

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

November 9, 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 3:30 pm. 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. Mayor Cole gave the invocation.

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

Mayor Cole called for a recess at 3:35 pm. to a closed *Executive Session to conduct the City Administrator, Chris Kukulski's, Annual Review.

*Note: The Executive Session was closed, as allowed in Section 2-3-203(3), MCA, as discussions relate to matters of individual privacy and wherein the demands of individual privacy exceed the merits of public disclosure.

Mayor Cole reconvened the meeting at 5:32 pm.

MINUTES:

The Minutes for the October 26, 2020 were pending completion.

COURTESIES:

Melanie Schwarz, Director of Business Development, stated the Yellowstone Economic Development Response and Recovery Team was sponsoring Healthcare Appreciation day on Friday, November 13th. They were collecting donations in order to give all healthcare workers at Billings Clinic, St. Vincent Healthcare, RiverStone Health, St. Johns United and Advanced Care Hospital a \$10 gift card to thank them for their efforts.

Councilmember Ronning stated the City had seen record numbers of constituents voting. She congratulated Larry Brewster and Chris Friedel, who had both won their races and would be on the Montana State Legislature.

PROCLAMATIONS:

There were no proclamations.

COUNCIL REPORTS:

There were no council reports.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

Mr. Kukulski stated there would be a Legislative update meeting on Tuesday, November 10th, at 5:30 pm, and invited Council to join the meeting.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, and 3 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.

- **Steve Wells, 4832 Audubon Way, Billings, Montana:** in reference to Item 1F, stated the Subdivision Improvement Agreement (SIA) would improve connectivity between the existing trails and the new sidewalk structures.

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

1. CONSENT AGENDA

A. Mayor Cole recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
1	Trudi Paulson	Library Board*	11/08/20	12/31/21

* 1 Unexpired term of Stella Fong

B. Bid Awards:

1. **Two (2) Enforcer PUC Fire Pumpers.** (Opened 10/20/20) Recommend Pierce Manufacturing, Inc./Hughes Fire Equipment; \$1,295,603.
2. **2021 Single Engine Combination Sewer Jet/Vacuum Cleaner.** (Opened 10/13/20) Recommend Titan Machinery; \$396,282.
3. **2021 12-Yard Dump Truck with Snowplow Mount.** (Opened 10/13/20) Recommend Istate Truck, Inc.; \$150,687.

- C. **Software Agreement** with MobileEyes for fire inspection software program; \$19,929 with annual license renewals of \$12,714 per year.
- D. **Other Transaction Agreement (OTA)** with the Transportation Security Administration (TSA) for the Law Enforcement Officer Reimbursement Program.
- E. **Corrected Memorandum of Understanding** between the City of Billings and the Downtown Billings Partnership (DBP); YesterYears Building, 102 North 29th Street.
- F. **Subdivision Improvement Agreement (SIA) Amendment**, Ironwood Estates Subdivision, 5th Filing.
- G. **Acceptance of Warranty Deed** for additional Right-of-Way on Central Avenue.
- H. **Second/Final Reading Ordinance 20-5744 for Zone Change 984:** a zone change from Residential 7,000 (R70) to Residential Multi-Family Restricted (RMF-R) on a 10,056 sq. ft. parcel of land, legally described as Lot 6, Block 2, Sunset Subdivision, generally located at 1219 12th St. West. Christian Helland, owner. Approval of the Zone Change and adoption of the findings of the 10 criteria.
- I. **Second/Final Reading Ordinance 20-5745 for Zone Change 986:** a zone change to amend the existing Planned Development (PD) zone for Cardwell Ranch on Zimmerman Trail and Grand Avenue to expand the existing Planning Area 2 to include Lot 15A, Block 2 and to remove the additional special review uses from the list of allowed uses within Planning Area 1 and Area 2, legally described as Lots 4A and 15A, Block 2, Cardwell Ranch Subdivision, 1st Filing, generally located at 3340 Sagegrass Drive and 1310 - 30th Street West, respectively. Yegen Grand Avenue Farm, Inc., owner; Charles G. Yegen, agent. Approval of the Zone Change and adoption of the findings of the 10 criteria.
- J. **Bills for the Weeks of:**
 - 1. October 5, 2020
 - 2. October 12, 2020

Councilmember Choriki separated Consent Agenda Item 1F for clarification.

Councilmember Yakawich moved for approval of the entire Consent Agenda, with the exception of Item 1F, seconded by Councilmember Boyett. On a show of hands vote, the motion was unanimously approved.

Councilmember Choriki, in reference to Item 1F, stated the City did not have a policy regarding sidewalk exceptions. He added staff would need to include the crosswalk and sidewalks across Canyonwoods Drive in order to connect the existing sidewalks, for him to support the improvements.

Debi Meling, City Engineer, stated the subdivision had been utilizing a path system set forth in the 2006 4th Filing Subdivision Improvement Agreement (SIA) and all future filings would require sidewalks.

Councilmember Neese stated the City needed to have a policy in place for sidewalk exceptions. He asked about the legality of the City requiring sidewalks even though the existing SIA may not require them.

Brent Brooks, City Attorney, stated an SIA was a binding contract and any changes to a SIA would need to be agreed upon by all parties.

Council discussed the legal issues of the 4th Filing SIA and the existing SIA requirements.

Ms. Meling stated 4th Filing was still active in the neighborhood, but the 2 properties in question would be under the 5th Filing SIA, which required sidewalks.

Councilmember Yakawich made a motion to approve Item 1F, seconded by Councilmember Boyett.

Councilmember Joy made a substitute motion to table Item 1F, in order to clarify the sidewalk exceptions, seconded by Councilmember Shaw.

Ms. Meling showed a map (Exhibit A) and explained how the proposed sidewalks would connect the existing trails.

On a show of hands vote, the substitute motion failed 1-10, Councilmembers Shaw, Yakawich, Neese, Ewalt, Choriki, Purinton, Ronning, Boyett, Brown and Mayor Cole voted in opposition.

On a show of hands vote, the original motion for approval of Item 1F, was approved 9-2, Councilmembers Joy and Choriki voted in opposition.

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE APPROVING PROJECT RECODE - Zoning Code amendment and Zoning Map update. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Mayor Cole stated during the November 2nd Work Session, Council had decided to continue the Public Hearing on this item, therefore, the Public Hearing would be opened, comments heard and then continued until the November 23rd Council meeting.

Councilmember Brown made a motion to open Item 2, have a staff presentation, followed by Council questions, open the Public Hearing, then continue and hold open the Public Hearing and First Reading, and postpone further Council action on the item until the November 23, 2020 Regular Council meeting, seconded by Councilmember Boyett. On a show of hands vote, the motion was unanimously approved.

Nicole Cromwell, Zoning Coordinator gave a PowerPoint presentation reviewing the Project ReCode zoning updates and amendments. She gave an overview of the proposed amendments to the Planned Neighborhood Developments (PND), Accessory Dwelling Units (ADU's), Casino's and Electronic Message Display Signs (EMD).

Ms. Cromwell reviewed the Planned Neighborhood Developments (PND), open space minimums and stated staff had reconsidered the required minimums and was recommending 2% for each type of PND as developed open space. She added that staff was not recommending the PND as optional for property requesting annexation and added PND's provided more predictability for neighbors.

Council discussed the open space minimums for Planned Neighborhood Developments (PND) and the Growth Policy that was previously approved by Council in 2016 and how it had been used to reach the amendments proposed in Project ReCode.

Wyeth Friday, Planning Director, stated there had been extensive public comment during the creation of the Growth Policy. He added builders, developers, real estate agents, etc. had been included in the outreach efforts, with over 35 meetings and 1,200 comments, which had been considered when creating the policy. He clarified that staff and/or the Planning Department did not create the amendments, but rather listened to the public for what amendments were desired.

Council discussed the code regarding open space requirements and the proposed changes. Ms. Cromwell stated the proposed amendments would be presented to Council for approval over the next several Council meetings.

Mayor Cole called for a recess at 7:36 pm.

Mayor Cole reconvened the meeting at 7:46 pm.

Ms. Cromwell continued her presentation and gave an overview of the casino policy questions from Council. She explained how “large” casino was defined and reviewed State data for casinos in Billings. Ms. Cromwell stated staff recommended keeping the break at 10 machines or more.

Ms. Cromwell gave an overview of the Accessory Dwelling Units (ADUs) and the consideration of allowing an ADU larger than 750 square feet. She presented Council with the data that had been gathered from peer cities. She reviewed the proposed non-conforming structure abandonment code and added staff was not recommending an adjustment to the maximum area.

Greg McCall, Project ReCode Steering Committee, stated the ADU recommendation may need to be slightly altered in the future, however, the current proposal for ADUs was very close to working well.

Councilmember Purinton asked for clarification on the 12-month versus 6-month timing for the abandonment code. Ms. Cromwell stated the code would be triggered when a structure was abandoned for 12 months or more and triggered if the type of use was abandoned after 6 months.

Ms. Cromwell reviewed the Electronic Message Display (EMD) signs and the consideration of allowing less than a 6 second display time for static EMD signage. She added the staff recommended 6 second hold time would create consistency, but Council may choose to reduce the hold time to 3 seconds.

Council discussed sign technology, lines of script, hold times and enforcement options. Councilmember Neese recommended changing the hold time for EMD signage to 3 seconds. Councilmember Ewalt made a motion to change the proposed hold time on EMD signage to 3 seconds, seconded by Councilmember Neese.

Councilmember Joy stated she would not support the 3 second hold time and added she had received feedback about inconsistent and distracting signs in the City.

