

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

September 28, 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 Purinton gave the invocation.

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

MINUTES:

September 14, 2020 – Councilmember Neese noted amendments to the minutes concerning Page 8, PD1 discussion and Page 11, ratio of awards. Councilmember Purinton moved for approval of the minutes as amended, seconded by Councilmember Ewalt. By a show of hands vote, the motion was approved unanimously.

COURTESIES:

Mayor Cole mentioned the State's positive COVID-19 cases were reported at over 300 per day. He encouraged everyone to be diligent in wearing masks, socially distancing, frequent handwashing and staying home when not feeling well.

PROCLAMATIONS:

There were no proclamations.

COUNCIL REPORTS:

There were no council reports.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

Mr. Kukulski mentioned there were 3 ex-parte communications received after 3:00 regarding in opposition to Zone Change 983.

Mr. Kukulski stated regarding Regular Agenda Item No. 4, Public Hearing and First Reading Ordinance - Zone Change 983, Cherry Creek Estates Subdivision, that the Zoning Division received a written request from the applicant's agent to delay the

public hearing until the October 12th regular business meeting. He stated Council may grant this request through a motion and a simple majority vote. He recommended that the Council move the item to be acted upon immediately after the Administrator's Report portion of the agenda.

Mr. Kukulski reminded Council that the next Regular Business meeting would be held on October 12th, Columbus Day, and would not be delayed to the following Tuesday.

Mr. Kukulski stated that Brent Brooks, City Attorney, wished to address the Council to announce his retirement, effective November 30th.

Mayor Cole addressed the Council about the request to delay Regular Agenda Item 4, concerning Zone Change 983, and stated that per the Rules of Procedure, Section 2-214(15) stated the order of business could be altered by a majority vote of the Councilmembers present. He suggested that there be a vote to see if the majority of Councilmembers wished to move that item to the front of the agenda. Mayor Cole then stated that a majority vote to delay this item would fall under the Zoning section in which the item could not be delayed more than 30 days. Councilmember Shaw moved to move Regular Agenda Item 4 to the beginning of the agenda, seconded by Councilmember Choriki.

Councilmember Neese acknowledged there was a valid protest on the item and asked if that would have any effect on this vote or any subsequent votes. Brent Brooks, City Attorney, responded it would not have an effect on the vote to move the item to the front of the agenda or a vote to delay the matter, but the protest would be considered on the actual vote concerning the zone change itself. Councilmember Neese stated he would not support a motion to delay because the issues regarding the Zone Change were well-known. Councilmember Shaw responded she admired the initiative the applicant took to try to address the protests and seek a solution with the neighbors. By a show of hands vote, the motion was approved 8-3, Councilmembers Yakawich, Ewalt and Neese voted in opposition.

Councilmember Choriki moved to delay the Public Hearing for Zone Change 983 until the October 12, 2020 Regular Business Meeting, seconded by Councilmember Shaw. Discussions followed between staff and Council concerning which of the Regular Business meetings in October would be best to hear the matter as both agendas appeared to be very full. Mayor Cole asked Nicole Cromwell, Zoning Coordinator, when the County Commissioners might hear their portion of the zone change. Ms. Cromwell stated the County Commissioners would meet on October 6th. Councilmember Neese asked when the protest petition was received. Ms. Cromwell stated it had arrived on Wednesday or Thursday of the previous week and the common reason stated in the protest was that the zone change would have a negative affect on the neighbors' properties. Ms. Cromwell continued that the applicant and agent were likely trying to determine more specific reasons for the protest. She continued to detail the public's comments made during the Zoning Commission, and stated that all of the comments,

with the exception of one, were from people living outside the 150 foot exterior boundary of the subject property. Mr. Kukulski asked Council to grant staff flexibility to determine which October meeting date to place the item. Councilmember Choriki amended his motion to delay the Public Hearing on Zone Change 983 until October, giving staff discretion to determine whether it would be placed on the October 12th or October 26th agenda, seconded by Councilmember Shaw. By a show of hands vote, the amended motion was approved 7-4, Councilmembers Boyett, Yakawich, Ewalt and Neese voted in opposition.

Mayor Cole advised the public that the vote to delay the Public Hearing for Zone Change 983 effectively removed the item from the agenda. If the viewing public wished to speak on the item, they could do so during the Public Comment period on Non-Agenda Items at the end of the meeting or wait until it was placed on either the October 12th or October 26th agenda.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1 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. Mayor Cole recommends that Council confirm the following appointments:

1.

	Name	Board/Commission	Term	
1	No Applications	Library Board*	10/01/20	12/31/21
2	Thelma Armstrong	Parks, Recreation & Cemetery Board*	10/01/20	12/31/21
3	Joe Studiner	Tourism BID	10/01/20	10/01/24
4	Ron Spence	Tourism BID	10/01/20	10/01/24

* 1 Unexpired term of Stella Fong

* 2 Unexpired term of Clark Johnson

B. Bid Awards:

1. **Fire Station #6 Exterior Repairs.** (Opened 9/15/20) Recommend TW Clark; \$156,900.
2. **Winter Traction Material.** (Opened 9/15/20) Recommend Knife River, \$23.00/ton, for one year with option for years two and three based upon mutual consent.
3. **Two 2021 37,000 G.V.W. Single Axle Trucks with Dump/Sander/Plow.** (Opened 9/15/20) Recommend I-State Truck Center; \$322,264.
4. **Three 2021 58,000 G.V.W. 12-yd. Dump Truck with Snowplow Assembly and Sanders.** (Opened 9/15/20) Recommend Tri-State; \$662,569.48.

C. Reimbursement Agreement with High Sierra II, Inc. for construction of public water and sanitary sewer main.

D. Resolution 20-10906 amending the boundaries of SILMDs 14, 97, and 99, and discontinuing SILMD 248.

E. Second/Final Reading Ordinance 20-5742 expanding Ward I (Annexation 20-02) for approximately .475 gross acres located at 1053 Lincoln Lane. Propriedad, LLC, owners.

F. Bills for the Weeks of:

1. August 24, 2020
2. August 31, 2020

Councilmember Brown separated Consent Agenda Item 1F1, in order to abstain, because his employer was the beneficiary in this agenda item.

Councilmember Yakawich moved for approval of the entire Consent Agenda, with the exception of Item 1F1, seconded by Councilmember Ronning.

Councilmember Neese noted that several of the bids indicated there was only one bid received and he asked if the City should be doing something differently to encourage more participation and competition. Mr. Kukulski stated staff contacts contractors and compare market prices to determine whether bids received are acceptable. He stated there are cases in which staff has asked Council to reject all bids because they are not acceptable. He continued that in same situations the equipment is very specialized and there are not a lot of vendors who have the equipment, limiting the number of bidders. Mr. Kukulski stated that even if only one bid is received, staff is diligent in checking that it is within acceptable market pricing. Mayor Cole added that

the staff memos often mention that staff has determined it is a fair market price; is within or less than the budgeted amount; but in general, does not provide enough information. Mr. Kukulski stated this was a good suggestion and he would address the leadership about including more details in the bid award staff memos.

By a show of hands vote, the motion to approve the entire Consent Agenda, with the exception of Item 1F1, was approved unanimously.

Councilmember Boyett moved to approve Consent Agenda Item 1F1, seconded by Councilmember Purinton. By a show of hands vote, the motion was approved 10-0, Councilmember Brown abstained.

REGULAR AGENDA:

2. PUBLIC HEARING to receive input on the City's FY2019-2020 Draft Comprehensive Annual Performance Evaluation Report (CAPER) for Community Development Block Grant (CDBG) and HOME Programs. No action necessary.

Brenda Beckett, Community Development Manager, provided a brief PowerPoint presentation and provided statistics on program outcomes, i.e., First Time Home Buyers – assisted 289 families, Home Repair – 21 homes, Purchased Foreclosures – 5 homes, Affordable Housing Development – 4 homeownership units, and the AmeriCorps VISTA program – assisted 2,770 people. She thanked the dedicated board members that of the Community Development Board. She reviewed leveraging through the Billings Metro VISTA Project in grants to the City, VISTA Fundraising, and Member Community Investment. She mentioned that many of the VISTAs are nationally renowned and that was very humbling.

Councilmembers Joy and Ronning acknowledged the Board's passion for housing and the efficiency of the Board's meetings.

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

3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 982: a zone change from Residential Professional (RP) to Residential Multi-Family (RMF) on Block 4, Lot 4-8, Sunset Subdivision, a 39,793 square foot parcel of land, generally located at 1127 Alderson Avenue. 1127 Alderson Avenue, LLC, owner; Michael Burke, agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.)

Karen Husman, Planner, provided a PowerPoint presentation and outlined the diverse zones surrounding the subject property and the improvements anticipated. She stated the owners of the property wished to convert the office building into a 29-unit residential apartment complex. She noted there was a large parking lot that eliminated

on-street parking. She noted that a valid protest petition was received. She stated that at least 5 of the 19 property owners within 150 feet of the subject property was needed to constitute a valid protest and 6 had signed the petition. She advised the Council that 2/3 of the present Councilmembers would need to vote in favor of the proposed change in order for it to be approved. Ms. Husman outlined the various concerns stated by the protesters and she reviewed the criteria the Zoning Commission considered.

Michael Burke, agent, Jeff Winkler, and Max Griffin, addressed the Council with their proposal for the property. Max Griffin, the owner of the property, stated he had owned the property for 15 years and gave the history of use for the property. He noted there was no demand for office space anymore and there were a lot of vacant office buildings around and this particular building had been vacant for over 2 years. He stated there is a great need for affordable, work force housing in mid-town Billings. He detailed the composition of the proposed apartment complex with studio, 1-bedroom and 2-bedroom units; fenced parking lot and area for children to play; lighting; traffic concerns and security cameras inside and outside the building. He stated a vacant building would not help the neighborhood or serve anyone.

Council acknowledged the many emails that had been received, some from people who did not live in the area. Council discussions continued concerning fencing, on-street parking, on-site management, and speculative property valuations.

Councilmember Brown disclosed he had received a phone call from one of the people who had sent Council a letter of protest. Nearly all Councilmembers acknowledged they too had received a phone call, likely from the same person.

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

Councilmember Joy moved for approval of Zone Change 982 as recommended by the Zoning Commission, seconded by Councilmember Choriki.

Councilmember Yakawich stated he opposed this development because of the landlords that did not manage and maintain their rental properties. He acknowledged the surrounding property owners' concerns as legitimate.

Councilmembers Brown and Ronning stated their support and complimented the owner of the building for keeping the property maintained and attractive even though it had been vacant for 2 years. Councilmember Choriki stated that as the aging residents move from the neighborhood and the commercial properties are becoming vacant, the area is in transition. He continued that this was exactly the kind of development needed in the area as it was one of the most walkable neighborhoods in the City. He stated he supported local business owners that were pivoting the usage of their properties to meet the needs of the community. Councilmember Shaw stated she supported the zone change and encouraged developers to follow suit with developing more studio and 1-

bedroom units. Councilmember Neese voiced his support and stated he hoped that the development would continue to be well-maintained long into the future.

By a show of hands, the motion was approved 10-1, Councilmember Yakawich voted in opposition, surpassing the required 2/3 vote.

~~4. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 983:** a zone change from Public to Residential 8,000 (R-80) for the southern 1.98 acres of Lot 2, Block 1, Cherry Creek Estates Subdivision. Cherry Island, LLC, owner; Blueline Engineering, agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.)~~

This item was addressed at the beginning of the meeting (*noted above*) in which the public hearing was delayed until either the October 12th or October 26th Regular Business meeting.

5. PUBLIC HEARING AND RESOLUTION 20-10907 adopting annual Special Improvement Light Maintenance District (SILMD) assessments for FY21. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Jennifer Duray, Deputy Public Works Director, provided a PowerPoint presentation outlining the law that requires municipalities to adopt a resolution annually to assess Special Improvement Light Maintenance Districts (SILMDs). She stated the assessments cover maintenance, energy costs and installation. There are 194 SILMDs, 65 are City-owned districts in which City staff performs the maintenance and 121 of the districts are utility-owned by Northwestern Energy or Yellowstone Valley Electric and 8 of the SILMDs are co-owned between the City and another utility company. She stated the assessments would generate approximately \$2.4 million in revenues for FY21, which is an approximate \$45,000 decrease from FY20, and she listed the districts that would experience no change, or a decrease/increase. She mentioned there were 2 new districts that would be assessed this year.

Mayor Cole stated he assumed costs increased every year and did not understand why some of the SILMD assessments decreased. Ms. Duray responded that each district is reviewed annually and sometimes are over-estimated and the district may not have experienced the maintenance costs that were anticipated. She continued that this year some of the energy costs that were quoted by Northwestern Energy did not come to fruition, which caused a decrease for this year in those SILMDs affected. She stated that the City administered all lighting districts whether they were owned by one of the utility companies or the City. She explained the difference between the utility-owned SILMDs charges and that of the City's, wherein the utility companies charge an ownership charge that continues to be charged forever.

Council discussions continued concerning the lack of funds to replace old light fixtures in some of the older-established districts due to the resolutions that created

them, but that had been corrected in the newer-established district resolutions. Ms. Duray outlined the options the City could take to revise the resolutions for the SILMDs.

Mayor Cole suggested a labeling system be considered to identify the ownership of light poles to expedite maintenance. Ms. Duray stated that the City was trying to improve its GIS information so the public could access that information.

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

Councilmember Boyett moved to approve Item 5, seconded by Councilmember Neese. By a show of hands vote, the motion was unanimously approved.

6. PUBLIC HEARING AND RESOLUTION 20-10908 approving reduction of the Arterial Construction Fee assessment for residents in commercial zones. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Jennifer Duray, Deputy Public Works Director, provided a PowerPoint presentation and stated that Council had approved the assessment in June, however, staff was now asking Council to reduce some of the assessments for eligible property owners. She explained that some residents, living in commercial zones, could petition the City for a reduction in the assessment by August 31st of each year and she outlined the requirements.

Mayor Cole noted that the annual process for bringing the reductions to Council appeared to be administratively expensive, given the small amount of reductions. He asked if a better system could be implemented. Ms. Duray responded that Project ReCode would help with many of the Public Works assessment processes.

Councilmember Neese asked if there was a fee to the application. Ms. Duray stated there was no fee.

Councilmember Ewalt asked why there was a discount in certain assessments. Ms. Duray stated that when the arterial construction fee was created in 2004, it was based on "impacts to the roadway". She continued that commercial use versus single family use had very different impacts to the roadway. It was done as an equity issue for residents who lived within commercial zoning so they didn't have to pay the higher commercial rate. Councilmember Ewalt followed by asking how this differed from plats that paid street maintenance fees where no streets existed. Ms. Duray responded it was something that could be reviewed during the next year.

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

Councilmember Purinton moved to approve Item 6, seconded by Councilmember Joy. By a show of hands vote, the motion was unanimously approved.

7. PUBLIC HEARING AND RESOLUTION 20-10909 assessing the nuisance property abatements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Nicole Cromwell, Code Enforcement Supervisor, gave a presentation. She stated there were 5 nuisance property abatement assessments this year for a total reimbursement to the General Fund of \$37,000. She stated that 2 of the assessments were capped at \$9,500 each, because of State law, but had cost the City more than was reimbursable at about \$46,000. She stated that all abatements were court-ordered.

Mayor Cole asked about the Municipal Court limits of \$9,500 and whether it would be better to file these civil actions in District Court to allow for a greater return to the City. Brent Brooks, City Attorney, stated it could be done for properties that appear they will exceed the \$9,500 limits for abatement, but the drawbacks are time constraints and accessibility to District Court calendars.

Councilmember Neese asked from which line item the funds were paid for abatements. Ms. Cromwell responded there was a budget line item under the General Fund for Code Enforcement for abatements which was reduced to \$50,000 this past year. She continued that even once the abatements are assessed, it takes a while for the funds to be received because in most cases property taxes are not being paid either. She said that in the future, due to code changes passed by City Council, Code Enforcement would be conducting good faith estimates to determine if the expenses of an abatement would exceed the \$9,500 allowed, in which case they could go through District Court to recoup more monies.

Councilmember Purinton asked about legal representation in Municipal Court versus District Court. Ms. Cromwell explained that Code Enforcement was able to represent itself in Municipal Court, however the City Attorney's staff would need to represent Code Enforcement in District Court and that would come with a cost.

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

Councilmember Boyett, moved to approve Item 7, seconded by Councilmember Neese. By a show of hands vote, the motion was unanimously approved.

Mayor Cole called for a recess at 7:33 pm.

Mayor Cole reconvened the meeting at 7:40 pm.

8. PUBLIC HEARING AND RESOLUTION 20-10910 assessing the weed abatements. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Nicole Cromwell, Code Enforcement Supervisor, provided information about the weed abatement assessments, stating there were more weed cases this year over last and less compliance than in previous years.

Councilmembers voiced their appreciation of staff's speedy response to rid the City of weeds and the ease of use on the website to make complaints.

Ms. Cromwell clarified weed abatement in right of way areas, along fence lines, alleys and sidewalks.

The public hearing was opened.

- **Nancy Bennett, 801 Avenue E, Billings, Montana**, stated she did not understand why the Council could not understand the necessity of removing weeds everywhere.

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

Councilmember Yakawich, moved to approve Item 8, seconded by Councilmember Boyett. By a show of hands vote, the motion was unanimously approved.

9. PUBLIC HEARING AND RESOLUTION 20-10911 setting General Obligation (GO) Debt and Public Safety II (PS II) mill levy rates for FY21 per the passage of 60 mills. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Andy Zoeller, Finance Director, stated the Public Safety Mill Levy passed and set the mills at 60 mills and additionally the City had received taxable values at an increase of 1.8% over the previous year. He continued that the City has always waited until it received the taxable values information before setting mill levy rates to make the debt payment. He stated the total mills are 179.48., so the total mill levy costs on a median home would be \$511.25 for FY21, an increase of \$55.43 over the prior year. Mr. Zoeller stated the increase was largely due to the passage of the repeal and replace of Public Safety Mill Levy II.

Councilmember Neese noted the increase to the Library GO Debt mill levy and asked for clarification of it and the City Charter's cap. Mr. Zoeller stated the resolution was setting the General Obligation Debt approved by the voters for the construction of the new library and not for operating the library. He continued that the Library Foundation had originally donated \$3 million over 10 years to help build the library, and now that donation was expiring, and the mill levy would have to increase to make up the

difference. He stated the first payment was due July 1st, so the City needed to collect the additional amount in this fiscal year. Councilmember Neese stated he was still confused because the City's Charter indicated a "capital" need which he interpreted as the building. He continued the he struggled to approve a mill levy increase that appeared to be contrary to the City's Charter.

Mr. Kukulski differentiated that this was a voter-approved mill levy to build the library versus the a mill levy addressed in the City's Charter. He continued that the City could not raise mills on its own for the construction of new library building, but the voters could and did approve a mill levy to build the new library. Mr. Zoeller reminded Council that they would be in default on the debt if this was not approved. City Attorney, Brent Brooks, stated GO debt mills have always been treated separately from voter-approved mill levies. Mr. Kukulski compared the new baseball field, Dehler Park's, mill levy wherein the voters had approved additional mills for the purpose of constructing the new baseball park.

Councilmember Neese asked to separate the vote for the Library GO debt mill levy rates from the rest of the vote to oppose it.

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

Councilmember Joy moved to approve Item 9 as recommended by staff, seconded by Councilmember Shaw.

Councilmember Purinton asked how the mills could be separated and stay current on the debt. Mr. Zoeller responded that the mills set by the Charter were already approved when the Council approved and adopted the budget in June and those were were operating mills. He continued that what was being approved now was only to pay the GO Debt.

Councilmember Neese again asked to separate the vote on just the Library GO debt mill levy rates. Brent Brooks, City Attorney, confirmed that this could be done because there were multiple parts to the proposed resolution and it was acceptable under the rules of meeting procedures to separate the items for separate vote. He continued that separating the items for a vote could be done by a request and did not need a separate motion and vote on the motion.

Mayor Cole asked if there was any objection with Councilmembers Joy and Shaw to amend the motion to include a separate vote for the Library GO debt mill levy rate, for which there was no objection.

Council and staff discussions continued concerning separate votes and separate mill levy elections, etc.

Councilmember Brown called the question. By a show of hands vote, the decision to move toward a vote on the motion was approved unanimously.

By a show of hands vote to approve the General Obligation (GO) Debt and Public Safety II (PS II) mill levy rates for FY21 per the passage of 60 mills, excluding the Library GO Debt mill levy rate, was approved unanimously.

Councilmember Neese stated he would vote against the Library GO Debt mill levy rate increase because he believed it was not in keeping with the Charter.

Councilmember Brown stated he would vote in favor of the Library GO Debt mill levy rate increase. He stated the Charter mills and the voter-approved mills were two completely separate items. He continued that the Library building was an obligation the City took because the voters wanted it.

By a show of hands vote on the approval of the Library GO Debt mill levy rate, the motion was approved 10-1, Councilmember Neese voted in opposition.

10. PUBLIC HEARINGS AND RESOLUTIONS relating to:

A. RESOLUTION 20-10912 Revising encroachment rental fees for FY21. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Jennifer Duray, Deputy Public Works Director, gave a brief PowerPoint presentation. She stated Council had asked staff to revise the \$1/sf. encroachment rental fee, which had not been changed since 1985. She outlined the different types of encroachments and the tiered fee structure. She stated there was a lot of administrative time involved with encroachments and explained why it was necessary to charge fees. Ms. Duray continued that the proposal was to revise the fees to \$2/sf/year to cover engineering and administrative costs. She estimated \$26,000 in additional revenues that would go into the engineering fund. She explained the plan of Tier 2 fee phase-in over 5 years to reach the desired fee of \$7/sf. She stated neighboring businesses in the downtown district are affected by those businesses with patios on the sidewalks, etc., so the proposal included using the fees to add public art and other right-of-way improvements that would benefit the other businesses.

Councilmember Joy asked whether the decision to increase the rental fees as recommended was discussed with the Downtown Billings Partnership (DBP). Ms. Duray responded they were not involved because there were a lot of encroachments in the downtown area that were not represented by the DBP. She continued that the conversations were held internally.

Councilmember Shaw asked for clarification about the ordinance that exempted downtown from encroachment fees. Ms. Duray responded the ordinance only exempted awnings and canopies in the downtown area.

Councilmember Neese asked why the fees would go to the Engineering Division. Ms. Duray stated the fees had always gone to Engineering because that was the department that performed the work and incurred expenses. She explained that there were discrepancies in the proposed resolutions and she believed that was because years ago Engineering was in the General Fund. Councilmember Neese then asked if Council was only approving the increase to \$2/sf. this year and for next fiscal year Council would be asked for an additional increase until it reached the proposed \$7/sf. in five years. Ms. Duray responded affirmatively.

