

REGULAR MEETING OF THE BILLINGS CITY COUNCIL

June 10, 2019

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. Mayor Cole called the meeting to order at 5:30 p.m. and served as the meeting's presiding officer. Councilmember Yakawich gave the invocation.

ROLL CALL: Councilmembers present on roll call were: Cromley, Yakawich, Neese, Ewalt, Joy, Friedel, Gibbs, Ronning, Clark and Brown.

MINUTES: May 28, 2019 – Pending

COURTESIES:

- Councilmember Joy mentioned she attended an MMIA elected officials training and she encouraged all Councilmembers to attend a training when offered in the future.
- Councilmember Yakawich thanked Katy Easton, the Downtown Business Alliance, and all involved in organizing the Strawberry Festival, despite the rain.
- Councilmember Yakawich recognized Councilmember Friedel's wife and the Boy Scout troop for their involvement in the March against Drugs and Violence.
- Mayor Cole recognized Councilmember Yakawich for organizing the March against Drugs and Violence for the past 20 years.

PROCLAMATIONS:

- Mayor Cole proclaimed the week of June 10-16, 2019, as Men's Health Week.

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

- Mr. Kukulski noted there were no ex parte communications.
- Mr. Kukulski advised Council that Vice President Mike Pence would visit Billings on Wednesday and Thursday. He stated Chief St. John would speak during a press conference on Tuesday morning at 0900 hrs.
- Mr. Kukulski asked Council to move to separate Consent Agenda Item 1A2, W.O. 18-22, Leavens Reservoir Expansion, to reject all bids. Public Works Director would provide an explanation for the new recommendation.

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: Agenda Items: 1 and 2 ONLY. Speaker sign-in required. (Comments are limited to three (3) minutes. 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 public comment period was opened.

- **Kevin Nelson, 4235 Bruce Avenue, Billings, Montana**, in regard to Consent Agenda Item 1D1, stated he objected to the City paying the Moulton, Bellingham invoice for investigation into Mr. Zeier's activities with SBBURA. He stated that the TIF district did not cause the expense to be incurred. He continued that the SBBURA Board and Mr. Zeier of Zeier Consulting, were responsible and should have to pay for the review and expense. He asked the Council to separate this item and get a voice vote on it.

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

1. CONSENT AGENDA

A. Bid Awards:

1. **MET Transit Roof Replacement Project, Phase 2.** (Opened 5/28/19)
Recommend Commercial Roofing, \$264,550.
2. **W.O. 18-22: Leavens Reservoir Expansion and Zone 1 Improvements.**
(Opened 5/28/19) Recommend Western Municipal, \$2,341,161.50.
REJECTED ALL BIDS. APPROVED 10-0, EWALT ABSTAINED
3. **W.O. 19-44: Shiloh Roundabouts Landscaping.** (Opened 5/28/19)
Recommend Good Earth Works, \$1,196,915.

B. Acceptance and Approval of Grant Award Project Safe Neighborhoods - Researcher for Police Department; \$42,200.

C. Final Plat of High Sierra Subdivision, 12th Filing.

D. Bills for the week of:

1. May 6, 2019
2. May 13, 2019

Councilmember Clark moved to separate Consent Agenda Item 1A2 for discussion, seconded by Councilmember Ronning.

Councilmembers Cromley and Brown separated Consent Agenda Items 1D1 and 1D2 in order to abstain.

Councilmember Neese separated Consent Agenda Item 1D2 in order to abstain.

Councilmember Ewalt stated he would abstain on the vote for Consent Agenda Item 1A2.

Councilmember Clark moved for approval of the entire Consent Agenda, with the exception of Items 1A2, 1D1 and 1D2, seconded by Councilmember Ronning.

Councilmember Ewalt, in reference to Consent Agenda Item 1A3, asked if the vegetation would be removed from the roundabouts for less dependence on water. David Mumford, Public Works Director, stated the vegetation was a maintenance issue. He continued that the new design would decrease vegetation and replace it with more drought tolerant species. He stated the new design would also increase and improve visibility.

Councilmember Yakawich, in reference to Consent Agenda Item 1B, asked Police Chief St. John to explain Project Safe Neighborhoods. Chief St. John responded that the grant monies would allow the police department to hire an intern to research the causes for violence in Billings; provide opportunities for early interventions; and identify trends. He stated Billings was losing traction in prevention, education and treatment.

Councilmember Ewalt inquired about graffiti elimination. Chief St. John responded there were individuals with Crime Prevention and the Parks Department that removed graffiti around the City and those efforts would continue, along with prosecution.

On a voice vote, the motion was unanimously approved.

