

WHITEFISH CITY COUNCIL MINUTES
Monday, November 2, 2020
SPECIAL SESSION 5:30 TO 7:00
Via Webex

1. Call to Order

The City Council approved Emergency Ordinance No. 20-14 to provide for remote meeting of the City Council, City Boards and Committees to protect the health and wellbeing of all attendees, practice social distancing and to continue to have public meetings to serve the community during the COVID-19 pandemic. Mayor Muhlfeld called the meeting to order. Councilors present were Qunell, Feury, Hennen, Davis, Sweeney, and Norton. City Staff present were, City Clerk Howke, City Manager Smith.

2. Interview:

The City Council interviewed Tara Zimmerman for the Police Commission and incumbents Whitney Beckham for the Planning Board; John Middleton for the Whitefish Housing Authority; Chuck Stearns for the Impact Fee Advisory Committee; and Kate McMahon for the Climate Action Plan. Three applicants were interviewed for the Pilot Parking Permit Program: Jeremy Grossman, Leslie Hunt and Tyler Furry.

3. Public Comment

None

4. Appointments

- a) **Mayor Muhlfeld appointed Tara Zimmerman to the Police Commission, completing term ending December 21, 2021. The Council ratified his appointment by roll call.**
- b) **Mayor Muhlfeld reappointed Whitney Beckham to the Planning Board. The Council ratified his appointment by roll call.**
- c) **Mayor Muhlfeld reappointed John Middleton to the Whitefish Housing Authority. The Council ratified his appointment by roll call.**
- d) **Councilor Feury made a motion, seconded by Councilor Sweeney to reappoint Chuck Stearns to the Impact Fee Advisory Committee. The motion carried by roll call.**
- e) **Mayor Muhlfeld reappointed Kate McMahon to the Climate Action Plan Standing Committee. The Council ratified his appointment by roll call.**
- f) **Mayor Muhlfeld appointed Jeremy Grossman and Tyler Furry to the Parking Pilot Program Committee. The Council ratified their appointment by roll call.**

5. Adjourn

Mayor Muhlfeld adjourned the Special Session and opened the regular meeting at 7:10 pm.

/s/John Muhlfeld
Mayor Muhlfeld

Attest:

/s/Michelle Howke
Michelle Howke, Whitefish City Clerk

WHITEFISH CITY COUNCIL
November 2, 2020
7:10 P.M.

1) CALL TO ORDER

The City Council approved Emergency Ordinance No. 20-14 to provide for remote meeting of the City Council, City Boards and Committees to protect the health and wellbeing of all attendees, practice social distancing and to continue to have public meetings to serve the community during the COVID-19 pandemic. Mayor Muhlfeld called the meeting to order. Councilors present were Qunell, Feury, Hennen, Davis, Sweeney, and Norton. City Staff present were, City Clerk Howke, City Manager Smith, City Attorney Jacobs, Planning and Building Director Taylor, Public Works Director Workman, Parks and Recreation Director Butts, Police Chief Dial and Fire Chief Page. Approximately 38 people participated in the Webex meeting.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Councilor Hennen to lead the audience in the Pledge of Allegiance.

3) COMMUNICATIONS FROM THE PUBLIC

None

4) CONSENT AGENDA

- a) [Minutes](#) from October 19, 2020 Special Session (p.48)
- b) [Minutes](#) from October 19, 2020 Regular Meeting (p.49)
- c) [Ordinance No. 20-15](#); An Ordinance amending the Architectural Review Standards (Second Reading) (p.53)

Councilor Norton to the October 19, 2020 regular session minutes, page 1, Mayre Flowers' comments 'It is an important and complex~~ity~~ document that needs to be vetted at the committee level'. **Councilor Sweeney made a motion, seconded by Councilor Qunell to approve the Consent Agenda as corrected. The motion carried by roll call.**

5) 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) [Consideration](#) and direction after hearing public comment on COVID-19 community measures including consideration of re-establishing some of the guidelines in the State of Montana's Phase 1 Directive (p.122)

City Manager Smith and City Attorney Jacobs presented their staff report that is provided in the packet on the website.

