

Billings City Administrator Weekly Report

July 15, 2022

- 1. Minimum Property Maintenance Requirements** – Please see the attached memorandum regarding follow up on questions asked at the June 6th Work Session on the regulation of Sober Living Homes.
- 2. Nurse-Family Partnership (NFP)** – I was introduced to this national program by Dr. Eric Arzubi while brainstorming with School District 2 on how to break the cycle of multigenerational delinquency and crime. NFP is an evidence-based, community health program with over 40 years of evidence showing significant improvements in the health and lives of first-time moms and their children living in poverty. The program works by having specifically trained nurses regularly visit first-time moms-to-be, starting with early pregnancy, continuing through the child's 2nd birthday. Mothers, babies, families, and the community all benefit. I've had three (3) meetings to learn more about FNP. Riverstone Health is one (1) of four (4) entities in Montana who operate NFP. I will be scheduling an upcoming meeting with Council to determine if this is an area you will support using some of our two (2) mills (substance abuse/mental health/crime prevention) and or 3% marijuana dollars.
- 3. From the PIO Desk:**

\$10,600 raised at police vs. fire charity softball game –

https://www.facebook.com/photo?fbid=417744160400406&set=a.245649930943164¬if_id=1657663498426127¬if_t=feedback_reaction_generic&ref=notif

WATCH: You're invited to the grand opening for Landon's Miracle Field at Poly Vista Park –

<https://www.facebook.com/CityofBillings/videos/764822051370007>

Update on Billings Community Survey numbers:

The survey closed on Tuesday, July 12th at midnight.

We had 223 paper surveys completed with an additional 162 online responses during the initial sampled survey.

During the open survey, we had another 525 responses online.

That brings us to a grand total of 910 responses, which Polco says is great!

They plan to get the results to us no later than August 9th.

City Link update:

Watch for the Summer 2022 edition of City Link in this Sunday's Billings Gazette! It will also be in next Thursday's Thrifty Nickle on the 21st.

Headlines include - *Caring for our community through code enforcement, NFL Flag Football returns to 7th year with Billings Parks and Recreation, Bringing people and technology together; city receives mapping award based on partnership between Public Works and IT,*

*What is next on the airport terminal project? Keeping Kids in Motion: Program experiences busiest semester of bike repairs in 7-year history,
Picnic or Play? Have the best of both worlds at Terry Park! The Billings Public Library: More than Books!,
Planning Division: Connecting you through trails and art, What's Your Ward? CDBG-CV Funded activities,
Water saving insight and money saving tips at your fingertips*

City of Billings in the news:

Billings Heights Castle Rock Park in the works to see major improvements -

<https://www.ktvq.com/news/local-news/billings-heights-castle-rock-park-in-the-works-to-see-major-improvements>

Police: Billings crime rate in decline despite public perception

<https://www.ktvq.com/news/local-news/magic-city-crime-rate-in-decline-despite-public-perception>

Billings PD holds onto coaches cup, winning 2022 Guns N Hoses charity softball game

<https://twitter.com/Mustangs/status/1545912514319450112>

Duckin around: Billings Firefighters come to rescue of feathered friends

<https://www.ktvq.com/news/local-news/duckin-around-billings-firefighters-come-to-rescue-of-feathered-friends>

To: Mayor and City Council

From: PCSD Director Wyeth Friday, City Attorney Gina Dahl, Legal and Planning Staff

Re: Minimum Property Maintenance Requirements

Date: 7/15/22

Mayor and City Council,

This is a follow up on questions asked by Council members at the June 6 Work Session when Legal staff presented information on regulation of Sober Living Homes. The questions were regarding whether the City could impose minimum property maintenance requirements to both address poorly maintained sober living homes but also all properties in the City.

City Attorney Gina Dahl, legal staff, Planning staff, and I have researched this topic and are providing the information below.

In short, while it appears the City of Billings could adopt a minimum property maintenance code (International Property Maintenance Code (IPMC):

- It could not be associated with the International Building Code (IBC) or other state adopted building codes (energy code, etc.)
- It would have to be funded and implemented outside of any funding the City collects from Building code enforcement
- There are significant complexities of adopting and applying such a code
- Resources, funding, and staffing challenges would have to be addressed before moving forward

History of Minimum Property Maintenance Code Discussion in Billings

The City Council has investigated this topic three other times in the past 15 years – once in 2007, once in 2011, and once in 2017/2018. The past discussions have resulted in drafting and adopted improvements to portions of the City’s Nuisance Code, BMCC 18-300, mainly focused on exterior condition of abandoned and decaying structures.

When the topic of minimum property standards was initiated by City Council in 2017 (Council Member Mike Yakawich Initiative), the options discussed with Council were:

- Retain current nuisance ordinance, City Code Section 18-300, evaluate more proactive approach and resource needs

- Adopt minimum building standards code
- Amend the City nuisance code

The result of these discussions was to amend the City nuisance code and the outcome was some very good improvements to the Nuisance Code that have helped us correct abandoned and dilapidated structure situations in Billings and improved our case outcomes through Municipal Court.

Amendments to the code that were ultimately adopted in January 2019 (Ord. 19-5721) included:

- Modifying and clarifying definitions
- Defining that a Public Nuisance may affect an individual, a neighborhood, or a community
- Specifically addressing exterior structure conditions – peeling paint, exterior rot, cracking, broken windows and doors, neglected trees and lawns, etc.
- Clarifying abatement cost estimating and time period for abatement by the property owner
- Clarifying the right of entry process

As you will see if you review [BMCC Section 18-303 Prohibitions](#), our current Nuisance Code is focused entirely on the exterior of buildings and the conditions of the exterior. It does not address interior conditions.

City did not pursue minimum property maintenance code outside of the Nuisance Code

At the time in 2017, the Council did both recognize the City was prohibited by State Statute from adopting the International Property Maintenance Code (IPMC) (as explained below in the Legal Determination section of this email), and also acknowledged that if it did decide to adopt the IPMC all or in part separately from Building Code and administer it under its self-governing powers, the development/adoption of the code and enforcement would be labor intensive and the approach is basically untested and may be subject to legal or administrative challenges.

International Property Maintenance Code (IPMC) Background

The International Property Maintenance Code (IPMC) is a model code that regulates the minimum maintenance requirements for existing buildings, residential and commercial. The IPMC is a maintenance document intended to establish minimum maintenance standards for basic equipment, light, ventilation, heating, sanitation, and fire safety. Responsibility is fixed among owners, operators, and occupants for code compliance.

The IPMC provides for the regulation and safe use of existing structures in the interest of the social and economic welfare of the community.

The IPMC has a lot of areas of property conditions that it addresses and much of its focus is the interior conditions of buildings. It does address some exterior issues as well, but staff would see the current Billings Nuisance Code as an effective tool for mitigating exterior impacts of buildings versus elements of the IPMC addressing interior elements. As an example, I have pulled the summary of the IPMC chapter on Light, Ventilation and Occupancy Limitations here:

Chapter 4 - Light, Ventilation and Occupancy Limitations.

The purpose of Chapter 4 is to set forth these requirements in the code and to establish the minimum environment for occupiable and habitable buildings, by establishing the minimum criteria for light and ventilation and identifies occupancy limitations including minimum room width and area, minimum ceiling height and restrictions to prevent overcrowding. This chapter also provides for alternative arrangements of windows and other devices to comply with the requirements for light and ventilation and prohibits certain room arrangements and occupancy uses.

To further provide an example of the detail of the code, here is an excerpt from the section of Chapter 4 on Ventilation:

SECTION 403 VENTILATION

403.1 Habitable spaces. Every *habitable space* shall have not less than one openable window. The total openable area of the window in every room shall be equal to not less than 45 percent of the minimum glazed area required in Section 402.1.

Exception: Where rooms and spaces without openings to the outdoors are ventilated through an adjoining room, the unobstructed opening to the adjoining room shall be not less than 8 percent of the floor area of the interior room or space, but not less than 25 square feet (2.33 m²). The *ventilation* openings to the outdoors.

While the City of Billings could decide to adopt only portions of the code that it determined would be the most impactful for quality of life and safety of its residents, the process to make these determinations and the complexity of the code would be very labor intensive and challenging.

