very, very difficult
5 landscape. We have victims that don't trust law
6 enforcement. You have financial situations. You
7 have perpetrators that are not dumb. They know how
8 to hide activities and -- and disguise the things
9 that they're doing, move assets around. It is --
10 it's labor intensive and it's a difficult
11 prosecution.

12 Q. Could you explain what resources would
13 have to be deployed by the police department? So you
14 said that it's labor intensive. You explained some
15 of the problems. But what are the actual like
16 deployment of resources? What are the tactics that
17 the police department uses?

18 A. Well, a wide variety of investigative
19 tools. Obviously, if we -- if we had investigators
20 dedicated full-time, they would certainly be, you
21 know, locating witnesses, locating suspects and
22 victims. They would be conducting surveillance.
23 They would be probably trying to develop informants.
24 They potentially would try to get somebody inside,
25 possibly wearing a wire, to capture an illegal

Richard St. John

1 transaction, trying to disrupt a trafficking
2 organization at the highest level, which, of course,
3 is now going to be multistate for the most part,
4 depending on what it is.

5 And then of course we would be working
6 with our federal partners on anything that is going
7 to be interstate. And certainly you're going to get
8 into the money side of things as well. So you have
9 that aspect.

10 Q. When you said surveillance -- when you
11 said officers conducting surveillance, what would
12 those officers be looking for?

13 A. I think they would be looking for some of
14 those red flags that I indicated to you before. They
15 would be looking for, lack of better terms, customers
16 going to the business and leaving, to potentially
17 contact them later. Anything that would suggest that
18 you have -- that you have trafficking activities or
19 illegal activities taking part inside.

20 Q. So I want to talk about inside the
21 suspected illicit massage businesses and
22 differentiating between legitimate operations and
23 criminal operations. What would officers be looking
24 for inside of these buildings if they got inside of
25 them?

Richard St. John

1 A. Well, again, I think anything that would
2 -- that would lead one to believe that you have those
3 -- those type of activities taking place. Off the
4 top of my head, I can't think of any -- you know,
5 anything specific. But you're going to find things
6 that don't -- you know, that are out of place or
7 don't belong in a legitimate massage parlor. So
8 those are things that officers would be -- would be
9 looking for.

10 Q. Would that include women living in the
11 property?

12 A. Yes.

13 Q. Are there any other indicators like women
14 living in the property that investigators would be
15 looking for?

16 A. Again, I think, you know, probably some of
17 the setup of the building, if you will, you know,
18 locked doors, screens and -- you know, windows that
19 are covered up that, you know, normally may not be in
20 another business, things like that.

21 Q. Do your officers do -- have they in the
22 past done any investigation online with respect to
23 illicit massage businesses, looking for
24 advertisements?

25 A. Yes. Probably not specific to illicit

Richard St. John

1 message, but they do online investigations.

2 Q. Just give me a moment, Mr. St. John.

3 MR. WOISLAW: I would like to take a brief
4 recess for a minute. We're going to take a quick
5 break.

6 (Whereupon, a break was then
7 taken.)

8 BY MR. WOISLAW:

9 Q. Are you ready to resume?

10 A. I am.

11 Q. Okay.

12 MR. WOISLAW: I'm going to hand this -- a
13 copy of this document to opposing counsel and a copy
14 to you, Deb.

15 (Whereupon, Exhibit 3 was
16 marked for identification.)

17 BY MR. WOISLAW:

18 Q. So we've just handed you a document marked
19 Exhibit 3, Mr. St. John. Would you just take a look
20 at that briefly and then -- review it briefly then
21 look back at me.

22 MR. FAGAN: Daniel, can I ask a question
23 about this?

24 MR. WOISLAW: Yes.

25 MR. FAGAN: Is this something you guys

Richard St. John

1 have had transcribed?

2 MR. WOISLAW: Yes. And we can send you
3 the OCR pdf to that as well.

4 MR. FAGAN: Yeah. Please do.

5 MS. BAUCUS: You don't happen to have
6 another copy, do you?

7 MR. WOISLAW: I think I do actually.

8 MS. BAUCUS: Sorry. Or if you want to
9 just ask somebody to e-mail it, I've got e-mail right
10 now. That might be easier.

11 MR. WOISLAW: That's okay. You can have
12 that one. I've got it here.

13 MR. FAGAN: Are you asking him to review
14 this entire transcript right now?

15 BY MR. WOISLAW:

16 Q. Would you just take a brief glance --
17 actually, Mr. St. John, would you look at pages 10 to
18 15. Yeah. If you would just read pages 10 to 15 to
19 yourself just to familiarize yourself with this.

20 MS. BAUCUS: Is this the entire
21 transcript?

22 MR. WOISLAW: It's not.

23 MS. BAUCUS: Do you have the whole thing?

24 MR. WOISLAW: We plan to get it.

25 MS. BAUCUS: Okay.

Richard St. John

1 THE WITNESS: Did you say 10 through 15?

2 BY MR. WOISLAW:

3 Q. 10 through 15, that's correct. Thank you,
4 Mr. St. John.

5 I asked you a question earlier during the
6 deposition about your preparation for today, and you
7 mentioned that you had reviewed some transcripts of
8 statements that you had made to the city council. Is
9 that right?

10 A. Yes. Not for city council but for some
11 public meetings or whatnot.

12 Q. For some public meetings?

13 A. Yeah.

14 Q. Okay. You may recall I asked you earlier
15 in the deposition whether you recalled speaking to
16 city council on April 12th, 2021, during a city
17 council session. And you stated that you didn't
18 remember?

19 A. Didn't recall that specific date.

20 Q. Does this document refresh your
21 recollection?

22 A. Yes, it does.

23 MR. FAGAN: And just for the record I'll
24 make an objection for the City that we would reserve
25 any objections to authenticity or foundation to this

Richard St. John

1 Exhibit 3, I believe it is, since we haven't seen it
2 before, so --

3 MR. WOISLAW: Okay.

4 MR. FAGAN: But you can go ahead and
5 answer questions about it.

6 MR. WOISLAW: All right. Thanks.

7 BY MR. WOISLAW:

8 Q. So do you remember giving statements now
9 to city council on April 12th, 2021?

10 A. Yes.

11 Q. I asked you earlier whether you had any
12 staff who were tasked specifically to the -- to
13 coordinating with the City on the ordinance, and I
14 would just like to ask you a follow-up on that. If
15 you will refer to -- sorry. Sorry. Just a minute.
16 I'm going to retract that question.

17 And I will ask you, Mr. St. John, to view
18 pages 1 through 4 at this time of that Exhibit 3 in
19 front of you.

20 Do you remember, Mr. St. John, if during
21 2021 you had any detectives who were tasked to
22 working with the City for purposes of the ordinance
23 or investigating IMBs?

24 A. Would this be preordinance or
25 postordinance?

Richard St. John

1 Q. And -- let's start preordinance.

2 A. So preordinance I had one detective
3 assigned to Internet Crimes Against Children task
4 force, which was affiliated to the FBI.

5 Q. And how about postordinance?

6 A. Postordinance, this particular detective
7 was initially the point of contact for coordinating
8 any cases involving IMBs in coordination with other
9 City departments.

10 Q. And can you just explain a little bit
11 about what that -- what form that coordination took?

12 A. Well, essentially, it was sharing
13 information, getting the case in the appropriate
14 venue for follow-up, whether it was a criminal that
15 needed to be investigated by Billings police
16 department or any of our partners or whether it was
17 more of a business license or code enforcement
18 violation.

19 Q. Do you remember whether you submitted a
20 letter to the City in advance of this April 12th city
21 council session?

22 A. I do.

23 Q. Did you submit such a letter?

24 A. Yes. And just referencing this, they're
25 referencing as well. So I do recall writing a

Richard St. John

1 letter, an opinion.

2 Q. Do you remember how you submitted that
3 letter to the city council?

4 A. It would have been submitted through the
5 city administrator, and then the city administrator
6 would share it with council.

7 Q. Did you put it in an e-mail or was it --

8 A. I believe it was an e-mail.

9 Q. Okay. Next -- and you can put the
10 document down for now. I would like to ask you about
11 training department -- police department personnel on
12 the ordinance or investigating illicit massage
13 businesses. Do you have any training materials that
14 you give to police -- police department employees
15 related to investigating illicit massage businesses?

16 A. We have nothing specific to the ordinance.
17 We have general instruction both through our academy
18 for our field training process, and then we have
19 continuing education online where that is one of the
20 -- one of the topics. As far as having anything in
21 writing, I don't know if we have that.

22 Q. And none of those training materials
23 reference the ordinance?

24 A. No.

25 Q. Does your department have any written

Richard St. John

1 policies that would -- that restrict the police
2 department's -- the frequency of the police
3 department's ability to conduct inspections under the
4 ordinance?

