

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

June 22, 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 Shaw gave the invocation.

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

COVID-19 Update by Unified Incident Command (UIC): John Felton, Yellowstone County Health Officer, provided an update on the increased number of cases and what the various counties in Montana were doing to contain the virus. He stated that 2,000 tests were available for people who wished to participate in the drive-through event on Saturday, June 20th at the Metra Park grounds, but only about 460 tests were actually administered. He continued that the test results would be available within two weeks.

MINUTES:

The March 26, 2020 minutes and June 8, 2020 minutes were pending.

COURTESIES:

There were no courtesies.

PROCLAMATIONS:

Mayor Cole proclaimed June 20th as Juneteenth National Freedom Day and stated the proclamation was delivered by Councilmember Yakawich during a Juneteenth (the emancipation of African Americans from slavery) celebration at South Park.

COUNCIL REPORTS:

There were no council reports.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

Mr. Kukulski stated there were two ex-parte communications received after 3:00 PM concerning Regular Agenda Item 6 and the passage of the budget as it related to keeping the pools and splash pads open.

Mr. Kukulski reminded Council that there would be no meeting on Monday, June 29th, as it was the fifth Monday of the month and therefore a bye week.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 and 8 ONLY.
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. There were no speakers and the public comment period was closed.

1. **CONSENT AGENDA:**

A. **Bid Awards:**

1. **SID 1408: Wanigan Subdivision Improvements.** (Opened 6/9/20) Recommend FirstMark Construction, LLC; \$759,525.
2. **SID 1410: Annafeld Park Trail Improvements.** (Opened 6/9/20) Recommend FirstMark Construction, LLC; \$103,429.
3. **SID 1410: Annafeld Subdivision, 2nd Filing, Streetlights.** (Opened 6/9/20) Recommend Ace Electric, Inc.; \$129,530.
4. **SID 1413: Winged Foot Road and Greenbriar Road.** (Opened 6/9/20) Recommend Knife River - Billings; \$843,704.75.
5. **W.O. 20-01: 60-inch Sewer Interceptor Trenchless Rehabilitation Project.** (Opened 6/2/20) Recommend Insituform Technologies, LLC; \$2,791,278.
6. **W.O. 20-11: Lloyd Mangrum and Lake Hills Lift Station Rehabilitation.** (Opened 6/9/20) Recommend rejecting all bids.
7. **W.O. 20-16: Rectangular Rapid Flashing Beacons Installations.** (Opened 6/9/20) Recommend Montana Lines, Inc.; \$383,660.

8. **W.O. 20-23: Solid Waste Container Storage Facility.** (Opened 6/9/20) Recommend FirstMark Construction, LLC; \$469,665.
 9. **W.O. 20-39: 2020 Miscellaneous Drainage Improvements.** (Opened 6/9/20) Recommend KLE Construction, LLC; \$417,630.
 10. **W.O. 20-40: Walter Pump Station Generator.** (Opened 6/9/20) Recommend CEI Electrical Contractors; \$281,000.
 11. **W.O. 20-42: North 29th and 30th Street Two-Way Conversion.** (Opened 6/9/20) Recommend Montana Lines, Inc.; \$1,468,327.05.
- B. **Professional Services Contract** for W.O. 20-44: Water Reclamation Facility Nutrient Recovery Improvements Project with HDR Engineering, Inc.; \$638,300.
 - C. **Amendment No. 6, Phase Two Terminal Concourse Expansion Project** Professional Services Contract with Morrison-Maierle, Inc.; \$1,707,736.
 - D. **Amendment to Gross Maximum Price (GMP) Agreement** with Sletten Construction for Airport Terminal Concourse Expansion Project, Phases 2-5; \$40,326,911.
 - E. **Consultant Agreement** for W.O. 20-30: Hallowell Lane Improvements with Sanderson Stewart; \$306,865.
 - F. **Consultant Agreement** for W.O. 20-30: Hallowell Lane Improvements with WWC Engineering; \$308,410.
 - G. **Landfill Agreement** with Yellowstone County; \$258,000.
 - H. **Purchase Agreement** for Water Reclamation Facility for 15,000V disconnect and transformer replacements with CTC Solutions, Inc.; \$458,765.
 - I. **Purchase Agreement** of parking access and revenue control system with Flash Parking; in an amount not to exceed \$500,000.
 - J. **Resolution 20-10877** relating to \$1,133,315.78 pooled Special Improvement District bonds, Series 2020 (SID 1408, SID 1410 and SID 1413); fixing the form and details and providing for the execution, delivery and security.
 - K. **Resolution 20-10878** relating to Tax Increment Bonds; fixing the form and details and providing for the execution, delivery and security.

