

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

May 24, 2021

The Billings City Council held the regular meeting at the Billings Public Library and via Zoom due to the COVID-19 response. Mayor Cole called the meeting to order at 5:30 pm. and served as the meeting's presiding officer. Councilmember Boyett gave the invocation.

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

### MINUTES:

**April 26, 2021** - Councilmember Joy moved for approval of the minutes as written, seconded by Councilmember Boyett. By a show of hands vote, the motion was unanimously approved.

**May 10, 2021** - Councilmember Joy moved for approval of the minutes as written, seconded by Councilmember Boyett. By a show of hands vote, the motion was unanimously approved.

### COURTESIES:

There were no courtesies.

### PROCLAMATIONS:

Mayor Cole proclaimed June as Men's Health Month and reminded everyone that men live, on average, 5 years less than women, with Native American and African American men having the lowest life expectancy. He stated that according to the CDC men are more likely to die from COVID than women and he encouraged everyone to get vaccinated, wear masks and practice social distancing. He referred to the website, [www.menshealthmonth.org](http://www.menshealthmonth.org) for more information on how men can protect their health. He encouraged people to adopt a healthy active lifestyle, get screened for depression and other mental health issues and take preventative measures such as early screenings for cancers, etc.

### COUNCIL REPORTS:

Councilmember Yakawich mentioned he served on several committees and reminded Council there would be vacancies in all of those when his Council term expired. He encouraged Councilmembers to consider filling these vacancies. He also shared various meetings and event dates for Council and the public to attend.

## **ADMINISTRATOR REPORTS - CHRIS KUKULSKI**

Mr. Kukulski stated that during all meetings in June the agendas would contain some component of discussion about the Public Safety Mill Levy, i.e. discussion time, public hearing, etc.

Mr. Kukulski stated Zimmerman Trail would be closed for an undeterminable period of time due to a serious accident that affected the safety barriers and retaining wall. Until that was repaired, Zimmerman Trail would remain closed.

Mr. Kukulski stated that the Memorial Day Holiday was Monday, May 31<sup>st</sup>, as well as a 5<sup>th</sup> Monday bye week and therefore no meeting would be held.

Mr. Kukulski stated the Billings Mustangs were returning this week, and he encouraged everyone to go to a ball game and support the team!

Mr. Kukulski stated there were no exparte communications.

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 4 and 5 ONLY. Speaker identification required.** (Comments are limited to three (3) minutes or as set by the Mayor. 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. Public comments during the meeting may be made in-person or remotely by registering as an attendee through Zoom as outlined in the Agenda coversheet.)

The public comment period was opened.

- **Tom Rupsis, 105 Legend Way, Billings, Montana**, in reference to Councilmember Ronning's initiative, stated he had been a part of the steering committee that worked with a number of City personnel and agencies to make the recommendation for the establishment of a Citizens Police Advisory Board to improve safety of the Billings' citizens. He continued that a resolution was being drafted that would govern the Board and would be brought to the Council at a later date for adoption. He thanked Kari Boiter and Councilmember Ronning for their leadership.
- **Leonard Smith, 17 North 26<sup>th</sup> Street, Billings, Montana, CEO of Native American Development Corporation, Billings Urban Indian Health and Wellness Center, and as a board member of the Elk River Indian Center**, in reference to Councilmember Ronning's initiative, stated there was a growing Indian population in Billings, many of which owned homes, held good paying jobs, etc. and it was important that everyone felt safe in the community. He offered his support and thanked Councilmember Ronning for her initiative.

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

**CONSENT AGENDA:**

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

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	Name	Board/Commission	Term	
			Begins	Ends
1.	No Applications	Billings Parking Board*	05/24/21	12/31/22

\*1 Unexpired term of Kevin Heaney

B. Bid Awards:

1. **W.O. 20-24: Phase 1A, Grand Peaks Lift Stations.** (Opened 05/11/21) Recommend Western Municipal Construction, Inc.; \$160,037.07.
2. **W.O. 21-01: 2021 Water Replacement Project.** (Opened 05/11/21) Recommend Wilson Bros. Construction of Montana, Inc.; \$3,191,697.
3. **SID 1417 Elysian Road.** (Opened 05/11/21) Recommend Knife River - Billings; \$2,477,123.90.
4. **Level IIIA Ballistic Shields.** (Opened 04/27/21) Recommend Ambitec, Inc.; \$60,522.
5. **Optimist Park Shelter.** (Opened 05/11/21) Recommend Hanna Construction Inc.; \$255,840.

C. **Agreement** with Guardian Security, Inc. for guard services at the Billings Public Library; \$73,164 per guard, with an option to extend for five (5) additional one-year terms.

D. **Grant Application Request** to submit 2021 Transportation Alternatives (TA) grant program for the Pioneer Park Trail Repaving Project and if successful, accept award; \$163,399.72.

E. **CDBG Funding Allocation** to NeighborWorks Montana to complete resident owned C & C Community infrastructure improvements; \$155,000.