5 A. No.

6 Q. Does the police department have any
7 written policies that would limit the scope of
8 inspections under the ordinance?

9 A. No.

10 MR. WOISLAW: I don't have any further
11 questions.

12 MR. FAGAN: Let's take a break real quick,
13 I want to talk to the chief for a second. Like five
14 minutes.

15 (Whereupon, a break was then
16 taken.)

17 MR. WOISLAW: I do have one quick thing so
18 as we're on the record now. I just want to clarify
19 that when I said I don't have any further questions
20 that I reserve the ability to do a redirect if I need
21 to. Otherwise, he's yours.

22 MR. FAGAN: Yeah. That's not a problem.

23 EXAMINATION

24 BY MR. FAGAN:

25 Q. Just for the record, Chief, I'm Gerry

Richard St. John

1 Fagan. I'm one of defense counsel for Vondra [sic]
2 as you know.

3 I just want to ask you to clarify a
4 previous response. Daniel had asked you about your
5 knowledge of the city police department investigating
6 IMBs, and I think your response was it had not.
7 Correct?

8 A. Correct.

9 Q. Okay. When you were answering that
10 question, were you talking about postordinance
11 investigations or preordinance investigations?

12 A. Post.

13 Q. To your recollection, had the city police
14 department done some investigations over time prior
15 to the ordinance of IMBs?

16 A. Yes. They had done a couple over the
17 years going back to the '80s and '90s specifically.

18 MR. FAGAN: I just wanted to make sure
19 that was clear for the record. That's all the
20 questions I have, Chief. Daniel has a right to ask
21 you some questions if he wants to.

22 MR. WOISLAW: I don't have any redirect.

23 (Whereupon, the deposition
24 concluded at 10:21 a.m.)

25 SIGNATURE RESERVED.

Richard St. John

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DEPONENT'S CERTIFICATE

I, RICHARD ST. JOHN, the deponent in the foregoing deposition, DO HEREBY CERTIFY, that I have read the foregoing - 33 - pages of typewritten material and that the same is, with any changes thereon made in ink on the corrections sheet, and signed by me a full, true and correct transcript of my oral deposition given at the time and place hereinbefore mentioned.

RICHARD ST. JOHN

Subscribed and sworn to before me this _____ day of _____, 2023.

PRINT NAME: _____
Notary Public, State of Montana
Residing at: _____
My commission expires: _____

DF - VONDRA, ET AL. vs. CITY OF BILLINGS

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EXHIBIT
17
REDACTED
EXCERPT

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

THERESA VONDRA, DONNA Cause No. CV 22-30-BLG-KLD
PODOLAK, LYNDA
LARVIE, and ADAM
POULOS,

Plaintiffs,

vs.

CITY OF BILLINGS,

Defendant.

DEPOSITION UPON ORAL EXAMINATION OF
THERESA VONDRA

BE IT REMEMBERED, that the deposition upon oral examination of THERESA VONDRA, appearing at the instance of the Defendants, was taken at the offices of Fisher Court Reporting, 2711 1st Avenue North, Billings, Montana, on Thursday, September 21, 2023, beginning at the hour of 9:34 a.m., pursuant to the Federal Rules of Civil Procedure, before Barbara J. Batts, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public.

* * * * *

Theresa Vondra

1 [REDACTED]
2 [REDACTED]
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18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 Q. How many hours a week do you work?
24 A. Oh, gosh, on clients, or -- because I own
25 the practice, so I probably -- hours doing massage,

Theresa Vondra

1 that's always kind of fluctuating. On average, I
2 see about 45 to 55 clients a month, again,
3 depending on if I see them for a half hour or an
4 hour, up to an hour and a half. So that always
5 varies time-frame-wise. And then the rest of my
6 time is spent working on the business, paying
7 bills, you know, marketing, things like that, back
8 office end.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 It [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Theresa Vondra

1 Q. And you own and operate the massage
2 company, correct?

3 A. Yes. That's been open for nine years,
4 however. I booth-rented or room-rented prior to
5 that and kind of hopped around a little bit with
6 different salons, trying to find a place that I
7 felt like was me, which was difficult. So that's
8 why I ended up starting my own practice.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]d
15 [REDACTED]
16 [REDACTED]
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18 [REDACTED]
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Theresa Vondra

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15 [REDACTED] [REDACTED]
16 [REDACTED] [REDACTED]
17 [REDACTED]
18 [REDACTED] [REDACTED] [REDACTED]
19 [REDACTED] [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] [REDACTED]
24 Q. So what's the difference there?
25 A. Well, it's because the -- it's stating in

Theresa Vondra

1 this ordinance that it can happen at any point in
2 time without me setting it up ahead of time. It's
3 that -- not only that, but that they want to go
4 through lockers. I have lockers that are for not
5 only staff, but for clients as well. So if they
6 come in at any point in time, middle of the day,
7 when we have clients there, are they going to be
8 searching through not only my staff's property, but
9 my clients' property?

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Theresa Vondra

1 BY MR. FAGAN:

2 Q. Okay. So, Theresa, what I'm marking there
3 as Exhibit 14 is a copy of documents from the
4 City's file related to your facility and inspection
5 and application that you turned in. For the
6 record, it's City 1532 through 1567. So can you
7 look at that and familiarize yourself with it,
8 please?

9 (Pause.)

10 A. Okay.

11 Q. So do you recall that application?

12 A. Yes.

13 Q. And that's the application you submitted
14 to the City?

15 A. Uh-huh. Yes.

16 Q. So this was submitted on -- by yourself on
17 January 4th, 2022. Do you see that? That's on
18 about page 1537.

19 A. Okay. Yeah.

20 Q. The first question I have is at the
21 beginning on the first page, it has initial
22 application fee of \$25?

23 A. Uh-huh.

24 Q. I just want to confirm, that's the only
25 fee that you've had to pay pursuant to this

Theresa Vondra

1 ordinance, correct?

2 A. Correct.

3 Q. Okay. Why did you wait until January 2022
4 to file this application?

5 A. Part was -- part of it was, like, in
6 disagreement with it. I wasn't sure how I felt.
7 But then also just a lot was going on with my
8 business during that time, and we were
9 consolidating back from two locations down to one
10 location. And so my issue was do I fill out two
11 applications, one for each location? Do I just
12 have one application? So I waited until we
13 consolidated down before I submitted my
14 application.

15 Q. And my understanding is that the City
16 contacted you three times in writing to ask you to
17 submit your application pursuant to the new
18 ordinance. Does that sound right?

19 A. Yes.

20 Q. And you had counsel on hand by this time,
21 correct?

22 A. Correct.

23 Q. And you had counsel submit a letter,
24 correct?

25 A. Uh-huh.

Theresa Vondra

1 Q. That is on 1538.

2 A. Uh-huh.

3 Q. That's the letter your counsel sent to the
4 City basically reserving your objection to the
5 ordinance, correct?

6 A. Yes, correct.

7 Q. And he was authorized by you to do that,
8 correct?

9 A. Correct.

10 Q. So let's talk about the actual inspection.
11 If you look back at 1542, please, Theresa. Do you
12 know -- do you see at the bottom there's an email
13 from Tanya Punt? Do you see that at the very
14 bottom?

15 A. Uh-huh.

16 Q. Do you know her?

17 A. No.

18 Q. She's talking to Joanne Rindahl, who also
19 works at the City. She said, "Can you email me the
20 application for Theresa Vondra, The Massage
21 Company. I'm going to call her in advance and set
22 up a day and time next week to get the inspection
23 scheduled."

24 Do you recall that Tanya did that?

25 A. Yes.

Theresa Vondra

1 Q. So they actually contacted you and let you
2 pick when the inspection would be?

3 A. Yes.

4 Q. And what did you decide to do?

5 A. I scheduled the inspection.

6 Q. Did you think that was respectful of your
7 time for the City to do that?

8 A. Yes.

9 Q. So it wasn't an unannounced inspection.
10 It was actually a scheduled inspection?

11 A. Yes.

12 Q. Did you have patients on-site when the
13 inspection occurred?

14 A. I scheduled it for a time when that wasn't
15 going to be the case.

16 Q. So who was there at the time of
17 inspection? Do you recall now? With the massage
18 company.

19 A. My receptionist, Mikayla Westerbeck, and
20 also I believe one of my other therapists that was
21 with me at the time, Delaney Sharbono. But I
22 believe that was it.

23 Q. So let's look at the next page here,
24 please, Theresa. Looks like the inspection
25 occurred on March 7, 2022. Sound correct to you?

