

**MINUTES
OF THE BILLINGS CITY COUNCIL
REGULAR BUSINESS MEETING
September 25, 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 Choriki

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 Pam Purinton, Ward IV
Mayor William Cole

Absent/
Excused: Councilmember Daniel Tidswell, Ward IV
Councilmember Mike Boyett, Ward V
Councilmember Tom Rupsis, Ward V

Staff
Present: Chris Kukulski, City Administrator
Gina Dahl, City Attorney
Denise Bohlman, City Clerk
Andy Zoeller, Finance Director
Debi Meling, Public Works Director
Wyeth Friday, Planning Director
Nicole Cromwell, Zoning Coordinator
Hunter Kelly, Planner
Jessica Fust, Building Official
John Caterino, Facilities Superintendent

MINUTES:

- July 24, 2023

Councilmember Neese mentioned a revision to Page 13 and moved to approve.
Seconded by Councilmember Purinton
APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

- August 28, 2023 - Pending
- September 11, 2023

Moved by Councilmember Joy
Seconded by Councilmember Gulick
APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

COURTESIES:

Police Chief St. John recognized and presented a Meritorious Award to the following Community Service Officers for their achievements, along with a Unit citation:

- Kevin Rockwell
- Francisco Santiago
- Amanda Newell
- Coltin Wevley

Councilmember Owen spoke about the Family Justice Center proposal and how it would help families in Billings. A strategic plan was expected soon.

Councilmember Joy mentioned that the Rubber Duck Regatta was held at Zoo Montana and all proceeds would benefit Big Sky Senior Services. She thanked the Mayor, Councilmembers Shaw, and Choriki for attending the benefit for the Prevention of Elder Abuse.

PROCLAMATIONS:

There were no proclamations.

COUNCIL REPORTS:

There were no Council reports.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

- Mr. Kukulski advised Council that there were 6 “recommended” motions for Council’s consideration for Regular Agenda Item 5, Zone Change 1034 – Text Amendments.

- Mr. Kukulski advised there were four items that needed to be removed from the agenda by council action. They were:
 1. Consent Agenda Item 1I – Resolution adopting Parking Rates for FY4-FY26 and repealing Resolution 20-10891, due to inadequate advertising for a public hearing;
 2. Regular Agenda Items 2 and 3, relating to the small cell ordinance and resolution, due to inadequate advertising. They will be on the October 9, 2023, Regular Agenda.
 3. Regular Agenda Item 6 was an ordinance change for property. It was discussed at the 9/18/23 Work Session. The item would be brought before Council during the October 2nd Work Session to continue work on a draft property ordinance.
- Mr. Kukulski reminded the public that on Wednesday, September 27th, there would be a presentation about the Parks, Recreation and Trails Bond issue in the Community Room at the Public Library.
- Mr. Kukulski reminded the public to apply for their property tax rebates.
- Mr. Kukulski advised there were no ex-parte communications sent to Mayor and Council after 3 pm concerning the agenda.

Motion: I move to remove Consent Agenda Item 1I, Regular Agenda Items 2, 3 and 6, as recommended by staff.

Moved by Councilmember Neese
 Seconded by Councilmember Purinton

Councilmember Neese asked that when Consent Agenda Item 1I returns to Council that the cost of kilowatt hours for electric vehicle chargers be included in the staff memo.

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 4b, 7 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.)

There were no speakers.

1. **CONSENT AGENDA** -- Separations: 1D, 1G

Mayor Cole separated Consent Agenda Item 1D to propose a change to the agreement and 1G to abstain since he was party to the donation.

Motion: I move to approve the items of the Consent Agenda as submitted, with the exception of Items 1D and 1G.

Moved by Councilmember Joy
Seconded by Councilmember Shaw

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

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

1.