Councilmember Purinton stated she was concerned about how the money would be used and was thinking about how small businesses were struggling right now. Ms. Duray stated the money has always been kept with Engineering and would continue, but the question may be how the excess, as the fund develops, may be spent on improvements. She continued that would not be a concern this year because the fee increase will only cover Engineering's costs. She stated the future monies would be earmarked for improvement/beautification projects and that would be decided during the next year.

Councilmember Brown was also concerned about the proposed increases. Mr. Kukulski stated that if Council wished to slow the fee increases due to COVID impacts that was a policy decision they could make, however, he pointed to scenarios in which some businesses' encroachments were impacting their neighbors. He continued that the beautification projects around those encroachments would benefit the neighbors and that could be done through the increased fees.

Councilmember Neese supported an increase and agreed that an encroachment fee was used to discourage businesses from using the public right-of-way. He also stated it was not fair to the other businesses for an encroaching business to get additional square footage for no cost or very low cost, noting that \$14/sf. was the going rate for business space rent.

Councilmember Purinton asked for clarification on fees paid by businesses that occupied parking spaces. Kevin Iffland, Assistant City Administrator, responded that the businesses were required to compensate the City for parking spaces it encroached upon.

Councilmember Ewalt stated he approved improving the sidewalks in the downtown area with the money, rather than having more planters, etc., that would further impede pedestrian traffic.

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

Councilmember Yakawich moved to approve the resolution revising the encroachment rental fees for FY21 as recommended by staff, seconded by Councilmember Boyett.

Mayor Cole asked that the following wording be included in the resolutions: "The City Engineer may determine in his or her discretion the boundaries of the encroachment area, which may be larger than the physical dimensions of an item placed in the right-of-way." Ms. Duray had no objection to those changes.

Mayor Cole moved to amend the motion to include the language cited above in the resolution, seconded by Councilmember Neese.

Councilmember Neese asked City Attorney, Brent Brooks, to provide guidance on the Mayor's concept about an affected encroachment area. He asked if the City could assess an area around a pole the same as the well-defined area of a patio. Mr. Brooks responded affirmatively.

Councilmember Purinton asked whether businesses that placed clothing racks, sandwich boards, etc. on the sidewalks were exempt from the encroachment rental fees. Ms. Duray stated the City did not assess for those, only the more permanent items of encroachment.

Councilmember Joy stated there are really great things that could be included that would be beautiful and calm traffic. She stated that life after COVID-19 may render people wanting to spend more time dining outside on the sidewalks.

By a show of hands vote, the amendment to the motion was approved 9-2, Councilmembers Brown and Purinton voted in opposition.

Mayor Cole moved for another change of language in Paragraph B of the proposed resolution to read as follows: "Tier 2 encroachments shall be determined by the Public Works Department as those encroachments that have a major impact to the right-of-way, making the encroached-upon portion of the right-of-way unusable to the public.", seconded by Councilmember Neese.

By a show of hands vote, the amendment to the motion was approved 9-2, Councilmembers Brown to Purinton voted in opposition.

Councilmember Choriki asked that seasonal encroachments be considered. Ms. Duray responded that there are seasonal considerations and businesses are only charged for the time in which they utilize the encroachment.

By a show of hands vote on the amended motion was approved 9-2, Councilmembers Brown to Purinton voted in opposition.

B. RESOLUTION 20-10913 Adopting the encroachment assessments for FY21. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Andy Zoeller, Finance Director, stated that the assessments were based on the rates approved in Item 10(A) above.

Councilmember Neese noted there were several assessments less than the \$10 minimum. Ms. Duray stated there was a \$10 minimum per encroachment, so in some circumstances assessments were split among several townhouses and property owners, which was consistent with other assessments.

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

Councilmember Boyett moved to approve and adopt a resolution for encroachment assessments as recommended by staff, seconded by Councilmember Choriki.

By a show of hands vote, the motion was approved 9-2, Councilmembers Brown and Purinton voted in opposition.

“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. There were no 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 9:05 p.m.



CITY OF BILLINGS

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

ATTEST:

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