

WHITEFISH CITY COUNCIL

October 16, 2023

7:10 P.M.

1) CALL TO ORDER

Mayor Muhlfeld called the meeting to order. Councilors present were Qunell, Feury, Caltabiano, Davis, Sweeney, and Norton. City Staff present were, City Clerk Howke, City Manager Smith, City Attorney Jacobs, Finance Director Gospodarek, Planning and Building Director Taylor, Parks and Recreation Director Butts, Deputy Police Chief Conway, and Fire Chief Hadley. Approximately 24 people were in the audience and 1 attended virtually.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Chuck Stearns to lead the audience in the Pledge of Allegiance.

3) PROCLAMATION

a) Children's Grief Awareness Month (p.61)

Mayor Muhlfeld read the Children's Grief Awareness Month proclamation that is provided in the packet on the website.

4) COMMUNICATIONS FROM THE PUBLIC– (This time is set aside for the public to comment on items that are either on the agenda, but not a public hearing or on items not on the agenda. City officials do not respond during these comments but may respond or follow-up later on the agenda or at another time. The mayor has the option of limiting such communications to three minutes depending on the number of citizens who want to comment and the length of the meeting agenda)

Leanne Galaz, 265 Colorado Avenue, stated she and a group of people met for a rally for community housing in the Flathead Valley. It is a citizen's initiative. There is no sponsoring organization. They came up with the name Housing For ____, which they put on t-shirts. The idea is for people can fill in the blank. There were about 40 community members who walked through town and over the viaduct. Community members shared their story in front of City Hall. The community members are struggling and bearing the weight. They want that message to be heard.

Mayre Flowers, Citizens for a Better Flathead, invited the Council and the community to attend talk by Dr. Emma Rossi sponsored by the Flathead Lake Biological Station on October 26th. She will be speaking about "Our Rivers on Drugs". The presentation is at the Bio station but will also be available online. She also reported DEQ is holding a series of listening sessions around the state in three cities. Public comment is open until December 1st. Citizens for a Better Flathead is hosting at the Hampton Inn in Kalispell on Thursday night at 5:00 pm.

Nathan Dugan, 937 Kalispell Avenue, virtual, stated the Governors Housing Task Force is reconvening October 17, 2023. The link to the meeting will be available on the DEQ website. He also mentioned he supports the PRO Housing Grant application.

5) COMMUNICATIONS FROM VOLUNTEER BOARDS

None

6) CONSENT AGENDA (The consent agenda is a means of expediting routine matters that require the Council's action. Debate does not typically occur on consent agenda items. Any member of the Council may remove any item for debate. Such items will typically be debated and acted upon prior to proceeding to the rest of the agenda. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC)

a) Minutes from October 2, 2023, Regular Meeting (p.63)

- b) **Ordinance No. 23-20**; An Ordinance amending Zoning Regulations Title 11, Chapter 9, Section 2, Definitions (Casino), of the Whitefish City Code (Second Reading) (WZTA 23-08) (p.72)
- c) **Ordinance No. 23-21**; An Ordinance amending Title 6, Chapter 1, Section 9, One-Way Traffic (Second Reading) (p.75)
- d) **Ordinance No. 23-22**; An Ordinance amending Zoning Regulations Title 11, Chapter 3, Section 1, Accessory Dwelling Units, Section 2, Accessory Buildings, and Chapter 9, Section 2, Definitions, of the Whitefish City Code (Second Reading) (WZTA 23-07) (p.77)
- e) **Resolution No. 23-32**; A Resolution of Intent to annex and incorporate within the boundaries of the City of Whitefish by petition and consent of the property owner approximately 2.33 acres of land known as 270 Lake Park Lane in Section 26, Township 31 North, Range 26 West, in Whitefish, Montana, and zone the property WR-2 on the findings of fact in the staff report, and set a public hearing for November 6, 2023 (p.81)
- f) **Resolution No. 23-33**; A Resolution declaring certain Fire Department equipment to be unneeded and obsolete, and authorizing the donation of such equipment (p.97)

Councilor Sweeney made a motion, seconded by Councilor Qunell to approve the Consent Agenda. The motion carried.