Theresa Vondra

1 [REDACTED] [REDACTED] [REDACTED]
2 [REDACTED] [REDACTED]
3 [REDACTED] [REDACTED]
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10 [REDACTED] [REDACTED]
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12 [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED]
15 [REDACTED]
16 [REDACTED] [REDACTED]
17 [REDACTED] [REDACTED]
18 [REDACTED] [REDACTED] [REDACTED]
19 [REDACTED] [REDACTED]
20 [REDACTED]

21 Q. And I think it looks to me like the
22 inspection lasted about 15 to 20 minutes? Does
23 that sound right to you?

24 A. Seems about right.

25 Q. Did you open the facility to them when --

Theresa Vondra

1 before they got there? Was it open to them? I've
2 heard some talk that maybe, like, you'd opened
3 doors or cabinets or things like that.

4 A. Yes, because they asked me to.

5 Q. In advance?

6 A. Yeah, right -- I mean, they asked me, can
7 you open these lockers. So I opened the lockers.

8 Q. And my question isn't very good.

9 You opened what they asked you to open.

10 A. Yes.

11 Q. You hadn't opened these things in advance
12 of them getting there.

13 A. No.

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Theresa Vondra

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7 [REDACTED] [REDACTED]
8 [REDACTED]
9 [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED]
11 [REDACTED]
12 [REDACTED] [REDACTED]
13 [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED]

15 Q. So the ordinance requires that a facility
16 keeps a log available of the services it's
17 providing?

18 A. Correct, yes. My receptionist, I had her
19 doing that as well at the time.

20 Q. So you do keep a log of the services?

21 A. Well, we had to. I didn't typically
22 before the ordinance, but --

23 Q. And is this an electronic log you keep or
24 a paper log?

25 A. Just a paper log.

Theresa Vondra

1 Q. And what kind of information does your
2 receptionist put in that log?

3 A. Everything that the ordinance has required
4 of us to put.

5 Q. So it lists the type of service provided
6 and how long it lasted?

7 A. Uh-huh.

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
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Theresa Vondra

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DEPONENT'S CERTIFICATE

I, THERESA VONDRA, the deponent in the foregoing deposition, DO HEREBY CERTIFY, that I have read the foregoing 104 pages of typewritten material and that the same is, with any changes thereon made in ink on the correction sheet and signed by me, a full, true and correct transcript of my oral deposition given at the time and place hereinbefore mentioned.

THERESA VONDRA

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2023.

Notary Public State of Montana
Print Name _____

Residing in:

My Commission expires:

BB - VONDRA VS. CITY OF BILLINGS

Theresa Vondra

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C E R T I F I C A T E

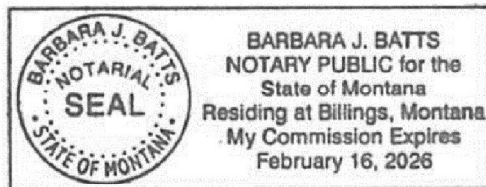
STATE OF MONTANA)
 : SS
COUNTY OF YELLOWSTONE)

I, BARBARA J. BATTS, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public for the State of Montana, residing in Billings, do hereby certify:

That I was duly authorized to and did swear in the witness and report the deposition of THERESA VONDRA in the above-entitled cause; that the foregoing pages of this deposition constitute a true and accurate transcription of my stenotype notes of the testimony of said witness, all done to the best of my skill and ability; that the reading and signing of the deposition by the witness have been expressly reserved.

I further certify that I am not an attorney nor counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on this the 16th day of October, 2023.



Barbara J. Batts

EXHIBIT
18

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD



State of Montana Department of Labor and Industry
 Business Standards Division
 301 South Park 4th Floor Helena, MT 59620

Montana State Board of Barbers and Cosmetologists

Inspection Report

Record ID COS-SLN-LIC-0000

Licensee Name:

Inspection Date:

Licensee Address

Inspector Name:

Inspector Phone:

Licensee Phone

Inspector Email:

Inspection Type:

Inspection Status:

Checklist Name: Salon Shop

Check List Item	Status	Comments
Does the salon/shop have a board granted variance? ARM24.121.405(1)	N/A	Variance
Does the salon/shop have a current license? ARM24.121.403(1)	Yes	Facility License
Is the salon/shop ownership and/or location accurately reflected? ARM24.121.403(4)	Yes	Facility License
Are all individuals performing services currently licensed? ARM24.121.2301(1)(h)	Yes	General License
Are all booth rental licenses current? Yes/No ARM24.121.2301(1)(h) for booth renter	N/A	General License
Are all licenses unaltered, uncut, and not defaced? ARM24.121.403(5)	Yes	General License
Are current licenses displayed conspicuously? ARM24.121.403(3)	Yes	General License
Is the NIC blood spill procedure posted in the facility? ARM24.121.1522(2)	Yes	General License
Is there at least one sink or basin within the confines of the salon/shop? ARM24.121.1301(4)(a)	Yes	Water Supply
Does the salon/shop have a public restroom facility available on or near the premises? ARM24.121.1505(1)	Yes	Water Supply



State of Montana Department of Labor and Industry
 Business Standards Division
 301 South Park 4th Floor Helena, MT 59620

Montana State Board of Barbers and Cosmetologists

Inspection Report

Does the salon/shop have hot and cold running water connected to an appropriate sewage system? ARM24.121.1507(1)(a)	Yes	Water Supply
Do the restrooms have hand basins? ARM24.121.1505(1)	Yes	Water Supply
Does the restroom have liquid soap dispensers available for hand washing? ARM24.121.1505(6)	Yes	Water Supply
Are there single service towels or a workable hot air blower? ARM24.121.1505(5)	Yes	Water Supply
Are there hand washing instructions posted in each restroom? ARM24.121.1505(2)	Yes	Water Supply
Are the restroom fixtures clean and in safe condition? ARM24.121.1505(3)		Water Supply
Is there a covered waste container in the restroom? ARM24.121.1505(7)	Yes	Water Supply
If the restroom is used for storage, is a closet/cabinet provided? ARM24.121.1505(4)	N/A	Water Supply
If chemicals/cleaners are stored in the restroom, are they stored in a locked cabinet/closet? ARM24.121.1505(4)	N/A	Water Supply
If a dog is present on the premises are the requirements met? ARM24.121.407(6)(b)(i)(ii)(iii)	N/A	General Requirements
Previous inspection report available? ARM24.121.1301(2)(a)	Yes	General Requirements
Are there any prohibited items? ARM24.121.1517(3)/1509(8)(9) List Items as needed		General Requirements
Is there mechanical ventilation provided for the total cubic feet of the salon/shop? ARM24.121.1301(1)	Yes	General Requirements
Does the mechanical ventilation provide four air exchanges per hour? ARM24.121.1301(1)	Yes	General Requirements
Is the ventilation system operating continuously during business hours? arm24.121.1301(1)	Yes	General Requirements
Is the furniture kept clean and in a safe condition? arm24.121.407(5)	Yes	General Requirements
If licensed after Nove 19, 2004, are the floor surfaces in working areas non- carpeted? ARM24.121.1501(1)		General Requirements
Are the salon/shop floors, walls, ceilings, doors, windows, screens, entrances and receptacles clean and in a safe condition? ARM24.121.1501(2)		General Requirements cl



State of Montana Department of Labor and Industry
Business Standards Division
301 South Park 4th Floor Helena, MT 59620

Montana State Board of Barbers and Cosmetologists

Inspection Report

Are all areas adequately lit? ARM24.121.1503	Yes	General Requirements
Are the light fixtures/covers clean? ARM24.121.1503	Yes	General Requirements
Are the salon/shop shelves, tables and station clean and in good repair?ARM24.121.1509(2)(a)(b)		General Requirements
Is there a covered clean disinfectant available in the salon/shop of appropriate depth?ARM24.121.1301(4)(b)	Yes	General Sanitation
Is the disinfection agent board approved? ARM24.121.1514(1)(2)(3)	Yes	General Sanitation
Is there a disinfected, dry, covered container for all implements and tools?ARM24.121.1511(4)	Yes	General Sanitation
Are soiled implements/tools sorted separate from disinfected implements/tools?ARM24.121.1515(1)		General Sanitation
Are neck strips, towels or clean capes used to prevent hair clippings from contacting client?ARM24.121.1515(3)	Yes	General Sanitation
Are garments and garment pockets free of tools/implements? ARM24.121.1515(4)	Yes	General Sanitation
Are machines, implements, tools and equipment clean and in safe condition?ARM24.121.1509(2)(b)		General Sanitation
Is there cleanable, leak proof, non-absorbent, plastic lined, covered refuse container(s)?ARM24.121.1519(1)(a)	Yes	General Sanitation
Is the refuse container frequently emptied to prevent overflowing?ARM24.121.1519(1)(b)	Yes	General Sanitation
Are hair/nail clippings swept and properly disposed after each client?ARM24.121.1519(2)	Yes	General Sanitation
Are salon preparations stored, handled and applied to protect against contamination?ARM24.121.1517(1)(a)(b)		General Sanitation
Product not in its original container, is new container labeled with the same product name?ARM24.121.1517(8)		General Sanitation
Is there at least one enclosed dust-free cabinet to store clean towels and linens?ARM24.121.1301(4)(e)	Yes	General Sanitation
Are all persons working in the salon/shop professionally attired and are shoes worn at all times?ARM24.121.1521(1)	Yes	General Sanitation
Do all operators wash their hands or use hand sanitizer before serving each patron?ARM24.121.1521(2)(a)(3)	N/A	General Sanitation
Another business within the salon/shop, not regulated by the board, separated by a full-length petition?ARM24.121.407(3)	N/A	General Sanitation



