



*City of Kootenai*  
**COUNCIL MEETING MINUTES**

**DATE:** April 6, 2021

**TIME:** 6:30 p.m.

**Mayor Lewis brought the meeting to order at 6:30 p.m.**

**City Clerk opened the telephonic/video line for phone and/or video attendance.**

**Roll Call: Councilman Sundquist – HERE, Councilwoman Mjelde – Not Present, Councilman Schock – HERE, and Councilwoman Bauer – HERE via Phone Conference.**

**Staff Present:** City Attorney, Keisha Oxidine and Benjamin Allen of Silver Valley Law

**Others Present:** Steve and son Noah Kaufman and Kevin Bryan, representing Boy Scout Troup 308, Dave Bowman, City resident, and Susan Lauinger, City resident.

**Amendments to the Agenda** – Councilwomen Bauer suggested that the in red via teleconference meeting will be held via teleconference public welcome.

**Noah Kaufman – Boy Scout Troop 308** – Noah addressed Council explaining that he was working on his Eagle Scout project and stated that he would like to do a project for the city of Kootenai. He stated that he would like to put doggie bag stations along the foot path from Brittany Loop to the Kootenai Elementary School; one at the beginning of the path and one at the end. Mayor confirmed that there would then be two and ask what they would be made of. Noah stated that he was not sure of that yet. Mayor confirmed that Noah would get his plan together and then return to Council with his plan. Noah agreed. Ronda asked what the requirements were for him to get his Eagle status. Noah stated that he had to do a project that benefited the community which would require a total of 50-man hours. There was a discussion as to who owned the property. Council suggested that that was something that needed to be established as some of the trail property belonged to the school. Councilman Schock asked Noah what his estimated time for completion of the project. Noah stated it would be a summer project. Councilwoman Bauer asked who would be purchasing the terminals. A Troop Member stated that Noah would need to fund raise to purchase them or build them. Ronda asked who would maintain the stations. Noah stated he would. Ronda suggested that the City would need to have something in writing. Councilman Sundquist stated that the agreement would need to have a termination point for maintenance. Council agreed to allow Noah to move forward with a final proposal for the project.

**Public Comment** – None were given.

**Announcements** – None were given.

**1. Consent Agenda:**

Mayor Lewis asked Council for a motion to approve the Consent Agenda.

**Councilman Schock made a motion to approve the Consent Agenda, 2<sup>nd</sup> by Councilman Sundquist; roll call vote:**

**Councilman Sundquist – AYE  
Councilwoman Bauer – AYE**

**Councilwoman Mjelde – Not Present  
Councilman Schock – AYE**

2. **Reports:**

2.A. **Mayor:** No Report was given. No BCATT this month.

2.B. **City Engineer:** Written Report Summary – No Report was submitted.

2.C. **City Planner:** Written Report Summary – Attached – No further discussion.

2.D. **City of Sandpoint Law Enforcement:** - Attached – Councilman Schock made note that the Department had saved someone's life.

2.E. **Selkirks-Pend d'Oreille Transit (SPOT)** – Mayor stated that there were only 20 days left for ski run. She advised that ridership has increased and that the shelter at Walmart was close to being completed.

2.F. **Clerk – Written Report** – Attached – There was no further discussion.

3. **Discussion/Action Items**

3.1 **Approval of Independent Contractor Agreement for Legal Services** – There was no further discussion. **Councilwoman Bauer made a motion to approve the Legal Contract, 2<sup>nd</sup> by Councilman Schock; roll call vote:**

**Councilman Sundquist – AYE**  
**Councilwoman Bauer – AYE**

**Councilwoman Mjelde – Not Present**  
**Councilman Schock – AYE**

3.2 **Avista Franchise Agreement** – Attorney Oxendine explained that she had been in contact with Todd Kiesbuy the point of contact for Avista and was waiting to hear back from him regarding the combination of electric services with gas services into one ordinance. She stated that she did not see a legal issue with combining them. She advised that in reading the March minutes she saw that there was a concern about the percentage rate for revenues. She stated that State Code restricts the percentage rate of revenues to a City for public utilities to one percent. She stated that she felt she would have a final draft of the proposed ordinance before May's public hearing. She advised Council that Avista is required to reimburse the City for publication, as the entire Agreement must be published. Ronda stated that Council had had the Franchise Agreements in front of them since the last meeting and asked Council if they had any question at this time. Councilwoman Bauer asked if there was any benefit to combining the two agreements and if the City's Attorney felt that there needed to be any adjustment to the agreement or was it fine the way it is. Attorney Oxendine stated that she had made some revisions and she could send out what she had, but she really wanted to wait until she had heard from Avista. She made some revisions pertaining to maintenance and repairs in the event that they damaged property and also some of the indemnity language to make sure that the City is adequately protected in the event that there were any damages caused by Avista and a few revisions that aren't material, but she felt necessary going forward. With a long-term franchise agreement, she wanted to make sure the City will be protected in the future. She did not feel that there would be a problem with Avista accepting her revisions as she has worked with them in the past with other cities and has never had an issue with getting them approved. Councilman Sundquist asked if there was any time crunch where the City would not receive revenues. Attorney Oxendine state that the City did not need to worry about that. Councilman Sundquist stated he would like to see the public hearing move forward. But would leave that to staff to determine. Attorney Oxendine stated that the City should be ready

to go for the first public hearing in May. She advised that for a utility franchise agreement the City needed to have two public hearings and that the City had to read the whole agreement at the public hearing each time. Ronda advised Councilwoman Bauer that if there were two franchise agreements one for gas and one for electric that they would both have to be read and published which could be in the thousands of dollars. Attorney Oxendine stated that also as far as public records one would be easier to manage as they are both a mirror of each other.

**3.3 Fatbeam Franchise Agreement**– Attorney Oxendine stated that she tried not to spend a lot of time reviewing the Agreement as the City has already had previous attorney review and costs. She stated that she understood the concern about what teeth or penalties there were within the Agreement. She explained that because of the type of ordinance this is not the type that addresses criminal penalties, but the City does have the ability to bring a cause of action for damages on a breach of contract. Because essentially this type of ordinance is in essence a formal passage of a contract and contract provisions, and so in the event that they breach the Agreement the City’s ability to essentially apply a penalty is to one, terminate the Agreement, then determine what the damages are and assess those to Fatbeam, so that that comes back into the City, so there are some teeth there which will deter Fatbeam from deviating from the terms of the Agreement because there are provisions in Idaho Code that would allow the City a pretty substantial amount of damages in different levels depending on the type of breach of contract action that the City pursues. So, in the sense of penalties with infractions and misdemeanors, its not that type of an ordinance and it is not the type that you can make penalties for, but there is the ability to have teeth in it because the City can have the ability to terminate and seek damages that the City could benefit from. Councilman Sundquist asked if for instance the Agreement says that everything will be underground, and they string a wire above ground, that would be something that the City could determine if damages were present, i.e. to get it put underground. For instance, a consumer dug up the wire and tripped on it or injured a machinery or household that would not be something the City could address, that would not be a breach of their contract. Attorney Oxendine concurred unless it was due to the negligence of their employee. Councilman Sundquist confirmed that the City’s ability to hold Fatbeam accountable is based on the terms of the contract as far as the install; the City has very little liability anywhere built into the contract. Fatbeam would have a really hard time even if the City allowed another company to come in and put in lines; the City has the ability to do that and Fatbeam could not come back and say that the City could not do that because it is not an exclusive. Attorney Oxendine agreed as this ordinance does not prevent the City from allowing competing businesses to come in or offering better service for your citizens. She advised the ordinance is grounded that if the City were to breach its obligation under this Agreement which would be very minimal, and if for some reason your employees were negligent in dealing with Fatbeam that would have to be a provable damage and she did not foresee, under these terms, there would be a situation where the City would end up with this type of liability. Councilwoman Bauer expressed her concern that she had asked Fatbeam for a copy of the contract that they have with existing utilities to put antennas on their poles, and she had not received that information to date. She stated that right now Fatbeam appears to be a fiber service completely underground which she is fine with; can the City make the contract so that the lines are 100 percent underground or fiber. Attorney Oxendine stated that the City cannot dictate what kind of work they do as far as what they choose to install. The City can dictate that it must be put in a certain way or that it meets provisions as underground is what was contemplated, but the City cannot actually dictate what they use and what materials that they actually install; that is beyond the City’s ability even with a franchise agreement. Councilwoman Bauer asked if the City could require a NEPA report for every antenna put up. Attorney Oxendine stated that she thought that would be very difficult for the

City to track and manage because it would require someone to be appointed and paid by the City to go around and identify where those antennas are, who owns them because the City's second issue would be whether or not those were installed by Fatbeam and then follow up on tracking down the report for that specific antenna. She stated that she did not see that as a feasible action for the City to take on as far as the responsibility. Councilwoman Bauer stated that then the only way to do anything like that would be to change the City's Code to require a permit for each antenna. Attorney Oxendine confirmed that that would be something that could be addressed in the City's Code. She advised that she understood that the City had spoken about having some Code workshops. Councilwoman Bauer stated that that would be something that she would like to see addressed before letting Fatbeam come into the City because she has not seen the contract that Fatbeam has between them and other utilities. Council discussed that the City cannot not allow services to come into the City; it is demand driven. Councilwoman Bauer stated that she just would like to see something in place so that the City does not see all these antennas popping up and to make sure that there is a limit as to how high they can go. Council advised that their understanding was that Fatbeam would be putting everything underground. Councilwoman Bauer disagreed and stated that her understanding was that Fatbeam had planned to install above ground. Attorney Oxendine stated that that would be beyond the scope of this Agreement because that is not what is contemplated in the proposed Agreement. Councilman Sundquist stated that his understanding was that an antenna could not be over 30 feet high as nothing in the city of Kootenai can exceed 30 feet. Ronda stated that her understanding from the conversation with Fatbeam at the last meeting was that Fatbeam planned to bore underground, but if there were a situation where there was an existing pole and no way to bore underground Fatbeam would use the pole. Councilwoman Bauer stated her concern that a street light pole could be used. Attorney Oxendine stated that they would not be able to do that without first getting permission from the City as it is City owned. Councilwoman Bauer confirmed that that would have to be voted on by City Council. Council and Attorney Oxendine agreed. Ronda asked Council if they could agree to move forward with public hearing to approve the Franchise Agreement. Councilman Sundquist asked if this could be done in May at the next Council meeting. Attorney Oxendine stated she thought that would be fine because for this particular type of Franchise Agreement the City is not required to read the whole of the ordinance and there was enough time for publication. Council agreed to move forward to public hearing for the proposed Fatbeam Agreement to be scheduled for May's Council Meeting.

#### **3.4 Addressing Memorandum of Understanding (MOU) with Bonner County –**

Attorney Oxendine advised that the MOU needed some work as it does not address the City's concern about readdressing the City without the City's involvement. She advised that she is working on getting the MOU to a point that it incorporates the City's concerns and makes sure that new development addressing is what is being proposed and that any re-addressing is specifically excluded from that MOU and it would require Council involvement pursuant necessary Idaho Code. She suggested that the MOU be put on the next City Council Agenda in May as the draft should be to the City within the next week. Councilman Schock advised that there are some acronyms and/or abbreviations that needed to be cleared up; it needs to be standardized. Attorney Oxendine agreed that it needs to be very clear and unambiguous as to what it involves and what it does not.

**3.5 City Hall Improvements –** Council discussed the needs for improvements to City Hall. Mayor reminded Council that she had asked Council to give her an itemization as to what they would like to have done with this building. Councilman Sundquist advised that the fascia needed to be addressed. He also advised that this may be something that the contractor

who gave the City a bid on the roof project could address. He stated he was told that the contractor would be beginning on the roof tear off in the coming weeks. Council discussed having a porta potty in the park. Ronda stated that she had requested one but had not heard back from the vendor. She advised that she would keep trying to get one set up. There was discussion about an air ventilator within the venting system, but Council agreed that the stationary one within the building was doing just fine. Mayor advised that the building needed to be painted. Councilman Schock mentioned that he felt that the power line going from the building to the utility pole needed to be raised or buried. He stated that the line is low enough that someone could touch it with a stick. Council discussed maybe putting a conduit up and see what it would cost. Ronda asked who she should contact for the project. Council advised that Avista sometimes have programs that could help. Council agreed that there would be no need for an electrician if the line was lifted. Council mentioned that flooring should be considered at some point. Councilman Schock stated that there was rot beginning at the bottom of the building siding and that new siding should be considered. Council suggested to ask a contractor what should be done and advised that the City needed to expand to other contractors. Ronda confirmed that they needed to work on the outside of the building and then paint. Council agreed.

**3.6 Boy Scout Troup Project – Discussed previously.**

**3.7 Set Budget Hearing and Workshops –** The City’s Clerk advised that it was time to set the City’s Budget Appropriations Hearing and Workshops. Council agreed that the Hearing should be set for Wednesday August 18<sup>th</sup> to begin at 6:00 p.m. and two workshops one on Wednesday, June 16 beginning at 6:00 p.m. and another on July 21, beginning at 6:00 p.m.

**Executive Session – Councilwoman Bauer made a motion to enter into Executive Session in accordance with Idaho Code 74-206(f) at 7:22 p.m., 2<sup>nd</sup> by Councilman Schock; roll call vote:**

**Councilman Sundquist – AYE**  
**Councilwoman Bauer – AYE**

**Councilwoman Mjelde – Not Present**  
**Councilman Schock – AYE**

Executive Session closed at 8:07 p.m.

Mayor Lewis adjourned the meeting at 8:08 p.m.

Submitted by:

Ronda L. Whittaker/City Clerk



# City of Kootenai

## Treasurer Report March 2021

Mt. West Money Market	\$	74,237.48	0.05% APY
Mt. West Checking	\$	102,359.78	0.01% APY
Idaho Central Credit Union	\$	390,898.19	1.85%
Park Fund	\$	4,000.06	
<b>Total Cash Assets</b>	<b>\$</b>	<b>571,495.51</b>	

### INCOME/GENERAL FUND

Name	Account	Amount	Sub-Totals
<b>01 · GF REV</b>			
<b>Franchise Fees</b>			
	Avista Corporation	0.00	
	Northland Cable Television	0.00	
	Waste Management, Inc	0.00	
<b>Total Franchise Fees</b>			0.00
<b>Interest</b>			
	Interest, MW Money Market	3.15	
	Interest, MW Checking	0.88	
	Interest, Park Fund	0.04	
	ICCU CD1	315.85	
	ICCU CD2	292.32	
<b>Total Interest</b>			612.24
<b>Licenses &amp; Permits</b>			
	Business Licenses	150.00	
	Liquor Licenses	0.00	
<b>Total Licenses &amp; Permits</b>			150.00
<b>Planning &amp; Zoning Fees &amp; Permit</b>			
	Building Permits	150.00	
	Subdivision Fees	0.00	
<b>Total Planning &amp; Zoning Fees &amp; Permit</b>			150.00
<b>Property Tax</b>			
	Arrears Property Tax	1,016.59	
	Penalty & Interest	31.72	
	Property Tax Current	0.00	
	Recovered Homeowners Exemption	0.00	
	Circuit Breaker	0.00	
<b>Total Property Tax</b>			1,048.31
<b>Rents</b>			
	City Hall Rental	200.00	
	Post Office Rent	280.00	
<b>Total Rents</b>			480.00
<b>State of Idaho Funds</b>			
	State Liquor Fund	8,322.00	
	State Revenue Sharing	0.00	
<b>Total State of Idaho Funds</b>			8,322.00
	<b>Total 01 · GF REV</b>	<b>10,762.55</b>	<b>10,762.55</b>

<b>STREET FUND REVENUE</b>			
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Name	Account	Amount	Sub-Totals
<b>02 · SF REV</b>			
<b>Idaho Transportation Dept</b>			
<b>State Highway Users Fund</b>			
	HB312	-	
	Hwy Users Fund	-	
<b>Total State Hwy Users Fund</b>		-	
Road & Bridge			
	Road & Bridge Current	0.00	
	Road & Bridge P & I	27.16	
	Road & Bridge Arrears	795.53	
	Circuit Breaker M&O	0	
<b>Total Road &amp; Bridge</b>		822.69	822.69
Stormwater/Encroachment			
	Culvert Encroachment Deposit	0.00	
	Utility Encroachment	0.00	
	Stormwater Management	0.00	
<b>Total Stormwater/Encroachment</b>		0.00	0.00
<b>Total Streets</b>			
	<b>Total 02 · SF REV</b>	<b>822.69</b>	<b>822.69</b>
	<b>Total Income</b>	<b>11,585.24</b>	<b>11,585.24</b>



**City of Kootenai**  
**Treasurer Report March 2021**

<b>GENERAL FUND EXPENSES</b>			
Name	Account	Amount	Sub-Totals
<b>10 - GF EXP</b>			
Accounting & Audit			
Accountant	Mountain Ledger pre-audit	-	
Total Accounting & Audit			-
Bank Fees		0	0
Building Maintenance			
	Janitorial Service	60.00	
	Security	179.52	
	Custodial Supplies	-	
	Maintenance & Repairs	-	
Total Building Maintenance			239.52
Legal			
	Attorney - Civil Action	2,785.00	
	Attorney	875.00	
	Law Enforcement Contract	1,012.00	
Total Legal			4,672.00
Dues & Membership	ICCTFOA	10.00	
Miscellaneous Memberships		-	
Dues & Membership	Bonner County Daily Bee	168.02	
Total Dues & Memberships			178.02
Insurance			
	ICRMP	907.50	
Total Insurance			907.50
Office Expenses			
	Bereavement Expense	135.16	
	Internet Service	75.18	
	Office Supplies	45.98	
	Postage	-	
	Computer Hardware	-	
	Computer Software	-	
	Computer Maintenance/Repair	119.84	
	Mayor's Expense/Holiday Cards	115.90	
Total Office Expenses			492.06
Park			
	Maintenance	649.50	
Total Park, Arbor Day & Earth Day			649.50
Planning & Zoning			
	Building Permits	464.12	
	Comp Plan Review	357.50	
	Subdivision Fees	-	
	Planner	229.50	
Total Planning & Zoning			1,051.12

**GENERAL FUND EXPENSES - Cont.**

<b>Name</b>	<b>Account</b>	<b>Amount</b>	<b>Sub-Totals</b>
Training Workshops			
	Meals/ICCTFOA Conference	-	
	Training Expenses/ICCTFOA	80.00	
	Milage	53.31	
<b>Total Training Workshops</b>			<b>133.31</b>
Utilities			
	Electric & Gas	144.1	
	Garbage	24.84	
	Water	74.11	
	Telephone	35.84	
	Sewer	77.76	
<b>Total Utilities</b>			<b>356.65</b>
Wages & Benefits			
	Clerk/Treasurer	3930.48	
	Council	500.00	
	Mayor	500.00	
	Payroll Taxes	377.17	
	Retirement Fund - PERSI	573.79	
	Health Insurance	631.64	
	Health Insurance Employee	(131.64)	
6560 · Payroll Expenses	Intuit Payroll	10.00	
<b>Total Wages &amp; Benefits</b>			<b>6,391.44</b>
	<b>Total 10 · GF EXP</b>	<b>15,071.12</b>	<b>15,071.12</b>

