

WHITEFISH CITY COUNCIL
January 4, 2021
SPECIAL SESSION AT 5:30
Via Webex

1) CALL TO ORDER

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, Planning and Building Director Taylor,

2) INTERVIEWS

The City Council interviewed Michael Hein and Scott Wurster for a three-year term on the Board of Adjustments

3) PUBLIC COMMENT

None

4) APPOINTMENT

Councilor Sweeney made a motion, seconded by Councilor Hennen to appoint Scott Wurster to the Board of Adjustments for a three-year term ending 12/31/2024. The motion carried by roll call.

5) ADJOURN

Mayor Muhlfeld adjourned the meeting at 6:25 pm and opened the work session.

/s/John Muhlfeld

Mayor Muhlfeld

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk

WHITEFISH CITY COUNCIL

January 4, 2021

7:10 P.M.

Via Webex

1) CALL TO ORDER

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 34 people were in attendance.

2) PLEDGE OF ALLEGIANCE

Mayor Muhlfeld asked Planning and Building Director Dave Taylor 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)

None

4) COMMUNICATIONS FROM VOLUNTEER BOARDS

Councilor Sweeney stated the Park Board will not be meeting this month.

5) 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 December 7, 2020 Special Session (p.33)
- b) Minutes from December 7, 2020 Regular Session (p.34)
- c) Minutes from December 14, 2020 Special Session (p.41)
- d) Ordinance No. 20-17; An Ordinance amending Title 11- Zoning Regulations, Chapter 2 – Zoning District (WZTA 20-05) (Second Reading) (p.43)
- e) Ordinance No. 20-19; An Ordinance amending the Conditions of Approval of the Trail View Planned Unit Development (Second Reading) (p.46)

Councilor Norton had corrections to the December 7, 2020 Regular Session minutes; agenda item 7a) Councilor Davis ~~recues~~ recuses himself; and agenda item 7c) D.L. Blank. **Councilor Sweeney made a motion, seconded by Councilor Norton to approve the Consent Agenda as amended. The motion carried by roll call.**

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)

- a) Consideration of a request from Tanner Babcock for a Conditional Use Permit, located at 2119 Houston Drive, to construct an accessory apartment over a new garage, zoned WER (Estate Residential District) (WCUP 20-17) (p.50)

Planner II, Tara Osendorf, presented her 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 Sweeney made a motion, seconded by Councilor Qunell to approve WCUP 20-17, the Findings of Fact in the staff report and the seven conditions of approval, as recommended by the Whitefish Planning Board on December 17, 2020. The motion carried by roll call.

b) **Resolution No. 21-01; A Resolution approving an agreement with Montana Waste Systems, Inc. d/b/a North Valley Refuse, (d/b/a Republic Services) for solid waste collection and disposal (p.96)**

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

Discussion followed between Council and staff regarding the contract; section 7.1 - there is no justification for increasing the rates; 7.3 – the changes have to be justified and agreed upon; section 8.4 – in the City of Whitefish, it is mandatory garbage service regardless of service being provided, we charge the customer regardless of a can being provided, this section is referring to if the city has not collected the customers fees, or the service has not been provided they are still going to be charged for those accounts; in the case the customers garbage is not picked up, the customer will deal directly with Republic Services for any service issues, the City has full collectability in garbage because it is a service that can be assessed to the property tax for delinquent payment. The contract includes remedies in section 9. Section 13, the equipment this section refers to a garbage can. Chad Bauer, Republic Services, stated they will be responsible for their liabilities. The contract does not have an indemnification clause, but it does have an insurance requirement. Animal resistant containers will be negotiated at a later date due to working on a tiered system, and currently there are no 300-gallon animal resistant containers.

Mayor Muhlfeld opened the Public Hearing.

Vita Wright, attending the meeting posted in the Chat, is there any information on how many people in the high bear zones leave their trash out overnight, even though it is not allowed? If this is a big enough problem could the early pick-ups be operated outside the high bear zones? Mayor Muhlfeld clarified the intent of the question to when and if we complete city-wide mapping of the high priority areas in terms of bear activity could we defer pick up in those areas to later in the day? Chad Bauer stated they would work with the city to help in those areas.

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

Councilor Norton made a motion, seconded by Councilor Hennen to approve Resolution No. 21-01; A Resolution approving an agreement with Montana Waste Systems, Inc. d/b/a North Valley Refuse, (d/b/a Republic Services) for solid waste collection and disposal.

Councilor Sweeney made a motion, seconded by Councilor Feury to amend section 13 to read; Customers shall fully reimburse Company for any and all claims resulting from personal injuries or death, or the loss of damage to property (including the equipment) arising out of improper use, the operation, or possession of the equipment by the Customers. Also, Company shall not be responsible for any damages to any pavement, curbing, or other driving surfaces resulting from Company’s providing the Services under this Agreement that are not caused by the Company. The motion carried by roll call.

The original motion to approve Resolution No. 21-01 carried by roll call.

- c) **Ordinance No. 21-01; An Emergency Ordinance to ensure the continuity of COVID-19 precautions for the health and safety of the City's citizens and visitors by requiring the use of face coverings in certain settings and waiving a second reading (Only Reading) (p.118)**

City Attorney Angie Jacobs reviewed the Emergency Ordinance.

Joe Russell, Flathead County Health Officer, stated this is a good first step. He also stated the Governor's Task Force does have public health controls that could come out as early as tomorrow and no later than the end of the week. When investigating any diseases, the confounding that happens in a social setting is really difficult to pin down. Mask use is a good demonstrated public health measure when you cannot socially distance. He suggests waiting to do anything else until hearing from Governor Gianforte.

Joe Russell also reported we are seeing a downward trend in cases. There is a lot of fluctuation especially during the holiday season with the hospital lab not reporting. He shared data reports that can be viewed on the meeting video (1:25:19). The next three weeks will be critical. Vaccines are being administered in the community, Logan Health Clinics (Kalispell Regional) have administered 1782 doses, 1170 of Pfizer and 700 Moderna, North Valley Hospital received 402 doses of Moderna. The vaccinations are administered in tiers.

Councilor Norton asked and Joe Russell stated the positivity rate has been around 15% . It is good when we see cases dropping over time, and the positivity rate remaining steady.

Mayor Muhlfeld opened the Public Hearing, limiting public comment to three minutes.

Dave VonKleist does not believe in masking or shutting down businesses.

Randy, works in Whitefish, is against the ordinance.

Thomas Millet, Flathead County; is against the ordinance.

Vita Wright, lives outside city limits, supports the ordinance.

City Clerk reported 45 written public comments were received, 37 comments were against the ordinance, 6 comments were in favor of the ordinance, one comment as other. The written comments are appended to the January 4, 2021 packet on the website.

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

Councilor Norton made a motion, seconded by Councilor Sweeney to adopt Ordinance No. 21-01; An Emergency Ordinance to ensure the continuity of COVID-19 precautions for the health and safety of the City's citizens and visitors by requiring the use of face coverings in certain settings and waiving a second reading (Only Reading). Councilor Norton appreciates everybody's input on how we should proceed as a community. She assessed public input based on the understanding of the seriousness and emergency of this issue that we are dealing with. The virus is very difficult to contain without safety protocols in place. She is happy to support this as one part of our safety protocol. She

does think individual businesses should consider maintaining their own distancing and possibly occupancy guidelines they have been using successfully for a number of months.

Councilor Sweeney stated the mountain resort has been a part and parcel of this community for a very long time. It is in many respects the reason we are as successful as we are as a community. The mountain has instituted a number of COVID related precautions including the requirements that all people wear masks, and all people allow social distancing. If the city were to do anything less would send a mixed message to the patrons and as to our support for the mountain. It is important to support our businesses do not restrict them. It would be incredibly foolhardy for us not to support the mountain and what they are doing to ensure their guests and our guests are as safe as we can make them.

Councilor Hennen stated he has been reading a lot about COVID and the effects of COVID and listening to a lot of podcasts about it. He thinks that most people are well-meaning people, who want to try to be socially responsible and are willing to sacrifice some of their comfort for the greater good. People can really put up with a lot, as long as they think it will end. Ten months later we are heading into winter and it is looking and feeling like none of this is temporary. His appetite to tell people how to navigate this pandemic is shrinking day by day. It is getting harder not to throw his hands up and say every man for himself. The moral and ethical thing to do is to continue to grit your teeth and do the best that we can to deal with the reality that we live in. Wearing a mask accomplishes that. He supports this ordinance if it keeps our businesses open and increases the capacity at our bars and restaurants.

Councilor Qunell stated the science is there that supports masks. He studied the different links that people shared, and there are two common threads in the ones that say masks are not effective. One common thread is that the study was not done about COVID-19; the other is that they cannot get a real study done because they cannot do a blind study with COVID-19. The Danish study shows the scientists agreed there is no benefit from wearing a mask. Digging deeper into the study it shows that they were not sure about their finding because masks were not required in the area, and mask wearing was inconsistent where they did the study. That is what we are preventing here. We want mask wearing to be consistent and it has to be required. A mask ordinance is going to be difficult to enforce. He will support the motion to approve the emergency ordinance.

Councilor Davis stated he cannot wait until life goes back to normal. Masks are a pain, nobody likes them. It is not too much to ask. The reality is life is not going to go back to normal until the spread of this virus is abated. He thinks some continuity of these regulations is necessary in our community where we have participation from a lot of folks coming from out of town. We need to grit our teeth and get this done for a while longer and have optimism for a better future.

Councilor Feury stated no one has been able to come up with an agreed upon set of facts for wearing masks. As Councilors they find themselves in the position of being the people that have to decide whether we should wear them or not. There are two arguments against; an argument of personal liberty the other is the efficacy. Efficacy we cannot decide that. With regard to the personal liberty side, it is interesting how history repeats itself. In 1905, in the case Jacobson vs. Massachusetts, during the height of the smallpox outbreak in the city of Cambridge, there was a smallpox vaccine that had come along and was being required by the city and the state. The decision of the court was against Mr. Jacobson and in favor of the state of Massachusetts. Councilor Feury finds himself responsible for the public safety and the public health. If he looks at the evidence and the research, he has been able to do, masks are effective and do make a difference. He will vote in support of the motion.

The motion carried by roll call. 2:14

7) COMMUNICATIONS FROM CITY MANAGER

a) Written report enclosed with the packet. Questions from Mayor and Council? (p. ~~118~~125)

None

b) **Other items arising between December 30th through January 4th.**

None

8) COMMUNICATIONS FROM MAYOR AND CITY COUNCILORS

a) **COVID-19**

None

Councilor Comments

Councilor Sweeney is pleased this is 2021. He is very hopeful for this year and hopeful for things in the nearer term. He is willing to put up with this to make this thing work. He wished Happy New Years to all.

Councilor Qunell wished Happy New Year to all. He gave a shout out to the Glacier Nordic Club. They have been working hard to try to get enough snow to skate the golf course. They have also been doing an excellent job on the Big Mountain Trails and with Iron Horse and their grooming, it has been fantastic Nordic skiing. He also reminded everybody to follow the rules, dogs are allowed on the course, but they have to be on a leash until the skier bridge at Haskill Basin Road.

Councilor Norton wished everybody for a Happy New Year. She thanked the Council for working through hard issues.

Councilor Feury wished everybody a Happy New Year. He mentioned there are two major potholes on Baker Avenue between Second Street and First Street in the northbound lane that need to be filled. He will have the city crew take care of the potholes by end of day Tuesday if MDT has not taken care of them.

9) ADJOURNMENT

Mayor Muhlfeld adjourned the meeting at 9:33 p.m.

/s/John Muhlfeld

Mayor Muhlfeld

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk