

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

September 14, 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 Choriki gave the invocation.

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

MINUTES:

August 24, 2020 - Councilmember Yakawich moved for approval, seconded by Councilmember Shaw. By a show of hands vote, the motion was unanimously approved.

COURTESIES:

Mayor Cole stated Billings had been awarded a BUILD Grant in the amount of \$11.6 million for the Skyline Trail and Inner Belt Loop projects. He thanked everyone involved in the application process.

Mayor Cole stated the 2020 Census was nearing the end and Billings was currently ranked 45th in the nation for its response rate. He encouraged citizens to respond to the census and added it helped the community obtain various funding and grants.

Councilmember Yakawich stated that Councilmember Brown had recently been recognized and received an Achiever's Award. He congratulated Councilmember Brown on the achievement.

PROCLAMATIONS:

Mayor Cole proclaimed September as National Recovery Month in Billings and called upon the people of Billings to observe the month with personal action and appropriate programs, activities and ceremonies to support recovery.

Brent Morris, 355 Waterton Way, Billings, Montana: called in to thank Council for recognizing National Recovery Month.

Mayor Cole proclaimed September as Healthy Tribes Wellness Month and encouraged citizens to support and participate in the third annual "Healthy Tribes Virtual Challenge to Walk, Run or Bike".

Bailey Ironshooter, no address given: called in to thank Council for recognizing Health Tribes Wellness Month.

Mayor Cole proclaimed September as Childhood Cancer Awareness Month and stated 1 in 285 children in the United States would be diagnosed with cancer and more must be done to raise awareness and find a cure for all childhood cancers.

Mayor Cole proclaimed September 24, 2020 as Arbor Day and encouraged all citizens to celebrate and support efforts to protect trees and woodlands and to plant trees to promote the well-being of this and future generations.

COUNCIL REPORTS:

There were no Council reports.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

Mr. Kukulski stated Public Safety Mill Levy election ballots were due on Tuesday, September 15th, 2020 and asked for all remaining ballots to be dropped off at the Election office.

Mr. Kukulski stated Regular Agenda Item 4D should read 1.4097 (**NOT** .014097) for the percentage of taxable value and informed Council that the number had been changed in the resolution.

Mr. Kukulski stated there were no ex-parte communications received after 3:00 pm that afternoon concerning items on the agenda.

Mr. Kukulski gave an update of current Covid cases from John Felton, City/County Health Officer. He stated numbers of hospitalizations had dropped significantly and added that positive test results had also dropped.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 5, and 6 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 callers and the public comment period was closed.

1. **CONSENT AGENDA**

A. **Bid Awards:**

1. **De-icer/Anti-icer Calcium Chloride Liquid.** (Opened 8/25/20) Recommend Brenntag Pacific, Inc.; \$1/gallon.
2. **Electronic Waste Collection.** (Opened 9/1/20) Recommend Green Technology Solutions; \$150/ton.
3. **Household Hazardous Waste Collection.** (Opened 9/1/20) Recommend rejecting all bids.
4. **W.O. 19-12: West End Reservoir Shale Material Processing Pilot Study.** (Opened 8/25/20) Recommend KLE Construction, LLC; \$259,395.

- B. **Purchase** of playground equipment at Rose Park; \$274,793.
- C. **South Park Splash Pad** budget amendment; \$4,000.
- D. **State of Montana Grant** for the 9-1-1 Emergency Operations Center for a 'Next-Gen' capable IP based ESINet system; \$34,472.
- E. **Donation** to Police Department from Breakfast Flakes, citizens and various businesses for the development of a body worn camera program; \$50,000.
- F. **Donation** from Public Works to Montana State University-Billings (MSU-B) of outdated laboratory instrumentation.
- G. **Lease Agreement** between the City and the Better Billings Foundation for Tract 2-A, in Amended Plat of Tract 1 of the Amended Plat of Sahara Park, Sahara Sands Subdivision, 2nd Filing; \$1 per year.
- H. **Preliminary Subsequent Minor Plat** of Amended Lots 1-B-1 and 1-C, Block 29, Descro Subdivision, 7th Filing, generally located at the northwest corner of the intersection of 24th Street West and St. Johns Avenue; Central Avenue Mall, owner; Sanderson Stewart, agent.
- I. **Resolution of Intent 20-10899** to create SILMD 328, North and South 27th Street Streetlights, and set a public hearing date for October 12, 2020.
- J. **Second/Final Reading Ordinance 20-5740 for Zone Change 980:** a zone change from Entryway General Commercial (EGC) to Neighborhood Commercial

(NC), on Block 5, Lot 1, Pinnick Subdivision, 3rd Filing, and Lot 24 of Sugar Subdivision, a 4.418 acre parcel of land. Christ the King Lutheran Church, owner; Collaborative Design Architects, agent. Approval of the Zone Change and adoption of the findings of the 10 criteria.