L. Bills for the Weeks of:

1. May 18, 2020
2. May 26, 2020

Councilmember Brown separated Items 1C and 1L2, in order to abstain, stating that his employer was the beneficiary in each of these agenda items.

Councilmember Neese separated Item 1K for discussion.

Councilmember Yakawich moved for approval of the entire Consent Agenda, with the exception of Items 1C, 1K and 1L2, seconded by Councilmember Ronning.

Councilmember Ewalt asked about Items 1A1, 1A2, 1A3, and 1A4 all being in the approved Capital Improvements Program (CIP). He stated that all of the bids came in lower than the estimated costs in the CIP. He asked when the amounts to the property owners involved in the SIDs would be adjusted. Mr. Kukulski stated that once the projects were completed and all the costs were determined, adjustments would be made and that no adjustments would ever be more than the estimated costs to the property owners. Andy Zoeller, Finance Director, stated the City would not over-borrow and then over-assess property owners during the bonding period in Item 1J. Jennifer Duray, Deputy Public Works Director, stated that the bid amounts were provided to the Finance Department to help with determining actual construction costs for bonding purposes. Councilmember Ewalt followed by asking why Item 1J was on the consent agenda for approval now, rather than at a time in the future when all of the final costs were determined. Mr. Kukulski stated the projects needed to move forward and if Council did not approve the bid awards, the projects would be dead. He continued it was his understanding that he, with the assistance of the Finance Director, had authority to adjust the amounts up or down so long as they did not exceed the amounts in the CIP.

Councilmember Neese stated the documents do not state "in an amount not to exceed" and should not have an exact amount. Councilmember Brown was concerned that if the wording about "not to exceed" were included, that might cause a problem with change orders. Ms. Duray responded that the bonding needed to happen before July or the City would not have enough money to get the projects started. She continued that the amount approved by Council was always the maximum, including contingencies for change orders. She clarified that any adjustments would be made during the next tax cycle.

By a show of hands vote, the motion to approve the entire Consent Agenda, with the exception of Items 1C, 1K, and 1L2, was approved unanimously.

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

Councilmember Neese, in reference to Item 1K, clarified with Andy Zoeller, Finance Director, that by approving this item, the TIF district would be extended by five years. Mr. Zoeller responded affirmatively and stated Council had approved, by resolution, the parameters in which the bonds would be sold. He continued that the maximum interest rate was approved up to 5% and this was coming in at 3.5%. Councilmember Neese asked if it were possible to hold off on approving a parameters resolution approving the sale of bonds, etc. Mr. Zoeller stated that was not possible and the process was clearly defined by State statute.

Councilmember Ronning moved for approval of Item 1K, seconded by Councilmember Boyett. By a show of hands vote, the motion was approved 9-2, Councilmembers Neese and Ewalt voted in opposition.

Councilmember Joy moved for approval of Item 1L2, seconded by Councilmember Boyett. By a show of hands vote, the motion was approved 10-0, Councilmember Brown abstained.

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 977: a zone change to amend the zone district boundary lines within the Planned Development Agreement (PDA) to increase the acres in the underlying Community Commercial (CC) zoning; increase the acres in the Neighborhood Commercial (NC) zoning; decrease the acres in the Residential Multi-family (RMF) zoning; and decrease the acres in the Residential Manufactured Home (RMH) zoning, generally located at King Avenue West and 48th Street West, Western Sky Subdivision. Mont Vista, LLC, owner, Sanderson Stewart, agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.)

Karen Husman, Planner, gave a brief presentation and explained the various zones throughout the area. She stated the zoning would be realigned with boundary line adjustments. The boundaries would be relocated to allow ingress and egress access. She continued that there was no significant deviation from the original plan for the land. She stated the Zoning Commission held its public hearing, reviewed the 10 criteria and forwarded a recommendation for approval.

Councilmember Neese asked when the Community Commercial zoning originally took effect. Ms. Husman stated it was 2017.

The public hearing was opened. There were no callers and the public hearing was closed.

Councilmember Neese moved for approval of Zone Change 977, seconded by Councilmember Boyett. By a show of hands vote, the motion was approved 10-0. Councilmember Purinton was excused due to technical difficulties during the vote.

3. PUBLIC HEARING AND RESOLUTION vacating the alley adjacent to Lots 1-6, Block 1, La Ray Subdivision; Propiedad, LLC, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Debi Meling, City Engineer, provided a brief presentation and explained the proposed usage of the land located in the Heights. She stated there was one parcel to the north and several parcels to the south. She continued that the alley was dedicated with the plat of La Ray Subdivision in 1960. In 2015 the unplatted property to the north of the alley was annexed into the City, so the City acquired the right-of-way adjacent to Lincoln Lane through the alley. She continued that there was not a lot of information concerning the development plan, but the Petitioner's representative was available and could provide more information. She provided the valuation of the alley at \$2.18 per square foot and the alley consisted of 4,730 square feet, \$10,311.40. Ms. Meling stated the recommendation on the agenda was different than that in the staff memo. She continued that the staff recommendation was that Council approve the vacation with the condition of the 10 foot right-of-way.