F. **Downtown Revolving Loan** to The Burger Dive; \$250,000.

G. **Donations** to the Billings Public Library from the Library Foundation and a private donor; \$8,493.

- H. **Preliminary Major Plat** of Yellowstone Landing Commercial Park Subdivision, generally located north side of Highway 3 and east of A J Way; Aviation Properties, LLC, owner; Performance Engineering, agent; conditional approval and adoption of the findings of fact.
- I. **Preliminary Major Plat** of Lake Hills Subdivision, 39th Filing, generally located along both sides of Gleneagles Boulevard north of Black Diamond Road; Ron Hill, owner; WWC Engineering, agent; conditional approval and adoption of the findings of fact.
- J. **Preliminary Major Plat** of Bitterroot Heights Subdivision, 3rd Filing, generally located on the west side of Bitterroot Drive and north of Mary Street; BCJM Properties, LLC, owner; PEC Engineering, agent; conditional approval and adoption of the findings of fact.
- K. **Final Plat** of Amended Lot 4E-1, Block 1, Shiloh Crossing Subdivision.
- L. **Bond Resolution 21-10950** for the sale of sidewalk bonds for WO 19-02 and WO 19-35.
- M. **Resolution 21-10951 of Intent to Create SID 1418** and setting a public hearing date for June 14, 2021.
- N. **Resolution 21-10952 of Intent to Create SID 1411** and setting a public hearing for June 14, 2021.
- O. **Second/Final Reading Ordinance 21-5758** expanding Ward I (Annexation 20-05B): a property located North of Highway 3 and West of AJ Way.
- P. **Bills for the Weeks of:**
  - 1. April 19, 2021
  - 2. April 26, 2021

Councilmember Boyett separated Consent Agenda Item 1F for discussion.

Councilmember Brown separated Consent Agenda Item 1P2 in order to abstain stating his employer was a payment recipient.

Councilmember Shaw moved for approval of the entire Consent Agenda, with the exception of Items 1F and 1P2, seconded by Councilmember Ronning.

Mayor Cole, in reference to Consent Agenda Item 1G, recognized and thanked the Myers family for their generous donation made to the Billings Public Library.

Councilmember Ewalt, in reference to Consent Agenda Item 1B2, asked Public Works Director, Debi Meling, about \$2.2 million for the water replacement project. Ms. Meling explained there was \$2.2 million in the budget this year to use toward the project, but all three items were bid at once because of the uncertainty of bid amounts. She stated that there was \$4 million in next year's budget and Public Works would like to borrow from next year's budget to use this year on the project. Then in FY22 there would be a smaller rehab due to the reduced amount left in the budget. Ms. Meling clarified how the monies would be used for the projects.

Councilmember Joy noted that in Consent Agenda Item 1C, the agreement for a security guard for the Library alone was \$73,164 and that was for an individual who did not hold the credentials of a police officer. She stated Council should keep this expense in mind when considering the Public Safety Mill Levy needs for more officers.

Councilmember Purinton, in reference to Consent Agenda Item 1B5, asked Parks Director, Michael Whitaker, if the construction could be completed for the bid price. Mr. Whitaker stated he believed it could be done for the bid price, but construction costs were increasing and once Council gave their approval, the shelter would be ordered, and he did not anticipate any problems. Councilmember Ewalt stated there was no indication how large the shelter would be. Mr. Whitaker responded it was large enough to shelter 8 to 10 picnic tables. He stated the shelter was half the size of the shelter(s) proposed for Centennial and Castle Rock Parks.

Councilmember Neese, in reference to Consent Agenda Item 1D, recognized the Planning Department's Transportation Alternatives grant and encouraged staff to continue seeking grants and applying for them.

Councilmember Ewalt, in reference to Consent Agenda Item 1L, inquired why the sidewalk project was delayed. Public Works Deputy Director, Jennifer Duray, stated it was delayed last year; it would be pooled with W.O. 19-35; and the deadline for selling bonds was in June. Councilmember Ewalt asked for clarification on the number of properties to be included in the SID. Debi Meling, Public Works Director, added that under W.O 19-02 there were many properties listed and she explained how properties were assessed.

By a show of hands vote, the motion to approve the entire Consent Agenda, with the exception of Items 1F and 1P2, was approved unanimously.

Councilmember Boyett, in reference to Consent Agenda Item 1F, voiced his concerns about loaning additional monies to the Burger Dive. He explained that the City was third in line on the building and second in line on the equipment, which

once equipment was used was worthless. He stated the Burger Dive did not have enough skin-in-the-game and he felt the loan was high risk of default. He continued that the business was moving their location and would have to increase their business by 63% the first day it opened in the new location to afford the loan repayment. He stated he would vote in opposition of the loan. Councilmember Neese voiced his concerns as well. Councilmember Ronning stated she fully supported the business and believed the business would thrive. Councilmember Ronning moved for approval of Consent Agenda Item 1F, seconded by Councilmember Joy.