Councilmember Joy moved for approval of Consent Agenda Item 1A2, seconded by Councilmember Cromley. Mayor Cole asked David Mumford, Public Works Director, why the recommendation to approve a bid award was changed to rejecting all bids. Mr. Mumford responded the bids were much higher than anticipated and after reviewing the sequencing of the projects to be included in the work order, staff decided to re-evaluate and re-bid later to eliminate any possible vulnerabilities to services to the hospitals.

On a voice vote, the motion was approved 10-0, Councilmember Ewalt abstained.

Councilmember Clark moved for approval of Consent Agenda Item 1D1, seconded by Councilmember Ronning.

Councilmember Friedel inquired about the invoices paid to Moulton, Bellingham, et al. on behalf of the SBBURD. City Administrator, Chris Kukulski, stated the full cost of the work was paid by the SBBURD and the monies were not derived from the City's funds. Councilmember Neese followed and asked if the SBURA would request reimbursement of the expenses from Mr. Zeier. Mr. Kukulski stated he was not aware of the Board's plans.

On a voice vote, the motion was approved 9-0, Councilmembers Brown and Cromley abstained.

Councilmember Clark moved for approval of Consent Agenda Item 1D2, seconded by Councilmember Joy. On a voice vote, the motion was approved 8-0, Councilmembers Brown, Neese and Cromley abstained.

REGULAR AGENDA:

2. RESOLUTION 19-10798 of support authorizing submittal for 2019 BUILD Grant Application to construct a program of projects - Inner Belt Loop, Sky Line Trail, Stage Coach Trail, Zoo to Riverfront and Riverfront to Mystic Park Trail Corridors; \$25,000,000. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Wyeth Friday, Planning Director, gave a brief Powerpoint presentation and outlined the proposed projects for the grant. He stated that last year staff was not able to meet the deadline to submit an application for the grant, but were prepared to submit by this year's deadline of July 15th. He explained that the BUILD grant, previously known as the TIGER grant, was a very competitive federal grant. He stated the grant would mention that one-half of the funds to complete the Inner Belt Loop was local match funding. He listed the many local stakeholders involved in the application process and was optimistic about Billings' chances to obtain a grant. He stated the Yellowstone County Commissioners would likely prepare a resolution of support in the near future.

Councilmember Clark thanked staff for being better prepared for application submission this year and stated it was a very important grant to acquire. Councilmember Joy asked for clarity on travel to Washington DC to educate congressional leaders as stated in the presentation. Mr. Friday stated it was very important to communicate, directly, with leaders involved in the process. He continued that other communities send small delegations in this effort and were successful in obtaining a grant. Councilmember Neese clarified that the Inner Belt Loop would not be used for truck traffic. Councilmember Ewalt asked if the Inner Belt Loop would be prioritized should the City receive the grant. Mr. Friday responded progress would move more quickly, if Billings received the grant. Mr. Kukulski stated staff continued to work with landowners along the Inner Belt Loop to obtain easements.

Councilmember Clark moved for approval of Item 2, seconded by Councilmember Neese. On a voice vote, the motion was approved unanimously.

3. PUBLIC HEARING AND RESOLUTION 19-10799 establishing collection, disposal, and landfill fees for FY2020. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Jennifer Duray, Public Works Deputy Director, gave a brief summary of the proposed solid waste fees. She reviewed the recommendations to fee increases. She

reviewed residential and commercial collection fees and explained the policies. She noted Billings' rates were below other Montana cities of similar size, with the exception of Kalispell. She stated Billings' rates were below the cost of service because they were subsidized by landfill fees. Ms. Duray continued outlining the various proposed increases and the implementation of a \$10 "uncovered load" fee that would include distributing a tarp for future load use. She explained that residential and commercial fees included the landfill fee, but the residential customers were not charged landfill fees for self-hauling. She explained that the fee structure was different for Yellowstone County customers, per an agreement with Yellowstone County. Discussions followed about County self-haulers and private haulers' fees; out-of-state users and landfill revenues. Ms. Duray cautioned the Council to consider keeping the rates as close to the cost of service as possible. She again compared the Billings' rate to those of other similarly sized Montana cities and Cheyenne, Wyoming and Eugene, Oregon. She stated that Billings' landfill rates were slightly less than Helena's and Bozeman's. She continued that that would likely change due to the investment cycle occurring at the landfill.

Councilmember Ewalt confirmed that the proposed fee structure would equate to a 10% overall increase over 5 years to City residents' collection fees. Discussions followed concerning charging extra to customers with overflow (pay as you throw), extra receptacles, 90 gal. vs. 300 gal. containers, and possibly reducing sanitation trucks for overflow.

Councilmember Ewalt asked if the increase to residents' collection fees was attributed to the landfill expansion. Jennifer Duray responded that the expansion was a landfill expense and does not significantly impact the collection portion of the fees. Councilmember Ewalt asked how much the bond payment was per year. Ms. Duray responded that it was approximately \$1.5 million. She stated the 5% increase on the landfill portion of fees would primarily make the bond payments. She continued that those rates had been implemented to pay for that debt service.

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

Councilmember Neese discussed possibly reducing the residential collection fee increase from the proposed 2.5% to 1.25% and shift that cost to outside users. Councilmember Cromley opposed that suggestion and moved for approval of Item 3 as recommended by staff, seconded by Councilmember Clark.

Councilmember Ewalt moved for an amendment to the motion to revise the 5% landfill fee to 15% to non-City residents and out-of-state customers, seconded by Councilmember Friedel.

Discussion ensued about landfill uses and outside users subsidizing City users. Mr. Kukulski warned against a lop-sided fee structure. He stated that if residents became too dependent on outside contributions, and there was a loss of outside

contributions in the future (loss of business), it could come as a hardship to some residents who were not accustomed to paying their way. He continued by stating fees help people self-govern their activity to avoid abuses of services and there is a value to that.

Councilmember Neese asked how much additional revenue the motion's increase would provide. Ms. Duray responded approximately an additional \$315,000, annually, over staff's recommendation. Councilmember Neese followed by asking how the additional \$315,000 would be used. Ms. Duray stated the increase was not considered or reflected in the proposed budget, but supposed the extra revenue would be used to off-set future rate increases. Councilmember Neese confirmed that the proposed increase would off-set the residential collection fee increase.

Councilmember Cromley asked how much of the \$315,000 would be paid by Yellowstone County residents. Ms. Duray stated approximately \$200,000 of it and she clarified the private haulers' portion of the revenue. She explained that there were also contracts with six other entities that made up the difference, and those contracts were due for renewal July 1st.

Councilmember Neese moved for an amendment to the amended motion, stating that the proposed residential collection fee be increased to 1.25%, rather than 2.5%, seconded by Councilmember Ewalt. Councilmember Neese stated the proposed amendments would actually give the Public Works more revenue, while buffering City residents with additional expenses. He continued that the City would be asking residents for more money soon for other areas and this seemed like a good compromise. Councilmember Clark confirmed that currently, the City residents' collection fees did not pay for itself, and those fees were subsidized by landfill fees.

On a voice vote, the amendment to the amended motion failed, 3-8. Councilmembers Cromley, Yakawich, Joy, Friedel, Ronning, Clark, Brown and Mayor Cole voted in opposition.

On a voice vote, the amended motion to revise the 5% landfill fee to 15% to non-city residents and out-of-state customers was approved, 9-2. Councilmembers Cromley and Joy voted in opposition.

Councilmember Joy stated that the City should be a good neighbor to its County residents. She stated that private hauling companies that hauled for the County residents would likely pass any increases onto the County residents and the private hauling companies would not absorb the increases. Councilmember Friedel objected to that statement and added the City has the liability and the County could develop a separate landfill if it wished.

On a voice vote, the original amended motion was approved, 10-1. Councilmember Joy voted in opposition.

4. PUBLIC HEARING AND RESOLUTION 19-10800 vacating a portion of right of way located in the northeast corner of 10th Avenue North and North 27th Street, Opportunity Bank, petitioner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

David Mumford, Public Works Director, provided location information. He explained that the City did not utilize the right-of-way in question and the City's sidewalks would not be impacted by the vacation of the right-of-way. He continued that Opportunity Bank wished to use the property for sign placement. He stated the City received an appraisal for its value and that staff recommended approval of the vacation.

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

Councilmember Yakawich moved for approval of Item 4, seconded by Councilmember Friedel. On a voice vote the motion was approved unanimously.

5. PUBLIC HEARING AND FIRST READING ORDINANCE amending Sections 17, BMCC, relating to noise regulations. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Brent Brooks, City Attorney, gave a PowerPoint presentation and acknowledged the work Daniel Autenrieth, the expert from Montana Tech, had provided. Mr. Brooks introduced Captain Korell of the Billings Police Department, who was charged with the investigation of noise complaints. He provided a hand-out of School District No. 2's good neighbor policy concerning noise from Daylis Stadium. He explained the history of the ordinance and the police department's procedures for handling complaints. He addressed the waivers criteria and stated there were no recommended changes to most of the current criteria. He continued that the Public Works Department responded to most of the construction-related complaints and special events held in the public right-of-way. Mr. Brooks stated Council had approved retaining Mr. Autenrieth to review the noise ordinance, globally, and to make recommendations. He continued that Mr. Autenrieth provided his report on September 16, 2018. Mr. Brooks noted the major recommended changes, particularly, adding a maximum and average noise limits table to the ordinance and provide specific ending times for outdoor events, unless a waiver was granted. He stated there was a recommendation to exempt the Central Business District and the EBURD area from waiver requirements. He stated it was recommended that waivers not override Special Reviews.