Mayor Cole was concerned about the property to the south and asked whether there should be some condition placed on it so it would not become a County orphan. Ms. Meling stated the parcels were owned by different people and the people to the south were quitclaiming their interest in the alley, but the rest of the parcel would remain in the County.

Councilmember Neese asked whether Griffing Lane had enough room for residential service. Ms. Meling stated Griffing Lane was unconstructed at this time, and it was not a part of the conversation with the applicant, but she could research it.

Councilmember Ewalt stated the original petition indicated a dry storage building would be erected both to the north and south of the alley. He asked for clarification on as it appeared they would be straddling the alley on both the north and south parcels, which could mean part of it would be in the City and part of it would be in the County. Ms. Meling responded that since that original petition was received, conversations with the applicant/developer had occurred. She continued it was made clear that one could not be in the City and one in the County, and if water and sewer connections were to occur, they would have to be annexed into the City. Scott Aspenlieder, the applicant's representative, confirmed that the two parcels were owned by two different owners. He continued that the plan was to build a dry storage building on the north parcel. He stated the owner of the southern parcel was working with a developer to sell the six lots that were not aggregated yet and he explained what had occurred with the County Commissioners to that end. He added the two developers were not moving in the same trajectory. He stated it was currently zoned for Community Commercial and if it were to be developed and needed water or sewer and was located within 500 feet of the City, it would have to be annexed into the City. Ms. Aspenlieder could not confirm whether there would be any agreements between the two developers or whether they would work collectively on any projects. He said there was no ability to place a well or septic on the property.

Councilmember Ewalt questioned whether public utilities were needed for a dry storage building with an office area and restrooms. Mr. Aspenlieder stated that portion of the building was in the City and would utilize City utilities, but he could not speak as to whether there was an agreement between the developers.

Councilmember Neese asked what was being done in the County. Mr. Aspenlieder referred to the plat map, stating there was a public road that split Lots 1 through 6 and caused there to be Lots 1A and Lot 2A, in Block 2. He stated the public right-of-way above those two lots was vacated by the County right down the middle. He continued that there was no ability to build on that property because the lots are so small and a septic cannot be placed on any property less than .5 acres and it is within 500 feet of the City. He stated in order to develop that property, all six lots would have to be aggregated. Councilmember Neese asked Ms. Meling if City Engineering was aware that the developers had gone to the County to obtain a vacation. Ms. Meling responded they were not aware. Councilmember Neese asked if that affected staff's recommendation. Ms. Meling responded that the 20 feet was not a big concern and that staff did not have a strong opinion one way or the other.

The public hearing was opened. There were no callers and the public hearing was closed.

Councilmember Ewalt moved to deny the vacation of the alley, unless all parcels were annexed into the City, seconded by Councilmember Yakawich.

Councilmember Choriki asked whether the motion was in order. He stated that each of the developers had absolutely no control over the other and the motion was asking Council to consider property that was not a part of the petition. Mayor Cole stated perhaps the motion could be worded in a way that referred to if the applicant acquired an interest in the property the applicant would be required to petition for annexation.

Councilmember Ewalt stated he made the motion because of the information provided to Council – that being that the development would occur on both sides of the vacated alley. He continued that the City needed to stop given away its services.

Councilmember Neese asked whether there was a time limit in which the applicant could return to Council if it was denied. Ms. Meling responded there was no statute concerning applicant time limitations. He stated he supported the motion due to learning that the applicants had gone to the County for vacation of the alley without the City's staff knowing about it. He continued that the development of Griffing Lane needed to be addressed.

Councilmember Joy asked what City services were being given away. Chris Kukulski, City Administrator, stated he could not clarify whether any City services were

being provided directly or indirectly to the properties adjacent to the applicant's property whether it was fire (BUFSA served) or utilities.

Councilmember Brown called the question on the motion. By a show of hands vote, the call of question was approved 9-2, Councilmembers Yakawich and Joy voted in opposition.

Council proceeded to the vote on Councilmember Ewalt's motion to deny. By a show of hands vote, the motion was failed 5-6, Councilmembers Ronning, Shaw, Joy, Brown, Choriki and Mayor Cole voted in opposition.

