

**MINUTES
OF THE BILLINGS CITY COUNCIL
REGULAR BUSINESS MEETING
May 22, 2023**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana, at 5:30 P.M.

CALL TO ORDER: Mayor Cole

PLEDGE OF ALLEGIANCE: Mayor Cole

INVOCATION: Councilmember Boyett

ROLL CALL:

Present: Councilmember Kendra Shaw, Ward I
Councilmember Ed Gulick, Ward I
Councilmember Roy Neese, Ward II
Councilmember Jennifer Owen, Ward II
Councilmember Denise Joy, Ward III
Councilmember Danny Choriki, Ward III
Councilmember Daniel Tidswell, Ward IV
Councilmember Pam Purinton, Ward IV
Councilmember Mike Boyett, Ward V
Councilmember Tom Rupsis, Ward V
Mayor William Cole

Staff

Present: Chris Kukulski, City Administrator
Kevin Iffland, Assistant City Administrator
Gina Dahl, City Attorney
Denise Bohlman, City Clerk
Jennifer Duray, Public Works Deputy Director
Andy Zoeller, Finance Director
Wyeth Friday, Planning Director
Monica Plecker, Planning Manager
Nicole Cromwell, Zoning Coordinator
Karen Husman, Planner
Hunter Kelly, Planner
John Caterino, Facilities Manager

MINUTES:

- May 8, 2023

Moved by Councilmember Joy
Seconded by Councilmember Boyett

APPROVED 11-0

COURTESIES:

- Mayor Cole thanked the City staff that attended the Crime Prevention Through Environmental Design (CPTED) training. Mr. Kukulski added details about the training; analysis of the community; and anticipated outcomes to policies.
- Councilmember Owen mentioned she attended the third graduation of Build Montana, a partnership between contractors and area high school students. She introduced John Hurd, leader of the program, to speak about the program. Mr. Hurd introduced one of the graduate students.
- Councilmember Gulick thanked the Chamber of Commerce for bringing the CPTED training to Billings and Councilmember Owen for moving the City forward through funding for training, etc.
- Councilmember Shaw mentioned it was Public Works Week and there were two open houses scheduled for the public to tour facilities.

PROCLAMATIONS:

- There were no proclamations.

COUNCIL REPORTS:

- Councilmember Purinton noted she attended the ACES training and that some departments could benefit from the program.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

- Consent Agenda Item No. 1M, Bond Resolution, the Resolution contained an error on Page 7. This item will need to be separated for a motion to include the corrected language of "Within the 2023 Sidewalk Sinking Fund there shall be maintained separate accounts for the Highwood Drive Improvements and the Mullowney Lane Improvements (collectively, the "Project Accounts").
- Reminded Council that the following week was a bye week and there would be no Council meetings.
- Had a meeting with MET transit staff, Debi Meling, Public Works Director, and Burn the Point organizers to create a minimally disruptive route for the parade over the Labor Day weekend.
- There were no ex-parte items sent to Mayor and Council after 3 pm concerning items on the agenda.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 2, 7c and 8 ONLY.

Speaker sign-in required. (Comments are limited to three (3) minutes or as set by the Mayor. Please sign the roster at the cart located at the back of the Council chambers or at the podium. 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 following individual gave public comment:

- **Pat Curry, Yellowstone Country Club, Billings, Montana**, in reference to Regular Agenda Item 7c, spoke in opposition to the development because the parks' monies were going to the

undeveloped Cottonwood Park, rather than the private, developed Yellowstone Family Park for maintenance.

- **Tom Zurbuchen, 1747 Wicks Lane, Billings, Montana**, in reference to Regular Agenda Item 8, spoke about the costs and extreme waste in settling a lawsuit that could have been settled 5 years prior.

There were no further speakers.

SPECIAL PRESENTATION: Big Sky Passenger Rail Authority

Jason Stuart, Vice Chairman, Big Sky Passenger Rail Authority, gave a presentation and explained the Authority's goal to reintroduce passenger rail service to the southern half of Montana.

1. **CONSENT AGENDA**

Councilmember Choriki separated Consent Agenda Item 1R for discussion.

Councilmember Rupsis and Mayor Cole separated Consent Agenda Item 1G in order to abstain.

Motion: I move to approve the items of the Consent Agenda as submitted and to acknowledge the typo correction to Item 1M as noted by the City Administrator, with the exception of 1G and 1R.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

A. **Bid Awards:**

1. **Compost Mixer and Conveyor System. (Opened 5/2/2023) Recommend Roto Mix, LLC.**

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

2. **W.O. 21-32: Wicks Lane and Bitterroot Drive Storm Drain Improvements. (Opened 5/2/2023) Recommend Schedule 1, Phase 2, Western Municipal Construction.**

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

B. **Memorandum of Understanding with Yellowstone County for water main replacements at MetraPark.**

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

- C. **Assignment and Assumption** of Pretreatment Service Agreement from ExxonMobil to Par Montana, LLC.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

- D. **Agreement** with Hoopla for the Library's digital library platform.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

- E. **Declaring Surplus Property** and authorizing the sale of 300-gallon waste containers to the City of Powell, Wyoming.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

- F. **Declaring Surplus Property** and authorizing the sale of 300-gallon waste containers to the Town of Upton, Wyoming.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

- G. **Donations** to City of Billings for "Mobilize the MAGIC City" Project.

Motion: I move to approve the acceptance of donations to City of Billings for "Mobilize the MAGIC City" Project with Mayor Cole and Councilmember Rupsis abstaining.

Moved by Councilmember Joy
Seconded by Councilmember Shaw
APPROVED 9-0, Mayor Cole and Councilmember Rupsis abstained due to their contributions to the donations.

- H. **Donations** to the Billings Public Library from various donors.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

- I. **Preliminary Minor Plat** of Elysian Subdivision. *Quasi-Judicial

Councilmember Neese asked when sidewalk improvements could be expected to provide safe routes to Elysian school. Wyeth Friday, Planning Director, explained sidewalks would be installed on the Elysian Road side as development along that road occurred. The East Lane frontage would be completed when the Annafeld Subdivision improvements were completed. Monica Plecker, Planning

Manager, added that at this time it was unknown where the placement of sidewalks would be and an SID would be necessary later.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

J. **Preliminary Minor Plat** of Price Subdivision, Amended Lots 1 and 5, Block 1. *Quasi-Judicial

Councilmember Purinton asked for clarification on the amended lots and why it was brought before Council. Monica Plecker, Planning Manager, explained by amending the lots to no-build lots, it preserves that area of the subdivision. The lots are very large, and the developer was financially motivated to avoid improvements or appurtenances on the properties to avoid assessments. If the property was to be sold the new owners would be restricted from building on the lots because it was listed as no-build in the Subdivision Improvements Agreement (SIA). The new owners would have to ask Council to amend the SIA if they wished to build on the lots.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

K. **Preliminary Major Plat** of Lake Hills Subdivision, 40th Filing. *Quasi-Judicial

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

L. **Final Plat** of Bitterroot Heights Subdivision, 3rd Filing. *Quasi-Judicial

Councilmember Neese voiced his concerns about the Kiwanis Trail and homeowners placing solid fences along the trail for privacy which created a tunnel effect and a safety issue; making the trail less desirable to utilize due to safety concerns. Wyeth Friday, Planning Director, advised that changes could not be made to final plats only to preliminary plats.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

M. **Bond Resolution 23-11116** for Pooled Series 2023 Sidewalk Bonds for W.O. 21-11 and W.O. 22-07.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

N. **Resolution 23-11117** of Intent to Create SILMD 331 and set a public hearing date for June 12, 2023.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

- O. **Resolution 23-11118** of Intent to Create SID 1423 and set a public hearing date for June 12, 2023.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

- P. **Resolution 23-11119** extending the Energy and Conservation Commission to December 31, 2025.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

- Q. **Resolution 23-11120** notifying Election Administrator of mail ballot.

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

- R. **Third/Final Reading Ordinance 23-5828** amending Billings, Montana City Code, Section 18-204, prohibiting weapons and firearms.

Councilmember Choriki stated the amendment was about when and where one could carry a gun in Billings. He likened the situation to "brandishing" a weapon to intimidate people at a public assembly and he disagreed with that.

Councilmember Joy was not satisfied with the "whereas-es" in the ordinance. It lacked value of the Council's intention to keep the public safe in public buildings. She added that the ordinance referred to the State legislature and the City had its own authority to legislate. She would support the motion to approve and hoped in the future the "whereas-es" would not be written in this manner.

Motion: I move to approve Third/Final Reading Ordinance amending Billings, Montana City Code, Section 18-204, prohibiting weapons and firearms.

Moved by Councilmember Neese
Seconded by Councilmember Boyett
APPROVED 8-3, Councilmembers Choriki, Tidswell and Purinton opposed

- S. **Bills for the Weeks of:**

1. April 17, 2023

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

2. April 24, 2023

Moved by Councilmember Boyett
Seconded by Councilmember Joy
APPROVED 11-0

REGULAR AGENDA:

2. APPROVAL OF BID PACKAGE NO. 2 CONTRACT AMENDMENT with Dick Anderson Construction for New City Hall Renovation Project. Staff recommends approval.

John Caterino, Facilities Manager, presented the guaranteed maximum price with Dick Anderson Construction. He introduced members of the design team, Nick with JLG and Bill with Collaborative Design. They reviewed the timeline, bid packages 1 and 2, National Historic Registration Application, grants, and project costs (estimated \$42,231,624 for full buildout) and owner items. Historic tax credits were expected to be around \$3.5 million over 5 years. Andy Zoeller, Finance Director, explained the tax credit process. Mr. Caterino provided renderings of many of the floors.

Council discussed the renovation costs per square foot at \$200/sq. ft. versus new building costs at \$350-\$500/sq. ft.

Motion: I move to approve bid package no. 2 contract amendment with Dick Anderson Construction for New City Hall Renovation Project, as recommended by staff.

Moved by Councilmember Purinton
Seconded by Councilmember Tidswell
APPROVED 11-0

3. PUBLIC HEARING AND RESOLUTION 23-11121 adopting Water and Wastewater Rates and Fees. Staff recommends approval.

Jennifer Duray, Deputy Public Works Director, presented. She indicated the numbers were changed from what was presented in April to add money to the water and wastewater extensions (\$1 million for water and \$1 million for wastewater) for FY24 and FY25. She reviewed the various rates, including a 6.1% increase in wastewater rates for FY24 and 6.2% increase in FY25. She continued that Exxon, Lockwood and Phillips 66 were wholesale users and staff recommended a reduction for Phillips 66 and recommended using a 2-year average of their costs for their volumetric and fixed monthly fee. She reviewed the fixed water monthly charges indicating there would be a 2% increase in FY24 and FY25. She mentioned that the Heights Water District had started their 30-day protest period. She continued outlining the various rate increases for the various users of water.

Council and staff discussed percentage averages, the necessity of increases to water and wastewater rates due to the new west end water plant and reservoir, and the effects on household budgets. Discussions continued about tracking the funds for development, the lower debt service next year and bond sales. Ms. Duray stated \$12 million had been spent on the new west end water plant project and approximately \$30 million was available for the project. The total amount of the project was expected to be near \$150 million.

No public testimony was given during the public hearing.

Motion: I move to approve a resolution adopting Water and Wastewater Rates and Fees with the changes to the Phillips 66 volumetric rates, as recommended by staff.

Moved by Councilmember Boyett
Seconded by Councilmember Gulick

Motion to Amend: I move to amend the motion to include that the new funds be tracked separately.

Moved by Councilmember Neese
Seconded by Councilmember Purinton

Council and staff discussed how funds would and could be tracked and how development in the City would and water and wastewater extension reimbursements would occur. Also discussed was the agreement the City had with the Heights Water District wherein it would begin paying its share of the improvements for the west end water plant project after the project was completed. That would impact their water bills significantly compared to Non-Heights Water District customers who were paying something toward the project each month now. The protest by the Heights Water District would not affect the City's determination of water rates. The protest was about the rate increase for FY25 as there was no rate increase for FY24 as determined by the cost of services study.