- 7) **PUBLIC HEARINGS** (Items will be considered for action after public hearings) (Resolution No. 07-33 establishes a 30-minute time limit for applicant's land use presentations. Ordinances require 4 votes for passage – Section 1-6-2 (E)(3) WCC))
- a) **Ordinance No. 23-23**; An Ordinance adopting amendments to the City's Impact Fee Ordinance (First Reading (p.99)
 - b) **Resolution No. 23-34**; A Resolution approving amendments to the rates and policies for impact fees assessed by the City of Whitefish (p.200)

Agenda items 7a) and 7b) will be held as one public hearing, with two motions. City Manager Smith presented her staff report that is provided in the packet on the website. Staff received one letter in opposition of the Ordinance and Resolution. The service area report and impact fee study provide the city with the necessary documentation and calculations to move forward with the fees. Council could phase the impact fees; increasing it slowly over time or do an immediate rate adjustment. If the rates are not adopted at the full amount, Council will have to have other funding to support these projects. The recommendation for the ordinance and resolution is that they both become effective January 1, 2024.

One important decision that the Council needs to understand when approving this impact fee study is that the capital improvement plan lists the expansion of City Hall. The council will need to recognize we will be moving forward with the plan for the third story on City Hall. That expansion would be 100% growth driven. We would anticipate the City Hall impact fees would cover that cost.

This is completely new methodology. Staff did add outside of state law changes, to allow 100% permanently deed restricted housing units pay their impact fees at time of Certificate of Occupancy (C of O) instead of at building permit. This does not prohibit us from reimbursing impact fees under our housing programs.

She addressed written public comment that was received, that is appended to the packet on the website. TischlerBise is confident that we have met the criteria of M.C.A. The CIP is within the service area report. State law does require that all projects be identified in the service area report. Staff is working with AE2S, to develop the meter sizing process. Within the letter they also reference an expert witness report. Staff has reviewed that expert witness report, that is dated July 21, 2023, prior to this final report.

Councilor Norton asked, and Manager Smith stated the written comments are referencing our current fees. It is staff's position that the city is not overcharging for sewer fees. The only thing that we have noted is the

error in the fixture count when calculating a standalone shower. In the summer 2021 an error was brought to our attention, staff determined there was an error, we publicly acknowledged that error, and began an audit to determine who was owed refunds for impact fees. In February 2022, the class action lawsuit was filed against the city in federal court. Which included claims based on the single head stand along shower issue. The city continued their audit and were ready to issue refunds. On September 29th, Federal District Court granted the plaintiff's request for class certification. Due to the class certifications, the city is no longer able to communicate directly with many of the property owners to continue our audit, or to issue refunds. The class action complicates the refund process in numerous ways. In such that we are suspending our audit and refund process currently.

Councilor Davis asked, and Manager Smith stated currently we have our process for calculating meter sizes with a fixture unit count, using the UPC. We hired an external consultant, knowing that impact fees are now based solely on meter size. We want to make sure that meter size is determined correctly.

Councilor Qunell asked, and Manager Smith stated the Housing Committee was tasked with looking at an impact fee reimbursement plan. Councilor Sweeney is interested in the concept of when we pay impact fees, with respect to affordable units, we ought to at least allow accommodation for paying those impact fees upon C of O.

Mayor Muhlfeld opened the Public Hearing.

Chuck Stearns, 698 Woodside Lane, member of the Impact Fee Advisory Committee. The Committee supported the changes proposed and he supports the changes. Adding police facilities and fire apparatus is a good step. He suggests payment due at temporary C of O, rather than the final C of O. Impact Fees really are not a big factor.

Paul Gilman, along with Bill Berg submitted written comment that is appended to the packet on the website. They are opposed to the 2023 TischlerBise update. It appears from their analysis, focusing on water and sewer, some of the same practice and same problems in the FCS report are appearing in the TischlerBise report. They don't question TischlerBise methodology, they question some of the data that came from the city.

Bill Berg stated he and Paul Gilman brought forth issues that they found in the calculation of single shower units in 2021, which led to a class action lawsuit. The errors and illegalities are probably a magnitude higher. He urges the Council to do the right thing. Study it personally.

There being no further public comment, Mayor Muhlfeld closed the Public Hearing and turned matters over to the Council for consideration.

Councilor Sweeney made a motion, seconded by Councilor Norton to approve Ordinance No. 23-23, and Ordinance adopting amendments to the City's Impact Fee on first reading, and he would move to adopt Resolution No. 23-34 a Resolution approving amendments to the rates and policies for impact fees assessed by the City of Whitefish.