Andy Zoeller, Finance Director, answered Councils' questions about the application and review processes. He stated credit records and reports are considered. He continued that downtown revolving loans carry some risk and borrowers come to the City for loans after traditional lenders have expressed no interest in a loan. He reiterated that the overall goal was to improve the tax base of downtown. He addressed Councils' questions about defaults on these loans and responded there had been no delinquencies for which he was aware.

Mayor Cole asked about the valuation of "other" equity, i.e. the TIF grant, owners' equity and Historical Tax Credit grant. Mr. Zoeller responded that 34% of the project was not funded by debt. The committee was comfortable that the Burger Dive would be able to repay the loan.

Discussions continued about the Downtown Revolving Loan Fund being a non-traditional lending vehicle and the repayment schedule on the loan began 30 days after closing.

Brad and Andrea Holsten, owners of the Burger Dive, addressed Council stating the loan was critical to their overall financial plan for the expansion of their business. They added that the business increased its hours to serve dinners, too; they would expand their merchandising; add beer and wine to the menu; and have apartment rentals above the business.

Council discussions continued about the vision for the Minnesota Avenue redevelopment and how the Burger Dive's plans for the area would be pivotal to that redevelopment.

By a show of hands vote, the motion for approval was approved 10-1, Councilmember Boyett voted in opposition.

Councilmember Boyett moved for approval of Consent Agenda Item 1P2, seconded by Councilmember Neese. By a show of hands vote, the motion was approved 10-0, Councilmember Brown abstained.

## **REGULAR AGENDA:**

### **2. PUBLIC HEARING AND RESOLUTION 21-10953 approving and adopting the water and wastewater rate and fee schedule effective July 1, 2021. Staff recommended approval. (Action: approval or disapproval of staff recommendation.)**

Jennifer Duray, Public Works Deputy Director, provided a PowerPoint presentation and reviewed information that was given during a recent Work Session meeting and information contained in the agenda packet. She stated that a rate comparison had been included in the agenda packet. She focused on the primary rate increase drivers, i.e., inflation, regulations, and aging infrastructure. She stated under the current funding level pipes were required to last 180 years. Council had directed staff to start increasing pipe replacements in the CIP and in response to Council's direction, the CIP reflected a 10% increase each year for pipe replacements. At that rate it would reduce the length of replacement to 136 years and in 10 years it would be reduced to 102 years. This was the main driver of the rate increases. She continued that under the Council's direction, the bills would now read in "gallons" to make them easier for consumers to understand and that change would be effective in the Summer of 2021. She noted that the west end reservoir would be separated on the bills and reflected 8.5% of the total bill this year and in FY22 it would be 8.3% of the bill. She reviewed water rate system development fees and wastewater rates. She noted there was an error concerning wastewater rates in the proposed draft resolution and asked that Council move to approve the resolution with the change noted to page 5, schedule 1a, meter size 6, second column, from \$86.85 to \$88.15. She stated the average household used approximately 4,000 gallons of water a month and gave the increases for the next couple of months. She reviewed the wholesale wastewater rates for Lockwood, Phillips 66 and Exxon. She stated the water rates, fixed monthly charges, would increase by 2% in FY22 and FY23. She stated that outside user fees were about 9% higher than inside user fees and would see the same increases. Ms. Duray reviewed the tier structure and acknowledged that Council had directed staff to provide a tier structure option that would keep water costs affordable for minimal usage. She provided a lengthy explanation concerning how usage and the tier rates would apply. She addressed the 3 bulk water resellers within the City limits and classified them as inside non-residential customers that combined, used approximately 45 million gallons of water annually and were one of the largest users in the City's water system. She stated that no agreements had ever been made with the resellers to use the City's water rights. She suggested there would be a new class of user for bulk water resellers to bring them into compliance with Rule 20-3. She identified 3 options for water rates for bulk water resellers and explained the differences between each option and gave reasons why the staff was not recommending Option 2 for consideration. She explained the methodology for calculating rates, i.e., cash vs. utility method. She said all of the recommendations made to Council were based

on tried-and-true methodologies and AWWA industry standards. She stated all future notices would be sent certified to the Montana Consumer Council to ensure they are good with the City's process. She stated there are specific State statutes that govern all water and wastewater rates and the City cannot charge arbitrary rates to the different classes. The rates must be based on cost of services principles and taking into account services provided and the benefits received. She continued that there was a bulk water rate that was primarily billed to construction companies and that was different than bulk water resellers and she outlined that process. She provided the volumetric rate comparisons for customer classes proposed in FY22 and FY23. She provided current comparisons of Billings' average monthly charges for water and wastewater with regional cities in Montana and nearby states indicating Billings falls in the mid- to low-range.

Mayor Cole recognized Ms. Duray for all her hard work on the presentation and the information given.