State of Montana Department of Labor and Industry
 Business Standards Division
 301 South Park 4th Floor Helena, MT 59620

Montana State Board of Barbers and Cosmetologists

Inspection Report

Acids used for exfoliation are PH levels less than 3 or acid concentration above 30%? ARM24.121.1517(6)	N/A	General Sanitation
Are all mechanical exfoliation machines board approved? ARM 24.121.1509(5)	N/A	Esthetic Services
Are licensees endorsed by the board? ARM 24.121.403(8)	Yes	Esthetic Services
Is microdermabrasion machine a closed looped system? ARM 24.121.1509(5)(i)	N/A	Esthetic Services
Are the aluminum oxide crystals or approved corundum at least 120 granule size? ARM 24.121.1509(b)	N/A	Esthetic Services
Are single use plastic tips being used? ARM 24.121.1509(d)	N/A	Esthetic Services
Is wax system board approved? ARM 24.121.1509(1)	Yes	Esthetic Services
Are all electrical file machines used specifically manufactured for use in the nail industry? ARM 24.121.1509(4)	Yes	Manicuring Services
Are nail bits used specifically manufactured for use on the nail plate of the natural nail? ARM 24.121.1509(4)(a)	Yes	Manicuring Services
Is there direct entry into the salon/shop from a public access area? ARM24.121.407(4)	Yes	Residential Facilities
Does salon/shop have an outside entrance with doors? ARM24.121.1301(1)	Yes	Residential Facilities
Do clients walk through living areas to reach the restroom? ARM24.121.1505(1)(a)		
Are services being conducted in living quarters? ARM24.121.407(2)	N/A	Residential Facilities
Is there a pedicure cleaning log being used? ARM24.121.1511(5)		
Are there MSDS for all products used on clients? ARM24.121.1517(2)		

Additional Comments		
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Additional Comments:

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EXHIBIT
19

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

Inspector Name(s): MARSHALL GLUNT , TODD MORGAN
Date Inspected: 10/29/2021
OL Number:
Spa Massage Facility Address: 926 MAIN ST. # 7



Facility Check List – BMCC 7-1900

BMCC 7-1910. Prohibitions during Operation:

- No licensed massage therapist is in the facility during open hours;
NO
- Evidence the facility is used for living or sleeping;
YES
- Employees are not fully clothed or are wearing transparent clothing;
NO
- Advertising to suggest sexual services are available at the facility;
NO
- Possession or display of sexually oriented toys, merchandise, sexual aids or contraceptives
NO
- Employees remain behind a locked door during the inspection;
NO

BMCC 7-1911. Requirements during operation

- List of current employees and independent contractors providing services at the facility;
YES
- Copies of each massage therapists license from the State of MT
YES
- Operate only under the business name on the COB OL License
YES
- Exterior (entry) door must be unlocked during hours of operation, except when permitted to remain locked through a Variance from the license administrator
YES
- Fail to open a locked interior door upon request that is not locked to protect client confidentiality/privacy or business information.
NO
- Reception area visible from the exterior of the building (building glass may not be fully covered);
YES. HAVE BLINDS BUT WERE OPEN
- Advertising lists the physical address of the facility
N/A
- A written list of services and prices for all services available in the reception area
YES

- Hours of operation allowed between 6 am and 10 pm
- Confirm the name of the business owner is the name of the person who holds or applied for the license ^{YES} YES
- Location is in a zone district that allows the spa/massage facility YES

BMCC 7-1912. Inspections

- Conspicuous display of each massage therapists' license from the State of MT ^{NO}
- Upon request, open all locked cabinet, storage areas or rooms for inspection YES

Inspector Notes:

OWNER SAID SHE HAD BEEN IN THIS LOCATION FOR ABOUT
12 YEARS. SHE LET US INTO EVERY AREA OF THE PLACE AND LET
US OPEN UP EVERY DRAWER. THE BACK ROOM LOOKS LIKE IT HAS BEEN
LIVED OUT OF DUE TO THE CLOSET OF CLOTHES AND MANY DIFFERENT SHES,
BEHIND THE COUNTER AS YOU WALK IN THERE IS A FRIDGE WITH A CHEST
FREEZER WITH ALOT OF FROZEN FOOD INSIDE. OWNER STATED IT WAS EXCESS
FROM HER APARTMENT DUE TO SMALL SPACES.

EXHIBIT
20

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

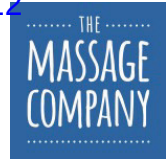
Theresa Vondra

DOB: -

Therapeutic Massage (within 4 weeks)(Code M79.1)

The Massage Company

1311 11th St. W
Billings, Montana 59102
406-702-1128
406-318-4072
billingsmassagetherapists@gmail.com



Info

Treatment

Therapeutic Massage (within 4 weeks)(Code M79.1)
May 04, 2022 @ 1:15pm (90 min.)

Practitioner

Kyle Buffington

Consent

Obtained

Snapshots as of Jan 19, 2023

Conditions

Area of Complaint

Left Side of Low Back - *it switches between left and right side*
Right Side of Neck - *typically my right side is worse than the left*
Right Side of Low Back - *its switches between left and right side*
Right Shoulder - *always a problem spot back by the shoulder blade*

Family History

Arthritis

Injuries

Uncategorized

Injuries - *none specific*

Medications

Uncategorized

Medications - *just supplements*

Surgeries

Uncategorized

Surgeries - *none*

Subjective

my body hurts

Objective

No objective data recorded.

Analysis

No analysis provided

Plan

No plan created

Kyle Buffington

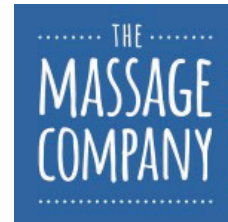
Clinical Intake

Theresa Vondra

Date: 31 Dec 2020

The Massage Company

1311 11th St. W
 Billings , Montana 59102
 406-702-1128
 406-318-4072



billingsmassagetherapists@gmail.com

About You

First Name

Last Name

Theresa

Vondra

Email Address

thopkins.balanceandharmony@gmail.com

Home Phone

Work Phone

Mobile Phone

()

()

40602084072

Address

City

Prov.

Postal Code

321 Prospectors Ln

Billings

Montana

59105

Source Of Referral

Date Of Birth

Gender

Occupation

01 Mar 1986

Female

you know

Primary Care Info

Doctor's Name

Doctor's Phone

Doctor's Address

()

Emergency Contact

Emergency Contact Name

Emergency Phone

Relationship

Andrew Sanders

4068761770

my man

Other Items

Medical Info

Primary Complaint

my body hurts

General Health

good

Current Treatment

Past Treatment (from other practitioners)

Medications

just supplements

Injuries

none specific

Surgeries

none

Additional Info

Insurance Info

Insurer's Name

Adjuster's Name

Policy Number

Office Address

Unit #

City

Country

Prov / State

Postal Code / Zip

Phone

Fax

Email Address

Claims / Benefit

Conditions

COVID-19 Questionnaire (Check Appropriate Boxes to Comment Below)

Have you tested positive for COVID-19?

Area of Complaint

Left Side of Neck

Right Side of Neck

Left Side of Upper Back

typically my right side is worse then the left

Right Side of Upper Back

Left Side of Mid Back

Right Side of Mid Back

Left Side of Low Back

Right Side of Low Back

Chest

it switches between left and right side

its switches between left and right side

Abdomen

Left Arm

Right Arm

<input type="checkbox"/> Left Shoulder _____	<input checked="" type="checkbox"/> Right Shoulder always a problem spot back by the shoulder blade _____	<input type="checkbox"/> Left Elbow _____
<input type="checkbox"/> Right Elbow _____	<input type="checkbox"/> Left Wrist _____	<input type="checkbox"/> Right Wrist _____
<input type="checkbox"/> Left Hand _____	<input type="checkbox"/> Right Hand _____	<input type="checkbox"/> Left Leg _____
<input type="checkbox"/> Right Leg _____	<input type="checkbox"/> Left Hip _____	<input type="checkbox"/> Right Hip _____
<input type="checkbox"/> Left Knee _____	<input type="checkbox"/> Right Knee _____	<input type="checkbox"/> Left Ankle _____
<input type="checkbox"/> Right Ankle _____	<input type="checkbox"/> Left Foot _____	<input type="checkbox"/> Right Foot _____

Headaches

<input type="checkbox"/> Migraines _____	<input type="checkbox"/> Cluster _____	<input type="checkbox"/> Headaches _____
<input type="checkbox"/> Rebound _____	<input type="checkbox"/> Sinus _____	<input type="checkbox"/> Chronic Daily Headache _____
<input type="checkbox"/> Tension _____		

Cardiovascular

<input type="checkbox"/> Heart Attack _____	<input type="checkbox"/> Cardiovascular Conditions _____	<input type="checkbox"/> Varicose Veins _____
<input type="checkbox"/> Congenital Heart Defect _____	<input type="checkbox"/> Phlebitis _____	<input type="checkbox"/> Blood Pressure _____
<input type="checkbox"/> Blood Clots _____	<input type="checkbox"/> Acute Coronary Syndrome _____	<input type="checkbox"/> Coronary Artery Disease _____
<input type="checkbox"/> Lymphedema _____	<input type="checkbox"/> Aneurysm _____	<input type="checkbox"/> Hyperlipidemia _____
<input type="checkbox"/> Pericarditis _____	<input type="checkbox"/> Cardiovascular Accident _____	<input type="checkbox"/> Angina _____

- Cold Hands _____
- Raynaud Disease _____
- Pacemaker _____
- Atherosclerosis _____
- Cold Feet _____
- Rheumatic Heart Disease _____
- Heart Disease _____
- Cardiac Arrhythmia _____
- High Blood Pressure _____
- Valve Disorders _____
- Chronic Ischemic Heart Disease _____
- Low Blood Pressure _____
- Myocardial infarction _____
- Chronic Venous Insufficiency _____
- Congestive Heart Failure _____

Musculoskeletal

- Strain/Sprain _____
- Hereditary/Congenital Deformity _____
- Amyotrophic Lateral Sclerosis (ALS) _____
- Joint Injury _____
- Muscular Dystrophy _____
- Osteoporosis _____
- Osgood-Schlatter Disease _____
- Osteoarthritis _____
- Myasthenia Gravis _____
- Gout _____
- Ankylosing Spondylitis _____
- Osteomalacia _____
- Tendonitis/Bursitis _____
- Bone Disease _____
- Sinus Problems _____
- Paget Disease _____
- Artificial Joints / Special Equipment _____
- Compartment Syndrome _____
- Psoriatic Arthritis _____
- Dislocation _____
- Fibromyalgia _____
- Scleroderma _____
- Scoliosis _____
- Arthritis _____
- Jaw Pain (TMJD) _____
- Fracture _____

Gastrointestinal

- Poor Appetite _____
- Digestive Conditions _____
- Constipation _____

Stomach Disorder

Diarrhea

Crohn's Disease

Ulcerative Colitis

Diverticulitis

Eating Disorder

Esophageal Disorder

Fecal Impaction

Celiac Disease

Intestinal Polyps

Irritable Bowel Syndrome

Neurological

Tingling

Brain Injury

Multiple Sclerosis

Stabbing

Cerebral Vascular Accident (Stroke)

Cerebral-vascular Accident

Stroke

Loss of Sensation

Seizure Disorder

Sciatic Pain

Transient Ischemic Attacks (TIA)

Vertebral and Spinal Cord Injury

Huntington Disease

Epilepsy

Shingles

Cerebral Palsy

Numbness

Brain Disorder

Dizziness

Parkinsons

Burning

Chronic Pain Disorder

Herniated Disc

Skin

Psoriasis

Athlete's Foot

Acne

Rash

Allergic Dermatitis

Bruise Easily

- Rosacea _____
- Herpes _____
- Hypersensitive Reaction _____
- Athletes Foot _____
- Chemical Burn _____
- UV Burn _____
- Hypersensitive Reactions _____
- Melanoma _____
- Melanoma/Carcinoma _____
- Pigmentary Disorder _____
- Skin Conditions _____
- Infectious Skin Conditions _____
- Plantar's Wart _____
- Skin Irritations _____

Hearing

- Conductive Hearing Loss _____
- Meniere Disease _____
- Motion Sickness _____
- Tinnitus _____
- Ear Problems _____
- Vertigo _____
- Hearing Loss _____

Blood

- Hypercoagulability _____
- Hepatitis _____
- Polycythemia _____
- Haemophilia _____
- HIV _____
- Thrombosis/Embolism _____
- Anemia _____
- High Cholesterol _____
- Bleeding Disorder _____
- HIV/AIDS _____

Kidney

- Renal Cysts _____
- Urinary Incontinence _____
- Urinary Tract Infection _____

- Bladder Disorder _____
- Chronic Kidney Disease _____
- Congenital Kidney Disease _____
- Electrolyte Imbalance _____
- Kidney Stones _____

Reproductive

- Menstrual Cycle Disorder _____
- Ovarian Cysts/Tumors _____
- Pelvic Inflammatory Disease _____
- Pregnancy _____
- Premenstrual Syndrome _____
- Breast Disorder _____
- Gynaecological Conditions _____
- Uterine Disorder _____
- Ectopic Pregnancy _____
- Endometriosis _____
- Menopause _____

Immune

- Non-Hodgkin Lymphoma _____
- Rheumatoid Arthritis _____
- Anaphylaxis _____
- Allergies _____
- Lupus _____
- Hodgkin Lymphoma _____
- Cancer _____
- Infectious Mononucleosis _____
- Leukemia _____

Respiratory

- Chronic Cough _____
- Respiratory Conditions _____
- Shortness of Breath _____
- Asthma _____
- Tuberculosis _____
- Emphysema _____
- Bronchitis _____
- Respiratory Tract Infection _____
- COPD _____
- Infectious Respiratory Conditions _____
- Cystic Fibrosis _____

Endocrine

- | | | |
|--|---|--|
| <input type="checkbox"/> Acute Pancreatitis
_____ | <input type="checkbox"/> Diabetes
_____ | <input type="checkbox"/> Hyperthyroidism
_____ |
| <input type="checkbox"/> Hypothyroidism
_____ | <input type="checkbox"/> Pituitary and Growth Disorder
_____ | <input type="checkbox"/> Prostate Condition
_____ |

Family History

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Arthritis
_____ | <input type="checkbox"/> Cardiovascular
_____ | <input type="checkbox"/> Respiratory
_____ |
|--|--|---|

Miscellaneous

- | | | |
|--|---|--|
| <input type="checkbox"/> Vision Problems
_____ | <input type="checkbox"/> Vision Loss
_____ | <input type="checkbox"/> Mental Health Issues
_____ |
| <input type="checkbox"/> Surgical Pins or Wire
_____ | <input type="checkbox"/> Insomnia
_____ | <input type="checkbox"/> Other Medical Conditions
_____ |
| <input type="checkbox"/> Other Diagnosed Diseases
_____ | | |

Massage Therapy Waiver and Consent Form

Massage Therapy Waiver and Consent Form

I understand that the massage I receive is provided for the basic purpose of relaxations, stress reduction, and relief of muscular tension. I further understand that the massage should not be construed as a substitute for medical examination, diagnosis, or treatment and that I should see a physician, chiropractor, or other qualified medical specialist for mental or physical ailment that I am aware of.

I understand that massage therapists are not qualified to perform skeletal adjustments, diagnose and/or prescribe, and that nothing said in the course of the session should be construed as such.

Because massage is contraindicated under certain conditions, I affirm that I have stated all my known medical conditions and answered all questions honestly. I agree to keep the therapist updated as to any changes in my medical profile and understand that there shall be no liability on the therapist's part should I forget to do so.

I understand that I am reserving a spot and will give at least 24 hours notice for cancellations. If given less than 24 hour notice, I understand that I will be responsible for any late cancellation fees.

Agreed on December 31, 2020 at 1:14pm

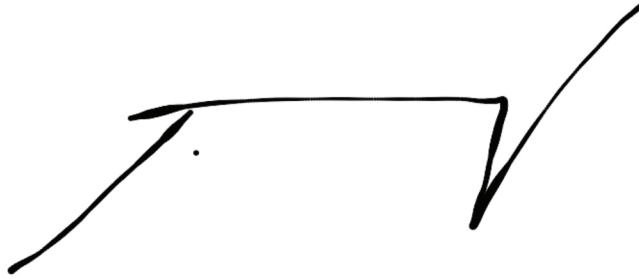
A handwritten signature in black ink, appearing to be 'Vondra', written over a horizontal line.

EXHIBIT
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Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

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**Pro Hac Vice
Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

THERESA VONDRA, et al.,

Plaintiffs,

-vs-

CITY OF BILLINGS,

Defendant.