Councilmember Choriki moved to approve the vacation of the alley in exchange for 10 feet of right-of-way along Lincoln Lane to the City, as recommended by staff, seconded by Councilmember Shaw.

Councilmember Yakawich stated he would oppose the motion because the information was new to Council and he had concerns about the development of the area. He stated the development of the area needed more attention.

Councilmember Boyett stated his experience on the Zoning Commission was that when there was confusion it was best not to pass the item until clarification was achieved. He continued he was not opposed to the applicant returning once the new information was explained.

Mayor Cole stated he would oppose the motion, but would support a motion to table the item until clarification could be made on the new details.

Councilmember Choriki stated he would accept an amendment to his motion stating that if the applicant acquired the parcel to the south, that they be required to annex into the City.

Chris Kukulski asked if the applicant's representative could verify whether postponing a decision for a few weeks was detrimental to the project before more motions were considered.

Councilmember Neese made a substitute motion to table the item until the new information could be clarified and a solution for Griffing Lane considered, seconded by Councilmember Boyett.

Mayor Cole acknowledged Scott Aspenlieder and asked if he would like to address Mr. Kukulski's inquiry. Councilmember Neese called point of order and stated the developer had an opportunity to speak earlier and it was now time for Council's discussion and vote.

By a show of hands vote, the substitute motion to table the item was approved 9-2, Councilmembers Shaw and Choriki voted in opposition.

4. PUBLIC HEARING AND RESOLUTION 20-10879 establishing and revising Planning and Engineering Divisions' fees for FY21-FY22. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Monica Plecker, Planning Division Manager, stated this item was a joint effort with the Engineering Division. She stated the fees are presented as one, but the two divisions actually benefit from the fees and work together on applications. She provided a PowerPoint presentation and explained that Council instructed the Planning Division to provide fee changes/increases every two years for its consideration. She stated the proposed fee increase was 10% for FY21-FY22. She continued that personnel, operations and maintenance costs were considered in the proposed fee increase. Ms. Plecker stated no increase was asked for signs because sign fees were based on size at \$3/sf. She stated there was a new fee for phased subdivisions that was passed by the legislature and she based the fee on the amount of time required by staff and the process involved. She stated another increase was to the annexation signs because of the cost of the sign bonds. She explained that she was careful to consider the fees in other major cities in Montana and often the other cities fees were significantly higher than Billings'. Ms. Plecker's presentation continued to review the exhibits for platting fees, zone change fees, engineering fees and Project Re:Code fees. She stated the estimated realized revenues with the 10% increase could be approximately \$25,000 for the Planning Division and \$6,000 for the Engineering Division. She explained that because the Planning Division was a City/County Planning Division, she would advise the County Commissioners of the budget and the Council's decision.

Councilmember Purinton asked how the fees for Project Re:Code differed from the fees presently. Ms. Plecker explained that there were certain processes in Project Re:Code that were not currently in place, i.e. landscape review, planned neighborhood developments. She stated she had to consider the amount of time each of these new processes would take and because fees were considered every two years, she was trying to keep the fees acceptable. Councilmember Purinton followed by asking when the fees associated with Project Re:Code would take effect. Ms. Plecker stated it was important to have those fees approved and ready to be assessed once Project Re:Code was approved so no applications would be interrupted. She explained that both divisions are not General Fund and collection of fees was their revenue base.

Councilmember Brown stated a 10% increase seemed too big of an increase. He asked if there was a \$25,000 deficit in the Planning Department and a \$6,000 deficit in the Engineering Division. He asked if the customer would see improved services from the additional fees. Ms. Plecker responded the fees were designed to recover the cost of service currently experienced by staff for each item. She stated the Planning Department was trying to improve their online submissions and digital plat reviews and there was currently a gap that required the increase. She provided an example of where a 10% increase on a major plat fee was equal to about \$600 and for some zoning fees it was about \$7, so not much of an increase overall. She clarified that the increase would cover the cost of providing the current services, but not add anything additional.

Mayor Cole suggested the proposed resolution's language include: that effective upon adoption of Project Re:Code in full or if approved, in part, and requiring any service described in Exhibit B. Ms. Plecker stated she would not object to the additional wording because the fees must be in place at the time of the adoption of Project Re:Code. Wyeth Friday, Planning Director, stated that Project Re:Code was a very large project, however, all of the pieces of it would fit with the whole of everything in Planning and it could not be adopted in parts.

Councilmember Neese stated he preferred that the fees' discussion occur annually rather than every two years and asked how that could be changed. City Administrator, Chris Kukulski, stated he could not speak as to why the fees were reviewed for changes every 2 years, but stated that some of the staff time spent researching fees was significant and perhaps that was why the investment of staff time was justified every other year. Councilmember Neese stated he did not want to approve fees related to Project Re:Code prior to its adoption.