	Name	Board/Commission	Term	
			Begins	Ends
1	Jordan Clayton	Tourism BID	10/01/23	10/01/27
2	Shelli Mann	Tourism BID	10/01/23	10/01/27

Moved by Councilmember Joy
Seconded by Councilmember Shaw

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

B. Bid Awards: None

C. Agreement with Lyngsoe Systems for Library Automated Materials Handler (AMH) System and Conveyance.

Moved by Councilmember Joy
Seconded by Councilmember Shaw

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

D. Funding Agreement between the City and RiverStone Health to increase Nurse Family Partnership.

Motion: I move to approve Consent Agenda Item 1D with the following changes made to the agreement for clarity:

Exhibit A – Scope – Paragraph 1, concerning providing 2 full time nurses to provide services.

Add the language 2 additional full time nurses. (Riverstone currently employs 2.5 full time nurse FTEs.)

Moved by Mayor Cole
Seconded by Councilmember Owen

Councilmember Joy noted the opportunity to get ahead of the problem before it lands in the criminal justice system was outstanding.

Councilmember Owen acknowledged the importance of the in-home impacts and its preventative affects on future criminal activity merited the use of tax dollars.

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

E. Amendment No. 3, with JLG Architect for professional services design contract, for New City Hall.

Moved by Councilmember Joy
Seconded by Councilmember Shaw

Councilmember Purinton asked for clarification on Consent Agenda Item 1E and whether the County would be required to replace or pay for the window replacement on the third floor. Jessica Fust, Building Official, responded that it is unknown whether the County would purchase the third floor, but the City was proposing to purchase all windows for the entire building. The City would not install the windows in the County suite due to the disruptive construction process while the space was occupied. Discussions continued about delays in furniture and HVAC. Security concerns were also discussed as well as whether there was a requirement for local labor to be used. The webpage had not been updated in a while but would be soon.

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

F. Donation to City for New City Hall artwork by local artist Barbara Garrett.

Councilmember Gulick thanked Barbara Garrett for her generous donation of her artwork.

Moved by Councilmember Joy
Seconded by Councilmember Shaw

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

G. Donation to the Parks and Recreation Department from Fidelity Charitable Donor Advised Fund grant.

Deputy Mayor Pro Tempore Neese, officiated over the vote.

Motion: I move to approve the Donation to the Parks and Recreation Department from Fidelity Charitable Donor Advised Fund grant.

Moved by Councilmember Joy
Seconded by Councilmember Gulick

APPROVED 7-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused, Mayor Cole abstained.

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

Moved by Councilmember Joy
Seconded by Councilmember Shaw
APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

I. Resolution adopting parking rates for FY24—FY26. **REMOVED**

Moved by Councilmember Neese
Seconded by Councilmember Purinton
APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

J. Bills for the Weeks of:

1. August 21, 2023

Moved by Councilmember Joy
Seconded by Councilmember Shaw
APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

2. August 28, 2023

Moved by Councilmember Joy
Seconded by Councilmember Shaw
APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

REGULAR AGENDA:

~~2. PUBLIC HEARING AND FIRST READING ORDINANCE~~ amending Billings, Montana City Code (BMCC), Article 22-407, Encroachment Permit Required. Staff recommends approval. **REMOVED**

Moved by Councilmember Neese
Seconded by Councilmember Purinton
APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

~~3. RESOLUTION~~ for managing deployment of small cell facilities in the right-of-way. Staff recommends approval. **REMOVED**

Moved by Councilmember Neese
Seconded by Councilmember Purinton
APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

4. **BOETTICHER AND SPENNY PROPERTY:**

a. **JOINT PUBLIC HEARING FOR ANNEXATION 23-07 AND ZONE CHANGE 1035:**

- i. **RESOLUTION 23-11165 APPROVING ANNEXATION 23-07:** a parcel located at 2449 Blue Creek Road, north of Blue Creek Road and West of Colleen Drive. Staff recommends approval. *Quasi-Judicial

Hunter Kelly, Planner, provided a joint presentation for the annexation and Zone Change 1035. He reviewed the annexation policy criteria and stated the property met the criteria. He noted only one residence was anticipated at this time, but it was possible for additional density in the future. He discussed the RR1 Zone Change to an N3 Zone because the City does not have an RR1 zone and therefore the zone change was necessary.

Discussions continued about density changes that would take effect January 2024 due to recently passed legislation. Infrastructure design to the property was clarified as being adequate and the access off of Colleen Drive was an emergency access only.

Mayor Cole and staff discussed future park development and planning. Also discussed was adding more analytical data to statements concerning the adequacy to provide public safety services.

A joint public hearing was held. No public testimony was given.

Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve a resolution approving Annexation 23-07, as recommended by staff.

Councilmember Joy explained that by annexing the parcel, it helped the City recoup its investment for utilities to Briarwood.

Moved by Councilmember Joy

Seconded by Councilmember Shaw

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

- ii. **FIRST READING ORDINANCE FOR ZONE CHANGE 1035:** generally located at 2449 Blue Creek Road - Lot 7 of Blue Creek Acreage Tracts Subdivision. Zoning Commission recommends approval and adoption of the 10 review criteria. *Quasi-Judicial

Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve First Reading Ordinance for Zone Change 1035 and adopt the findings of the 10 review criteria, as recommended by the Zoning Commission.

Moved by Councilmember Joy

Seconded by Councilmember Shaw

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

- b. **ANNEXATION AGREEMENT** with Andrew Boetticher and Michelle Spenny. Staff recommends approval.

Debi Meling, Public Works Director, explained the annexation agreement with the developer was to outline the developer's responsibility for payment of the City system development fees for connecting to sanitary sewer and water main and reimburse their proportionate share of the cost for those improvements.

Councilmember Neese asked when the water and sewer mains were installed and whether the fees to the developer could include the cost of inflation rather than 2004 and 2009 construction costs. Ms. Meling responded that it was considered, along with depreciation, and determined it appropriate for 20-year-old infrastructure. Policy changes were discussed.

Motion: I move to approve an Annexation Agreement with Andrew Boetticher and Michelle Spenny, as recommended by staff.

Moved by Councilmember Shaw,
Seconded by Councilmember Joy

Councilmember Purinton clarified with Debi Meling, Public Works Director, that the right-of-way and sidewalk installation would be postponed until further development occurred. Ms. Meling clarified the terms "Developer" versus "Owner". She indicated that should the property be sold in the future, the annexation agreement ran with the land and it could be developed further, so using the term "Developer" was appropriate.

Mayor Cole expressed his concern about the language concerning intersection improvements and the 500 trips per day criteria in Paragraph 9 of the agreement. He suggested it be contained in a waiver of SIDs. Ms. Meling responded that state law allowed for assessments and the waivers were in perpetuity.

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

- c. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward III to include recently annexed property in Annexation 23-07: a parcel located at 2449 Blue Creek Road. Staff recommends approval.

There was no presentation, but staff was available if there were any questions.

No public testimony was given.

Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve First Reading Ordinance expanding the boundaries of Ward III to include recently annexed property in Annexation 23-07: a parcel located at 2449 Blue Creek Road, as recommended by staff.

Moved by Councilmember Joy

Seconded by Councilmember Gulick

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

5. **PUBLIC HEARING AND FIRST READING ORDINANCES FOR ZONE CHANGE 1034:** Zoning Text Amendments - Phase III, landscape and off-street parking relief; landscape plan clarifications for residential; Special Review criteria and Zoning at Annexation. Zoning Commission recommends approval and adoption of the 10 review criteria for these items only.

Nicole Cromwell, Zoning Coordinator, presented on the proposed amendments leading to 6 separate ordinances. She reviewed each of the following sections of the code:

- Section 27-1614 - Administrative Relief. Proposed amendment would normalize types of relief; would add current relief provisions from off-street parking and landscaping into this process and no changes to standards or criteria for granting or denying relief requests. She provided the Costco waiver request as an example.
- Section 27-1618 – Landscape Plans. Amend the language to clarify that no landscape plan is required for one and two family developments on single lots and change the requirement for a landscape architect for a 1-acre lot to 1.5-acre lot similarly to the County’s code and update references in the new Administrative Relief, Section 27-1614.
- Sections 27-1000, 1300, 1400, 1500, 1600 and 1800 – Minor errors, cross references and omissions were gathered for various sections and recommended housekeeping changes were addressed.
- Sections 14-300 and 24-600 – Minor errors, cross references and omissions to be corrected.
- Section 27-1623 providing Special Review criteria.
- Sections 27-1615 and 802 – Regarding Zoning choices at annexation.

Councilmember Neese asked if someone could be prevented from living in a home next to a business in an industrial zone or converting a section of their warehouse into housing. Ms. Cromwell responded that the code prohibited building new residences in industrial zones. And if there was a home existing in an industrial zone, a home occupation would not be allowed out of the home.

The following individuals spoke during the public hearing:

- **Doug Wild, 4712 Audubon Way, Billings, Montana**, represented the Home Builders Association, supported the proposed amendments and appreciated the process.

No further public testimony was given.

A voice vote was taken for each of the 6 ordinances.

Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve First Reading of the Ordinance Amending City Code Section 27-1614 providing Administrative Relief and adopt the findings of the 10 review criteria, as recommended by the Zoning Commission.

Moved by Councilmember Gulick

Seconded by Councilmember Shaw

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve First Reading of the Ordinance Amending City Code Section 27-1618 providing Landscape Plan Process and adopt the findings of the 10 review criteria, as recommended by the Zoning Commission.

Moved by Councilmember Shaw

Seconded by Councilmember Gulick

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve First Reading of the Ordinance Amending City Code Section 27-1000, -1300, -1400, -1500, -1600, and -1800 to correct errors, cross references, omissions, and provide clarification of the regulations and adopt the findings of the 10 review criteria, as recommended by the Zoning Commission.

Moved by Councilmember Joy

Seconded by Councilmember Gulick

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve First Reading of the Ordinance Amending City Code Section 14-300 and 24-600 to correct errors, cross references, omissions, and provide clarification of the regulations and adopt the findings of the 10 review criteria, as recommended by the Zoning Commission.

Moved by Councilmember Shaw

Seconded by Councilmember Gulick

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve First Reading of the Ordinance Amending City Code Section 27-1623 providing Special Review criteria and adopt the findings of the 10 review criteria, as recommended by the Zoning Commission.

Moved by Councilmember Joy

Seconded by Councilmember Gulick

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve First Reading of the Ordinance Amending City Code Section 27-1615 providing Zoning at Annexation and Section 27-800 providing for Planned Neighborhood Development and adopt the findings of the 10 review criteria, as recommended by the Zoning Commission.

Moved by Councilmember Gulick

Seconded by Councilmember Shaw

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

~~6. — **PUBLIC HEARING AND FIRST READING ORDINANCE** amending Billings, Montana City Code (BMCC), Article 22-900, Sale, Exchange or Donation of City Real Property. Staff recommends approval. **REMOVED**~~

Moved by Councilmember Neese

Seconded by Councilmember Purinton

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

7. **PURCHASE AND SALES AGREEMENT** of Park 1 ground retail space to Journey Willow Cottage, LLC. City Council Operations Sub-Committee recommends Council reject all proposals.

John Caterino, Facilities Superintendent, provided a PowerPoint presentation giving the history of the decision to sell Park 1 ground retail space in 2022. He explained the RFP process and that two offers were received. The City Council's Operations Sub-Committee reviewed and directed staff to enter into negotiations with Journey Willow Cottage, however after further discussions, the Operations Sub-Committee recommended rejecting all bids and re-advertising mostly due to sales price. The property was currently being condo-ed.

Matt Robertson, agent, NAI Business Properties, 3312 Fourth Avenue North, Billings, Montana, explained the valuation of the property and its challenges. He spoke of the properties' potential, its national marketing efforts and the RFP process did not work well for a real estate sale in a volatile economy.

Discussions continued regarding location and visibility and the success of business in that area. Also discussed was changing from an RFP process to an offers process. The sales comparison approach was reviewed.

Motion: I move to reject all proposals for the sale of Park 1 ground retail space, as recommended by City Council Operations Committee.

Moved by Councilmember Shaw,

Seconded by Councilmember Neese

Councilmember Shaw indicated the RFP process needed to be changed right away.

Councilmember Neese agreed and spoke about avoiding additional costs.

Councilmember Owen voiced her concern about changing the process but offered an auction scenario as a possibility. Mr. Robertson cautioned against an auction because bids could be really low and there could be a sole bidder. It was not just about disposing of property, it was also about maximizing the outcome for the property owner, the City.

Mayor Cole entertained selling “condos” for commercial property much like was done with the Empire Parking Garage retail spaces. Mr. Robertson stated that “mom and pop” small businesses often wanted to own their business property, rather than lease so “condo-ing” could make sense. Mayor Cole followed by inquiring if residential space could be offered in the space, rather than retail space. Mr. Robertson found that problematic and could prove to be very expensive with the required renovations.

Councilmember Choriki inquired whether selling the retail space first and later selling the parking garage would create difficulties. Mr. Robertson indicated it could be done.

Chris Kukulski, City Administrator, reviewed the provisions in the recently approved Ordinance concerning sale and disposition of City-owned real property. The Ordinance provided that sales could be done by bid, public auction or open negotiations. Conditions could be attached to the sale, but doing so could lose a sale.

Mayor Cole mentioned that three City-owned properties were discussed for use for a Family Justice Center, including this one.

APPROVED 7-1, Councilmembers Tidswell, Boyett and Rupsis absent/excused, Councilmember Choriki opposed.

Recessed at 7:37 PM. Reconvened at 7:45 PM.

8. CHANGE ORDER NO. 4 2, with Dick Anderson Construction for Construction Manager at Risk (CMAR) contract, for New City Hall. Staff recommends approval.

Jessica Fust, Building Official, introduced the team involved in the construction efforts and thanked the Council’s Budget and Finance Sub-Committee for their involvement and guidance. She gave a PowerPoint presentation and explained the decisions made. At the time of purchase, window replacement was not considered. However, later in the process Terracon reported that most of the 752 windows were near or had reached the end of their useful life. They were 60 years old and many were inoperable and inefficient. Initially, re-glazing and repairing the windows was considered. Ms. Fust provided details of the replacement windows and its feasibility. Bids received were approximately \$2.5 million less than anticipated. She explained that because the building was a historic building, the proposed window replacements had to be in line with Historic Preservation requirements and tax credits. The Budget and Finance Sub-Committee recommended the project to move forward. She explained the replacement

process and stated the windows in the County suite would not be replaced on the third floor. She reviewed budget allowances and reductions to the scope of work that could be considered.

Councilmember Owen clarified that the Committee had recommended the \$2 million expenditure but the differential to be considered was about \$420,000. The cost of the windows was \$2.4 million and Ms. Fust was providing areas where the \$420,000 could be sought in reductions to the scope of work.

Mayor Cole noted the new windows would be very energy efficient and the cost-savings would be realized within 15 years or less.

It was noted that the staff memo indicated Change Order No. 2, but the agenda description erroneously stated Change Order No. 1.

Motion: I move to approve Change Order No. 2 with Dick Anderson Construction for Construction Manager at Risk (CMAR) contract, for New City Hall, as recommended by staff.

Moved by Councilmember Gulick
Seconded by Councilmember Owen

APPROVED 8-0, Councilmembers Tidswell, Boyett and Rupsis absent/excused.

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: 8:01 PM.

CITY OF BILLINGS

BY: _____
William A. Cole, Mayor

ATTEST:

BY: _____
Denise R. Bohlman, City Clerk