Discussions followed concerning delaying any final decision about the proposed amendments.

The public hearing was opened.

- **Mark Wahl, Activities Director for School District No. 2, Billings, Montana,** stated the sound system at Daylis Stadium was updated and was unexpectedly powerful. He gave examples of ways the School District and neighborhood worked together to reduce the incidences of obtrusive noise coming from Daylis Stadium. He stated that the School District needed to provide more communication and instruction to outside users of the sound system, i.e. Special Olympics and Big Sky State Games. He explained it was difficult to place a governor on the system because the different sources of sound generated sound differently, i.e. music genres. He explained that the School District purchased a decibel reader and used it, but that on Avenue B, there were no obstructions to block noise from Daylis Stadium.

Council discussions followed about the use and accuracy of decibel readers and their locations; possible hearing damage at certain noise levels; consulting with audiologists; the use of noise buffering systems; and improving communications with neighbors.

- **Gerald Kessler, 237 Avenue B, Billings, Montana,** stated he was concerned with the ordinance exempting all stadiums from noise limits. He stated a specific decibel limit was needed. He stated the noise had been acceptable for four decades previous to the introduction of the new sound system. He thanked Mr. Wahl for his efforts, but stated more needed to be done, specifically during football season. He stated his concern about keeping the neighborhood viable.
- **Teri Edelman, 711 North 32nd Street, Billings, Montana,** stated her family moved to the neighborhood over a year ago because they wanted to be around the noise and excitement of children. She stated their home was located about 3 blocks from Daylis Stadium and they were not bothered by the noise.

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

Brent Brooks, City Attorney, stated that in Mr. Autenrieth's report, he had referenced several cities that exempted athletic stadiums, however, he was uncertain of the proximity of the stadiums to residential areas. Mr. Brooks addressed changes Councilmember Cromley had requested and suggested subtitling for school events and public park events be included. He read proposed new language to the ordinance concerning school events and public park events and added that "Non-Event" be placed in the ordinance concerning schools and public parks. He continued that requiring an exemption for each athletic event was problematic under the current ordinance, which limited the number of waivers per year to four. He stated that proposing an overall exemption for school events may be an improvement over existing language.

Councilmember Cromley stated a maximum decibel level needed to be added because there currently were no daytime decibel limits. Mr. Brooks responded that if the limits were not specifically mentioned in individual sections, the overall general decibel limits would apply. He continued that granting waivers was a concern. He stated that the current language has schools under an exempt section for noise between 7 AM and 8 PM and that was likely meant to address playground activities, i.e. recesses.

Councilmember Gibbs stated the ordinance was not consistent. He stated it addressed residential, commercial and industrial, but it did not address special venues across the city. He continued that the City should consider public safety. He stated that 105 decibels was damaging to one's hearing and more research needed to be done before approving any amendments to the ordinance. Mr. Brooks stated he would check Mr. Autenrieth about damage to hearing because of duration or volume or both and provide that information to Council.

Discussions continued about the organization of the wording in the ordinance; organized fireworks display exemptions; and construction/maintenance/snow plowing restrictions.

Councilmember Yakawich moved to delay Item 5, and form a subcommittee of Councilmembers to develop proposed amendments to be brought before Council during the August 5, 2019 Work Session, seconded by Councilmember Ewalt. On a voice vote the motion was approved unanimously.

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. Please sign the roster at the cart located at the back of the Council chambers or at the podium.)

The public comment period was opened.

- **Donald Kaiser, 1671 Vuecrest Drive, Billings, Montana**, stated his concerns about water damage to his home caused by the BBWA canal. He stated his home and property, his neighbors' properties, and even the City's property were damaged by the water. He asked for the City's help in locating documentation concerning development in the area.
- **Charlie Groscup, 1663 Vuecrest Drive, Billings, Montana**, stated the land around the homes on Vuecrest was moving. He stated someone should hold the BBWA responsible for the damages to his property, his neighbors' properties, the City's property and MDU's property. He continued that people were being forced from their homes for their safety.
- **Britton Frisbie, 1687 Vuecrest Drive, Billings, Montana**, stated she had obtained an attorney concerning water damage to her home and property caused by water from the BBWA canal and described the damages. She stated that the City was an interested party, because it was a property owner, too.

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

Council discussion followed concerning safety, emergency measures, and the City's position on the situation on Vuecrest Drive and the BBWA.

COUNCIL INITIATIVES:

There were no Council initiatives.

There was no further business, and the meeting adjourned at 9:35 p.m.

CITY OF BILLINGS

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

ATTEST:

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