Councilmember Purinton noted that some of the increases were low in year one and then very high the following year(s). She asked why those could not be averaged better. Ms. Duray responded that the septage rates could be adjusted and spread over 2 or 3 years, but the septage charges are for-profit businesses who will pass the expense on to their customers. The charges are in keeping with the cost of services level. She said for the Heights Water District, per the contract with the City, the City cannot charge anything other than how it is calculated, i.e. cannot take part of the 31% for FY23 and charge it now. She continued that she suspected the Heights Water District would charge incremental increases to their customers.

Mayor Cole noted that the Public Works Department may be affected the most from the increases in constructions costs to their capital improvement projects and would that affect the rates in the future. Ms. Duray responded that the rates were considered before the sudden increases were seen and depending on how long or how high those increases lasted, it could affect rates in the future.

Council discussions continued concerning rate recommendations and Council policy objectives.

Councilmember Neese asked about the 31% increase to the Heights Water District and whether there had been a similar increase by them recently. Ms. Duray responded the primary driver was the construction of the west end reservoir, intake and plant and that the Heights' businesses and residents would benefit from the project as much as the rest of the City businesses and residents. Councilmember Neese asked whether the 8.3% would be noted in the Heights water bills as it was with the City's. Ms. Duray stated it likely could not be applied in the same way because the Heights Water District was calculated very differently. She continued that the Public Works Department had actually

decreased its O&M costs and she suspected that the entire increase to bills would be due to the west end facilities.

Chris Kukulski, City Administrator, asked Jennifer Duray to explain the process of how the construction of the reservoir was billed prior to the construction to City residents in anticipation of it being built, but that the Heights' residents had not shared in that cost until the project was started. Therefore, the Heights would have to catchup on the investment costs and they were likely to experience significant increases in their monthly bills.

Councilmember Neese asked about the legality of the recommended rates for bulk water resellers. Gina Dahl, City Attorney, stated she trusted the City's Public Works staff and their consultants properly used the methodology to determine the recommendations. Jennifer Duray responded that the previous methodology was based on rate of return only for wholesale users and that was a mistake, it was too high.

The public hearing was opened.

- **Jeff Essman, 3130 Mc Masters Road, Billings, Montana**, stated he only used 15-20% of the bulk water resellers. He stated for the record that based on the letter from the Montana Consumer Council, he objected to the meeting in terms of whether it complied with the public notice laws. He stated it was his goal to resolve his questions and not litigate, but he had been advised that he needed to object on the record should the matter be litigated. He stated he was the owner of No Cash Water, LLC, 2015 Blue Creek Road since 2000. He explained the history of the annexation of Briarwood and Cedar Park Subdivisions into the City in the early 2000s. He stated that Fishers and Reliable objected strenuously to the City water department to begin selling water from the pump station located directly behind his property on Blue Creek Road. At that time the Council chose not to compete with those two taxpayers. He explained the financial background of his business from the beginning to present day. He stated he was concerned less about the rates and more about due process. He needed an opportunity to review the information and prepare public comment based on that information and he was not given that. He stated his customers are now paying four times the tier 1 rate than their City neighbors and they have to haul it home. He stated he does not wish to have his property rights diminished in not treating him as an owner and requiring him to sign a contract with the potential of stopping sales to him in the future. He stated that regulated utilities have a duty to provide service to the customer and that cannot stop because of a change in policy. He stated he would not sign a contract that indicated he could lose his right to purchase water at a reasonable rate. He asked that he be given the courtesy of reviewing information timely.

Councilmember Yakawich asked if the item was delayed for two weeks would that give Mr. Essman enough time to review the information the analysts provided. Mr. Essman responded he would be traveling a lot in the next two weeks and may need additional time.

Councilmember Purinton stated a contract was interesting to her and asked how that would work. Mr. Essman stated he would explain it to the best of his understanding, but she may wish to discuss further with City staff. He stated he was an owner because he had paid a lot of money in system development fees and was paying \$300 to \$400/month toward the construction of the west end reservoir. He stated he was contributing his share. He did not consider charging him a rate of return at 7.15% as fair as it was more than other commercial users at 4.23% and 2.11%.

- **Jennifer Owen, 906 Royal Avenue, Billings, Montana,** stated she understood the position the City was in with the complicated contract they had with the Heights County Water District. However, the jump in rates to Heights users was significant. She asked that a more tiered or phased-in approach be considered for the District. She asked Council to delay the increase until the District's election results were in so they could deal with new leadership.

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

Mayor Cole called for a recess at 7:40 pm.

Mayor Cole reconvened the meeting at 7:49 pm.

Councilmember Shaw asked the City Attorney to address the due process questions. Gina Dahl, City Attorney, stated that adequate notice was given to the public and to the Montana Consumer Council per the statutes. Additional due process had been provided for an appeal and challenges could be made for any decision made by Council.

Councilmember Neese asked for an explanation of the differences between commercial rates, commercial bulk rates and bulk water reseller rates and why Mr. Essman's business was not included in the commercial bulk rates. Jennifer Duray, Public Works Deputy Director, responded that commercial bulk rates applied only to the construction industry.