APPROVED 11-0

Councilmember Owen noted that the Heights Water District could have implemented its own rate increase in anticipation of their payment portion for the west end water plant to mitigate their risk.

Amended Motion: I move to approve a resolution adopting Water and Wastewater Rates and Fees with the changes to the Phillips 66 volumetric rates, as recommended by staff and to track new funds separately.

APPROVED 11-0

Recess was called at 7:27 PM. Reconvened at 7:37 PM.

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 1029: text amendments to the Neighborhood Districts, Fence Materials and Sign Code. Zoning Commission recommends approval.

Nicole Cromwell, Zoning Coordinator, provided the presentation concerning zoning code amendments and reviewed the proposed changes brought forward by Council. She stated the amendment maintenance schedule for substantive adjustments was adhered to. She suggested a public testimony opportunity be held after each section of the amendments. There were 4 separate ordinances altogether. She continued that Section 27-300, Neighborhood Districts concerned adjustments to garage entries and locations in NX1 and NX2 zones. Next, she reviewed the Build-To zones in Section 27-300 concerning adjustments to N and NX zones.

Council and staff discussed garage options, and administrative relief versus variances. Also discussed were developer conflicts with abiding with the zoning code and conflicts with subdivision covenants. Ms. Cromwell explained there were some covenants that could not be enforced even though they were written, such as roof pitch and setbacks.

Public testimony was given during the public hearing by:

- **Doug Wilde, 4712 Audubon Way, Billings, Montana**, supported the approval of the ordinances.

No further public testimony was given on these ordinances.

Motion: Having conducted a public hearing, considered written and spoken testimony, I move to approve first reading ordinance concerning text amendments to Section 27-307, -308, related to location and entry of attached garages.

Moved by Councilmember Joy
Seconded by Councilmember Boyett
APPROVED 11-0

Motion: Having conducted a public hearing, considered written and spoken testimony, I move to approve first reading ordinance concerning text amendments to Section 27-304-308, and Section 27-1802, related to build-to zones.

Moved by Councilmember Joy
Seconded by Councilmember Boyett
APPROVED 11-0

Nicole Cromwell, Zoning Coordinator, proceeded to provide details about the amendments to the Fencing Materials, Section 27-209, specifically to include corrugated and uncorrugated metal panels in residential neighborhood zones. She noted the panels must be framed with an approved material and have non-reflective coating on the metal panels.

Councilmember Joy was concerned about graffiti “tagging” opportunities on metal panels.

Councilmember Purinton asked how it could be that metal fences were being constructed around Billings without permits. Ms. Cromwell explained the City’s code enforcement was complaint driven and no one had filed complaints during the construction of the fences, so they were erected under the radar and apparently the neighbors were not objecting to metal fencing materials. She explained that obtaining fencing permits fell to the property owner, not the contractor installing the fences.

No public testimony was given during the public hearing.

Council and staff discussed CPTED implementation.

Motion: Having conducted a public hearing, considered written and spoken testimony, I move to approve first reading ordinance concerning text amendments to Section 27-209, related to fencing materials in commercial and residential zones be amended.

Moved by Councilmember Boyett
Seconded by Councilmember Purinton
APPROVED 11-0

Nicole Cromwell, Zoning Coordinator, continued her presentation and reviewed proposed amendments to the sign code, Section 27-1400. She explained the problems with the current sign code in multi-tenant structures. The amendments included allowing tenants in a multi-tenant structure to have a set amount of wall sign area, building frontage and a set max per tenant. She explained the allowed size limitations and configurations and electronic display limitations for billboards. She reviewed CMU2 zones and the increased separation distances to residential zones from 200 ft. to 500 ft. was recommended by the Zoning Commission.

