

WHITEFISH CITY COUNCIL
September 8, 2020
7:10 P.M.

1) CALL TO ORDER

Deputy Mayor Sweeney called the meeting to order. Councilors present were Qunell, Feury, Hennen, Davis, Sweeney, and Norton. Mayor Muhlfeld was absent. City Staff present were, City Clerk Howke, City Manager Smith, City Attorney Jacobs, Planning and Building Director Taylor, Public Works Director Workman, Police Chief Dial, Long-Range Planner Lindh, and Senior Planner Compton-Ring. Approximately 19 people were in the audience.

2) PLEDGE OF ALLEGIANCE

Deputy Mayor Sweeney asked Maureen Cordoza to lead the audience in the Pledge of Allegiance.

3) 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)

Simon McCullough, 616A Wisconsin Avenue, has concerns about pedestrian safety on Wisconsin Avenue. He presented a few suggestions for the Council to consider; 1) repaint the current crosswalks; 2) add a pedestrian sign facing southbound traffic at the Marina Crest crosswalk; 3) add in street pedestrian paddles at the crosswalks; 4) improve the care of the street. He also suggests skinnier car lanes, protected bike lanes, and a sidewalk on both sides of Wisconsin Avenue.

Jenny Alva, 616 Wisconsin Avenue also has concerns regarding cycling safety on Wisconsin Avenue. The pedestrian path is not wide enough for cyclists and pedestrians to feel safe. The shoulder of the road is sandy at times and only a foot across. She requests vertical signage indicating cyclists have the right to use the full lane, painted chairs to give road space to cyclist and peace of mind they are welcomed, vertical elements in the road to reduce the speed of drivers. The amount of free parking available for cars and their drivers in downtown is offensive. She is against free storage of massive vehicles that are also inefficient that are using space in the public right-of-way. She encourages the City Council to change this and charge a modest fee for use of parking in downtown, utilize that money in order to fund the snow bus and bicycle infrastructure.

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

None

5) CONSENT AGENDA

- a) [Minutes](#) from August 17, 2020 Special/Regular Session (p.164)
- b) [Resolution No. 20-25](#); A Resolution levying and assessing a tax on each lot or parcel of land in the City lying within the boundaries of the City's Street Maintenance to defray the costs of street improvements REVISED (p.169)
- c) [Fiscal Year 20](#) Year-End Financial Report (p.171)

Councilor Norton made a motion, seconded by Councilor Hennen to approve the Consent Agenda as presented. The motion carried.

6) 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))

Councilor Feury made a motion, seconded by Councilor Hennen to reorder the Public Hearing agenda and move item g) before a). The motion carried.

g) Ordinance No. 20- ; An Emergency Ordinance prohibiting organized gatherings and demonstrations not subject to a special event permit during the hours of 7:00 p.m. to 7:00 a.m., prohibiting the use of amplified sound during organized gatherings and demonstrations (Only Reading) (p.370)

City Attorney Jacobs gave a brief overview of the proposed Emergency Ordinance. Staff has received numerous letters, emails, phone calls regarding the numerous protests and demonstrations that have occurred outside City Hall. Concerns include feeling intimidated to walk through the sidewalks, having to listen to bull horns or megaphones, and concerns regarding traffic with demonstrators encroaching into the right-of-way. There have also been a few altercations, one of which was physical.

The city does have a special event ordinance which requires a permit if a demonstration is impeding the public's use of the sidewalk or the right-of-way or for events over 75 people. As of now, nobody has come forward with a special events permit.

The intent of the ordinance is not to prohibit demonstrations, nor to infringe on anybody's rights. The intent is to constrain public demonstrations to the daylight hours. The City has always been committed to protecting people's first amendment rights, all though those rights are not absolute. The United States Supreme Court and every other court has long held that cities may impose reasonable time, manner and place restrictions on speech in order to accomplish governmental goals.

She pointed out two things about the ordinance; 1) it is content neutral, it is not directed toward any group, it applies to every group; 2) if a group feels as though they need to demonstrate past 7:00 p.m., they can apply for a special events permit. The city can grant the permit albeit according to certain conditions.

Police Chief Dial stated the ordinance is about public safety, not about taking away peoples first amendment rights. We look at best practices, what we have to do to preserve law and order in this community. For the most part both sides have been very cooperative. There is a lot of violence throughout the country, we so do not want that in Whitefish.

Deputy Mayor Sweeney opened the Public Hearing.

Jill, refused to provide last name or address, has no problem with the 7:00 pm cut off time, nor the megaphones or speakers. She is opposed to the ordinance, feeling it is against the 1st amendment rights.

Rapheal Pease, Whitefish, believes in evidence and facts. He has been protesting for 15 weeks, for things that are more noticeable in other parts of the country. He has concerns of standing in the middle of the street, the megaphones, and verbal and physical assaults. The situation is to create progress and change and not create more havoc in this town. He feels it is a wrong time for the ordinance. He feels the city is concentrating on the wrong things.

Megan Kline, 315 Kalispell Avenue, stated the working-class citizens work until 5:00 pm or 6:00 pm. The ordinance should not go into effect before trying to implement guidelines for how to peacefully

protesting such as no flag poles that have the ability to obstruct the views of traffic, stay three feet from the curb, no megaphones or loud instruments, remove yourself if you feel unsafe or uncomfortable at the rallies.

Katherine Owens, PO Box 1606, the timing of the ordinance seems odd to her. A permit is not going to change anybody's behavior. A permit can be turned down and is squashing their freedom of speech.

Maureen Cordoza, 150 Lost Coon Trail, stated since late spring she has had to tolerate protestors with signs including profanity being waved in our faces, being yelled at, and signs shoved at her windshield. The rallies are to support the President of the United States, Donald J. Trump. She asks to allow both side equal and fair time and rules, hold both sides to the same standards. She is proud to be an American. She is not proud right now to live in Whitefish. She requests the Council to not limit her rights to meet, speak, or to wave the flag on a pole.

Susie Moore, 709 Patton Lane, is proud of the Whitefish community. There are two differences here; the protesters and a rally. She is more concerned of the group that is against America, waving the American flag upside down and dragging on the ground rather than how the hours are regulated.

Kim Porter, 200 Lost Coon Trail, they are not just Trump Rallies, they are rallies for our nation. What she finds disheartening is the flag has become something in our nation now that is dividing people. The flag should bring us together. This ordinance goes against the Montana State Constitution Article 2 Section 6. She understands wanting to limit the time to 7:00 pm.

Shelby, refused to give her last name and address, a 20-year Marine Vet, Master Gunner Sergeant, four generations in the Marines, stated she has a right to her speech. The council works for the citizens but yet they think they have the right to dictate to the people regarding masks and now an emergency ordinance prohibiting gatherings and demonstrations during the hours of 7am and 7pm. She served 20 years to protect every American to peacefully assemble. Mayor and City Council are dictating to the people regarding hours they can assemble, what equipment they can use, limiting attendance and requiring permits. When did Whitefish become a communist community? Whitefish has become a controlled and sterilized community. This community is no longer for the people of Montana. She encourages the Council to stand up for the people you were elected to serve. This is not about one side or the other.

Jenny Alva, 616 Wisconsin Avenue, stated they are still protesting the fact that our brown and black siblings and community members are getting killed. This ordinance is limiting their freedom to speak up against black and brown people getting killed for no reason.

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

Deputy Mayor Sweeney called for a recess at 8:24 p.m. and reconvened at 8:40 p.m.

Discussion followed between Council and staff regarding enforcement. The ordinance has penalties built into the ordinance, but it is hard to administer who to charge. We would like people to get permits for police resources to know how many people will be there, where they are going to be, and at what time. As a city we can place some conditions on special use permits. To Attorney Jacobs knowledge the city has never denied a special event permit.