Councilmember Brown asked if Council could vote on some of the tiers and rates and delay a vote on others, i.e. delay consideration of the bulk water reseller rates. Chris Kukulski, City Administrator, stated the adoption of the rates was intended to be done altogether. He stated if Council wished to delay on some, he would prefer they delay on all of it, but to provide clarity on the policy side.

Mayor Cole asked if all the information that Mr. Essman indicated was due him had been provided. Ms. Duray responded the Public Works Department had provided to Mr. Essman everything that they had as it became available to them, with the exception of the information she received at 3:30 the day of the meeting. It was the first time Mr. Essman had seen it or the Council. She said it would take a few days to provide Mr. Essman with the particular information he needed from the presentation.

Mr. Kukulski stated he was more concerned that the public was given proper notice about what the Council would be considering, than one member of the public asking for more information about his particular business.

Councilmember Ronning asked whether any communications had been received from the other bulk water resellers. Ms. Duray stated she heard from the new owner of Reliable and she could provide all three of the bulk water resellers with the information Mr. Essman requested. Councilmember Ronning asked about the contract that Mr. Essman referred to. Ms. Duray responded that the agreement was an effort to provide them permission for usage and outline terms and conditions.

Councilmember Purinton stated Council was not privy to a lot of the information prior to the meeting for consideration and were unprepared to make a decision.

Councilmember Neese moved to approve a resolution approving and adopting the water and wastewater rate and fee schedule, effective July 1 2021, as recommended by staff, using Option 1 for residential rates and Option 3 for bulk users, seconded by Councilmember Boyett. Mr. Kukulski confirmed with Ms. Duray that the motion was accurate and she reminded Council that the motion needed to contain a correction on Page 5, schedule 1A, Meter Size 6, Second Column from \$86.85 to \$88.15. Councilmember Neese amended his motion to include that information, seconded by Councilmember Boyett. Councilmember Neese stated he trusted staff and the consultants in the recommendation.

Council discussions continued regarding the different rates, peak usages and infrastructure needs.

Councilmember Ronning provided a substitute motion to delay the item for 2 weeks, keeping the public hearing open, to allow Council, staff and the public more time to consider the information, seconded by Councilmember Purinton. Councilmember Ronning stated it was too important an issue to have confusion and uncertainty about it. She would rather do something right, rather than do something quickly. Ms. Dahl, City Attorney, provided guidance on whether to keep the public hearing open, giving notice, etc.

Council discussed potential postponement to address Mr. Essman's challenge. Ms. Dahl clarified that all notice requirements had been met by the City and there was no specific date that notice needed to be sent to the Montana Consumer Council. She stated postponing a vote would simply provide additional time to citizens to give public comment.

Councilmember Purinton stated she needed more time to review the information that was provided, including the proposed agreements with the three bulk water resellers and the information from the Montana Consumer Council.

Councilmember Joy asked about the reference to 20-3, where was it found and when was it adopted. Ms. Duray responded 20-3 was a section in the rules and regulations and stated it had been in the rules and regulation in 1992, but could have been a part of the rules and regulations even before that.

Councilmember Shaw called the question, seconded by Councilmember Choriki. By a show of hands vote, the motion to call the question failed 7-4 as a two-thirds approval was not met. Councilmembers Ewalt, Ronning, Brown and Mayor Cole voted in opposition.

Councilmember Joy stated staff provided a tier system to Council, for which it had asked, that incentivized minimal users. She would not support the substitute motion to delay or postpone a decision. She stated there had been ample time to review the consultants' reports and staff had provided information since April.

Councilmember Shaw stated she also would not support the substitute motion because there had been an abundance of information provided.

Councilmember Ronning stated the purpose of the substitution motion was not to consider other information, but to consider the information as it had been presented. She continued that the subject matter was very complicated. She stated that in reviewing emails from other Councilmembers, it was clear to her that there was confusion amongst the Council.

Mayor Cole stated he supported Councilmember Neese's motion, however he was sympathetic to the due process question and he agreed with Councilmember Ronning that there was a lot to consider.

Councilmember Brown agreed with the Mayor, however he asked for more information about the agreement that was to be entered into with the three bulk water resellers. Chris Kukulski, City Administrator, stated entering into an agreement with these businesses had been in the rules and regulations since the 1990s, but no one had followed up on it. Staff was trying to bring the three bulk water resellers into compliance with the adopted rules and regulations. He stated an agreement needed to be drafted with the bulk water resellers. Councilmember Ewalt stated that the

information about an agreement was unknown to the Council until this meeting and postponement of Council's decision was warranted. He would support the substitute motion.

Councilmember Neese stated an agreement or contract with the three bulk water users would not be completed in the next two weeks and he saw no benefit to delaying Council's decision. He agreed with Councilmember Joy that staff provided a tier system that Council had asked for.

Councilmember Brown asked for a timeline to get the agreements entered into. Mr. Kukulski stated he expected negotiations to take several weeks, maybe even months to reach an agreement, but not years. He continued that clarification for a continuance was needed because in two weeks there was not a regular business meeting. Councilmember Ronning clarified her substitute motion to include that the delay / postponement be brought to the next Council regular business meeting on June 14<sup>th</sup>, 2021, seconded by Councilmember Purinton.

By a show of hands vote, the substitute motion failed 7-4, Councilmembers Shaw, Yakawich, Neese, Joy, Choriki, Boyett and Brown voted in opposition.

Councilmember Yakawich called the question concerning discussion on the underlying motion, seconded by Councilmember Boyett. By a show of hands vote, the motion to call the question was approved 10-1, Councilmember Joy voted in opposition.

By a show of hands vote on Councilmember Neese's motion, the motion was approved 8-3, Councilmembers Joy, Choriki and Purinton voted in opposition.

**3. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 991: a zone change to amend parts of the Lenhardt Square Planned Development Agreement, generally located at King Avenue West and 44th Street West. Lenhardt Square Master Association - Allan R. Lenhardt, owner; Sanderson Stewart - Rick Leuthold, P.E., agent. Zoning Commission recommends approval and adoption of the findings of the 10 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.)**

Mayor Cole disclosed he had been involved in the original drafting of the Planned Development Agreement for Lenhardt Square and recused himself from discussion and vote on this item. He turned the meeting to Deputy Mayor Yakawich to preside over the meeting.

Nicole Cromwell, Zoning Coordinator, provided a PowerPoint presentation about the amendment to the Planned Development Agreement in Zone Change 991 to update the zone districts, the average density and amend height measurements of buildings. She reviewed the zoning map to orient the Council to the area and the

114-acre parcel. She explained the proposed revisions to the PD zoning, i.e., eliminating residential multi-family 4-plexes; change the underlying zoning to two parcels, Tracts 2A and 5A-1 from MF-4 to MF-R; change building heights; increase maximum average dwelling density from 20 to 21 in the MF-R zone and from 20 to 35 in the Mixed-Use zone; and update minor wording and language in the document. She reviewed the Zoning Commission's recommendation and their findings of the 10 review criteria.

- **Rick Leuthold, Sanderson Stewart, agent**, addressed Council on behalf of the founders of the property. He stated the founders had a vision 13 years ago for a neighborhood that was walkable to the nearby commercial areas and included greater green areas in the design. He spoke about the changes that had occurred since the original plan and the amenities residents wanted, along with stormwater drainage and construction materials and methods. He made clarifications that were given to the neighbors at the neighborhood meeting, i.e., no reduction in parking, but garages, rather than canopies, and some underground parking may exist; accesses and interconnectivity to adjacent parcels would be installed; and traffic impact studies were conducted. He reiterated that the amended plan met all requirements of the 2016 Growth Plan and the 2001 West Billings Neighborhood Plan. He stated it was in a very desirable location with walkability to neighborhood commercial and recreation opportunities at the lakes and access to the new health care facilities. He asked for the Council's approval of the Zoning Commission recommendation.

Councilmember Boyett asked about whether single-family and residential multi-family 4-plexes were eliminated in Mixed-Use zoning. Nicole Cromwell responded that was not necessarily true, it meant that those involved in the planned development were not interested in keeping single-family and residential multi-family 4-plexes in the development. She continued that the portion of the development that was zoned MF-R would allow single-family homes and so forth.

Councilmember Neese asked about maximum occupancy of people in the development. Mr. Leuthold stated the development could house 200-300 people if approved. Councilmember Neese expressed his concern about the increased density and lack of increased green space with no single-family homes expected in the development at all. Mr. Leuthold mentioned that construction costs were increasing and there was no way of knowing if that would continue. He continued that apartment dwelling would likely be the main type of housing in the development and he added that the green space would be a park for the entire neighborhood to enjoy with amenities.

Councilmember Purinton asked about affordable house and the anticipated average rents per unit. Mr. Leuthold stated they would be at market rate. Councilmember Purinton followed with questions about the water table and underground parking. Mr. Leuthold stated that any land that had been used for agriculture once had to be concerned about the water table. He continued that the geotechnical studies indicated that single layer parking could be constructed on the property without concern.

Councilmember Boyett asked when the project would begin. Mr. Leuthold stated many of the developments around the subject property were in varying stages of development and this property would move forward if approved and if construction supplies could be obtained, etc.

The public hearing was opened.