Council and staff discussed the Zoning Commission’s recommendation for 500 ft. separation of billboards from residential zones and deteriorating older signs. Also discussed was the special review process, billboard mapping, sign face credits and accruals, paper versus LED brightness displays.

Public testimony was given during the public hearing by:

- **Kelly Strobal, Lamar Advertising, 7505 Entryway Drive, Billings, Montana**, commented that placement of his signs was very restricted and he provided examples of locations where he was prohibited to erect a sign. He opposed the 500 ft. distance proposed for billboards. He then spoke about digital displays being too bright and expressed his frustrations.
- **Allie Harley, 2524 Aspen Creek Trail, Billings, Montana**, stated that digital billboards were the largest advertising exposure to the masses. She emphasized that amber alerts and other important public service announcements for non-profits were provided on billboards and they were the best way to get information to the public.

No further public testimony was given on these ordinances.

Council and staff discussed new businesses' signs versus newly located or relocated businesses and the moving of their signs to other zones.

Motion: Having conducted a public hearing, considered written and spoken testimony, I move to approve first reading ordinance to Zone Change 1029 concerning text amendments to Section 27-1403 and 1407, relating to wall signs be amended and changing the language "newly located" to "relocated" business and replace word "allocated" to "calculated".

Moved by Councilmember Choriki
Seconded by Councilmember Shaw

Councilmember Purinton voiced her concerns about wall sign allotments for multiple tenants being equal. Ms. Cromwell responded that the landlord was responsible for allocating the sign footprint of the tenants by lineal foot per tenant.

Councilmember Tidswell asked about the Westend Task Force's involvement in the placement of the wall signs. Ms. Cromwell was unaware of any involvement in the wall signs text amendments to the zoning code but acknowledged that they had provided input in the billboard signs portion.

APPROVED 9-2, Councilmembers Purinton and Tidswell opposed

Motion: Having conducted a public hearing, considered written and spoken testimony, I move to NOT approve first reading ordinance to Zone Change 1029 concerning text amendments to Section 27-1409(c)(1)(b), (Billboard Signs) and to direct staff to develop language to allow some digital billboards in the City limits and return to Council with

Moved by Councilmember Choriki
Seconded by Councilmember Owen

Councilmember Owen expressed her concerns about the ability to upgrade existing signs in non-conforming locations and to consider new sign locations differently. She also wanted the special review process revisited.

Councilmember Neese voiced his support so long as this portion of the text amendments were brought to Council again in the future.

Councilmember Gulick stated he would not support the motion because billboards were about scale regardless of the technology. Billboards were a distraction and stressful.

Councilmember Purinton was concerned about relocating signs in CMU1 zones and billboards at entry points to the City with County properties adjacent to City limits.

Councilmember Rupsis would not support the motion to NOT approve because something needed to be done.

Councilmember Joy also would not support the motion. She suggested creating additional amendments such as 200 ft. separations to include PMD zones and County zones for billboards rather than deny the entire amendment.

Wyeth Friday, Planning Director, asked to have more specific direction as to what Council wanted if the matter was to be reworked.

Chris Kukulski, City Administrator, spoke about The Den's forwarding an application for a billboard sign. He added that if the application came to the City for consideration before the text amendments were approved, the City would have to approve the application per the current, unamended sign code.

Councilmember Owen expressed her frustration about legislating on the fly. She understood Council was to direct staff to reconsider, review and revise amendments to refine it for a better fit, but Council was receiving pushback from the staff.

Substitute Motion: I move to adopt staff recommendations for Sec. 27-1409(c)(1)(b), (Billboard Signs) only, as leaving the existing 200 ft. radius from the proposed location of the off-premise sign; a residential zone district includes any planned development zone and allows residential uses and any county zone district that allows residential uses and also allowing the change from "control" to "light" in industrial zones.

Moved by Councilmember Rupsis
Seconded by Councilmember Shaw

Councilmember Choriki voiced his support for digital billboards.

APPROVED 9-2, Councilmembers Joy and Choriki opposed

5. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 1023: located at Wicks Lane and Bitterroot Drive. Zoning Commission recommends approval and adoption of the 10 criteria. *Quasi-Judicial

Karen Husman, Planner, presented an overview of the zone change area and mentioned that two property owners had expressed concern about the development affecting their properties. She indicated the Zoning Commission recommended approval and adoption of the 10 review criteria.

Public testimony was given during the public hearing by:

- **Jeff Welschlager, 3711 Corbin Drive, Billings, Montana**, represented HWT Construction, the owner/applicant of the property. He spoke in favor of the zone change adding that the development proposed for the property mimicked the development across it on Bitterroot Drive. He had been in contact with the Public Works Engineering Division concerning future traffic control at the intersection to anticipate appropriate access points to the property.

No further public testimony was given.

Motion: Having conducted a public hearing, considered written and spoken testimony, I move to approve first reading ordinance of Zone Change 1023 and adoption of the 10 review criteria as recommended by the Zoning Commission.

Moved by Councilmember Shaw
Seconded by Councilmember Owen
APPROVED 11-0

6. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 1024:
located at 3100 block of Central Avenue. Zoning Commission recommends approval and adoption of the 10 criteria. *Quasi-Judicial

Karen Husman, Planner, presented an overview of the unique, diverse zone change area. She indicated the Zoning Commission recommended approval and adoption of the 10 review criteria.

No public testimony was given during the public hearing.

Motion: Having conducted a public hearing, considered written and spoken testimony, I move to approve first reading ordinance of Zone Change 1024 and adoption of the 10 review criteria as recommended by the Zoning Commission.

Moved by Councilmember Boyett
Seconded by Councilmember Rupsis
APPROVED 11-0

Recess at 9:58 PM. Reconvened at 10:07 PM.

7. FIFTY-FOUR WEST DEVELOPMENT:

a. **JOINT PUBLIC HEARING FOR ANNEXATION 23-03 AND ZONE CHANGE 1025:**

i. **RESOLUTION 23-11122 APPROVING ANNEXATION 23-03:** located north of Rimrock Road and east of 54th Street West. Staff recommends conditional approval.
*Quasi-Judicial

Hunter Kelly, Planner, presented an overview of the annexation policy guidelines and criteria, the annexation map and reviewed the interconnectedness.

Mayor Cole inquired about CPTED concept implementation, i.e. 4-foot fences, and whether it was best to include that in a Subdivision Improvement Agreement (SIA) or an Annexation Agreement. Monica Plecker, Planning Manager, said Council could amend conditions of approval in the annexation resolution indicating that within a certain number of days an annexation agreement must be entered into, or it could be addressed in the Findings of Fact for the plat.

Ms. Plecker explained that street layouts and access points were done during the platting process. She added there were safety concerns with providing accesses onto Rimrock Road rather than 54th Street West.

Public testimony was given during the public hearing by:

- **Steve Grabel, KLJ**, owner representative, explained that fencing was planned to be 4-foot everywhere except along Rimrock Road, where the fences would be 6-foot height.

Council discussed fencing heights, CPTED principles and parkland designations.

- **Michael Christensen**, agent, addressed the Council's concerns about P1 parkland space, indicating the parkland would be a combination of irrigated and manicured private park and greenspace. He voiced concerns about maintaining the value of lots that butted up against Rimrock Road that did not have a 6-foot fence and stated it would be difficult to sell those lots

and homes if a 6-foot fence was not allowed.

No further public testimony was given.

Motion: Having conducted a public hearing, considered written and spoken testimony, I move to conditionally approve a resolution approving Annexation 23-03, as recommended by staff.

Councilmember Purinton expressed concern about access points and traffic speeds along Rimrock Road.

Councilmember Rupsis indicated strips of designated parkland along paths of N2 and N3 neighborhoods was a loophole that needed to cease with future developments.

Mayor Cole asked if conversations were had with the developer concerning contributions toward Cottonwood Park. Monica Plecker, Planning Manager, responded there had not been conversations with the developer but that it was written into the subdivision conditions that 9% cash in lieu would be applied toward Cottonwood Park improvements. Mayor Cole expressed concern that the City had not made efforts to work with the developer about its contribution to Cottonwood Park. Councilmember Purinton was also concerned that since Cottonwood Park was undeveloped, neighbors from the new development would utilize Yellowstone Family Park, a private park, instead and make no contributions to its upkeep. Council and staff discussions continued regarding Cottonwood Park and the private park, Yellowstone Family Park, and designations for cash in lieu monies and Park Maintenance Districts (PMD).

Moved by Councilmember Purinton
Seconded by Councilmember Tidswell
APPROVED 11-0

- ii. **FIRST READING ORDINANCE FOR ZONE CHANGE 1025:** located on the north side of Rimrock Road and east of 54th Street on a parcel located on the northeast corner of the intersection. Zoning Commission recommends approval and adoption of the 10 criteria. *Quasi-Judicial

Karen Husman, Planner, reviewed the zone change criteria and stated the Zoning Commission forwarded their recommendation for approval and adoption of the 10 review criteria. She mentioned there was an application for a preliminary plat pending the zone change and annexation.

Councilmember Rupsis inquired how a 33-acre parcel could be reduced to only 16 acres with 66 residential units. Monica Plecker, Planning Manager, explained that the Planning Department looked at the net acres. P1s and rights-of-way were not included in the net. Proposed was a PND with N1 and N2 housing. Councilmember Rupsis added that the proposed new development was not following the growth policy and did not contain enough mixed housing options. Ms. Plecker confirmed that in the N2 zone the developer planned single-family housing and not duplexes as allowed. Park development options were also discussed.

Motion: Having conducted a public hearing, considered written and spoken testimony, I move to first reading ordinance of Zone Change 1025 and adoption of the 10 review criteria as recommended by the Zoning Commission.

Moved by Councilmember Purinton
Seconded by Councilmember Tidswell
APPROVED 11-0

- b. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward IV to include recently annexed property in Annexation 23-03: a parcel located

north of Rimrock Road and east of 54th Street West. Staff recommends approval.

No presentation was given but staff was available to answer questions.

Motion: Having conducted a public hearing, considered written and spoken testimony, I move to first reading ordinance expanding the boundaries of Ward IV to include recently annexed property in Annexation 23-03: a parcel located North of Rimrock Road and East of 54th Street West, as recommended by staff.

Moved by Councilmember Tidswell
Seconded by Councilmember Purinton
APPROVED 11-0

- c. **PRELIMINARY MAJOR PLAT** of Fifty-Four West Subdivision. Planning Board recommends approval. *Quasi-Judicial

Hunter Kelly, Planner, provided an overview of the proposed subdivision, noting there were 16 net acres divided into 66 lots. He reviewed the conditions of approval.

Mayor Cole expressed his concern about the fencing along Rimrock Road to meet with CPTED principles. He suggested the developer be given a choice of a solid 4-foot wall/fence or a non-sight obscuring 6-foot fence, such as wrought iron or pickets.

Councilmember Purinton did not agree with using the term CPTED without the City fully adopting CPTED principles. She wanted the PMD to be expanded to include Yellowstone Family Park for this subdivision. Monica Plecker, Planning Manager, advised to add it as a condition of approval.

Council and staff discussions continued concerning the P1 area containing an easement and functioning for stormwater removal.

Motion: I move to approve the preliminary major plat of Fifty-Four West Subdivision and adoption of the conditions of approval and Findings of Fact, as recommended by the Planning Board, and adding a condition that the developer have a choice of a solid 4-foot wall/fence or a non-sight obscuring 6-foot fence.

Moved by Councilmember Shaw
Seconded by Councilmember Purinton

Motion to Amend: I move to amend the motion to add a condition to expand the existing PMD to include Yellowstone Family Park for this subdivision.

Moved by Councilmember Purinton
Seconded by Councilmember Neese

Councilmember Rupsis expressed opposition to the amendment. The Yellowstone Family Park was created by property owners in the Yellowstone Country Club Estates Subdivision wherein they created their own PMD and SID for it. He did not consider it fair to others to now pay for their park.