**City of Kootenai**  
**Treasurer Report March 2021**

<b>STREET FUND EXPENSES</b>			
Name	Account	Amount	Sub-Totals
<b>20 · SF EXP</b>			
Ditches			
	Ditch Maintenance	-	
Total Ditches			-
Stormwater			
	Culvert Inspections Engineer	- 340.75	
Total Stormwater			340.75
Street Maintenance			
	IWorQ Annual Fee	-	
Asphalt Striping		0	
Street Fund Reserve		0	
Total Street Maintenance			-
Streets			
	Street Engineer	584.14	
	Utility Encroachment Permits	-	
Total Streets			584.14
Utilities, Streets			
	Signal Lights	46.13	
	Street Lights	890.49	
Total Utilities, Streets			936.62
Transportation			
	Bike & Pedestrian Paths	-	
Total Transportation			-
	<b>Total 20 · SF EXP</b>	<b>1,861.51</b>	<b>1,277.37</b>
	<b>Total Expense</b>	<b>16,932.63</b>	<b>16,348.49</b>
	<b>Total Income</b>		<b>11,585.24</b>
<b>Net Income</b>			<b>-4,763.25</b>



**RUEN-YEAGER & ASSOCIATES, INC.**  
*ENGINEERS ♦ PLANNERS ♦ SURVEYORS*

**MEMO**

To: Kootenai City Council, Mayor and Clerk  
From: Clare Marley, AICP, City Contract Planner  
Date: April 2, 2021  
Re: **Planning update for April 6, 2021 City Council meeting**

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**Building permit activity: ADVISORY ONLY.** The City has received two building permits for March, which included a single-family dwelling addition (sunroom) and an interior remodel for Cedar Hills Church.

**Land use application activity: ADVISORY ONLY.** There have been no new land use applications submitted during March. Staff fielded calls on setbacks and commercial uses. The representative for the pending application to annex into the City has advised that the owners expect to return the consent to annex in about two to three weeks.

To: Kootenai City Council and Mayor  
From: Ronda L. Whittaker, City Clerk  
Date: March 2021  
RE: Clerk's Report

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**Website Activity** – Continued update of the site.

**Building Permit Inquiries** – Ongoing processing of building permits and utility and culvert encroachment permit applications. Collection of non-refundable initial fees. There seems to be many additions and/or inside improvements going on. A lot of inquiries about non-conforming lots.

**Clean Up Issues** – There seems to be a lot of RVs, Camp Trailers, and other larger storage in driveways and side yards. I am working with the City's planner as to how the City can regulate this practice. When the driveway is used for storage of such items then the resident is having to park on the streets. Also, when these items are stored within the side yard it is encroaching on the setback requirements. There are a lot of properties who are creating a nuisance with their outside debris. I will be working with our City Attorney to see what the City can do to remedy this practice. The County will not allow the City to attach fees to property taxes.

**Working with New Technology** – Working and learning about new technology procedures and systems. Internet system is acting up. Have ordered a new router as the existing router is from 2009.

**Working with Independent Highway District (IHD)** – I have contacted IHD as asked them to look into a drainage system for the water release from under the City Hall. They have indicated that they will work with our City Engineer to get the project started.

**Playground Activity** – Continued work on getting fund donations for the ADA swing.

**Records Retention** – Working on organizing and refiling the City's Building Permits for easy access.

**Parking Lot** – Keeping an eye on the parking lot and reasons for the handicap sign issue. There have been no issues within the parking lot. Actually, the reason for the ADA sign issue is that when a large truck parks next to that designated area and then makes a left turn the sign cannot be seen.