- **Jan Rehberg, 4401 Highway 3, Billings, Montana**, explained that she and her siblings grew up on the farm that is the subject property and they had been master planning it for years. She continued to give specifics about the vision of the development as being mostly apartments and some townhomes and the amenities planned for the property.
- **Tom Rupsis, 105 Legends Way, Billings, Montana**, stated he was generally in support of the zoning change, but had concerns about traffic congestion, parking issues and pedestrian safety. He stated the green space needed to be maximized to its fullest potential. He asked that Council prioritize intersection safety.
- **Daniel McElmurray**, stated he had been involved as the designer for Lenhardt Square since 2008. He stated the demands in the housing market had changed the vision for the property. He stated the plans for the green space were not complete and the intention was always to have a series of connected experiences traveling north to south, with a town square in the center. He explained that the spine of the green space was designed to take people from King Avenue West to the north edge of Shiloh Drain, via walking or biking, without being on the street.
- **Sara Creeden, 4733 Georgina, Billings, Montana**, stated she was speaking on behalf of her husband, Mike, and her brother, Mike Kinsfater and sister-in-law, Eileen Kinsfater. She stated they felt disregarded through the entire process, meetings had been perfunctory and cursory, and their questions had not been thoughtfully addressed. She stated they are very concerned about the connection of Monad Avenue to Georgina because it would increase vehicle traffic significantly. She stated that their letters had gone ignored. She said the increased density would drop the value of their single-family homes and they did not support the zone change at all.
- **Allan Lenhardt**, stated he appreciated the City staff and had felt supported during the process. He added the Lenhardt family was very proud of their plans and felt it honored their parents and grandparents and it would be good

for the City of Billings.

- **Lorraine Newman**, stated her appreciation to address the Council. She continued that even though there had been changes to the plan, the core elements were still there, and it would be a beautiful area to live. She stated that with each stage of development the community improved.
- **Lorna Dyk**, stated that the City's density was most significant in the area of King Avenue West and where this development was located. She stated the parking in the area and on land that was not developed was occurring already without adding more density. She said it would be a very large transitional neighborhood, lacking stabilization. She encouraged Council to look to zone changes that encouraged single-family home building and gave more consideration to the homeowners that currently lived in or around that space.

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

Councilmember Boyett moved to approve Zone Change 991 and adopt the finding of the 10 criteria as recommended by the Zoning Commission, seconded by Councilmember Purinton.

Councilmember Purinton stated the on-street parking was a concern and that 2-bedroom apartments could produce up to 3 vehicles per unit. Councilmember Purinton asked about increased crime with increased density and whether the police department could provide adequate public safety. Councilmember Joy called point of order and stated the Police Department, as well as other departments, gave comments during the application process, contained in the agenda packet. Chris Kukulski, City Administrator, responded that increased density did not correlate to an increase crime.

Councilmember Neese asked Ms. Cromwell to add to her list of changes to the code increased green space requirements. Councilmember Neese followed by asking about notice given to adjacent property owners. Ms. Cromwell responded that notices were sent to property owners one-quarter of a mile from the subject property. She stated that one property owner had moved and his notice went to an old address; by the time she became aware the notice was undeliverable it was the day of the Zoning Commission hearing. She continued that she contacted the property owner and explained that the Zoning Commission was an advisory board, and that the property owner could make public comment to the Council before a final decision was made.

Councilmember Joy stated she would support the motion. She continued that the City relied on private development and private capital to provide housing. She stated there were lots of ways to development green space, including rooftop garden areas. She asked for a quality development and mentioned that multi-family units bring with it a number of school children who may be waiting for the school bus without good lighting or shelter. She asked that the developers not overlook their

needs for safety.

Councilmember Ewalt commented that he understood Zone Changes would no longer be brought to Council once Project ReCode had been adopted, but that did not appear to be happening.

By a show of hands vote, the motion was approved 10-0, Mayor Cole abstained.

At 9:43 pm, Mayor Cole returned to presiding over the meeting.

**4. RESOLUTION 21-10954 repealing and replacing Property Purchasing Resolution 93-16740. (Staff recommends approval.) (Action: approval or disapproval of staff recommendation.)**

Jessica Iverson, Facilities Manager, stated the current property purchasing resolution was 18 years old and needed to be updated. She said the old resolution created compliance challenges for staff when acquiring property. She stated a committee comprised of City staff from various departments reviewed the existing resolution and identified the following issues: 1) the order of negotiations versus appraisals; 2) the number of appraisals; 3) specified dollar amounts; 4) City Administrator versus Council approval for purchase; and 5) negotiating flexibility. During her PowerPoint presentation Ms. Iverson provided a flow chart for the proposed property purchase process and the significant resolution revisions.

Councilmember Boyett moved to approve the property purchasing resolution including the amendments provided in writing by the Mayor and as recommended by staff, seconded by Councilmember Shaw.

Council discussed the City Administrator's signing authority. City Attorney, Gina Dahl, stated she had no concerns about the changes and supported the proposed resolution. Assistant City Administrator, Kevin Iffland, explained how the committee arrived at the \$25,000 ceiling before an appraisal was required.

