

RECORD OF PROCEEDINGS

**TOWN OF DILLON
TOWN COUNCIL
REGULAR MEETING**

Tuesday, April 21, 2020

7:00 p.m.

Via teleconferencing

CALL TO ORDER & ROLL CALL

A regular meeting of the Town Council of the Town of Dillon, Colorado, was held on Tuesday, April 21, 2020, via teleconferencing. Mayor Carolyn Skowyra called the meeting to order at 7:00 p.m. and the following Council Members answered roll call: Brad Bailey, Jennifer Barchers, Kyle Hendricks, Karen Kaminski, Renee Imamura and Steve Milroy. Staff members present via teleconferencing were: Nathan Johnson, Town Manager; Carri McDonnell, Finance Director; Mark Heminghaus, Chief of Police; Kerstin Anderson, Marketing & Communications Director; Scott O'Brien, Public Works Director; Craig Simson, Marina Director; Dan Burroughs, Town Engineer; Ned West, Town Planner; and Adrienne Stuckey, Town Clerk.

APPROVAL OF AGENDA

There being no changes to the agenda, it will stand as approved.

APPROVAL OF CONSENT AGENDA

Council Member Bailey moved to approve the following consent agenda:

- a. Minutes of Regular Meeting of April 7, 2020
- b. Approval of Bill List dated April 17, 2020 in the amount of \$348,491.80 and Payroll Ledger dated April 10, 2020 in the amount of \$72,388.94

Council Member Barchers seconded the motion which passed unanimously upon roll call vote.

CITIZEN COMMENTS

There were no citizen comments.

SWEARING-IN OF COUNCIL MEMBERS BRAD BAILEY, KYLE HENDRICKS AND STEVEN MILROY

Town Clerk Adrienne Stuckey administered the Oath of Office to newly elected Council Member Brad Bailey, Council Member Kyle Hendricks and Council Member Steve Milroy with terms expiring in 2024.

COUNCIL APPOINTMENT

Mayor Skowyra moved to appoint Council Member Bailey as Mayor Pro-Tem for a two-year term. Council Member Imamura seconded the motion which passed four to three with Council Member Barchers, Hendricks and Kaminski in opposition.

APPEAL OF THE DEVELOPMENT PERMIT APPLICATION FEE FOR A MAJOR PUD AMENDMENT FOR ANEMONE URGENT CARE

Town Planner Ned West explained Dr. Nizar Assi, MD, submitted a request to waive the \$4800.00 Major PUD Amendment Development Permit Application Fee. The Major PUD Amendment classification

was triggered because of changes to the site and grading plan and access to the residential building. The urgent care center and the residential condominium remain very similar in design. Staff doesn't anticipate the review will be as involved as with other PUD applications on which application fees are based.

Mr. West explained there are three options available to the Town Council in considering waiving application fees:

1. Approve the request and waive the application fee and the Applicant will be refunded the fee.
2. Deny the request and require the full payment of the application fee; the application fee paid will be retained by the Town.
3. Allow for a time tracked approach for determining the fee based on the time spent reviewing the application, the costs associated with the public hearing and other associated costs incurred by the Town regarding the application, and then refund the remaining funds.

Mayor Skowrya moved to deny the request to waive the \$4800.00 Major PUD Amendment Development Permit Application Fee. Council Member Imamura seconded the motion which passed unanimously upon roll call vote.

CONSIDERATION OF EMERGENCY ORDINANCE NO. 10-20, SERIES OF 2020
AN EMERGENCY ORDINANCE AMENDING THE DILLON MUNICIPAL CODE
REGARDING SMALL CELL FACILITIES IN THE RIGHTS-OF-WAY

Town Attorney Nick Cotton-Baez explained Verizon Wireless presented a proposal to the Town regarding small cell facilities. The Dillon Municipal Code provides regulations for telecommunications installations in Town in Article XII of Chapter 16 "Zoning". Technology has changed substantially since those regulations were last amended in 2002. The small cell technology currently being deployed around the world is thus not contemplated in the current Code. This ordinance is drafted to address this new technology and its deployment in the Town's rights-of-way.

He stated he has worked with the Town and the firm Kissinger & Fellman on siting and design requirements to ensure the protection of the interests of the Town and character of Dillon neighborhoods. The Town has developed the small cell ordinance in an effort to protect the health, safety and welfare of the community; that being said, the FCC limits the extent of regulation.

Town Attorney Cotton-Baez explained this ordinance provides new definitions, including that of a small cell facility, general standards, design standards and siting requirements. It also contains new code language that provides for waivers for good cause by the Town Manager if it is found that the Town's ordinance is clearly preempted by state or federal law; if a provider can show that adherence to the Town's requirements will effectively prohibit the provider from providing service; or when a proposal would in fact further the purpose and intent of the Town's requirements.