Councilmember Boyett supported the amendment noting families would utilize the developed Yellowstone Family Park more than they would the undeveloped Cottonwood Park and the families from the proposed subdivision should help maintain the park they use.

Mayor Cole stated recusal on the basis he would benefit from the outcome.

Councilmember Rupsis called point of order, stating Councilmember Purinton made an amendment from which she too would personally benefit as she lived in the Yellowstone County Club Estates Subdivision as well.

Gina Dahl, City Attorney, provided that if someone on the Council would benefit financially from a decision then that member should recuse themselves, disclose the reason for recusal and could not participate in the discussion or vote.

Mayor Cole turned the meeting to Deputy Mayor Boyett to officiate.

Councilmember Purinton said she would benefit very little financially if the property owners in the proposed subdivision contributed to Yellowstone Family Park. Her point was that residents from the proposed subdivision would use the Yellowstone Family park and should contribute to its maintenance.

Councilmember Shaw called point of order to learn who was recusing themselves as three of the members on Council lived in the Yellowstone County Club Estates Subdivision.

Councilmembers Purinton and Tidswell would not recuse themselves.

Councilmember Choriki clarified with Ms. Plecker that 9% of the cash in lieu would go to Cottonwood Park. That would not affect the contributions to the Yellowstone Family Park PMD.

Councilmember Neese disagreed that anyone needed to recuse themselves and he likened the situation to him being a Heights Water District customer and voting on the rates.

Councilmember Joy called point of order and stated it was up to the individual members of the Council to decide whether to recuse themselves and that was not up for debate.

APPROVED 6-4, Councilmembers Rupsis, Shaw, Gulick and Choriki opposed

Amended Motion: I move to approve the preliminary major plat of Fifty-Four West Subdivision and adoption of the conditions of approval and Findings of Fact, as recommended by the Planning Board, and adding a condition that the developer have a choice of a solid 4-foot wall/fence or a non-sight obscuring 6-foot fence and add a condition to expand the existing PMD to include Yellowstone Family Park for this subdivision.

APPROVED 9-2, Councilmembers Rupsis and Choriki opposed

8. FRANCHISE FEE LITIGATION SETTLEMENT AGREEMENT. Staff recommends approval.

Gina Dahl, City Attorney, introduced Attorney Doug James, the City's Counsel from Moulton, Bellingham, et al. to review the terms of the litigation settlement agreement. He stated the Plaintiffs, Class Representatives and their counsel had all signed the settlement agreement and he asked for Council's approval. The settlement would not be administered by the City. The court had appointed Attorney Matt Monforten as class counsel and he represented all class members. Simpluris was appointed the class administrator and was responsible for maintaining a list of customers who paid the franchise fees when it existed, as well as excluded customers. He reminded Council that the franchise fees were abolished 2

days prior to the filing of the lawsuit and for the past 5 years the City had been litigating something that did not exist.

He explained the difficulties with determining past customers who may have been eligible to compensation. He added that customers who were eligible for compensation would receive a rebate against their current utility bill. He explained that those who were excluded but believed they were entitled to compensation, would have to file paperwork with the class administrator. He advised Council to direct anyone with questions about the settlement to contact Attorney Matt Monforten until the Court had accepted the settlement agreement and made its ruling on or about November 16, 2023, at which time the Councilmembers could speak about the case.

Motion: I move to approve the franchise fee settlement agreement as presented by Attorney Doug James, as recommended by staff.

Moved by Councilmember Boyett
Seconded by Councilmember Gulick

APPROVED 11-0

PUBLIC COMMENT on "NON-AGENDA ITEMS". Speaker Sign-in required. *(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes or as set by the Mayor. Please sign the roster at the cart located at the back of the Council chambers or at the podium.)*

There were no speakers.

COUNCIL INITIATIVES:

There were no Council initiatives.

ADJOURN: 11:56 P.M.



CITY OF BILLINGS

BY: William A. Cole
William A. Cole, Mayor

ATTEST:

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