K. Second/Final Reading Ordinance 20-5741 for Zone Change 981: a zone change to add auto sales as an allowed use in the Yellowstone Planned Development - Neighborhood Commercial (NC) zone, on Block 4, Lot 27-31 and 26A, 26B of the Yellowstone Addition Subdivision, a 24,450 square foot parcel of land. Russ and Colleen Cherry, owners; Dusty and Tiffany Sims, agents. Approval of the Zone Change and adoption of the findings of the 10 criteria.

L. Bills for the Weeks of:

1. August 5, 2020
2. August 10, 2020
3. August 17, 2020

Councilmember Brown separated Consent Agenda Items 1L1, 1L2 and 1L3, in order to abstain.

Councilmember Ronning separated Consent Agenda Item 1G for questions.

Councilmember Yakawich moved for approval of the Entire Consent Agenda with the exceptions of Items 1G, 1L1, 1L2 and 1L3, seconded by Councilmember Boyett. On a show of hands vote, the motion was unanimously approved.

Councilmember Neese, in reference to Item 1A1 asked for the health impacts for pets regarding the liquid deicer. Jennifer Duray, Public Works Deputy Director, stated the material, calcium chloride, had been used in the City for many years and was not aware of any adverse effects for people or pets and could provide Councilmember Neese with more information on the product.

Councilmember Ewalt, in reference to Item 1A4, stated the water reservoir amount was constantly changing and questioned the process. Debi Meling, City Engineer, stated the West End Reservoir project was a multi-million dollar project that was very complex and staff had known that various studies would be required. She added that a project of this scale was constantly evolving and as more information was discovered, it would continue to require various studies.

Councilmember Neese, in reference to Item 1A2, asked if there were different locations available for electronic waste drop off, besides the landfill. Jennifer Duray stated, in addition to the landfill, electronic waste could be taken to Green Technologies Solutions and/or Yellowstone E-Waste.

Councilmember Ronning, in reference to Item 1E, asked for clarification about the status of the Police Department body camera program. Rich St. John, Police Chief, stated there was currently enough money to purchase the body cameras, but the department would need to thoroughly vet their policies and procedures before implementing the program. He added the cost for long term maintenance and storage was the major financial portion of the program. He added he would be giving a presentation to Council in the next few months reviewing the proposed costs and requirements.

Mayor Cole, in reference to Item 1H, stated one of the conditions in the plat indicated the applicant would have discretion on street improvements after reviewing the traffic impact statement. He suggested, in a previous email, that the condition be changed to be a mandatory requirement. Wyeth Friday, Planning Director, stated the proposed change in the condition was reflected in the documents.

Councilmember Ewalt, in reference to Item 1I, asked who would be responsible for paying for the streetlight maintenance. Debi Meling, City Engineer, stated the State of Montana would pay for the maintenance because it was in their right-of-way.

Councilmember Neese, in reference to Item 1C, asked why the City was paying an extra \$4,000 for the South Park Splash Pad. Chris Kukulski, City Administrator, stated the project had incurred some issues with the contractor, and in order to complete the project and move forward, the City had worked with a mediator to reach a settlement with the contractor.

Council discussed the City's costs in finishing the project, settlement costs and warranty information. Michael Whitaker, Parks and Recreation Director, stated the warranty was a standard 1-year warranty, but had some additional warranties on pumps, plumbing, etc. He added the warranty started when the facility opened, therefore, the warranty had expired. He added was confident in the equipment.

Councilmember Ronning, in reference to Item 1G, asked for clarification on the ownership option for the lease agreement and ensuring the property remained a public park. Brent Brooks, City Attorney, stated the warranty deed had restrictions that would ensure the land remained open to the public.

Councilmember Neese moved for approval of Item 1G, seconded by Councilmember Ronning.

Councilmember Ewalt stated there was wording "keep and maintain the exterior of the premises" on page 3 of the agreement that did not seem appropriate to parkland. He stated the wording "exterior of the" needed to be removed. Brent Brooks, City Attorney and Andrew Billstein, Better Billings Foundation, agreed with removing "exterior of the" wording from that portion of the agreement.

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

Councilmember Yakawich moved for approval of Consent Agenda Items 1L1, 1L2 and 1L3, seconded by Councilmember Ewalt. On a show of hands vote, the motions were approved 10-0, Councilmember Brown abstained.

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward I to include recently annexed property in Annexation 20-02: an approximate .475 acre parcel located at 1053 Lincoln Lane; Propriedad, LLC, owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Wyeth Friday, Planning Director, stated there was no presentation and added the City had approved the development agreement on August 24th. He continued that this would be the next step in the process, with a second/final reading to occur on September 28th.

The public hearing was opened.

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

Councilmember Shaw moved for approval of Item 2, seconded by Councilmember Boyett. On a show of hands vote, the motion was unanimously approved.

3. PUBLIC HEARING AND RESOLUTION 20-10900 assessing the cost of sidewalk construction and/or repair. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Jennifer Duray, Deputy Public Works Director, gave a PowerPoint presentation showing the method developed in 2018 to assess the cost of sidewalk repairs. She added the new program allowed the property owner to complete the repairs themselves or allow the City to make repairs and later be billed for the repairs or assessed on their annual property tax statements. Ms. Duray stated two of the properties, A00641 and A10218, had paid their assessments today and needed to be removed from the assessment bill total.

Councilmember Ewalt stated Heritage Trail on the west side of Walden Park had a bad break in the sidewalk that desperately needed to be repaired. He added the Parks Department also needed to repair the east side of Walden Park, as it was also in disrepair.

Councilmember Neese asked how a constituent reported breaks in the concrete or tripping hazards on sidewalks. Ms. Duray stated they currently needed to call the Public Works Department to report sidewalks in disrepair, but Public Works was working with GIS to develop a program for reporting tripping hazards.

The public hearing was opened.

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

Councilmember Boyett moved for approval of Item 3, with A00641 and A10218 removed, seconded by Councilmember Joy. On a show of hands vote, the motion was unanimously approved.

4. PUBLIC HEARING AND RESOLUTIONS allocating assessments on the following:

- A. SID 1408 RESOLUTION 20-10901**
- B. SID 1410 RESOLUTION 20-10902**
- C. SID 1413 RESOLUTION 20-10903**
- D. Park District 1 RESOLUTION 20-10904**
- E. Park Maintenance District RESOLUTION 20-10905**

Andy Zoeller, Finance Director, gave a PowerPoint presentation reviewing Special Improvement Districts 1408, 1410 and 1413.

In reference to Item 4D, he stated the taxable value for Park District 1 had an error and requested Council approve the resolution using the taxable value percentage of 1.4097, instead of .014097. He added the total amount had been correct and it was only a decimal point error.

Mr. Zoeller, in reference to Item 4E, stated there were 36 Park Maintenance Districts and Broadway/City Hall, Mission United and Falcon Ridge were typically in a negative cash position and the proposed assessments would bring them into a positive cash position, in order to cover their costs.

Councilmember Ewalt, in reference to Item 4A, stated the original assessment had decreased by approximately 33% and property owners may have chosen to move forward with the work at that lower amount. He stated all the gravel streets may have been completed if the area had received a more accurate bid.

Mr. Kukulski stated staff did a very good job at getting the best/most accurate bids they could, and this project has received a better bid than expected, which occasionally happened.

Councilmember Ewalt asked for clarification on extra costs incurred due to weather-related delays. Jennifer Duray, Deputy Public Works Director, stated the project should not incur any extra costs based on weather issues. She added that contracts had an end date included, and if work went beyond that date, it would be the financial responsibility if the contractor.

Councilmember Neese, in reference to Item 4D, expressed concern with the Parks Department reserve amount. Chris Kukulski, City Administrator, stated all money collected through Park District 1 (PD1) stayed in PD1 and any money spent would have to be appropriated through Council.

Mr. Zoeller stated PD1 did not have a recommended minimum balance for reserves budget and assessments were set yearly in order to cover costs and operating expenses.

Councilmember Neese stated he supported leaving the Parks mill levy reserves at \$2 million and using the excess reserves in the Parks mill levy to cover Parks costs.

Mr. Zoeller stated using that amount would impact future projects and the money would have to be raised the following year.