Councilmember Shaw stated that if she were a developer, looking to the future, she would want to be able to anticipate costs and she preferred adoption of the fees related to Project Re:Code now. Monica Plecker reiterated the importance of the fee structure being adopted and in place at the time Project Re:Code was adopted. She continued that it is very clear in the resolution that the fees would not go into effect until the adoption of Project Re:Code, whenever that may be.

The public hearing was opened.

- **Ryan Bradenburg, 216 Rhea Lane, Billings, Montana**, stated the 10% increase was pretty considerable and he had not heard justification for the increase.

There were no further callers and the public hearing was closed.

Councilmember Neese asked when the fee structure was determined. Ms. Plecker responded that she began the evaluation process in March in preparation for the budget.

Councilmember Joy moved to approve a resolution establishing and revising Planning and Engineering Divisions' fees for FY21-FY22, seconded by Councilmember Shaw.

Councilmember Ewalt stated this was the first time Council had heard about the 10% increase. Mr. Kukulski responded that the increases were spoken about during the budget process, but perhaps not to this degree of detail and should not be a surprise. He continued that these costs were applicant driven and it was the Council's desire to review fees on a regular basis to keep current with costs of services.

Councilmember Brown stated he would support the motion.

Councilmember Joy stated that Project Re:Code is well-known and the members of the committee are from the development and construction industries. She stated that the changes that will be brought about through Project Re:Code have had the input of these industries and Councilmember should not be apprehensive about the fee structure associated with its adoption.

Mayor Cole asked if Councilmember Joy would consider an amendment to her motion that would change the language in the resolution that upon adoption of Project Re:Code in full or if approved, in part, and required services, the fees would apply. Councilmember Joy was in agreement to the amendment and Councilmember Shaw was in agreement, as well.

Councilmember Neese stated he agreed with the 10% increase, although his preference was that it be distributed 5% in FY21 and another 5% in FY22. He continued that he did not agree that the fees structure for Project Re:Code items be in the resolution at all and that portion of the language should be removed. He stated he has had conversations with area developers who have had no idea Project Re:Code was coming. He suggested that there could be even more increases necessary once Project Re:Code was adopted. Councilmember Neese made a substitute motion to approve a resolution establishing and revising Planning and Engineering Divisions' fees for FY21-FY22, but removing the related fees concerning Project Re:Code in Exhibit B, seconded by Councilmember Ewalt.

Councilmember Choriki called point of order and stated that one could not speak in favor of a motion before making a motion. Mayor Cole allowed it.

Councilmember Ronning stated she would not support the substitute motion. She stated she had been involved in Project Re:Code for the past 2 years and developers need to learn about it.

By a show of hands vote, Councilmember Neese's substitute motion failed 4-7, Councilmembers Shaw, Yakawich, Joy, Choriki, Ronning, Boyett and Mayor Cole voted in opposition.

By a show of hands vote, Councilmember Joy's amended motion was approved 9-2, Councilmembers Neese and Purinton voted in opposition.

5. PUBLIC HEARING AND RESOLUTION 20-10880 approving and adopting Public Works right-of-way fees for FY21-FY22. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Jennifer Duray, Deputy Public Works Director, began a brief presentation concerning the fee review process. She explained there was an extensive amount of work required to review fees and that was why it was done every other year, rather than

yearly. She reaffirmed that the Public Works Department was completely out of the General Fund and it was necessary that fees cover the full cost of services. She stated that right-of-way fees are associated with contractors that do work in the City's right-of-way and are paid for the work they do in those rights-of-way. She stated the recommended increase was 10% overall.

Councilmember Neese asked if the \$1/sf. for the encroachment fee was enough. Ms. Duray stated Public Works was reviewing an increase in the encroachment fee and would likely make a suggestion to Council for a fee adjustment in September.

Councilmember Ewalt asked whether contractors that worked in City roads and then sink holes later developed needed to be bonded. Debi Meling, City Engineer, responded affirmatively. She stated that the fees were reviewed and increased every two years. Councilmember Ewalt stated there were several streets that had repairs to them that were in very bad shape and it had been longer than two years ago that the repairs were completed. He wanted to know to whom to report the defects and how it worked. Ms. Meling stated she could be contacted about it and explained that each job had a walk-through of the affected area 11 months after the work was completed to ensure the work was not failing.

The public hearing was opened. There were no callers and the public hearing was closed.

Councilmember Purinton moved for approval of Item 5, as recommended by staff, seconded by Councilmember Choriki. By a show of hands vote, the motion was approved unanimously.

Mayor Cole called for recess at 7:33 pm.

Mayor Cole called the meeting back to order at 7:40 pm.