Case No. CV 22-30-BLG-KLD

**AFFIDAVIT OF THERESA
VONDRA**

I, Theresa Vondra, declare:

I am a state-licensed massage therapist and reside in Billings, Montana where I own, operate, and practice massage therapy at The Massage Company, located at 1311 11th St. W. in Billings, Montana. I've been practicing massage therapy for over 17 years. Before 2010, massage therapy did not require a license, so when I graduated from massage school in 2006, I obtained a private certificate through the National Certification Board for Therapeutic Massage and Bodywork—a private organization. In 2010, when the state license requirement went into effect, I was grandfathered in. Since then, I've renewed my license every 2 years by paying a fee and proving I completed continuing education credits.

Working for myself has been empowering and I am proud of the service that my business provides to our patients, whether they are suffering from chronic pain and injuries, or they just need to find some moments of peace in their lives. Because of the sensitive information that our patients share with us, their privacy and trust is essential. To avoid areas that might trigger past physical or psychological trauma, the intake process my company uses for new patients includes private details of our patients' personal lives. That information is stored in our electronic database and occasionally printed for patients to be able to share their treatment information with their attorneys, insurers, or other healthcare providers.

The Massage Company is separated into two distinct areas by a wall and door. The public lobby contains a waiting and reception space. Beyond that, the patient-and-employee-only area includes massage therapy rooms, an infrared sauna, closets, administrative space for the reception desk, lockers for employees to store personal property, and lockers for patients to store personal property.

At the reception desk is a computer with access to an electronic database where patient files containing private information are kept. The electronic files contain sensitive information, including a patient's prior injuries and trauma, which can be a combination of physical, sexual, or psychological, including how pain or injury affects the patient's activities of daily life; whether the patient has seen another massage therapist, physician, physical therapist, or chiropractor; a diagram depicting the bodily locations of pain or discomfort and the seriousness and type of each; the objectives a therapist and patient hope to achieve through massage therapy; the planned course of treatment; and assessments and notes by the massage therapist. All of this is associated with the patient's name, their massage therapist's name, the date, and duration of treatment.

The employee-only area of the business contains lockers that I have provided, which employees use to store their personal property during business hours. When I am at the business, I keep my purse in in one of these employee lockers.

The business also has a space in the back area containing lockers for patients to store their property as well. Adam Poulos, one of my regular patients, keeps property in a patient locker when receiving massage therapy treatments. His personal information is also stored in the electronic database. The dates, times, type of massage, and my name, are also recorded on a separate log of treatment for each of his sessions—though it does not include his name.

The Massage Company contains several closets, cabinets, file drawers, and an enclosed storage area outdoors that are not open to the public.

After receiving a City of Billings facility license, I began having my receptionist keep a separate physical log of massage therapy treatments containing the information required by Ordinance 21-5757 in the hopes that it would keep the City out of my electronic database since removing identifying information from the entries in that database would be difficult.

Dated: November 17, 2023.


Theresa Vondra

STATE OF Montana
Yellowstone COUNTY, SS:

Personally appeared the above named THERESA VONDRA, and made oath that the above stated facts are true based on her own personal knowledge, information, or belief; and, so far as upon information and belief, that she believes this information to be true.

Catherine Fosjord

Notary Public

My Commission Expires: Feb 26, 2024

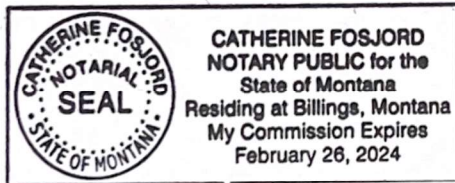


EXHIBIT
22

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

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**Pro Hac Vice
Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

THERESA VONDRA, et al.,
Plaintiffs,

-vs-

CITY OF BILLINGS,
Defendant.

Case No. CV 22-30-BLG-KLD

**AFFIDAVIT OF DONNA
PODOLAK**

I, Donna Podolak, declare:

I began working as a massage therapist in December of 1999 after reading several books about its many healing benefits. This led me to attend massage school and begin a long and happy career as a solo practitioner treating people's aches, pains, injuries, and mental well-being with massage therapy. It wasn't until I had been practicing about a decade that Montana started requiring licenses, but I was grandfathered in around 2010 and have only been required by the state to submit education credits and a payment every couple of years to keep my license current.

I practice massage therapy out of my home apartment in an over-55 community located at 4125 Montana Sapphire Drive in the City of Billings. I welcome patients into my home by appointment only. Some of my patients are people who were injured during a car accident or at work and I bill through their insurances directly. Others include those seeking relaxation massages or neuromuscular work. I specialize, in particular, in neck, shoulders, and back pain.

As patients walk through the entryway door to my apartment, they can see into the living room, kitchen, and even the primary bedroom beyond those areas. Immediately to one side, as patients walk in, is a doorway to my massage room and office, which contains a massage table, chair, desk, file cabinet, closet, small stand, small freezer, and small table.

I use the closet within the massage therapy room to keep a massage chair, sheets, housecoats, towels, and patient files. The desk is for administrative work related to my business, including the drafting of insurance claims, and organization of patient files, and payment processing. The chair is for my patients to fill out information upon their arrival. The room also contains a copier and CD player. The small stand is for massage therapy items, including oils, patient notes, and towels. The chair is where patients leave their clothes and personal belongings when they undress to their comfort level before getting under the sheet on the massage therapy table.

The file cabinet and closet within the massage therapy room both contain sensitive and identifying information for my patients. At any given time, the desk might contain this information as I work on processing files, claims, and payments for my patients, or generating and organizing other business-related files.

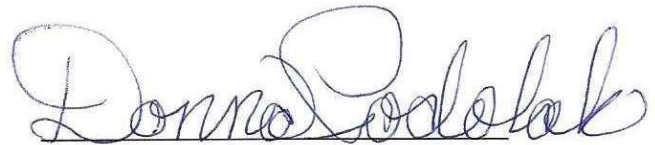
Directly across the hall from the massage room is a bathroom that my patients use. My patients will also sometimes get a glass of water from the kitchen. In addition to patient files, I keep a separate physical log of massage therapy containing the information required by Ordinance 21-5757.

I only take patients by appointment. I do not accept walk-ins and no portion of my home is generally open to the public. I do not have any public lobby or waiting

area for patients to schedule appointments in the way that a commercial property would.

I am offended by the City of Billings law that treats me like a criminal or sex worker. I am a massage therapist and proud of the work I do helping people with physical and mental injuries. Relaxation is one of the most healings things you can do, and I should not have to let the government into my home to continue this important work.

Dated: November 19, 2023.


Donna Podolak

STATE OF Montana
Yellowstone COUNTY, SS:

Personally appeared the above named DONNA PODOLAK, and made oath that the above stated facts are true based on her own personal knowledge, information, or belief; and, so far as upon information and belief, that she believes this information to be true.

Cory Smith

Notary Public

My Commission Expires: 7-2-27

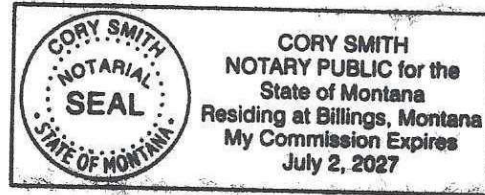


EXHIBIT
23

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

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Fax: (916) 419-7747

**Pro Hac Vice
Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

THERESA VONDRA, et al.,

Plaintiffs,

-vs-

CITY OF BILLINGS,

Defendant.

Case No. CV 22-30-BLG-KLD

**AFFIDAVIT OF LYNDIA
LARVIE**

I, Lynda Larvie, declare:

I am a state-licensed massage therapist and own a physical property located at 629 Grand Ave in Billings, Montana where I have operated Bella Spa: Mind Body Spirit for 18 years as a solo practitioner of massage therapy.

I began practicing massage therapy over 23 years ago and am fulfilled by the experience of helping people with pain and injuries enjoy a better quality of life. Massage is not just a livelihood for me, but a calling. Sometimes I'm the last resource people who suffer from chronic pain have and it is my life's work and passion to help them. I take new patients only through referrals, typically from physicians, chiropractors, and other patients. My practice is strictly limited to therapeutic massage. People do not come to me for "foo-foo" relaxation massages. Instead, I use deep-tissue and neuromuscular techniques. My patients tend to be elderly, those suffering from injuries, or people with physically demanding jobs. While the massage therapy I do might not be comfortable, it helps people and I'm proud of that. Some of my patients jokingly complain that I'm "the meanest woman in Montana" because of how intensive deep-tissue and neuromuscular massage therapy can be.

Some of my patients pay for my services through Federal Spending Accounts or Health Savings Accounts, and I used to bill insurance directly, but it became too

burdensome to continue. Now, many of my patients seek reimbursement from their medical insurers themselves after receiving their bills.

My business includes a waiting area, massage room, and a desk with drawers that I use for administrative work related to my business. The massage room is only open to me and my patients with appointments. The desk and its drawers are for my use alone. I keep patient files containing private information related to massage therapy treatments in a filing cabinet in a closet within my business. The massage room and contents of my desk are not open to the public.

