

## REGULAR MEETING OF THE BILLINGS CITY COUNCIL

**September 27, 2021**

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 Purinton gave the invocation.

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

### **MINUTES:**

**September 13, 2021** – The Minutes were pending.

### **COURTESIES:**

Mayor Cole congratulated Councilmember Yakawich on the arrival of his new granddaughter.

Mayor Cole provided instructions for closed-captioning viewers who were watching on Community 7 TV. He advised viewers to contact Community 7 TV directly if there were questions and stated the equipment and software was made possible through a grant from the Billings Community Foundation, and a joint partnership between Billings School District No. 2, Yellowstone County Commissioners, Community 7 TV and the City of Billings.

Councilmember Ronning wished a speedy recovery to the Public Works employee who was injured when hit by a vehicle while working on the City's streets.

### **PROCLAMATIONS:**

Mayor Cole proclaimed Wednesday, October 6, 2021, as Walk to School Day.

### **COUNCIL REPORTS:**

There were no Council reports.

### **ADMINISTRATOR REPORTS - CHRIS KUKULSKI**

Mr. Kukulski stated while he was attending a conference, Assistant City Administrator, Kevin Iffland, would be present at the October 4<sup>th</sup> Work Session.

Mr. Kukulski stated there were no ex parte communications received concerning the agenda.

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 6b, 7b, 8 and 9 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

- F. **Assignment and Assumption** of Lease Agreement for the Miller Building space; \$18,883/mo.
- G. **State Highway Traffic Safety Billings Selective Traffic Enforcement Program (STEP)** overtime grant; \$10,000.
- H. **Donation** to the Public Library for specific projects and book kits for the Teen Tech Lab from Humanities Montana; \$6,000.
- I. **Underground Easement** with NorthWestern Energy (NWE) for the new service line for W.O. 20-23: Solid Waste Container Storage Facility.
- J. **Final Plat** of Copper Ridge Subdivision, 8th Filing.
- K. **Bills for the Weeks of:**
  - 1. August 23, 2021
  - 2. August 30, 2021

Councilmember Brown separated Items 1E and 1K1 to abstain, stating his employer was a beneficiary in those items.

Councilmember Ewalt separated Item 1B2, for discussion.

Councilmember Neese moved for approval of the entire Consent Agenda with the exception of Items 1B2, 1E and 1K1, seconded by Councilmember Boyett. On a voice vote, the motion was unanimously approved.

Councilmember Ewalt, in reference to Consent Agenda Item 1B2, moved to change the "Background" paragraph of the staff memo to contain, "and damages from previous hailstorms," seconded by Councilmember Neese. On a voice vote, the motion was unanimously approved.

Councilmember Ewalt moved to approve Consent Agenda Item 1B2 as changed, seconded by Councilmember Neese. On a voice vote, the motion was unanimously approved.

Councilmember Neese moved to approve Consent Agenda Items 1E and 1K1, seconded by Councilmember Ewalt. On a voice vote, the motion was approved 10-0, Councilmember Brown abstained.

**REGULAR AGENDA:**

**2. PUBLIC HEARING to receive input on the City's FY2020-2021 Draft Comprehensive Annual Performance Evaluation Report (CAPER) for Community Development Block Grant (CDBG) and HOME Programs. No action is necessary.**

Brenda Beckett, Community Development Division Manager, provided a PowerPoint presentation highlighting all the accomplishments reported in the draft CAPER. She provided statistics for all active programs. She mentioned that the Community Development Board's priorities included improvements to parks in low-income areas. She explained that the HOME-ARP funds \$1.2 million allocation was handled through the HUD program. Ms. Beckett stated

**approval or disapproval of staff recommendation.)**

Councilmember Ewalt moved for approval of Item 3a, seconded by Councilmember Boyett. On a voice vote, the motion was approved unanimously.

**b. SID 1410 - Annafeld Subdivision, 2nd filing and Annafeld Park Trail improvements. Resolution 21-11005. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Councilmember Shaw moved for approval of Item 3b, seconded by Councilmember Joy. On a voice vote, the motion was approved unanimously.

**c. SID 1413 - Greenbriar Road and Winged Foot Drive. Resolution 21-11006. APPROVED Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Councilmember Neese moved for approval of Item 3c, seconded by Councilmember Ewalt. On a voice vote, the motion was approved unanimously.

**4. PUBLIC HEARING AND RESOLUTIONS 21-11007 to 21-11008 setting FY22 annual assessments on the following:**

Jennifer Duray, Public Work Deputy Director, provided a PowerPoint presentation stating the Street/Traffic Division maintains 4,639 lights each year and that the revenues from FY22 would be \$2,380,340. She noted that 57 districts would experience no changes to their assessments; 122 districts would experience a decrease; 14 districts would experience an increase; and 3 districts would be assessed for the first time. She stated that overall, there would be a decrease in assessed fees of \$50,785 from FY21. She explained the Sidewalk Hazard Fund program and its assessments. She reminded Council that both resolutions needed to be approved now to assess on the November tax statements.

Mayor Cole noted that about 90% of the districts either experienced a decrease or remained the same. He asked why that was happening. Ms. Duray responded that many of the Northwestern Energy lights had been converted to LED which were less expensive to operate.

Councilmember Ewalt asked whether the districts could have overall replacements. Ms. Duray stated that the newer districts could, but the older districts would need all the SILMDs redone to allow widespread light pole replacements.

Councilmember Boyett stated a constituent had contacted him about getting her sidewalk repaired or replaced and was not successful locating a contractor to do it. Public Works had suggested she wait a year to see if the labor force changed. He asked if the City was experiencing the same problem. Ms. Duray responded affirmatively.

Councilmember Purinton asked what happened to funds if the City estimated costs too high and assessed too much. Ms. Duray stated the funds remain with the district and adjustments to reduce the following year's assessments were made. She stated the same was true if the estimates were too low, the adjustments would be

6. **REGAL LAND DEVELOPMENT, INC. PROPERTY:**

a. **JOINT PUBLIC HEARING FOR ANNEXATION 21-10 AND ZONE CHANGE 998:**

Monica Plecker, Planning Manager, provided a PowerPoint presentation and explained there would be one public hearing for the annexation (6ai) and zone change (6aii) but separate votes were necessary for each item. She stated there was no public hearing for the development agreement (6b) nor a presentation for it, it was simply a requirement associated with the annexation. She reminded Council that there would be a public hearing for the ward boundary expansion. Ms. Plecker explained the interconnectedness and relationship of all the items for Agenda Item 6.

Ms. Plecker stated the annexation was a part of a Planned Neighborhood Development. She said Planned Neighborhood Development was a new zoning tool used to incentivize master planning and allowed phasing, although this annexation would not include phasing; all 55 acres would be developed at the same time. She stated the property was located within the limits of annexation map.

Nicole Cromwell, Zoning Coordinator, gave her portion of the presentation and identified the mixed zoning around and in the subject property.

Monica Plecker, Planning Manager, resumed the presentation and reviewed annexation criteria; 1) area was located within the limits of the annexation map; 2) City was able to provide adequate services to the property; 3) proposed public improvements within the annexation area would meet City standards; 4) all property owners within the annexation area were required to sign a waiver to right to protest future SIDs; and 5) any proposed development of the site would be done in compliance with zoning and site development regulations.

Councilmember Ronning asked about stretching public safety resources to the annexed areas and when that might be too much of a stretch. City Administrator, Chris Kukulski, stated these areas annexed actually were within City limits and public safety services were already provided. He stated City citizens in those patchwork annexed areas were paying disproportionately because services were given to the islands of properties located in the county, and he saw the annexations as equalizing that. Councilmember Ronning stated patrolling vacant land versus land that would have 79 homes with families was a different.

Councilmember Neese stated the "Fiscal Effects" portion of staff memos needed more information than "There was no financial impact" because there was an impact to the City.

Council and staff discussed whether Poly Drive would ever be connected and concerns about the trail along 54<sup>th</sup> Street West being too close to the road. It was determined that the trail was a part of Cottonwood Park and not this development.

i. **RESOLUTION 21-11010 FOR ANNEXATION 21-10: a parcel located south of Sweetgrass Creek Drive between 54th and 58th Street West. Regal Land Development, petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)**

Councilmember Ronning moved for approval of the Development Agreement with Regal Land Development, Inc., as recommended by staff, seconded by Councilmember Purinton. On a voice vote the motion was unanimously approved.

**c. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward IV to include recently annexed property in Annexation 21-10: a parcel located south of Sweetgrass Creek Drive between 54th and 58th Street West. Regal Land Development, owner. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

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

Mayor Cole confirmed with City Attorney, Gina Dahl, whether action could be taken on ward boundary expansions immediately following the approval to annex property into the City. Ms. Dahl explained that this was first reading, and ward boundary expansions required a second / final reading before it was effective and by then the resolution annexing would be of record.

Councilmember Purinton moved for approval of first reading ordinance expanding ward boundaries of Ward IV, seconded by Councilmember Ronning. On a voice vote the motion was unanimously approved.

**7. MESSINGER COMPANY, LLC, PROPERTY:**

**a. PUBLIC HEARING AND RESOLUTION 21-11011 FOR ANNEXATION 21-11: a parcel located between South Frontage Road and Trade Center Avenue. Messinger Company, LLC., petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)**

Monica Plecker, Planning Manager, provided a PowerPoint presentation and noted the location of the property to be annexed and that the limits of annexation map had been recently approved by Council to include the subject property. She stated the property was currently zoned correctly and a zone change was not necessary. She continued that the City was able to adequately provide services to the property; proposed public improvements would meet City standards; all property owners within the area must sign a Waiver of Right of Protest to future SIDs (contained in the Development Agreement); and any proposed development of the site would be done in compliance with zoning and site development regulations.

Debi Meling, Public Works Director, spoke about portions of the Development Agreement. She stated access to the property would be from Harnish Boulevard and Trade Center Avenue; the developer would construct sanitary sewer; water lines and storm drain in Harnish Boulevard along frontage; and in Trade Center Avenue along frontage if needed in the future. She explained that street construction, widening and sidewalks would be developed with a delay of at least 5 years. She continued that a Traffic Impact Study would be required if the development exceeded 500 trips per day and that "Parks" would be added to the waiver of right to protest.

Mayor Cole asked whether there had been identified any property to connect the RiverFront Park trail and the Zoo trail as part of the Marathon Loop. Ms. Plecker stated none was identified with this piece of property.

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

discussions had been held concerning the direction Coca-Cola wished to advance, i.e., warehousing and manufacturing. She stated the warehouse jobs from their current location would remain and the manufacturing side would add additional jobs providing an annual economic impact of approximately \$23 million.

Ms. Corbin provided tabulations for both the 50% and 75% 10-year tax abatement scenarios for personal and real property, indicating tax abated amounts and taxes collected for each scenario.

**Joe Easton, Development Director for Coca-Cola High Country**, provided background information about the company, its headquarters and its future plans. He provided regional service maps and noted that Billings was central to its distribution. He stated Coca-Cola had recently built a facility in Missoula that was about half the size of the facility anticipated for Billings. He stated they had been working with BSED for the past couple of years before bringing the project before Council. He stated adding manufacturing to Billings made sense for the business. Mr. Easton gave details about the new facility's size, construction and percentages of square footage usage for the distribution, manufacturing and office spaces. He reviewed plans to annex the 55 acres obtained from Tvetene Turf Farm and the future residential development of that land. He asked Council to consider the 75% real and personal property tax abatement request. He stated the company had an established market; was making a long-term commitment to Billings; and had a long track record of sales and executions in the communities it served. He spoke about the financial risks the company was willing to afford to gain access to City infrastructure. He stated that should Council agree to the 75% abatement on the new facility, the taxes paid on the new facility in year one would be greater than the amount paid on the current location without any abatement. He continued that the difference in the 50% and 75% tax abatements would significantly impact how much progress the company could make in development of the properties.

Councilmember Boyett asked if many tax abatements have been granted in recent years. Chris Kukulski, City Administrator, responded the last tax abatement was granted to a car dealership in 2018.

Councilmember Neese asked how it was that the tax abatement ask was for 75%, while the Council's policy was for 50%. Mr. Kukulski responded that he became aware of the 2005 policy during the creation of the staff memo. He continued that in 2017 the State legislature opened the option to grant tax abatements between 50% and 75% and BSED had not been advised of the 2005 Council policy in advance.

Councilmember Purinton asked for clarification on the 55-acre parcel purchased. Joe Easton responded that the shortest distance to run infrastructure to the Coca-Cola facilities was along the Tvetene Turf Farm property. He continued that by purchasing the land it made it easier to control the infrastructure development and that the land would later be developed as a subdivision for residential use.

Councilmember Purinton asked if there were caps as to how much tax abatement could be granted. Mr. Kukulski responded there was a minimum, but not a maximum. Councilmember Purinton asked whether the minimum was the same for 50% and 75%. Mr. Kukulski stated the minimums were the same.

signed, nor any commitments made, and Coca-Cola was soliciting for that position. He stated the project manager would extend an invitation to all businesses in the State that could provide the staffing and expertise necessary to complete the work, but certainly Billings' workers would be considered.

Councilmember Joy stated she would support the motion but expressed concern about revising the 2005 resolution to reflect changes made by the 2017 Legislature.

Councilmember Choriki agreed with Councilmember Joy and added he was not supportive of tax abatements, generally, but would support this one because of the long-standing commitment the company has had in the community and the future tax revenue it will generate. He also noted the company was significantly contributing to the City's infrastructure and that he would have supported the 75% tax abatement.

Councilmember Shaw agreed with Councilmembers Choriki and Joy and stated she too would have supported the 75% tax abatement had it been an option.

Councilmember Brown voiced his support for the motion and his excitement for the project.

Mayor Cole stated he wanted the resolution revised, but also wanted criteria to be added to aid with determining whether a tax abatement would qualify for 50% or 75% abatement.

Councilmember Neese added he wanted criteria included in the revisions to the resolution as well as revisions to the Rules and Regulations for an extension of reimbursement time to 20 years for private developers.

On a voice vote the motion was approved unanimously.

**8. APPROVAL of Purchase and Sale Agreement - Stillwater Building. Stillwater Building Negotiation Committee recommends approval. (Action: approval or disapproval of Stillwater Building Negotiation Committee recommendation.)**

Jessica Iverson, Building and Facilities Manager, provided a PowerPoint presentation with the history of events that lead to the negotiation committee's recommendation. She provided details of the newest purchase agreement with the recommended purchase price of \$13.5 million and a closing date of September 30, 2021. She said the Stillwater Building had 213,615 sq. ft and the purchase price per sq. ft. was \$63.20. She said the City needed 100,000 sq. ft. for its purposes and provided the estimated buildout costs at \$100/sq. ft.; total buildout estimate \$10,000,000; building upgrades for electrical, mechanical and plumbing \$3,500,000; and the finished space would be \$165/sq. ft. She continued that not all areas would need to be built out because there was 35,000 sq. ft. currently finished, i.e., lobby, common areas and County offices). Ms. Iverson provided an overview of the funding sources and usages, i.e. Excess General Fund Reserve, Departmental Building Contributions and ARPA funds for Public Safety Buildout. She reviewed the rent revenue from Yellowstone County's lease of 17,395 sq. ft. and projected future rents. She provided current operation and maintenance (O&M) costs - \$4.46/sq. ft., which she acknowledged was very low because the building was mostly vacant. She compared the operating costs of the facilities the City currently occupied, i.e., City Hall, Miller building and Depot building, stating that departments occupying these spaces would be moved to the Stillwater Building. She

could be made to the fifth floor so it would meet building and fire codes.

Councilmember Ronning expressed her frustration with the recommendation and the numbers given left more questions.

Councilmember Choriki stated he would not support the motion as he believed the Mayor, staff and attorneys could be trusted to make the corrections and changes needed to move forward with the closing.

Councilmember Neese asked who prepared the documents. Attorney Doug James stated there had been multiple drafts of the documents circulated and after an agreement was reached to reduce the purchase price, Mr. Holden's attorney prepared the latest version and Mr. James' staff prepared the exhibits. Councilmember Neese stated his support for the motion.

Councilmember Purinton voiced her support on the motion. Councilmember Boyett called the question.

On a voice vote, the motion to call the question was unanimously approved.

On a voice vote, Councilmember Boyett's motion to table the matter until the next regular business meeting (October 11<sup>th</sup>) to allow staff and legal counsel to make the necessary changes and corrections to the documents before going to closing, was approved unanimously.

Councilmember Purinton asked about the fire suppression system on the skybridge. Kevin Iffland, Assistant City Administrator, explained that the fire hydrant resided in the Stillwater Building, but the fire sprinkler system that fed from the hydrant was dry and no water charged the system until activated. He continued that the agreement was that the O&M would be the responsibility of the owner of the building. He stated that if Council wished for that to be changed, they needed to make that known.

**9. RESOLUTION 21-11013 establishing a Citizen Police Advisory Board (CPAB). Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

Chris Kukulski, City Administrator, explained that the resolution came from the Council's initiative to establish an advisory board. He explained the board appointment process and responsibilities of the board.

Mayor Cole asked whether the timeline to appoint members to the board was realistic. Mr. Kukulski responded that in light of the November 2<sup>nd</sup> election and the focus being on Public Safety Mill Levy education presentations prior to the election, the timeline set forth was very aggressive.

Councilmember Joy asked how the data and analysis would be obtained, internally or externally. Mr. Kukulski responded that data would likely come from different sources as well as analysis.

Councilmember Neese asked for an appropriate timeline. Mr. Kukulski provided a timeline for when the positions needed to be advertised and applications collected and mentioned that the Council would have to act in December to have the board members in place by January 1, 2022. He stated the bigger question might be whether this Council wanted to choose the board members or have the newly elected Council choose the board members.



- **Dennis Ulvestad, 78 27<sup>th</sup> Street West, Apt. 122, Billings, Montana,** provided a statement of support to the area's college students.
- **Stacy Zinn, DEA Agent, Billings, Montana,** stated that the DEA does not support the legalization of recreational marijuana. The DEA's silence was not to be interpreted as complacency; the agency chose not to be involved in local elections.
- **Kari Boiter, 946 Yorkshire Court West, Billings, Montana,** stated that endocannabinoids were found in mother's breast milk and that was the original gateway drug. She stated that was how cannabis was determined to have medical benefits because of the effects of endocannabinoids on humans.

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

**COUNCIL INITIATIVES:**

There were no Council Initiatives.

There was no further business, and the meeting adjourned at 9:59 pm.

CITY OF BILLINGS:



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

ATTEST:

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