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

**5. TAX INCREMENT FINANCING ASSISTANCE from South Billings Boulevard Urban Renewal District (SBBURD) to Billings Public School District No. 2 on behalf of the Newman Elementary School PTA for reimbursement of expenses related to improvements to the student pick-up/drop-off area of Newman Elementary School, located at 605 South Billings Boulevard; up to \$61,200. SBURA Board recommends approval. (Action: approval or disapproval of SBURA Board recommendation.)**

Jim Tevlin, SBURA consultant, provided a PowerPoint presentation outlining the Newman School's project objectives and improvements. The changes would increase safety for staff and students, and provide improvements and beautification of the grounds. He displayed the current pick-up/drop-off area and the proposed pick-up/drop-off area. The proposed pick-up/drop-off area would be a safer option located on the neighborhood side with a large lawn leading to the school that would become a de facto park for the neighborhood. He stated the grant would be unmatched due to the school's Title 1 classification, serving low-income students and their families. Any monies raised by the PTA would go directly into the school. He stated the school was responsible for maintenance and upkeep of the improvements.

Newman School Principal Walsh thanked Council for their consideration and Mr. Tevlin's presentation. He stated the improvements were much needed and would provide a sense of pride for the community and benefit the entire neighborhood.

Mayor Cole provided for public comment from the following individuals:

- **Kelphen Tokar, 37 Nimitz Drive, Billings, Montana**, stated her children attended the school and she looked forward to seeing children playing under the shade of the trees.
- **Anita Gonzalez, 4702 Rebecca Place, Billings, Montana**, stated her family had attended Newman School for 7 years and she was an active member of the PTA. She said it was important her children witness her contributions by being a member of PTA and it was important for her children to see the City supporting their efforts.
- **Marissa Cook, 4615 Phillips, Billings, Montana, PTA President**, stated she had a second grader attending Newman School. She said her family used the green space, but with no trees or shade it was limiting. She expressed her gratitude for the opportunity to improve their school.
- **Kathy Bentley, 1928 Howard Avenue, Billings, Montana, PTA Vice President**, stated she supported the grant 100% and also had a second grader attending the school.

Councilmember Neese moved for approval of the tax increment financing assistance from SBBURD to Billings Public School District No. 2 on behalf of the Newman Elementary School PTA for reimbursement of expenses related to improvements to the student pick-up/drop-off area at Newman Elementary School, as recommended by the SBURA Board, seconded by Councilmember Joy.

Councilmember Brown stated he would support the motion but asked how the welcoming sign qualified for reimbursement. Principal Walsh stated it was an

important part of recognizing the community and welcoming them. Jim Tevlin stated it fit within the TIF code as a public amenity.

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

**PUBLIC COMMENT on “NON-AGENDA ITEMS”. Speaker Identification required.** *(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes or as set by the Mayor. Public comments during the meeting may be made in-person or remotely by registering as an attendee through Zoom as outlined in the Agenda coversheet.)*

The public comment period was opened.

- **Dennis Ulvestad, Billings, Montana**, introduced his dog, Sarge, and recommended the Dog Tag Buddies to any vet needing a service animal or companion.
- **Tanya Rom, 1921 Eastridge Drive, Billings, Montana**, asked why the police department continually stated it could accommodate new development on the west end and then ask for more officers. It sent a mixed message to the public. She suggested an outside analysis be conducted to get a true understanding of the situation.

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

Mayor Cole called for a recess at 10:25 pm.

Mayor Cole reconvened the meeting at 10:30 pm.

### **COUNCIL INITIATIVES:**

Councilmember Ronning read her statement concerning her initiative. Councilmember Ronning moved to direct City Administrator Kukulski to form a committee made up of Citizen Police Advisory Board (CPAB) steering committee members, City councilmembers, and appropriate City staff to develop resolution language that would be re-establish a CPAB for the four key objectives: 1) Recruitment, retention, and workplace diversity; 2) Crime prevention and diversion; 3) Community support and engagement; and 4) Data collection and analysis. Committee to present proposed resolution to City Council at a work session to facilitate feedback; and set a public hearing for resolution adoption, seconded by Joy.

Councilmember Neese asked if Police Chief St. John was 100% in support of the initiative to which Chief St. John responded affirmatively.

Councilmember Joy stated her appreciation to Mr. Ruppis, Ms. Boiter and Councilmember Ronning and all the others that had contributed their time and energies over the past 11 months to writing the language of the proposed resolution.

She stated her support for the initiative and encouraged the rest of the Council to do so as well.

Councilmember Purinton asked Chief St. John how the advisory board would help with recruitment, retention and diversity. Chief St. John stated it started with becoming familiar with the police department, its culture and the community's challenges. He continued that the message would be relayed into the community and basically become recruiters for the police department. He stressed it was important to bring more diversity into the department.

Councilmember Brown expressed appreciation of the process and asked for a timeline to get the advisory board established. Councilmember Ronning stated the goal was September 1, 2021.

Councilmember Neese asked if the board was a City-appointed board or one that Mayor appointed. The Mayor responded the board members would be selected by the City Administrator.

By a show of hands vote, the motion was approved 10-1, Councilmember Purinton voted in opposition.

There was no further business, and the meeting adjourned at 10:52 pm.



CITY OF BILLINGS:

By: William A Cole  
William A. Cole, Mayor

ATTEST:

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