Councilor Qunell made a motion, seconded by Councilor Davis to deny an Emergency Ordinance prohibiting organized gatherings and demonstrations not subject to a special event permit during the hours of 7 :00 p.m. to 7:00 a.m., prohibiting the use of amplified sound during organized gatherings and demonstrations. Councilor Qunell stated his motion to deny is based on the premise that this violates the first amendment. It is unfortunate that people are out there making noise on a busy corner, obstructing views with flags having distasteful and vulgar signs. All of those things make it much less safe to be a citizen of Whitefish. It would be nice as Chief Dial said people would police themselves. We have the right to protest, the right to peacefully assemble and we should all have that right. We should all do it with public safety in mind.

Councilor Norton stated she is in favor of the ordinance to put some parameters around how people are behaving in front of our city hall. It is one of our busiest intersections in town. She thinks it would be safer for our community.

Councilor Hennen stated he supports the motion to deny. He thinks an ordinance like this would lead to an increase in gatherings. He thinks this would lead to more police encounters. He understands the intent behind it.

Councilor Davis feels the right of peaceful assembly, protest, demonstrations are as American as it gets. There has been a lot of good things that have happened in our country as a result of that. It is not something to discourage. He feels this ordinance is a bit premature. He thinks if folks care enough to stand out there and protest or demonstrate for things they believe, if we can allow that to happen, we should. The second reason is he also thinks that if we were to pass this the situation out there probably would not be much different. He wonders what the effectiveness would be. He thanked Chief Dial and the rest of the police force for keeping our citizens safe.

Councilor Feury stated he also does not support the ordinance. He is concerned this might actually be fanning flames a bit. Anything in any form constitutionally or legally correct that does inhibit free speech, he has a problem with it. He does not like to see some kinds of speech, but he respects the right.

The motion to deny the Ordinance carried on a 5 to 1 vote, Councilor Norton voting in opposition.

- a) **Resolution No. 20-34; A Resolution discontinuing, abandoning, and vacating an unimproved portion of Lookout Ridge (p.183)**

Public Works Director Workman gave his staff report that if provided in the packet on the website.

Deputy Mayor Sweeney opened the Public Hearing.

Wally Wilkinson, 1328 River Horse Court, representative of Lookout Ridge LLC. He has talked to Iron Horse in regard to this abandonment, and the water operator that services the water tank. They have drafted the easement that would gain them the right to be able to utilize this road. The portion that is being abandoned is owned by Lookout Ridge LLC.

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

Councilor Feury made a motion, seconded by Councilor Qunell to approve Resolution No. 20-34; A Resolution discontinuing, abandoning, and vacating an unimproved portion of Lookout Ridge. The motion carried.

- b) Consideration of a request by Ron Nash of Montana Creative, on behalf of Pamela Green for a Conditional Use Permit to construct an accessory apartment above a garage, located at 35 Columbia Avenue, zoned WR-2 (Two-Family Residential District) (WCUP 20-12) (p.212)**

Long-Range Planner Lindh gave her staff report that is provided in the packet on the website.

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

Councilor Hennen made a motion, seconded by Councilor Qunell to approve WCUP 20-12, the Findings of Fact in the staff report and the seven conditions of approval, as recommended by the Whitefish Planning Board on August 20, 2020. The motion carried.

- c) Consideration of a request from Troy Core for a Conditional Use Permit to construct an accessory apartment above a garage, located at 25 Oregon Avenue, zoned WR-2 (Two-Family Residential District) (WCUP 20-11) (p.257)**

Long-Range Planner Lindh gave her staff report that is provided in the packet on the website.

Deputy Mayor Sweeney opened the Public Hearing.

Troy Core, 25 Oregon Avenue, stated he and his wife are planning on relocating back to Whitefish in the next five years. They have family living in their home now and while they are visiting, they will stay in the apartment.

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

Councilor Feury made a motion, seconded by Councilor Hennen to approve WCUP 20-11, the Findings of Fact in the staff report, the eight conditions of approval, as recommended by the Whitefish Planning Board on August 20, 2020. The motion carried.

Deputy Mayor Sweeney made a motion to move agenda item 6e on the agenda. The Council agreed unanimously.

- e) Resolution No. 20-35; A Resolution updating the Legacy Home Program Fee-in-Lieu, Purchase Prices and Rental Prices (p.312)**

Senior Planner Compton-Ring gave her staff report that is provided in the packet on the website.

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

Councilor Davis made a motion, seconded by Councilor Hennen to approve Resolution No. 20-35; A Resolution updating the Legacy Home Program Fee-in-Lieu, Purchase Prices and Rental Prices. The motion carried.

Councilor Norton excused herself from the meeting at 9:36 p.m.

- d) **Ordinance No. 20-12; An Ordinance amending Title 11, Zoning Regulations, Chapter 2 – Zoning Districts, Article 2K – WB-2 Secondary Business District, of the Whitefish City Code (WZTA 20-02) (First Reading) (p.290)**

Planning and Building Director Taylor gave his staff report that is provided in the packet on the website.

Deputy Mayor Sweeney opened the Public Hearing.

Rhonda Fitzgerald, 412 Lupfer Avenue, provided a comic to the Council that is appended to the packet on the website. The intent of the WB-2 is specifically for large businesses that require large storage or large display and a lot of parking and are vehicular oriented. During the WB-2 and WB-3 mediation, they went over a lot of the uses, she thinks quit a few of the suggestions tonight are good, cleaning up archaic uses, moving formula restaurant to a CUP. There are a couple things suggested that are problematic. Personal services are allowed in the WB-3, WB-1, WR-3, WR-3T, and the WR-4. Those kinds of uses generate a lot of shopping. Allowing personal services in the WB-2 is harmful to the synergy and to the entrance to our town. It will create a strip mall proliferation. She hopes the Council will take this piece out of the WB-2. She also has concerns for the Administrative CUP for light manufacturing. An administrative cup only allows for the neighbors to be notified, so no one in the community will know about this. Light manufacturing should certainly be a CUP. Otherwise the changes look good and she supports it.

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

Councilor Qunell made a motion to postpone to October 5th, keeping the Public Hearing closed. The motion failed for a last of a second.

Councilor Feury made a motion, seconded by Councilor Hennen to approve Ordinance No. 20-12; An Ordinance amending Title 11, Zoning Regulations, Chapter 2 – Zoning Districts, Article 2K – WB-2 Secondary Business District, of the Whitefish City Code (WZTA 20-02) (First Reading). Councilor Feury made the motion at the Planning Board to move personal services to a conditional use. He understands there is a need to have places for those but there are a lot of places in the city that they are ~~allowed~~ allowed. He also had concerns with light manufacturing but if he looks at what we did with the Administrative CUP process in the Legacy Homes Program the Administrative CUP worked really well. There was a lot of neighborhood opposition, it did go to a full CUP and it was ultimately denied.

Councilor Feury made a motion, seconded by Councilor Hennen to amend the Ordinance to eliminate personal services from the WB-2 District. The motion carried.

Councilor Davis made a motion, seconded by Deputy Mayor Sweeney to remove Administrative Conditional Use Permit to light assembly and manufacturing. Councilor Davis feels the Administrative Conditional Use Permit does work well for the Legacy Homes Program, but there is not

any particularly great reason to have an Administrative CUP for this particular use and not others. **The motion failed on a 4-1 vote, Councilor Davis voting in favor.**

The original motion to approve Ordinance No. 20-12 as amended carried.

- e) ~~Resolution No. 20—; A Resolution updating the Legacy Home Program Fee-in-Lieu, Purchase Prices and Rental Prices (p.312)~~
- f) **Ordinance No. 20-13; An Ordinance amending Title 11-Zoning Regulations, Chapter 3 – Special Provisions, Section 42 – Multi-Family Development Standards, and Section 43 – Mixed-Use and Non-Residential Building Development Standards, of the Whitefish City Code (WZTA 20-03) (First Reading) (p.319)**

Planning and Building Director Taylor gave his staff report that is provided in the packet on the website.

Deputy Mayor Sweeney opened the Public Hearing.

Rhonda Fitzgerald, 412 Lupfer Avenue, stated this is quite complicated and she has not grasped how this really affects neighborhoods. The drawings are a huge improvement. She is confused about the 25-foot maximum setback for commercial buildings. She thought we wanted bigger green belts and more mature trees and more green space. She thinks we would want to incentivize more landscaping, more green belts, maybe berms, protected bikeways, sidewalks, and everything. We do not want parking lots in front of the buildings, but we would like landscaping in front of the buildings.

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

Councilor Hennen made a motion, seconded by Councilor Qunell to table this agenda item to October 5th. The motion carried.

- g) ~~Ordinance No. 20—; An Emergency Ordinance prohibiting organized gatherings and demonstrations not subject to a special event permit during the hours of 7:00 p.m. to 7:00 a.m., prohibiting the use of amplified sound during organized gatherings and demonstrations (Only Reading) (p.370)~~

7) COMMUNICATIONS FROM CITY MANAGER

- a) **Written report enclosed with the packet. Questions from Mayor or Council? (p.374)**

None

- b) **Other items arising between September 2nd through September 8th**

City Manager Smith thanked the Kramer Family Fund with the Whitefish Community Foundation for providing a grant to purchase four picnic tables at Riverside Park and a backless bench at Riverside Tennis Courts.

In her manager's report she asked the Council to discuss and give direction to seek the option of going to remote meetings. The Council unanimously agreed to pursue the steps to hold remote meetings.

8) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

- a) **Letter** from Solberg Family Glenwood Trust second request for financial assistance to place safety buoys around the perimeter of the sandbar (p.377)

Council agreed to help fund the safety buoys around the perimeter of the sandbar, not to exceed \$2,750.00.

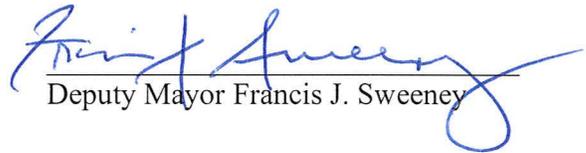
Council Comments

Councilor Davis stated he agrees with Simon McCullough's comments regarding Wisconsin Avenue.

Deputy Mayor Sweeney stated he appreciates the fact that most everybody was willing to put on a mask tonight. He agrees wholeheartedly the right to protest and the right to speak should be very little regulated, on the other hand it would behoove all involved to consider the community's commitment to civil discourse. That includes language that is used, addressing council and other members of the public. He would like to see us act like Whitefish. The only reason that ordinance was proposed was because of people acting badly. If we want to continue to protect our right to free speech and to be able to petition our government and petition your government, we need to start acting like that is important. We have to treat other citizens with equal respect.

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

Deputy Mayor Sweeney adjourned the meeting at 10:55 p.m.


Deputy Mayor Francis J. Sweeney

Attest:


Michelle Howke, Whitefish City Clerk

PUBLIC HEARINGS

PLEASE SIGN IN TO SPEAK ON A SPECIFIC PUBLIC HEARING 9-08-2020

	A	B	C	D	E	F	G	H	I
1	NAME AND ADDRESS	6a) Res No. 20-__; Discontinuing, abandoning, vacating portion of Lookout Ridge	6b)WCUP 20-12; Pamela Green, accessory apartment @ 35 Columbia Ave	6c)WCUP 20-11-Troy Core, accessory apartment @ 25 Oregon Ave	6d) Ord No. 20-__; Amending 11-2-2K, WB-2 District (1st Reading)	6e) Res No. 20-__; Updating LHP Fee-in- lieu, Purchase Prices and Rental Prices	6f) Ord No. 20-__; Amending 11-3-42 Multi-Family & 43 Mixed-Use/Non- Residential Bldg Dev. Standards (1st Reading)	6g)Emergency Ord No. 20-__; Prohibiting organized gathering and demonstrations not subject to special event permit between 7pm-7am	
2	Maureen Cordova 150 LOST COON TRAIL					Maureen Cordova			
3	Ken Cordova					Ken Cordova			
4	Susie Moore 709 Patton Lane WF							Susie Moore	
5	Kim Porter 200 LOST COON TR. W FISH							Kim Porter	
6	Catherine Owens								
7								che	
8	Jenny Alva 616 Wisconsin								
9	Simon McHugh 616 Wisconsin								
10	Wally Wilkinson	✓							
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