Attorney Jacobs stated for the public's benefit of what was said about the class action lawsuit. Class certification is not an adjudication on the merits. That was mis-represented. This class has been certified, there has been no decision made on the merits of that lawsuit.

Councilor Qunell stated it is staff's opinion the calculations are done properly, and the water and wastewater impact fees are calculated based on the right data. Attorney Jacobs stated is not experts in calculating impact fees, this is why we hire experts to calculate the impact fees. TischlerBise stands by their report.

Councilor Davis stated growth needs to pay for the growth. It is a matter of fairness to the citizens. Councilor Feury stated we appropriated \$37 million in the last four years for wastewater and water. We have also raised water and sewer rates which affects the affordability of housing as much as anything in this community. If we don't have impact fees to offset those costs, that are driven by new development, then we pass that along in rate increases. That is \$37 million we would have to generate rate fee increases.

The motion for approve Ordinance No. 23-23 and Resolution No. 23-34 carried with one motion and one vote.

Mayor Muhlfeld called for a recess at 8:43 pm and back in session at 8:52 pm. Parks and Recreation Director Butts was excused at 8:50 pm.

- c) **Resolution No. 23-35; A Resolution adopting the Whitefish Fire Department Strategic Plan (p.276)**

Fire Chief Hadley presented his staff report that is provided in the packet on the website.

Mayor Muhlfeld opened the Public Hearing. There being no public comment, Mayor Muhlfeld closed the Public Hearing and turned the matters over to the Council for their consideration.

Councilor Qunell made a motion, seconded by Councilor Feury to adopt Resolution No. 23-3 5; A Resolution adopting the Whitefish Fire Department Strategic Plan. The motion carried.

- d) **Resolution No. 23-36; A Resolution authorizing the submission of an application for a Pathways to Removing Obstacles to Housing Grant to the U.S. Department of Housing and Urban Development (p.309)**

Housing Coordinator Luke Sponable presented his staff report that is provided in the packet on the website.

Mayor Muhlfeld opened the Public Hearing. There being no public comment, Mayor Muhlfeld closed the Public Hearing and turned the matters over to the Council for their consideration.

Councilor Davis made a motion, seconded by Councilor Qunell to adopt Resolution No. 23-36; A Resolution authorizing the submission of an application for a Pathways to Removing Obstacles to Housing Grant to the U.S. Department of Housing and Urban Development. The motion carried.

8) COMMUNICATIONS FROM CITY MANAGER

- a) **Written report enclosed with the packet. Questions from Mayor and Council? (p.343)**

None

- b) **Other items arising between October 11th through October 16th.**

None

- c) **Ordinance No. 23-24**; An Ordinance adding a new Chapter 19 to Title 2 of the Whitefish City Code to establish the Whitefish Community Housing Committee as a standing committee (First Reading) (p.344)

Manager Smith presented her staff report that is provided in the packet on the website.

Councilor Davis made a motion, seconded by Councilor Qunell to adopt Ordinance No. 23-24: An Ordinance adding a new Chapter 19 to Title 2 of the Whitefish City Code to establish the Whitefish Community Housing Committee as a standing committee (First Reading). The motion carried.

9) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

Council Comments

Councilor Caltabiano stated three campaign signs were removed from his yard while on vacation. He asks the citizens of Whitefish to be respectful. Councilor Qunell stated there are still a few 300-gallon garbage cans on Good Avenue and Geddes Avenue. Councilor Davis stated because of the legislative bill that allows residential in commercial zones, and that the transitional zoning district is no longer transitional, interpretation that conditional uses are no longer conditional now impacts all the other commercial zoning districts. This is something that we are going to need to think about one of these days. Manager Smith stated until the Growth Policy is updated, we will have a period that we will have to implement SB 245. In the end that is the benefit of SB 382 in that we get to decide all these housing policies. Councilor Norton thanked the Emergency Services for the Open House on Sunday.

10) ADJOURNMENT (Resolution 08-10 establishes 11:00 p.m. as end of meeting unless extended to 11:30 by majority)

Mayor Muhlfeld adjourned the meeting at 9:26 p.m.

/s/John Muhlfeld

Mayor Muhlfeld

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk