

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 26, 2020

The Billings City Council held the regular meeting via virtual video-conferencing due to the COVID-19 response. Mayor Cole called the meeting to order at 5:30 p.m. and served as the meeting's presiding officer. He provided an explanation for the virtual meeting setting and stated Council was cooperating with the CDC guidelines for social distancing to flatten the curve of the COVID-19 infection rate. He continued that Council was doing everything they possibly could to protect citizens' rights to participate in public meetings by having it televised live, and offering a call-in period for public comments. Councilmember Boyett gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Shaw, Yakawich, Neese, Ewalt, Joy, Choriki, Purinton, Ronning, Boyett and Brown.

MINUTES: May 11, 2020 – Pending

COURTESIES:

- Rich St. John, Police Chief, presented a Citizen's Award to Mike Nelson, Northern Hotel Manager, for his role in helping the Police Department in a human trafficking situation. His assistance helped Police reunite the young victim with her family and led to an arrest of the suspect.

PROCLAMATIONS:

- Mayor Cole proclaimed June as Men's Health Month. He encouraged healthy lifestyles, preventative health and early detection practices.

COUNCIL REPORTS:

- There were no Council reports.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

- Mr. Kukulski stated the following ex-parte communications were received after 3:00 PM:
 - An email from Tom Rupsis regarding ponds at Centennial Park.
 - An email from Joe Holden regarding Item 2 of the Regular Agenda.
 - An email from Pam Ellis regarding Park District 1 spending.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: ALL items.
Speaker sign-in required. (Comments are limited to three (3) minutes or as set by the Mayor. During COVID-19, the method to take and hear public comment has changed. Individuals wishing to give public comment will call a dedicated phone line (237.6196)

and held in queue until it is their turn to comment. Comments on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For items not on this agenda, public comment will be taken at the end of the agenda.)

The public comment period was opened and the following calls were received:

- **Clark Johnson, 6180 Masters Boulevard, Billings, Montana**, sent a letter asking Council to create a separate millage for the Parks and Recreation Department.
- **Pam Ellis, 2000 Outlook Drive, Billings, Montana**, stated people did not trust the Parks and Recreation budgeting process and funds from PD1 were being used for Coulson Park. She encouraged Council to move forward with the mill levy vote. Chris Kukulski, City Administrator, stated PD1 funds were not being used for the Coulson Park Master Plan and staff would further explain during the Consent Agenda.
- **Scott Wetzel, 439 Grandview Boulevard, Billings, Montana**, in reference to Item 3, encouraged Council to obtain public opinion regarding the conversion of one-way to two-way streets.

The following constituents spoke in favor of allowing 5-foot sidewalks on Aronson Avenue:

- **Corey Brinkman, 951 Aronson Avenue, Billings, Montana.**
- **Jeanie Pearson, 1033 Aronson Avenue, Billings, Montana.**
- **James Coanni, 202 Ashley Court North, Billings, Montana.**
- **Debby Beartusk, 1032 Aronson Avenue, Billings, Montana.**
- **Leo Wohler, 933 Aronson Avenue, Billings, Montana.**
- **Chris Alamond, 1001 Aronson Avenue, Billings, Montana.**

There were no further callers, and the public comment period was closed.

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **W.O. 18-32: Landfill Slope Stability.** (Opened 5/12/20) Recommend Dan Hart Patrol Service, LLC, base bid only; \$527,904.
2. **Three Compact Track Loaders.** (Opened 5/12/20) Recommend Tractor and Equipment; \$247,830.

- B. **Agreement** with Yellowstone County Sheriff's Department to provide FY2021 data processing services; annual revenue \$131,181.

- C. **Consultant Services Agreement** with Sanderson Stewart for the 5th Avenue North Corridor Feasibility Study; not to exceed \$97,000.
- D. **Donation** to the City of Billings from Exxon for fuel for Public Safety vehicles.
- E. **Acknowledge receipt of petition to vacate** the alley right of way adjacent to Lots 1-6, Block 1 of La Ray Subdivision, Propiedad, LLC, petitioner, and set a public hearing for June 22, 2020.
- F. **Utility Easement** with Vision Net to install fiber optic line in the Galaxy Subdivision.
- G. **Approval** of City Administrator's moving expenses with King Transfer and Storage Company; \$7,087.80.
- H. **Bills for the Weeks of:**
 - 1. April 20, 2020
 - 2. April 27, 2020

Councilmember Purinton separated Item 1C for discussion

Councilmember Brown separated Item 1H1 in order to abstain.

Councilmember Ewalt separated Item 1E for discussion.

Councilmember Neese asked for clarification on Item 1H2. Andy Zoeller, Finance Director, stated the Coulson Park Master Plan had been included in the FY19 Capital Improvement Plan (CIP). He added that there had been some grant and donation contributions deposited into the PD1 fund, therefore, those grant and donation funds were being taken from that account.

Councilmember Yakawich moved for approval of the entire Consent Agenda, with the exception of Items 1C, 1E and 1H1, seconded by Councilmember Neese. On a show of hands vote, the motion was unanimously approved.

CM Purinton asked for clarification on Item 1C. Wyeth Friday, Planning Director, stated it was a feasibility study for the 5th Avenue corridor that ran through downtown toward Metra Park. He added the study was considering developing a connection from Metra Park to downtown, with public transportation, art installations, etc. He stated there was a rail link in the area and the plan could include repurposing the rail link. He added the Yellowstone Art Museum, YMCA, Billings Library and several businesses had expressed interest in the study. He stated Council had approved the study in the previous year's work plan.

Councilmember Ewalt made a motion to postpone Item 1C, seconded by Councilmember Neese.

Councilmember Ewalt asked if the study was financially time-sensitive. Mr. Friday stated the study had been approved by Council through the annual work plan, the County Commissioners, Planning Board and the community. He stated the Department of Transportation and the Federal Highway Administration had provided a funding allocation for the study that would need to be used by October 2020.

Councilmember Neese asked if the Tax Increment Finance Districts had participated in the financing of the study. Mr. Friday stated EBURD had participated as a stakeholder and community engagement, but not financially.

Councilmember Neese made a substitute motion for approval of Item 1C, seconded by Councilmember Ronning.

Councilmember Yakawich asked for clarification on previous opinions of the study. Mr. Friday stated Council had chosen to not approve the contract in June of 2016. He stated the overall opinion of businesses in the area and the EBURD were much more supportive of the study at this time.

On a show of hands vote, the motion to approve Item 1C, was approved 9-2, Councilmembers Ewalt and Purinton opposed.

Councilmember Ewalt, in reference to Item 1E, asked for clarification on who would own the property. Debi Meling, City Engineer, stated the property owners had signed the property off to the owners to the north and added more information would follow during the vacation process. She stated Item 1E was acknowledging the receipt of the petition to vacate and not actual approval of the vacation.

Councilmember Choriki moved for approval of Item 1E, seconded by Councilmember Neese.

Councilmember Neese asked what would happen if Council did not approve Item 1E. Brent Brooks, City Attorney, stated legally the petitioner would need an opportunity to provide further information and Council would be provided more information during the vacation process.

On a show of hands vote, the motion was unanimously approved.

Councilmember Choriki moved for approval of Item 1H1, seconded by Councilmember Boyett. On a show of hands vote, the motion was approved 10-0, Councilmember Brown abstained.

REGULAR AGENDA:

2. WITHDRAWAL of the unexecuted Development Agreement with WC Commercial. Staff and Downtown Business Partnership (DBP) recommend approval. (Action: approval or disapproval of staff and DBP recommendation.)

Brent Brooks, City Attorney, stated Council had previously asked if the City had any legal liability in withdrawing the development agreement and he stated since the agreement had not been signed by either party, the City would not have any liability.