Mayor Cole stated a 3 second hold time would be distracting and had concerns with how it would affect areas of the City.

Councilmember Neese stated he had received feedback that a 6 second hold time would be too slow to get the message to customers.

Councilmember Ronning stated a smaller hold time would allow people to read the messages more easily.

On a show of hands vote, the motion was approved 6-5, Councilmembers Shaw, Joy, Choriki, Brown and Mayor Cole voted in opposition.

Ms. Cromwell finished her presentation with an overview of sign height and size limits, effects on drivers and commercial corridor regulations. She stated staff was not recommending changes to the sign size or height limits.

Council discussed existing sign size, State regulations for signage, and how Subdivision Improvement Agreements (SIAs) could affect signage regulations.

Councilmember Ewalt asked for clarification on builders that were almost ready to begin building and how the amendments would affect their plans. Ms. Cromwell stated there was a section regarding existing approvals, building permits and master site plans.

The public hearing was opened.

- **Randy Hafer, Project ReCode Steering Committee**, stated having buildings located closer to the street could significantly improve the look of the area. He added builders were not necessarily building what the market wanted and the City should not consider builders wants and needs regarding design concerns. Mr. Hafer recommended a mix of residential types in any given area.
- **Elizabeth Garvin, consultant**, commended staff on their knowledge and hard work on Project ReCode.
- **Dave Goodridge, Project ReCode Steering Committee**, stated the City had a vision problem and Project ReCode provided vision and predictability. He added that the project was being driven by the community and wanted to see it move forward.
- **Tom Zurbuchen 1747 Wicks Lane, Billings, Montana**, stated himself and neighbors had paid a significant amount of money to rezone their property and did not think the City should take away property owners' rights.
- **Greg McCall, Project ReCode Steering Committee**, stated there had been 3 years of community outreach and comments, which had helped create Project ReCode. He commended staff on realizing there would be a need for minor edits later.

There were no further callers, and the public hearing was continued to November 23, 2020.

Councilmember Neese asked for clarification on Mr. Zurbuchen's statement of the zoning issue in his neighborhood. Ms. Cromwell stated staff would research zoning in the area and how the amendments would affect the area.

Councilmember Neese encouraged constituents to look at the zoning map updates and contact the Planning Department with concerns.

Councilmember Purinton asked for clarification on how Council amendments and concerns would be presented to Council. Ms. Cromwell stated Exhibit A was the final document and any proposed Council adjustments and corrections would be presented to Council through that document.

Councilmember Joy stated the housing needs assessment, not just the Growth Policy, informed the City and builders of what types of housing was needed.

Mayor Cole stated the zoning amendment documents could be redlined for proposed adjustments and Council suggestions.

3. CITY ADMINISTRATOR'S Annual Performance Evaluation.

Mayor Cole stated Council held a Closed Executive Session discussion regarding the evaluation process at the beginning of the meeting concerning City Administrator, Chris Kukulski's, performance. He stated Council commended Mr. Kukulski on his overall hard work, devotion to the City, and his efforts to keep Council informed which included individual meetings with Councilmembers. He added that Mr. Kukulski had played an important role in getting the Public Safety Mill Levy passed, in the middle of a pandemic, with various community outreach efforts. Mayor Cole stated Council encouraged Mr. Kukulski to continue to work on challenges with Council and public relationships. He stated Council would create an informal subcommittee to develop changes in the evaluation process and ways to communicate with City employees. He added most City employees enjoyed an annual cost of living raise, but due to concerns regarding possible property tax revenue declines during the pandemic, it would be wise for Council to remain fiscally conservative while keeping the compensation competitive.

Councilmember Yakawich moved for approval of a 2% increase, seconded by Councilmember Joy. On a show of hands vote, the motion was approved 10-1, Councilmember Ewalt voted in opposition.

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.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana:** stated Code Enforcement could not investigate violations on private property, therefore, public utilities needed to be located on public property. Mayor Cole stated most Subdivision Improvement Agreements included easements that would allow access for utilities.
- **Tasheena Duran, 104 Birch Street, Box Elder, Montana:** stated she supported police officers, but questioned the City's lack of body cameras on officers. Kevin Iffland, Assistant City Administrator, stated the City was actively working on the implementation of the body camera program. He added staff was researching equipment costs, policies and procedures and software needs. He stated the City was reviewing how they could fill the funding gap with CARES funding.

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

COUNCIL INITIATIVES:

Councilmember Choriki directed staff to bring recommendations to the November 16, 2020 Work Session meeting, on how to better the City's response to the Public Safety crisis, seconded by Councilmember Ronning. By a show of hands vote, the motion was unanimously approved.

There was no further business, and the meeting adjourned at 10:50 pm.



CITY OF BILLINGS

By: William A Cole
William A. Cole, Mayor

ATTEST:

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