Legal Determination of adopting and applying the code

Montana Code Annotated (MCA) 50-60-301 provides that a city may adopt a building code to apply to the city, but the building code adopted may only include codes adopted by the Department of Labor and Industry (MCA 50-60-302). Montana has an administrative rule (ARM) that adopts and incorporates the International Building Code as its building code (ARM 24.301.131). Additionally, the International Property Maintenance Code (IPMC) is specifically excluded from the state building code – see ARM 24.301.146(4).

The Department is the only agency that may promulgate building regulations for the state or any municipality (MCA 50-60-202) so it would not be appropriate for Billings to adopt its own building code or something other than what has been adopted/promulgated by the state. MCA 7-1-113(1) provides “[a] local government with self-government powers is prohibited the exercise of any power in any manner inconsistent with state law or administrative regulation in areas of law affirmatively subjected by law to state regulation or control.” The Legislature has clearly demonstrated an intention to occupy this area of the law by enacting a statewide building code and by expressly prohibiting local governments from adopting regulations that deviate from the state code. Therefore, Billings is expressly prohibited from adopting the IPMC as part of its building code because it would be inconsistent with state law or administrative regulation.

The City of Great Falls has previously adopted the IPMC as a separate part of its city code to supplement the enforcement of proper maintenance of property, including such standards as weed restrictions, maintenance of grounds, and minimum temperature settings. Because the state has not adopted a property maintenance code nor expressly prohibited cities from doing so, the City of Billings may likewise adopt such a property maintenance code to assist in enforcing its health and safety and/or zoning regulations under its self-governing powers pursuant to MCA 7-1-101 and under the general zoning powers of MCA 76-2-301 *et seq.*

If Billings chooses to pursue this path, the development and enforcement of such a code must not be funded with building permit fees or building department funds.

Great Falls use of the International Minimum Property Maintenance Code

Great Falls first adopted the IMPC in 2011 and at the time had intended to manage and enforce it through its Building Department that enforces the building code like our Building Division in Billings. In 2016, Great Falls moved the IPMC out of their section of the code that addresses Building Code jurisdiction and put it as a stand-alone section of the City Code. This was done when the City discovered that per MCA 7-1-113(1), as referenced in the legal determination section of this email above, it could not enforce the IPMC through its authority to enforce the Building Code.

Here are some points about Great Falls' application and implementation of the IPMC:

- Great Falls adopted the entire IPMC
- It has one code enforcement officer for the entire City
- The CE officer is trained like a building inspector to be able to identify and address IPMC violations which are much more like building code items than standard code enforcement items.
- All cases are complaint driven
- The staff estimate that at most 20% of the CE officer's time is spent on IPMC-related complaints annually
- The officer when dealing with an IPMC complaint does not conduct a full inspection of the building to find other possible violations of the IPMC, but focuses on the one violation.

Lessons Learned from Great Falls Experience:

- Don't adopt the entire IPMC, be selective about what you can and want to enforce in your community – focus on life safety kinds of issues
- With a lot of older buildings that do not even meet the current building codes, enforcement of the IPMC is problematic and can open a can of worms in terms of how far compliance should go
- Only address complaints. Do not conduct building-wide inspection for IPMC compliance
- Funding must come from non-building code permitting and enforcement source to avoid contradicting state statute – Need to use General Fund

Billings staff conclusion

- Staff is aware that there are properties in Billings that have sub-standard living conditions and building conditions

- Staff is aware that there are landlords that own extremely poorly maintained housing units that tenants rent because they need housing and that the tenant's quality of life and personal safety may be impacted by the conditions of the housing units.
- Staff is using the existing Nuisance Code to address the exterior conditions, and sometimes an abatement addresses interior conditions as well, of residential and commercial properties
- City Council would need to direct additional resources and staff capacity to further research how all, or portions, of the IPMC might be adopted and applied in Billings to further address properties in poor condition. Such a process would likely involve, but not be limited to, a Council and staff working group, community stakeholder involvement, possible outside code expertise and guidance, and, ultimately, a budget and staffing plan to implement the new code.