When the massage ordinance went into effect, I became concerned about the privacy of my patients and my property. Several of my patients told me that they were upset, too. One thing that worried me was how the government could look through my patients' treatment files. Because of this, I started keeping a separate log with the information required by that law because separating patients' identifying information from the files would be difficult.

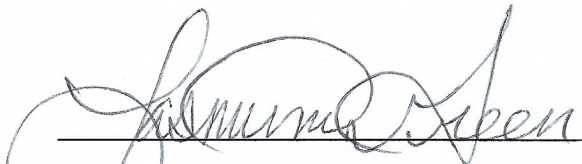
The Montana Board of Massage Therapy issued me an occupational license as a massage therapist in 2010 under the grandfather clause of the law when it went into effect. My only interaction with the Board has been to renew my license by certifying that I've completed continuing education credits and paying a fee every other year. The Massage Board has never inspected my business. In fact, I've never heard of them ever inspecting anyone's business.

Dated: November 21, 2023.

Lynda Larvie
Lynda Larvie

STATE OF Montana
Yellowstone COUNTY, SS:

Personally appeared the above named LYNDA LARVIE, and made oath that the above stated facts are true based on her own personal knowledge, information, or belief; and, so far as upon information and belief, that she believes this information to be true.



Notary Public

My Commission Expires: Jan. 30, 2027

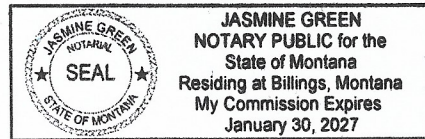


EXHIBIT
24

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

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**Pro Hac Vice
Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

THERESA VONDRA, et al.,

Plaintiffs,

-vs-

CITY OF BILLINGS,

Defendant.

Case No. CV 22-30-BLG-KLD

**AFFIDAVIT OF ADAM
POULOS**

I, Adam Poulos, declare:

I am a regular patient of Theresa Vondra's and have been receiving massage therapy treatments from her at The Massage Company in the City of Billings since October of 2017 following an accident during which I suffered a physical injury to my neck.

When I attend my appointments at The Massage Company, I regularly store my wallet, pocket knife, keys, and other personal effects in the lockers provided for patients in the back area of the business.

I understand that the times of my appointments and the name of my massage therapist are recorded in a log that The Massage Company is required to keep under the City of Billings' massage ordinance.

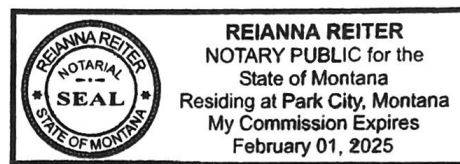
Dated: November 17, 2023.


Adam Poulos

STATE OF Montana
Yellowstone COUNTY, SS:

Personally appeared the above named ADAM POULOS, and made oath that the above stated facts are true based on his own personal knowledge, information, or belief; and, so far as upon information and belief, that he believes this information to be true.


Notary Public



My Commission Expires: Feb 1 2025

EXHIBIT
25

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

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* *ro ac ice*

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

THERESA VONDRA, et al.
Plaintiffs,
-vs-
CITY OF BILLINGS,
Defendant.

Case No. CV 22-30-BLG-KLD

**LAINTIFF THERESA
VONDRA S RES ONSE TO
DEFENDANT CIT OF
BILLINGS FIRST
DISCOVER RE UESTS**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

INTERROGATOR NO Please identify and describe in detail any and all inspections of your business that you contend were done pursuant to the Ordinance. For each and every such inspection, please provide the following information: (1) the date or approximate date, time, and duration; (2) the identity and any known contact information of the individual or entity involved in the inspection; (3) a description of what was said and done by the individuals or entities involved in the inspection and what was inspected; (4) information about where you were and

[REDACTED]

[REDACTED]

[REDACTED]

INTERROGATOR NO Please describe in detail the Vondra Inspection, including, but not limited to, listing all clients who were at the business at the time, listing all employees or independent contractors who were present at the business at the time, and providing a list of all documents and property specifically inspected by the City and the scrutiny given each document or piece of property.

ANSWER Plaintiff objects to interrogatory on the grounds that it is a one-way road and seeks information outside Plaintiff's knowledge, custody, possession or control of it standing to these objections Plaintiff responds on information and belief that there were no clients or clients of her business present during the Vondra inspection and that only Plaintiff's receptionist, Dayla Esterce, and a former employee named Delaney were present aside from the officers from the city who were looking at the licenses of each eraist on staff too photos of the and alleged that the sole office taken photos along the way the officers also looked inside the locker room in the rest

[REDACTED]

[REDACTED]

DATED this 31st day of March, 2023.

PACIFIC LEGAL FOUNDATION

By: s Daniel T. Woislaw

DANIEL T. WOISLAW*

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** ro ac ice*

ATTORNEYS FOR PLAINTIFFS

VERIFICATION

STATE OF MONTANA
County of Yellowstone

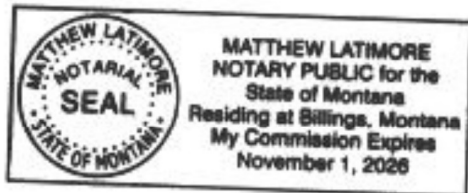
Theresa Vondra, being first duly sworn, deposes and says:

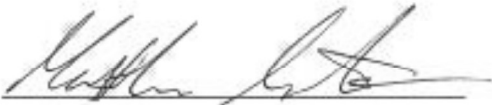
1. I have read Plaintiff Theresa Vondra's Response to Defendant City of Billings' First Discovery Requests ("Response").
2. That I believe the facts stated in this Response are true to the best of my knowledge, information, and belief.



THERESA VONDRA

SWORN AND SUBSCRIBED before me, a Notary Public, in and for the State and County, on this 31 day of March, 2023.





Matthew Latimore
(Name Printed or Typed Out)

Notary Public for the State of
Montana

Residing at

Billings, Montana

My Commission

Expires: 11/01/2026

CERTIFICATE OF SERVICE

This is to certify that on this 31st day of March, 2023, a copy of the foregoing was served upon the following by emailing a true and correct copy thereof addressed to:

Gerry Fagan,
Gerry.Fagan@moultonbellingham.com

Stephanie Baucus,
Stephanie.Baucus@moultonbellingham.com

By: s Daniel T. Woislaw
Daniel T. Woislaw

EXHIBIT
26

Vondra, et al., v. City of Billings

Case No. CV 22-30-BLG-KLD

City Council Work Session

Virtual Meeting - 5:30 PM
Tuesday, January 19th, 2021

ATTENDANCE:

Mayor/Council (please check) X Cole, X Shaw, X Yakawich, X Neese,
X Ewalt, X Joy, X Choriki, X Purinton, X Ronning, X Boyett, X Brown
CM excused: None

ADJOURN TIME: 11:28 PM

Agenda

	Legislative Update
PRESENTER	Chris Kukulski, City Administrator
NOTES/OUTCOME	

- **Chris Kukulski:** Provided an update of Legislative topics concerning the City.

TOPIC #1	COVID-19 Update by Unified Incident Command
PRESENTERS	John Felton, Yellowstone County Health Officer
NOTES/OUTCOME	

- **John Felton:** Gave updated numbers of in-patient numbers, COVID positive numbers, and vaccine availability.
- Council discussed various vaccine manufacturers, and vaccination updates.
- **Public Comment:**
- **Ellen Mellor,** [REDACTED] **Billings, MT 59102,** stated she was recently diagnosed with COVID-19 and was getting her care through RiverStone Health. She stated the community had reacted very negatively toward RiverStone and she stated she has had nothing but the best care from their staff.

TOPIC #2	MDT 27th Street Railroad Crossing Study Alternatives
PRESENTERS	Wyeth Friday, Planning Director Debi Meling, Public Works Director Rod Nelson, MDT Representative Tim Erickson, HDR Engineering
NOTES/OUTCOME	

- **Debi Meling:** Gave a history and named several projects that are coming up.
- **Rod Nelson:** Stated it was time for the community to provide comments on the study.
- **Tim Erickson:** Explained that the railroad crossing at the 27th Street was the busiest railroad crossing in the State. He stated that in 2016-2018 there were 36 trains per day and 6 switching trains per day. He stated most of the weekday wait times were about 6 minutes and weekend was about 4 minutes. He discussed short term alternatives, over and/or under 27th Street options, costs, and long-term alternatives. He reviewed the community outreach meetings and participation results.
- Councilmember Yakawich indicated 21st Street needed improvements and may be a good option for the project. Ms. Meling indicated there were challenges to developing 21st Street due to depth issues.
- Council discussed costs of each option, impact studies, traffic and pedestrian accident results, economic impacts and first responder access.