6. PUBLIC HEARING AND RESOLUTION 20-10881 approving and adopting FY21 budget. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Chris Kukulski, City Administrator, reviewed all the aspects to prepare the overall budget, which begins in December with the adoption of the Capital Improvement Plan, Equipment Replacement Plan and Technology Replacement Plan. He stated that the proposed resolution included a \$1 million increase in PD1; \$700,000 use of reserves in the General Fund; and \$1.7 million reduction for the City Administrator's original proposal wherein the Council had agreed not to approve a Public Information Officer (PIO) position, Lean Six Sigma program, and an Asset Coordinator position, and had asked for reductions in Fire, Police and Parks Departments. He compared data with other similar sized communities. He spoke to how the Public Safety Mill Levy could affect the General Fund budget. He reviewed the additional staffing positions Council approved, i.e., a prosecutor, a plumbing inspector and 2 solid waste maintenance

workers. He continued by reviewing the current residential rates and anticipated changes to those rates. He stated that the budget did not have to be adopted at this meeting, but it was preferred that a budget be adopted prior to the beginning of a new fiscal year on July 1st.

Council discussed various aspects and scenarios of the budget with the Finance Director, Andy Zoeller and Mr. Kukulski, which included moving the Parks Department operations and maintenance budget from the General Fund into PD1. Staff stressed that under the proposed budget, there would be no pool closures or laying off any sworn officers in the Police Department, but there would be a reduction through vacancy savings of about 4 positions that would not be filled. Mr. Kukulski stated the proposed budget assumed the passage of the Public Safety Mill Levy. He continued that without its passage, the current state of the budget would be \$4 million short by the next fiscal year and big changes would have to be made. Clarification from Police Chief, Rich St. John and Fire Chief, Bill Rash, was given concerning the cuts proposed. Mr. Kukulski stated that some maintenance on fire stations could be deferred because hail damage insurance coverages were making it possible to get the most needed repairs completed. Michael Whitaker, Parks and Recreation Director, stated the proposed cuts would not affect current service levels, but it would affect some of the programs.

Councilmember Neese asked if the budget would break even if \$1 million was not moved into PD1 and the Public Safety Mill Levy (PSML) passed. He then asked for clarification should the PSML fail, could Council move additional monies to PD1 to close the budget gap. Mr. Zoeller responded that it could be done through a public hearing and budget amendment. He continued that it would have to be done during the last Council meeting in September.

The public hearing was opened.

- **Camelita Dominguez, 4440 Laredo Place, Billings, Montana**, stated the City needed to be fiscally responsible and not continually dip into its savings. She stated Billings needed to invest in itself and build efficiencies. She encouraged Council to move all parts of the Parks budget into PD1.
- **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana**, stated the taxpayers want more police officers, not fewer. He stated the taxpayers want the City to spend down the reserves and they want to keep the same level of services and protections. He continued that the City did not need to cut officers.
- **Pam Ellis, 2000 Outlook Drive, Billings, Montana**, stated she did not see the impact of Public Safety Mill Levy 2 and she did not see the \$4 million plus from COVID monies reflected in the budget presentation. She continued that it did not seem equitable to make \$300,000 in cuts from Parks Department, when its operations expenses were only 10% of the General Fund. More cuts should have been reflected in the Fire and Police Departments. She continued that increasing taxes to PD1 at will, without giving the public the opportunity to vote on it, would likely decrease the passage of the future PSML.

- **Katherine Card, 2815 4th Avenue South, Billings, Montana**, thanked Council for their efforts and clarification about cuts to the Parks Department. She supported increases to taxes to keep those services. She supported having mobile crisis intervention professionals aiding in service calls, rather than sending police officers to crisis mental health situations.
- **Tim Warburton, 3444 Lucky Penny Lane, Billings, Montana**, thanked Council for their efforts. He stated that the Council needed to focus on sending a positive message about the passage of a PSML. He continued that comments about moving expenses around if the PSML does not pass, showed a lack of confidence by the Council toward the passage of the PSML. He did not support moving Parks' operations and maintenance from the General Fund to PD1.
- **Sonya Davis, Billings, Montana**, stated she appreciated Councilmembers Shaw and Yakawich and encouraged Council to protect the Parks' programs. She continued that she supported tax increases as an investment in the community.
- **Joe Fedin, 2533 River Oaks Drive, Billings, Montana**, stated the only way to balance a budget was to reduce expenses and/or increase revenues. He did not support moving Parks' operations and maintenance from the General Fund into PD1 and then he provided a history of the creation of PD1. He stated it might be time to change the Charter to adjust the number of mills.
- **John Biddle, 4 Lariat Circle, Billings, Montana**, stated that people had to pay for things they hold important and that would be through property taxes. He approved of moving the Parks' operations and maintenance expenses from the General Fund into PD1 to protect funding for public safety budgets.

There were no further callers and the public hearing was closed.

Councilmember Choriki moved to approve a resolution approving and adopting the FY21 budget as recommended by staff, seconded by Councilmember Yakawich.

Councilmember Ronning asked what the last possible date was to approve the FY21 budget. Andy Zoeller, Finance Director, responded State statute required municipalities to adopt a budget within 30 days of receiving certified values. He continued that the certified values are expected to be received by the first Tuesday in August and based on the Council's meeting schedule, Council would have to adopt the budget during its last meeting on August 24th. He added that budget amendments are approved throughout the year, so if changes needed to be made, they could be made in September after final approval of the budget. Mr. Zoeller continued that an amendment to the budget could include moving Parks from the General Fund to PD1 and set PD1 accordingly. He stated that if that was the intention of Council, it would be good to know that ahead of time due to the time constraints for giving public notice.

Councilmember Shaw stated waiting for the PSML to fail and then moving Parks to PD1 was the worst of both worlds. Councilmember Shaw moved to amend Councilmember Choriki's motion to increase the amount going to PD1 by \$700,000 and not use any reserves for Parks, seconded by Councilmember Ronning.

Councilmember Ewalt made a substitute motion to approve the budget as recommended by staff, with the exception that there would be no cuts to the Fire and Police Departments' budgets (approximately \$527,632), instead that money would be taken from reserves to balance their budgets, seconded by Councilmember Boyett.

Andy Zoeller stated the substitute motion would require \$527,632 for the Public Safety budgets and \$700,000 for Parks, equally approximately \$1.22 million be used from the General Fund reserves.

Mayor Cole clarified that under the current substitute motion the Parks Department cuts proposed by staff would continue and it would be the only department making cuts. Councilmember Choriki stated he would support the substitute motion. Councilmember Ewalt stated he would rescind his substitute motion to make another that this matter be postponed to allow for additional discussion. Councilmember Boyett would not agree to rescind his second and stated he wanted the substitute motion to go for a vote to see how the rest of the Council was leaning.

Councilmember Purinton stated she was not in favor of moving \$700,000 to PD1. She stated it was important to support Police and Fire and put a positive look toward the passage of PSML, so she would support using \$527,632 from the reserves account for their budget. She stated that a Parks mill levy could be considered in the future and she could not support any of the motions brought thus far.

By a show of hands vote, Councilmember Ewalt's substitute motion failed 3-8, Councilmembers Shaw, Neese, Joy, Choriki, Purinton, Ronning, Brown and Mayor Cole voted in opposition.

Councilmember Neese made demand that separate votes to be taken on Councilmember Shaw's amendment to the Councilmember Choriki's underlying motion, per Section 2-221(2)(e), BMCC. With the assistance of City Attorney, Brent Brooks, Mayor Cole stated Councilmember Shaw's amendment to the motion did not contain multiple separate questions and ruled Councilmember Neese's motion out of order.

By a show of hands vote, Councilmember Shaw's amendment to Councilmember Choriki's motion failed 3-7, Councilmembers Yakawich, Neese, Ewalt, Joy, Boyett, Brown and Mayor Cole voted in opposition. Councilmember Purinton experienced technical difficulties during the vote. Mayor Cole excused her from the vote.

Councilmember Neese again made demand for separate votes to be taken because each department had its own distinct budget to decide, per Section 2-221(2)(e), BMCC. City Attorney, Brent Brooks, provided counsel on the interpretation of the code, stating that it referred to whether a question had multiple parts. He explained that in this situation, there was only one decision to be made. Mayor Cole denied the demand and stated the motion was for approval of the budget, as recommended by staff.

Councilmember Neese moved to approve the Enterprise Funds in the budget only, seconded by Councilmember Ewalt. Council discussion followed and by a show of hands vote, the motion failed 2-8. Councilmember Purinton experienced technical difficulties during the discussion and had not heard the motion. Mayor Cole excused her from the vote. Voting in opposition were Councilmembers Shaw, Yakawich, Joy, Choriki, Ronning, Boyett, Brown and Mayor Cole.

Councilmember Yakawich called the question, seconded by Councilmember Brown. By a show of hands vote it passed 9-2, Councilmembers Ewalt and Purinton voted in opposition.

By a show of hands vote, Councilmember Choriki's motion was approved 7-4, Councilmembers Shaw, Neese, Ewalt, and Purinton.

Councilmember Yakawich moved to switch the order of the last two items on the agenda so the Public Safety Mill Levy second/final reading ordinance and resolution approving ballot language would be heard before the resolutions setting FY21 annual assessments, seconded by Councilmember Choriki. By a show of hands vote, the motion was approved unanimously.