Discussion followed between Council and staff. If Council place more restrictions than what is currently in place by the Governor, the city would have to do their own enforcement. This would be a potential process to doing that. Manager Smith has concerns to hire an individual to be on board with city policies during the holiday season. The job requirements would require some type of law enforcement or legal background. The Health Department is monitoring the number of cases per 100,000. The positivity rate is a recommendation from the World Health Organization of 5% or less, the Health Department is looking for cases to be under 50 per 100,000 for each week.

Missoula County looks at 25 cases per 100,000. They rolled back to 50% capacity for all businesses. Bars, restaurants, breweries, and distilleries are limited to eight people per table, six feet of separation, and all bars shall close at 10:00 pm or earlier. Alcohol sales end at 10:00 pm or earlier in establishments that have both food and alcohol. They have a tiered system for events. For release of their restrictions they are looking at a seven-day average of new case incident rate at 25 per 100,000 population for a period of at least two weeks. They are reviewing this every two weeks, the next review will review will be on November 12th.

In addition to the incident case rates, they are looking at hospital capacity for both COVID and non-COVID patients, testing resources, turnaround time on testing and the timely isolation of positive cases.

Currently there are 29 hospitalized at Kalispell Regional Hospital (KRH), anything over 15 we are in the red. Of the patients 50% are residents from outside Flathead County. North Valley Hospital (NVH) is now accepting non-COVID patients. The hospitals face the challenge of number of beds and also staffing.

Councilor Davis asked and City Manager Smith reported the Halloween weekend went really well. As expected, most of the businesses complied, most bars closed by 10pm. Chief Dial reported Friday and Saturday night were uneventful. About 60% of the usual amount of trick-or-treaters in the neighborhoods, most were in their family groups. Many homes had candy at the end of their sidewalks. Most of the bars closed at 10 pm. One establishment will be forwarded to the Prosecutor for possible action. There were a lot of people disappointed but understanding for the need of the restrictions. The reception of the Officers being in the bars was very positive. The bars would text each other to notify the cops are on their way. If there was something going on, they corrected it before they got there. There were numerous DUI's which is the norm for Halloween night.

Mayor Muhlfeld opened the Public Hearing.

Dave Sheeran, The Remington, stated going back to Phase 1 will disproportionately affect many businesses. We should be moving into a forward direction. He feels the spike in town, but the Health Department does not see any correlation from the staff from the bars in the restaurants transmitting the disease to customers or vice versa. It seems to be coming through the back door with staff. He closed early Friday and Saturday out of abundance of caution for the 42 people he employs. Further restrictions will affect his business and all other bars and restaurants in town and the employees.

Sam Boucher, 275 Diamond Court, without any relief for the employees of bars and restaurants, in an already slow time in this town to cut back on any money they can possibly make seems extremely unfair. There is no real option for them to pick up that lost wages right now. If we shut down the people who want to go out will go to Kalispell or Columbia Falls. If Council does roll it back maybe consider putting the burden on city employees to enforce these rules instead of the businesses. Seventeen-year-old hostesses are getting screamed at by customers who do not want to wear a mask, and then the business possibly gets fined.

Betsy Kohnstamm, 573 Somers Avenue, currently serves on the school board. The school is in hybrid situation and considering how to open schools 100% of the time for K-2 children. The only way we can do that are if the cases continue to go down. They are on the edge of having enough staff to be able to run the schools at the moment. Every day is kind of a challenge. November is a quiet month,

if we could put in a few more regulations to help keep it down in town that might help us before ski season. She recommends we do everything we can to keep the schools going and keep children able to learn this year.

Randy Larson is upset about the discussion and the enforcement. He believes this is something we should not be doing. If these restrictions continue people are not going to want to come to Whitefish. He does not understand the agenda.