Mayor Cole asked when Council would be presented with the Parks Board recommendation for use of reserves and the CIP. Mr. Zoeller stated the Parks Board and staff would bring the draft CIP forward in early October, with Council adoption in December.

Council discussed the reserve amount and how PD1 currently operated.

Councilmember Ewalt asked if High Sierra Dog Park could get a vault toilet with the money available in reserves. Michael Whitaker, Parks Director, stated the vault toilet had been ordered and, weather permitting, should be in place in November.

Councilmember Neese, in reference to Item 4E, asked if the City was considering turning Park Maintenance Districts over to homeowners' associations so the City would no longer be responsible. Mr. Kukulski stated that was a very broad topic that Council may want to consider discussing as one of their yearly goals.

The public hearing was opened.

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

Councilmember Yakawich moved for approval of Item 4A, seconded by Councilmember Shaw. On a show of hands vote, the motion was unanimously approved.

Councilmember Purinton moved for approval of Item 4B, seconded by Councilmember Boyett. On a show of hands vote, the motion was unanimously approved.

Councilmember Joy moved for approval of Item 4C, seconded by Councilmember Neese. On a show of hands vote, the motion was unanimously approved.

Councilmember Shaw moved for approval of Item 4D, with the correction of taxable value to 1.4097, seconded by Councilmember Choriki.

Councilmember Neese stated the assessments should be reduced and would not support the motion.

On a show of hands vote, the motion for approval of Item 4D was approved 8-3, Councilmembers Neese, Ewalt and Purinton opposed.

Councilmember Boyett moved for approval of Item 4E, seconded by Councilmember Joy. On a show of hands vote, the motion was approved 10-1, Councilmember Ewalt opposed.

Mayor Cole called a recess at 7:38 pm.

Mayor Cole reconvened the meeting at 7:46 pm.

5. DOWNTOWN TAX INCREMENT line of credit payment to Big Sky Economic Development. Downtown Billings Partnership (DBP) recommends approval. (Action: approval or disapproval of DBP recommendation.)

Katy Easton, Executive Director of the Downtown Billings Partnership, gave a PowerPoint presentation reviewing the Memorandum of Understanding (MOU) from 2019. She stated the property, Yesteryear's Antique Mall located at 102 North 29th, was purchased with the intention of future downtown development and the expectation of the One Big Sky Center. Big Sky Economic Development planned to move ahead with the purchase of the Montana Bank Building and this line of credit payment would help cash flow the project. Ms. Easton reviewed the qualification citations and allowable uses as well as fiscal effects of the early full payment. She added the Downtown Partnership Board (DBP) would like to retain ownership of the building, to be sold to a developer at a later date, with revenues being returned to the district's 203 fund.

Council discussed the property and potential plans for the building in the future.

Councilmember Brown asked how this would affect the TIF's ability to continue bonding of downtown streets. Chris Kukulski, City Administrator, stated it would not have a negative impact on recently sold bonds or the planned one-way street projects.

Councilmember Neese asked for clarification on how to ensure the money from the line of credit payment would be returned to the 203 fund. Ms. Easton stated the building's rent fully maintained the property and the 203 fund was not used for any property maintenance. She added the DBP Board wanted to incentivize other projects for additional economic development.

Brent Brooks, City Attorney, stated an MOU could be used to ensure the funds from the sale be returned to the 203 fund. Ms. Easton stated that stipulation could be clarified in the motion, or an MOU or an individual development agreement could be drafted.

Councilmember Ronning moved for approval of Item 5, seconded by Councilmember Shaw.

Councilmember Neese stated he would like to see the motion include a requirement that the funds be returned to the 203 fund.

Council discussed the legality and various options available to Council to ensure funds be returned to the 203 fund. Discussions continued regarding the sale of the building, future plans for development and the City's role in the property.

Councilmember Neese made an amendment to include a legal agreement, between the City of Billings and the Downtown Billings Association, requiring the proceeds from the sale of the building be deposited into the 203 fund, seconded by Councilmember Brown. The amended motion was approved 6-5, Councilmembers Shaw, Joy, Choriki, Purinton and Ronning opposed.

Council discussed how the amendment could affect the line of credit payment and how long it could delay the process, as well as the DBA's ability to continue downtown development without the line of credit payment.

Mr. Kukulski stated staff would need time to draft a legal agreement for Council approval and it may delay Big Sky Economic Development's ability to move forward with the line of credit payment and development plans.