The ordinance acknowledges that the Town desires the undergrounding of overhead utilities and provides a provision for owner/operator removal and relocation of affected small cell or micro cell facilities on 60 days' notice from the Town should the Town decide to pursue an undergrounding project.

The emergency ordinance sets forth provisions requiring permits and application submittal, and governing application review and permit issuance. The Firm Kissinger & Fellman has advised that the Town use a wholly administrative application review process for small cell facilities proposed for the ROW for the following reasons:

- It may be difficult to hold public hearings within required review time frames, particularly in the context of batched applications (for up to 10 facilities), and thus the time limits could encourage

- denials in contravention of state and federal law, which could invite litigation;
- Because small cells are a use by right in all zones, it makes little sense to hold a public hearing and invite citizen input where the Town does not have the ability to deny a facility, except based on certain limited criteria in the Code;
- In all cases, applicants will be required to conform facilities to the design and siting requirements of the Code, and staff will be able to identify whether applications conform.

In the development of the ordinance language and in reviewing the approach of various other municipalities, Town staff and legal counsel believe it is best to use a Master License Agreement (MLA) approach to govern owner/operator access to ROW and work on Town poles supporting small cell facilities. The MLA will cover all small cell facilities installed by an owner/operator in ROW after such facilities have gone through the Town’s application and approval process. Town staff/attorney are working with Kissinger & Fellman on a draft MLA that staff will bring to Council in template form for approval.

Based on state law and shot clocks established therein, the Town is required to review applications in no more than 90 days, which is spelled out in the ordinance.

Although there are limited triggers for denial of an application, the ordinance details what those might be – essentially failure to comply with any requirements of the emergency ordinance and other provisions of the Code, negatively impacting snow removal operations, causing a violation of the American with Disabilities Act, causing a public hazard, or if it does not comply with building or electrical codes.

Finally, the ordinance requires small cell service providers to repair damage to Town improvements caused by provider operations, and releases the Town from all liability for network interference caused by any structures now existing or constructed in the future on property adjacent to the rights-of-way installations

Council Member Barchers moved to approve Emergency Ordinance No. 10-20, Series of 2020. Council Member Imamura seconded the motion which passed unanimously upon roll call vote.

CONSIDERATION OF RESOLUTION NO. 21-20, SERIES OF 2020
A RESOLUTION SETTING FEES AND CHARGES IN CONNECTION WITH SMALL CELL FACILITIES IN THE RIGHTS-OF-WAY.

Town Attorney Nick Cotton-Baez explained this will set the following fees associated with (Emergency) Ordinance No. 10-20, Series of 2020:

1. An Application Fee in the amount of \$500 for a single up-front application that includes up to five small cell facilities, with an additional \$200 for each small cell facility beyond five, to offset costs incurred by the Town in reviewing applications for installation, collocation, or modification of small cell facilities in the rights-of-way;
2. An annual Recurring Charge of \$270 per small cell facility installed in the right-of-way per year, to offset costs incurred by the Town in connection with small cell facilities in right-of-way including owner and operator access to right-of-way and attachment of small cell facilities Town poles.

He stated the Resolution reserves the Town Council’s power to raise the Application Fee and Recurring Charge by subsequent resolution, if higher fees are supported by the Town’s actual and reasonable costs in connection with small cell facilities in right-of-way.

Council Member Bailey moved to approve Resolution No. 21-20, Series of 2020. Council Member Barchers seconded the motion which passed unanimously upon roll call vote.

CONSIDERATION OF RESOLUTION NO. 22-20, SERIES OF 2020
A RESOLUTION ESTABLISHING THE TOWN OF DILLON SMALL BUSINESS LOAN PROGRAM AND AUTHORIZING THE LOAN OF FUNDS FROM THE SEWER ENTERPRISE FUND TO THE GENERAL FUND FOR PURPOSES OF FUNDING SUCH PROGRAM.

Finance Director Ms. McDonnell explained this resolution establishes a loan program and establishes a loan from the Sewer Enterprise Fund to the General Fund. The Sewer Enterprise Fund currently has \$800k in unrestricted cash that is needed for capital projects in approximately 4-5 years. This loan agreement would authorize the Finance Director to loan the General Fund up to \$250,000 from the Sewer Enterprise Fund. The loan must be paid back no later than July 1, 2023 and the interest rate will be determined based on covering inflation. The General Fund will make annual payments to the Sewer Enterprise Fund in a schedule established by the Finance Director. The loan to the Sewer Enterprise Fund is not dependent on the repayment of the loans from the General Fund to small businesses. If the small businesses receive a forfeiture or default on their loan, the General Fund will still be providing the full repayment to the Sewer Enterprise Fund.

Council Member Imamura moved to approve Resolution No. 22-20, Series of 2020. Council Member Barchers seconded the motion which passed unanimously upon roll call vote.

CONSIDERATION OF RESOLUTION NO. 23-20, SERIES OF 2020
A RESOLUTION APPROVING A FORM LOAN AGREEMENT IN CONNECTION WITH THE TOWN OF DILLON SMALL BUSINESS LOAN PROGRAM.

Finance Director McDonnell stated this resolution approves the format for the small business loan agreement with a small business. In order to expedite the program and get funds to our business community, staff is recommending that the Town Manager approve the final loan amounts and sign the loan agreements as approved by the Town Council and using the criteria established during the work session which was the following:

- A small business is defined as independently owned and employing less than 50 full-time year-round employees.
- The business must be physically located in the town limits of Dillon
- The business must be current on all required permits, licenses and taxes assessed by the Town of Dillon.
- Businesses or individuals engaged in the short term renting of properties are not eligible to receive loans under the program.
- The Town may deny loans to businesses that have not applied for at least one loan or grant through the state or federal government.
- Business must complete the Business Loan Program Application and submit a completed W9 no later than April 30, 2020. Payments will be made no later than May 20, 2020.
- The Dillon Town Manager will determine the eligibility of each small business applicant in accordance with these criteria, and amount to be awarded to each small business applicant in accordance with additional written criteria adopted by the Town.

All small businesses awarded a loan under the program shall be required to enter into a loan agreement with the Town. The loan repayment will be a three-year term with a 1% annual interest rate. Annual payments will be due July 1 of each year beginning in 2021. The Town has a total of \$250,000 budgeted for this program and each eligible business will receive a prorated share of the loan program up to \$10,000.

Council Member Milroy moved to approve Resolution No. 23-20, Series of 2020. Council Member Imamura seconded the motion which passed unanimously upon roll call vote.

CONSIDERATION OF RESOLUTION NO. 24-20, SERIES OF 2020
A RESOLUTION APPROVING A LOAN AGREEMENT BY AND BETWEEN THE TOWN OF DILLON AND THE TOWN OF DILLON SEWER ENTERPRISE.

Finance Director McDonnell explained this resolution approves the loan between the Sewer Plant Investment Fund and the General Fund and the Finance Director to loan the General Fund up to \$250,000 from the Sewer Enterprise Fund. The loan must be paid back no later than July 1, 2023 and the interest rate will be determined based on covering inflation. There will be annual loan payments from the General Fund of approximately \$85,005 per year at 1% interest and would give the Sewer Enterprise Fund interest earnings of \$5,015.

The loan to the Sewer Enterprise Fund is not dependent on the repayment of the loans from the General Fund to small businesses. If the small businesses receive a forfeiture or default on their loan, the General Fund will still be providing the full repayment to the Sewer Enterprise Fund.

Council Member Imamura moved to approve Resolution No. 24-20, Series of 2020. Council Member Barchers seconded the motion which passed unanimously upon roll call vote.

TOWN MANAGER'S UPDATE

Manager Johnson reported on the following:

- There are over 100 cases of COVID-19 in Summit County. Howard Head Sports Medicine in Silverthorne is being used as a COVID-19 testing site in Summit County.
- The Summit County Public Health Symptom Tracker case numbers have decreased.
- The County and Towns still do not have a clear picture of what opening will look like. However, they do know restaurants will continue with curb-side/take-out dining.
- There will be a Community Outreach meeting on Monday, April 27, 2020 at 1p.m.
- Staff is collectively working on contingency plans and these will be brought forward at the May 5th, 2020 Council meeting.
- The Managers' Meeting will be held virtually on Thursday, April 23, 2020.
- The Town will be giving \$100 gift cards to employees to help them during this COVID-19 pandemic and can be used at their discretion.

MAYOR'S UPDATE:

Mayor Skowyra did not have an update.

COUNCIL MEMBER COMMITTEE REPORTS AND COMMENTS:

- Council Member Bailey thanked staff for creating the small business loan program. He hoped it is going to work well and appreciates the effort from staff.
- Council Member Hendricks asked what was going on with the Town's staff? Are they reducing hours?

Manager Johnson replied there have not been any layoffs or furloughs. Town staff receives up to 80 hours of COVID-19 pay. The Town would like to keep staff in place and would rather

not hire seasonal employees.

- Mayor Skowrya would like to add “State of the Town” to Council meetings. Manager Johnson replied it can be added to the Work Sessions.
- Council Member Barchers thanked Ms. McDonnell, Mr. West, Mr. Burroughs, Manager Johnson and Staff for their hard work. She added the parking retreat would be beneficial in person even if they have to be 6’ apart.

ADJOURNMENT:

There being no further business, Mayor Skowrya declared the meeting adjourned at 8:02 p.m.

Respectfully submitted by:

Adrienne Stuckey, Town Clerk