Sandra Guzman, Spanky's and Gus, is upset with the new restrictions. Her sales have tumbled. Most of her customers are masked, she has a sanitization station and offers masks. She finds it very off putting with the signs all over windows. It is very unwelcoming. She understands the situation with COVID. If the restrictions come down any harder and you are putting the onus on the businesspeople. She suggests a sign at the entrance of town to let people know we are serious about the COVID. There are people who do not know what the rules are, they change so different from town to town. She is asking to take some of the pressure off of retail and the business community and put it on the community itself. She is opposed to any heavier restrictions.

Dave VonKleist, 106 Mill Avenue, has been watching this very carefully for several months now, he is amazed at how many times the CDC has had to revise its numbers. The numbers are bouncing around. We are dealing with numbers and figures that are being skewed and manipulated. He asks the Council to do their own diligence, use good science. The restrictions being imposed upon the city of Whitefish and the Flathead County are based upon science that has an agenda behind it. Before Council enforce any more restrictions or continue to carry on with the restrictions already imposed, look at all the doctors, physicians, health care workers whose voices are being stifled and censored.

Megan Chaisson, 704 Cedar Street, stated science is a difficult subject to correctly analyze. Charter cities do have the powers to set mandates. That precedent has been set by other counties such as Yellowstone. She really feels very strongly it is time for us to act. She implores the Council to step up as community leaders of our community to do what we can to help protect the health and safety of our community members. The complaint-based system seems like a strange way to go about enforcement. More random walk throughs would be essential. A complaint-based system does not seem to be the most effective. Also look at a data-driven reopening. She implores the Council to act strongly and swiftly during the shoulder season.

Alex Maetzold, 1338 4th St., Buffalo Café, has about 40 employees and they have been doing everything they can to stay by the book and to look out for their employees and the community. It is tough but doable. He does not think we should roll forward, or backward to 50% capacity. He thinks we are at a pretty good, sweet spot, with the 75% capacity, distancing, and the mask. To roll back would be difficult for business owners and employees. It looks different than just saying it. Messaging would help, communicating, helping get the word out. Helping with messaging and communicating between the Chamber, Heart of Whitefish, Explore Whitefish, the City, Hotels and restaurants as what to expect when you are dining out, or shopping, it would go a long way in at least diffusing some of the battles we are having at our door. He likes being a part of the business community that sticks together and for better or worse has these conversations as a group with everybody involved. We can find a solution together.

Amy Sharp is registered nurse at North Valley Hospital in the special care unit. North Valley Hospital will be taking COVID positive patients starting November 4th. Kalispell is no longer able to handle

the numbers. She is confused with the numbers as well. The fact that Kalispell is no longer able to take patients leads to a lack of beds, cancelled surgeries, delayed outpatient imaging and people staying at home and staying sicker longer. COVID patients are coming to the hospital all at once. She respects the fact that the restaurants are enforcing the masks, unfortunately once they are inside the door, they are taking them off to eat. Nurses are no longer able to eat in their break rooms or at the nurses' station. They can take their masks off for a brief second to take a drink of water. This is a very tricky dangerous disease unlike the flu which we are entering flu season. The combination of influenza with the COVID-19 is very scary for healthcare professionals. She implores the Council to act and act swiftly for the sake of Kalispell Regional Hospital and North Valley Hospital.

Kevin Proctor, 336 Fairway Drive, thinks it is important to know what the data is saying for the Whitefish area in terms of how the spread is happening. The solution would be based on how the spread is occurring. The ability to test a large amount of people in a short amount of time would help to get a handle on how this is spreading.

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

Councilor Feury does not find himself informed enough to decide and understands we need to do something. We are looking at community spread in our county and doesn't happen just amongst Whitefish people. He is afraid Whitefish going to additional restrictions is not going to make any difference in terms of what is going on in this valley. That has to come from a county level and a state level. Whitefish alone is not going to solve that problem. From his own personal perspective, businesses that are front line and serve the public are going to have to come together to make it work. He supports staying at the current state regulations. He would like to see no congregation at bars but rather see table service. He does not support hiring somebody for the enforcement unless funding is available for a longer period of time. Better information would help.

Councilor Davis finds this entire situation very regrettable and frustrating. He is to the point where he feels City Council should be taking some leadership. It is difficult and it means we have to have a lot of these hearings and a lot of differing opinions on the topic. In general he feels some sort of action is appropriate. We have a lot of wonderful business owners here and we are not trying to handicap them, ruin their businesses or anything like that. He thinks there is a happy medium. It seems like a lot of the conversation tends to focus on capacity. A business that is following the current restrictions are a lot safer than a business at 50% capacity and not following the rules. Walk throughs would help out with enforcement. The vast majority of businesses that are doing the right thing do not mind a bit. Events are a major contributor to this problem. He thinks event restrictions are an important piece of this.

Councilor Sweeney stated it is about trying to protect the community, our businesses and our schools. The Canadian border is closed. The likelihood of it opening if we do not bring our numbers down as a state and as a community will be a long time coming. That is having a huge impact on a day-to-day basis on all of our businesses. He is not interested in going backwards creating more restrictive limitations on capacities or business operations that are currently issued through the state. The thing that disturbs him more than anything is those that are choosing not to wear a mask. Understand your failure to follow that one ask is driving the businesses crazy. It makes their jobs more difficult, more miserable, and it shows disrespect for them and their employees. He finds that unacceptable. If we

socially distance, wear masks, and keep capacity at 75% he can live with that. He is open to an ordinance that will give some tools to act where the county will not.

Councilor Norton is shocked about the hospital going to COVID patients. We are in a much more serious place than we realized given the capacity that both hospitals might be exceeded shortly. Some of the comments received over the last few weeks are 1) do nothing, 2) do something. We have been trying to model other plans and follow the governor's directive, it has been difficult to identify what we legally have the right to do as a chartered city. Our pandemic response for our nation is to contain the virus with the hopes of eradicating it and not letting it spread while we wait on a vaccine. As a Chartered city we have the legal and constitutional right to intervene in a public health emergency. Some of the business owners are already at 50% just to maintain the social distancing, and they are functional at 50% financially. Other businesses may be able to stay at 75% if the distancing is maintained. She suggests looking at some flexibility between 50 and 75% as long as the transmission route is safe between people. She would prefer to be very stringent at this point. The issue of it being a shoulder season and clamping down as much as we can before we have high visitation is a really good idea. She would be up for reinstating our own mask ordinance with fines attached to that. She agrees with Councilor Davis the events are a trigger for spreading. She appreciates the school district taking the lead and getting the task force going. She loves the idea of getting rapid testing in Whitefish. She would strongly support hiring our own Education Outreach Liaison even if it is only through December. Every day counts when you are dealing with something like this.

Councilor Hennen echoes what Councilors Sweeney and Feury said. Some of the business owners who spoke earlier brought up some good points and shed some light on how difficult it is to be a business owner right now in this ever-changing climate. He is not in favor of going back to having additional restrictions on businesses. He would be in favor of discussing what we can do. What kind of ordinances we could pass, what kind of enforcement we could look into, and messaging we can get out there to ensure we are protecting the health of our community and we are making sure the businesses can operate in ways that they need to.

Councilor Qunell stated wearing masks is not to prevent you from getting the disease, it is to prevent you from spreading the disease. It is important we wear masks. The real purpose of this meeting is about what can we do and what should we do? He is hearing we could come up with the greatest set of restrictions but if we cannot enforce it, it is not worth anything. Enforcement is the key. He is hearing there is no support to go backwards in any restrictions, but we do want some element of local restrictions. He echoes what Councilor Davis said, we need to look at the spacing in bars and restaurants, and also need to look at what we can do about gatherings.