Mayor Cole called for a recess at 9:45 p.m.

Mayor Cole called the meeting back to order at 9:50 p.m.

8. 7. PUBLIC SAFETY MILL LEVY

- a. **SECOND/FINAL READING ORDINANCE 20-5736 amending City Charter by repealing and replacing Section 1.05.1. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Brent Brooks, City Attorney, stated the public hearing and first reading on this item took place two weeks prior and approval by Council to repeal and replace was necessary before moving toward approving ballot language for the upcoming Public Safety Mill Levy election.

Councilmember Yakawich moved for approval of Item 7(a) as recommended by staff, seconded by Councilmember Boyett.

Councilmember Shaw stated that on first reading she was the only one that had opposed this because she wanted the ask to be for more money, but that she fully supported the propose ordinance before Council.

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

- b. **RESOLUTION 20-10889 approving ballot language. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Brent Brooks, City Attorney, stated the resolution was the vehicle that would ask the County Elections Administrator to place the Public Safety Mill Levy on the ballot for the September 15th election for voters.

Councilmember Ronning moved for approval of Item 7(b) as recommended by staff, seconded by Councilmember Neese. By a show of hands vote, the motion was approved unanimously.

7. 8. PUBLIC HEARING AND RESOLUTIONS setting FY21 annual assessments on the following:

- a. **Business Improvement District, RESOLUTION 20-10882**
Tourism Business Improvement District, RESOLUTION 20-10883
Mill Levy Rates for General Fund, Transit, Library and Public Safety,
RESOLUTION 20-10884
- b. **Road Maintenance District 6, RESOLUTION 20-10885**
- c. **Arterial Construction, RESOLUTION 20-10886**
- d. **Street Maintenance District, RESOLUTION 20-10887**
- e. **Storm Sewer, RESOLUTION 20-10888**

Andy Zoeller, Finance Director, began the presentation concerning the Business Improvement District, Tourism Business Improvement District and mill levy rates for General Fund, Transit, Library and Public Safety, based upon the adopted FY21 budget. He explained that the Road Maintenance District 6 was for emergency access into the Briarwood Subdivision, which consisted of 51 properties. He stated staff recommended no change from the prior year and the assessment would remain at \$55.28 per property.

Jennifer Duray, Deputy Public Works Director, followed and gave her presentation concerning Arterial Construction fees, Street Maintenance District fees and Storm Sewer fees for FY21. She stated Arterial Construction fees were used for the construction and reconstruction of Arterial streets and generally about \$4.4 million annually. She stated the increase recommended was 2%, which would generate approximately \$87,000/yr. She continued that there are two Street Maintenance Districts in Billings (SMD I and SMD II). She clarified that SMD I was for the downtown properties that provided additional sweeping and snow removal services and SMD II was for the entire City, including properties in SMD I. Ms. Duray stated the two SMDs

generated \$9.1 million, annually. She stated the increases recommended were to maintain the current service levels. She added the recommended increase to SMD I was 3.5% and 1.9% for SMD II. She continued with outlining the recommended increases to the Storm Sewer assessments. She stated the assessments currently generate \$4.5 million in revenue and increases typically are tied to the Construction Cost Index (CCI). Ms. Duray stated the annual average impact to residential rates was \$.87/year.

Council discussion followed concerning coordinating efforts between departments versus contracting services with outside entities; the cost of services and assessments in other cities; and weed abatement in right-of-ways.

The public hearing was opened. There were no callers and the public hearing was closed.

Councilmember Yakawich moved for approval of Item 8(a), seconded by Councilmember Shaw. By a show of hands vote, the motion was approved unanimously.

Councilmember Boyett moved for approval of Item 8(b), seconded by Councilmember Joy. By a show of hands vote, the motion was approved unanimously.

Councilmember Purinton moved for approval of Item 8(c), seconded by Councilmember Boyett. By a show of hands vote, the motion was approved unanimously.

Councilmember Purinton moved for approval of Item 8(d), seconded by Councilmember Neese. By a show of hands vote, the motion was approved unanimously.

Councilmember Joy moved for approval of Item 8(e), seconded by Councilmember Joy. By a show of hands vote, the motion was approved unanimously.

PUBLIC COMMENT on “NON-AGENDA 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.)

The public comment period was opened.

- **Tim Warburton, 3444 Lucky Penny Lane, Billings, Montana**, stated he was disappointed that no one from the Council intervened when he was called names and ridiculed by another Parks’ Board Member.

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 10:31 p.m.

CITY OF BILLINGS



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

ATTEST:

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