- **Public Comment:**
- **Paul Schoemer,** [REDACTED], **Billings, MT,** stated he was not in favor of an underpass and stated it was prohibitive. He preferred a 4-lane overpass. He stated it was very important that EMS services be able to get to their destinations and not be hindered by waiting for trains.
- **Eric Schmidt,** [REDACTED] **Billings, MT,** stated he was the Chair for Yellowstone Valley Citizens Council, and they were not in support of either option given. It would severely impact the area, neighborhoods and pedestrians. The YVCC would support a non-build option and asked that Council move for more options to be considered.

- **Shaw:** Moved to direct staff to work on tunnel option only, seconded by Ronning.
- Ms. Meling indicated MDT would be given that feedback.
- **Boyett:** Made a substitute motion to continue to research all options, seconded by Councilmember Purinton.
- **Wyeth Friday, Planning Director,** spoke of various routing and signage options that could be implemented. He reminded Council of the 27th Street pedestrian project that had been way over budget. He indicated DBP staff had indicated concern with an overpass.

Council consensus: continue researching options for build options and impacts involved.

Recess at 7:27 PM. Reconvene at 7:38 PM.

TOPIC #3	Massage Therapy Business License Ordinance
PRESENTER	Chris Kukulski, City Administrator Gina Dahl, Interim City Attorney Stephanie Baucus, Yellowstone County Area Human Trafficking Task Force
NOTES/OUTCOME	

- Chris Kukulski gave a history of the 2017 Initiative. He indicated the 2018 working group developed a draft after reviewing dozens of ordinances.
- Stephanie Baucus reviewed the issues Illicit Massage Businesses (IMB's) had caused, how to identify, FBI statistics showed the City at a much higher number of IMB's due to website advertisements. She reviewed money made through IMB's and crimes involved, why they were hard to shut down, illicit websites and advertisements.
- Chris: reviewed various Massage Facilities Business License Ordinances from other cities, and proposed changes to the Business License Ordinance application process. He explained how the ordinance would help regulate legitimate businesses and discourage / disrupt illegal activity.
- Gina Dahl gave an overview of renewal of licenses, and denial, revocation or suspension of licenses, code enforcement involvement , violation/penalties, and affirmative defenses.

Council discussed how home massage businesses would be affected by the proposed business license ordinance. Gina Dahl indicated additional language could be added to address the issue.

Chris: indicated there had been a language requirement outlining illicit acts, but it had been requested that the requirement be removed.

Gina: explained the process of drafting the ordinance, various meetings, and people involved in the process. She indicated several massage therapists had attended and staff had tried addressing issues as best as possible.

Ronning: reviewed the meetings that had occurred, and the people involved in the ordinance drafting.

Chief St. John: explained the Police departments role in policing the illicit businesses and how they would provide support for Code Enforcement.

Council asked for clarification on how the ordinance would affect landlords.

Gina: staff was working on adding something that could require a notarized statement signed by landlord ensuring appropriate conduct and compliance with the law.

Public Comment:

- **Teresa Thormahlen, [REDACTED], Billings, MT**, asked about revenue generated by business licenses to help fund the departments needed to address the issue. She indicated a tax on all residents would be fairer.
- **Brittney Homer, [REDACTED], Billings, MT**, spoke in support of the ordinance.
- **Linda Nielsen, [REDACTED], Billings, MT**, spoke in favor of the ordinance and how it could help end human trafficking.
- **Carey Fleming, no address given, Billings, MT**, spoke of the ease of having fingerprints and background checks done and indicated it was worth the inconvenience for helping victims of human trafficking.
- **Deanna Young, [REDACTED], Billings, MT**, spoke against the ordinance.
- **Melanie Tripp, Human Trafficking Task Force**, spoke in support of the ordinance.
- **Lynda Larvie, [REDACTED], Billings, MT**, explained medical terminology terms used by massage therapists and spoke against the ordinance.
- **Elizabeth Olivo, [REDACTED], Billings, MT**, spoke in favor of the ordinance.
- **Joe Olivo, [REDACTED], Billings, MT**, spoke in support of the ordinance.
- **Jennifer Roth, [REDACTED], Billings, MT**, spoke about the lack of representation for License Massage Therapist (LMT's). She spoke against the ordinance.
- **Tiffany Wardell, [REDACTED], Billings, MT**, spoke in favor of the ordinance.
- **Kate Freedman, [REDACTED], Billings, MT**, spoke in support of the ordinance.
- **Eric Hart, [REDACTED], Billings, MT**, spoke against the ordinance.
- **Zach Jokela, [REDACTED], Billings, MT**, indicated the ordinance had too many loopholes and suggested expanding it to include all licensed businesses.
- **Desta Fix, [REDACTED], Billings, MT**, spoke against the ordinance.
- **Alex Jokela, [REDACTED], Billings, MT**, spoke against the ordinance.
- **Theresa Vondra, no address given, Billings, MT**, spoke against the ordinance.

Councilmember Ewalt suggested continuing the discussion to a future Work Session.

Council discussed limiting public comment to 1 minute.

Council discussed moving Consent Agenda Item's #4 and #5 to a future Work Session.

Councilmember Choriki made a motion to remove Consent Agenda Item's #4 and #5 from the agenda and add them to a future Work Session, seconded by Councilmember Boyett. Approved unanimously.

Council suggested allowing Special FBI Agent, Brandon Walter to speak.

Brandon Walter, FBI Special Agent, spoke of the Illicit Massage Businesses in Billings, gave an overview of the issues Law Enforcement had with establishing a case against the businesses. He spoke of how Billings was being advertised as an easy place to operate an IMB and the resources available.

Council discussed how IMB's were currently being handled and how the ordinance could help address the issues.

Public comment continued:

- **Deborah Kimmet, Missoula, MT**, massage advocacy group member, spoke of the issues with the ordinance and indicated there were other ways to address the issue.
- **Caleb Scotson, no address given, Billings, MT**, indicated he did not think the ordinance would be sufficient in solving the IMB issue.
- **Nicole Holm-Mikkelson, no address given, Billings, MT**, spoke against the ordinance.
- **Susan Carlson, [REDACTED], Billings, MT**, indicated there was another way to end the human trafficking sex trade and did not support the ordinance.
- **Skelly Adkins, no address given, Billings, MT**, indicated illegal businesses would go elsewhere and did not support the ordinance.

Councilmember Yakawich made a motion to direct staff to place the topic on a future business meeting, seconded by Councilmember Ronning.

Recess at 10:24 PM. Reconvene at 10:30 PM.

Mayor Cole: asked staff to address questions asked during public comment.

Chris: will not receive additional money to cover enforcement from this ordinance.

Gina: Section regarding locks; exterior doors remain unlocked during sessions, some exceptions listed. Exceptions may be granted by license administrator.

Stephanie: Special Agent Walter cannot comment on ethical question but very clear it will reduce IBM's. Other cities have seen reduction. She addressed fraudulent licensing and encouraged Council to address the issues with IBM's.

Council discussed how code enforcement would address various issues, the City website complaint map, and ordinance language. Councilmember Ronning spoke the specific requirements of current City Code regarding hours of operation, clothing, etc.

Wyeth: indicated those items were not currently in City Code and adding them would help provide a way to enforce compliance.

Council spoke of how to provide changes to the draft ordinance, and the need for a work session or a subcommittee for further discussion.

Councilmember Ewalt: substitute motion to bring topic back to a future work session, seconded by Councilmember Purinton.

Councilmember Neese called the question. Approved unanimously.

Substitute motion: Failed 3-8, Councilmembers Shaw, Yakawich, Neese, Joy, Ronning, Boyett, Brown and Mayor Cole

Councilmember Neese called the question. Approved unanimously.

Original Motion: bring ordinance back to a business meeting after proposed edits have been received. Approved 9-2, Councilmembers Purinton and Ewalt opposed.

Councilmember Neese suggested having a few Councilmembers work with staff to compile proposed edits. Mayor Cole, Councilmembers Purinton, Choriki and Ronning volunteered.

TOPIC #4	Human Relations Commission Annual Report
PRESENTER	Kedy Christensen-Linton, Downtown Billings Alliance, Resource Outreach Coordinator
NOTES/OUTCOME	

TOPIC #5	Yellowstone County HazMat Response Plan – Updated
PRESENTER	K. C. Williams, Yellowstone County Disaster and Emergency Services Director
NOTES/OUTCOME	

TOPIC #6	Council Discussion
PRESENTER	
NOTES/OUTCOME	

- Ewalt: hold meetings in the Community Room of the Library. Chris Kukulski: Gavin is researching. Equipment needed. Mayor Cole: need written protocols regarding public participation and safety. Several Councilmembers indicated a desire to meet in person.
- Ronning: email headshots to wynnette for Council picture? Chris: correct.

- Choriki: too early to relax about Covid numbers.

TOPIC #7	Public Comment on Items Not on the Agenda
PRESENTER	
NOTES/OUTCOME	

- None