Mayor Muhlfeld thanked the businesses that came to speak tonight. Overwhelming what he has heard both from discussions with the Flathead City-County Health Department Health Officer is that the infection seems to be spreading from large events within the county, and from younger employees who may work two or three jobs in the downtown and they congregate after their shifts and transmit the disease to each other bring it back to the workplace and infect their fellow coworkers. Enforcement is one of the biggest gaps in data right now. He does feel enacting an ordinance that would just target restaurants and bars would not be fair. It would be disproportionately be affecting a small sector of our economy. Recently through the help of LJ Communications and Manager Smith a COVID-19 response team has been created. The first meeting involved members from the school district board and administrators, health officials from North Valley Hospital, Winter Sports Incorporated, and other health professionals. They created task force to take a very aggressive

approach to education outreach and messaging through PSA's and other public outreach measures to deliver concise consistent and frequent messaging to our town regarding the true effects this disease and what we can do to help protect our residents and our visitors. He believes pushing for more voluntary compliance through messaging is our best course of action. He suggests having COVID-19 as a standing agenda item.

The Council agreed to add COVID-19 as a standing agenda item.

Mayor Muhlfeld adjourned for a recess at 9:18 pm. and reconvened at 9:25.

6) COMMUNICATIONS FROM CITY MANAGER

a) **Written report enclosed with the packet. Questions from Mayor and Council? (p.133)**

Councilor Norton asked and Manager Smith reported the City Hall doors will be open from 7:00 am to 8:00 pm November 3rd for Election Day. Two Election Judges will be available to monitor the ballot drop box.

b) **Other items arising between October 28th through November 2nd**

Councilor Sweeney asked and Director Workman stated the final fourth piece of the tunnel was placed today. He anticipates they will finish the retaining wall on the west side next week and they should be paving the following week. The viaduct will be open to full traffic within the next couple of weeks.

Manager Smith gave a brief update on the Task Force. They had their first meeting, and it was great hearing from the businesses, hospitals and schools. LJ Communications is working hard on help the Task Force come together with a concise clear frequent message reaching out to the demographic that is seeing the most spread of COVID-19. A subgroup was created with experts in the fields of communications and marketing from the hospital, school district, city, CVB and interested business owners. It will be a great outcome for the community.

c) **Resolution No. 20-39; A Resolution authorizing participation in the Short Term Investment Pool (STIP) Montana Board of Investments (p.139)**

Manager Smith gave her staff report that is provided in the packet on the website. **Councilor Hennen made a motion, seconded by Councilor Sweeney to approve Resolution No. 20-39; A Resolution authorizing participation in the Short Term Investment Pool (STIP) Montana Board of Investments. The motion carried by roll call.**

7) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

a) **Consideration of appointments to volunteer boards and committees not made during the Special Session preceding tonight's meeting**

Appointment were made at the Special Session preceding tonight's meeting.

b) **Consideration of cancelling the second meeting in December – December 21, 2020**

Councilor Sweeney made a motion, seconded by Councilor Hennen to cancel the second meeting in December – December 21, 2020. The motion carried by roll call.

Council Comments.

Councilor Feury advocated for Tyler Furry to be appointed to the Parking Pilot Program Committee. **Mayor Muhlfeld appointed, with ratification of the Council, Tyler Furry to the Parking Pilot Program Committee.** He also congratulated the Whitefish Boys Soccer taking State Championship.

Councilor Sweeney mentioned Hwy 93/Spokane Avenue is rough and wondered if we could contact the State regarding it.

Councilor Norton thanked the voters, and reported there are two drive thru drop off locations, one at Fairgrounds and at the Election Department parking lot.

Councilor Qunell was contacted by Missoula Councilor Amber Sherrill regarding drafting an ordinance to ban flavored vape pens. Council agreed to move to a future agenda item or a work session.

Mayor Muhlfeld discussed with staff an ordinance giving authority to enforce governor's directives would give incentive, however our hands are tied to certain degree of penalties and fines and pulling a business license. Manager Smith stated the patrol officers walk through bars as a protocol. During the Halloween weekend they were not enforcing the Ordinance, they were just collecting video to obtain information to provide to Deputy Attorney Barry.

8) 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 9:59 p.m.

/s/John Muhlfeld
Mayor Muhlfeld

Attest:

/s/Michelle Howke
Michelle Howke, Whitefish City Clerk