Andy Patten, Attorney with Patten, Peterman, Bekkedahl and Green, stated there had been many discussions with Mr. Holden, owner of the Stillwater Building, and he would not sign the agreement due to objections of the 50% private ownership clause, which had been included by the City in order for the building to be a taxable entity. He stated a letter had been received by Mr. Holden that gave an overview of his objections to the agreement. Mr. Patten stated Mr. Holden had been given over one year and in that time, he had chosen not to sign the agreement.

Councilmember Boyett moved for approval of Item 2, seconded by Councilmember Joy.

Councilmember Purinton stated she had requested earlier documents in order to determine whether there was a disparity between the two sides and found the information confusing. Mr. Patten stated there had been discussions of a claw back and the Downtown Billings Alliance (DBA) had never approved it. He stated there was a document with a draft watermark on it and he did not know where it came from or how it came to be. He added that the current agreement was advantageous to Mr. Holden, but after many failed attempts of trying to get Mr. Holden to sign it, he recommended withdrawing the agreement.

Council discussed the various clauses of the development agreement and how each clause would affect individual parties.

Councilmember Ronning asked how many times both parties had met to discuss the development agreement.

Katy Easton, Downtown Billings Alliance (DBA) CEO, stated there had been several meetings in which an agreement had not been met. She stated several emails had also been sent, but DBA had not received a response from Mr. Holden. She added the improvements Mr. Holden had made to the Stillwater Building had mitigated a very blighted building and stated it was a huge improvement for downtown.

Councilmember Choriki asked if the occupancy, tax exemption and timeframe clauses in the Tax Increment Finance (TIF) development agreement were standard. Mr. Patten stated there had been criticism from Council during the Alberta Bair agreement,

since it was a nontaxable entity, therefore, the TIF Board had worked on ensuring a taxable income in future TIF agreements.

On a show of hands vote, the motion to withdraw the development agreement was approved 8-3, Councilmembers Neese, Ewalt and Purinton opposed.

Mayor Cole called for a recess at 7:39 pm.

Mayor Cole called the meeting back to order at 7:45 pm.

3. RESOLUTION 20-10873 authorizing the issuance and negotiated sale of Tax Increment Bonds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Andy Zoeller, Finance Director, gave a PowerPoint presentation on the parameter's resolution authorizing the issuance of bonds and extending the life of the Tax Increment Finance (TIF) District. He stated the bonds would be used for the conversion of North 29th and North 30th into two-way streets and to upgrade parking garage gate equipment in all three City garages. He stated the sunset date for the TIF was fast approaching and the extension was necessary if Council wanted to continue the TIF District.

Council discussed the two-way street conversion and how it would affect the businesses in the area. Mayor Cole asked for clarification on the public engagement process for the conversion. Chris Kukulski, City Administrator, stated further public engagement process would occur within the next year and staff would seek out community input on the conversion, timing, schedule, etc.

Wyeth Friday, Planning Director, stated the DBA and City staff had been doing outreach with property owners. He added that surveys had been sent and consultants had met with various task forces for input.

Katy Easton, DBA CEO, stated businessowners on 29th and 30th Streets were overall in support of the project. She stated her team was constantly reaching out to owners in the area for their opinions.

Councilmember Yakawich moved for approval of Item 3, seconded by Councilmember Shaw.

Council discussed downtown revitalization and the financial ramifications of not extending the TIF.

Councilmember Neese made a substitute motion for approval of Item 3 with the Tax Increment Finance District not extending past July 1, 2038, seconded by Councilmember Boyett. On a show of hands vote, the substitute motion failed 4-7,

Councilmembers Shaw, Yakawich, Joy, Choriki, Ronning, Brown and Mayor Cole voting in opposition.

On a show of hands vote, the motion for approval of Item 3, was approved 8-3, Councilmembers Neese, Ewalt and Purinton opposed.

4. RESOLUTION 20-10874 ordering improvements for the 2020 Missing Sidewalk Program. Staff recommends approval. (Action: approval of disapproval of staff recommendation.)

Dave Mumford, Public Works Director, gave a PowerPoint presentation of the 2020 Missing Sidewalk Program and the area on Aronson Avenue that Council was reconsidering. He clarified that the Americans with Disabilities Act (ADA) had been brought up by a constituent, but added those standards were meant for structures. He stated the Public Right of Way Access Guidelines (PROWAG) were the Federal guidelines for rights of way, and were the guidelines used by the City and State of Montana. He stated PROWAG recommended a 6-foot right of way, but would allow an absolute minimum of 48 inches with a 2-foot buffer. He gave an overview of the possible alternatives for design of the Aronson Avenue. He informed Council that any modifications would require a design change and suggested that staff be allowed additional time to make design changes and reassess costs.

Councilmember Boyett moved for approval of Item 4, 2020 Missing Sidewalk Program, as recommended by staff, but allow curb walk modifications, as suggested by homeowners on Aronson Avenue, seconded by Councilmember Ewalt.

Council discussed the PROWAG standards, and how curb walk width would be handled around mailboxes, trees and other obstructions.

Debi Meling, City Engineer, informed Council that any design changes on Aronson Avenue would require modifications to the plans and could change the homeowner costs. She added Public Works would like ample time to notify homeowners of the proposed changes and how they would be affected. She added that walkability, safety and how the City wanted its streets to look needed to be considered. Council asked for clarification on various curb walk width options that could be considered for Aronson Avenue curb and how width would be handled around mailboxes.

Councilmember Yakawich made a substitute motion to allow staff discretion to work with homeowners to install a minimum 6-foot curb walk or boulevard on Aronson Avenue, seconded by Councilmember Ronning.

Council discussed the overall curb walk policy for the City, the minimum standards, accessibility and safety.

Councilmember Brown called the question. On a show of hands vote, the motion to proceed to the vote was unanimously approved.

On a show of hands vote, the substitute motion was approved 6-5, Councilmembers Neese, Ewalt, Joy, Purinton and Boyett voted in opposition.

Mayor Cole called for a recess at 10:12 pm.

Mayor Cole called the meeting back to order at 10:16 pm.

Councilmember Brown made a motion to postpone Item's 5 and 6 to the May 27th Work Session meeting, seconded by Councilmember Yakawich. On a show of hands vote, the motion to postpone the final two items on the agenda was approved 10-1, Councilmember Ewalt voted in opposition.

5. PROPOSED ORDINANCE amending City Charter by repealing and replacing Section 1.05.1, Public Safety 2 (PS2) and PROPOSED RESOLUTION with ballot language, providing for a permanent mill levy to fund fire, police, and related public safety expenses to be referred to the voters. POSTPONED

6. PROPOSED ORDINANCE amending City Charter by providing a new dedicated, permanent and non-cumulative mill levy to fund Parks, Cemeteries, Recreation, Trails, Public Lands and its operations and maintenance and PROPOSED RESOLUTION with ballot language, to be referred to the voters. POSTPONED

PUBLIC COMMENT on "NON-AGENDA ITEMS". Speaker Sign-in required.
(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes or as set by the Mayor. Please call 237-6196 during the Public Comment period.)

The public comment period was opened, and the following individual placed a call into the public comment telephone line.

- **Tim Warburton, 3444 Lucky Penny Lane, Billings, Montana:** stated the Council meetings were not being ran efficiently and certain members of Council were making the meetings painfully long. He stated some Councilmembers were trying to micromanage City business and not allowing the City Administrator and staff to do their jobs. He stated topics like a nondiscrimination ordinance were not given enough of Council's time, but the topic of curb walk on a single street could warrant hours of Council time. He thanked the Councilmembers that served the City and encouraged them to be more efficient with their time.

There were no further callers and the public comment period was closed.

COUNCIL INITIATIVES:

There were no Council initiatives.

There was no further business, and the meeting adjourned at 10:32 p.m.

CITY OF BILLINGS



By: William A. Cole
William A. Cole, Mayor

ATTEST:

By: Denise R. Bohlman
Denise R. Bohlman, City Clerk