Councilmember Brown made a motion for reconsideration, seconded by Councilmember Joy. On a show of hands vote, the motion was approved 7-4, Yakawich, Neese, Ewalt and Purinton opposed.

On a show of hands vote, Councilmember Neese's amendment failed 4-7, Councilmembers Shaw, Joy, Choriki, Ronning, Boyett, Brown and Mayor Cole opposed.

On a show of hands vote, Councilmember Ronning's underlying motion for approval of Item 5 was approved 8-3, Councilmembers Neese, Ewalt, and Purinton opposed.

6. DOWNTOWN URBAN RENEWAL DISTRICT sign incentive program. Downtown Billings Partnership (DBP) recommends approval. (Action: approval or disapproval of DBP recommendation.)

Mehmet Casey, Downtown Billings Partnership, gave a PowerPoint presentation on the Sign Incentive Program expectations, how it could be used by local businesses and added the program was a 1:1 match, not to exceed \$3,000. He stated DBP had allocated \$30,000 for the program based on the approved budget.

Council discussed current sign permitting issues and Code Enforcement's role.

Councilmember Neese asked for clarification on whether the Sign Incentive Program was a permanent approval or 6-month process. Mr. Casey stated the DBP Board would assess the program every 6 months and if there were funds available at the end of the year, they would roll over into the next fiscal year. He added DBP would evaluate the program and return to Council for approval, if it was deemed successful and they would like it to continue.

Councilmember Shaw moved for approval of Item 6, seconded by Councilmember Boyett.

Councilmember Neese asked if DBP would consider a 2:1 match for the program. Mr. Casey stated it would be more encouraging for participants to keep the 1:1 match.

Council compared the Crime Prevention Through Environmental Design (CPTED) Program and the Sign Incentive Program. Mr. Casey explained how the Sign Incentive Program would also help with safety concerns, because strong signage created a welcoming atmosphere and added good signage helped create safer driving conditions.

Councilmember Choriki called the question. Brent Brooks, City Attorney, stated a motion to call the question would require a 2/3 vote. On a show of hands vote, the motion to call the question failed 7-4, Councilmembers Yakawich, Neese, Ewalt and Purinton voted in opposition.

Council continued discussion on sign permitting, requirements and how current signage issues would be handled within the Sign Incentive Program. Wyeth Friday, Planning Director, stated the Planning Department had signage and permitting regulations, therefore, some of questions would not be pertinent to the Signage Incentive Program, but instead handled by the Planning Department.

Councilmember Neese asked if DBP had considered requiring some sort of Downtown Branding on the signage. Mr. Casey stated DBP reviewed proposed signage and made recommendations, but did not want to limit businesses from their own business brand.

Councilmember Ewalt amended the motion to change the 1:1 match to a 2:1 match, seconded by Councilmember Neese.

Councilmembers Joy, Shaw and Brown stated they would not support the 2:1 match amendment.

On a show of hands vote, the motion failed 3-8, Councilmembers Shaw, Yakawich, Joy, Choriki, Ronning, Boyett, Brown and Mayor Cole opposed.

On a show of hands vote, the motion for approval of Item 6 was unanimously approved.

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.

Frank Fuhrmann, 433 Hillview Lane, Billings, Montana: stated building low income apartments on Jackson Street would create too many vehicles, increase crime and be detrimental to the area.

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

COUNCIL INITIATIVES:

Councilmember Brown moved to direct staff to draft a Memorandum of Understanding (MOU) with DBP requiring all proceeds/revenues from the sale of Yesteryear’s Antique Mall be deposited back into fund 203, seconded by Councilmember Neese.

Councilmember Joy stated she would not support the motion. She encouraged downtown development and it may be to a greater advantage to use the proceeds of the sale differently.

Council discussed the City Administrator’s ability to sign the agreement or if the agreement would need to be brought before Council for approval. Brent Brooks, City Attorney, stated the City Administrator had signing authority up to \$80,000, and this MOU would not have a dollar amount attached to it. Chris Kukulski, City Administrator, stated the proceeds of the sale of the building could be valued at well over \$750,000, which would be over his signing authority. Mr. Brooks stated Council could choose to have the MOU be brought back to Council for approval.

Councilmember Brown amended his motion to bring the MOU back to Council for approval, seconded by Councilmember Neese.

On a show of hands vote, the initiative was approved 10-1, Councilmember Joy opposed.

There was no further business, and the meeting adjourned at 9:39 p.m.

CITY OF BILLINGS



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

ATTEST:

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