

ADMINISTRATIVE MEETING

October 12, 2016

4:00 p.m. to 6:00 p.m.

Room 326

AGENDA

1. **Call to order, introductions, opening comments**
2. **September 21, 2016 Administrative Meeting summary**
3. **Commission comments, questions**
 - Upcoming appointments
4. **City Manager's Report**
5. **Department discussions**
 - Public Works**
 - a) Highland/Montana Crosswalk Discussion
 - b) Sidewalk Authority on State Highways

➤ **Consensus Direction to Manager:**
6. **Committee discussions**
 - a) Audit Committee, City-County Board of Health, L&C County Mental Health Advisory Committee, Montana League of Cities & Towns
– Mayor Jim Smith
 - b) Mayor Pro-Tem, Audit Committee, Helena Chamber of Commerce Liaison, Information Technology Committee, Transportation Coordinating Committee
– Commissioner Dan Ellison
 - c) ADA Compliance Committee, Audit Committee, City-County Parks Board , Civic Center Board
– Commissioner Rob Farris-Olsen
 - d) Board of Adjustment, City-County Administration Building (CCAB), Non-Motorized Travel Advisory Board, Transportation Coordinating Committee
– Commissioner Andres Haladay
 - e) Business Improvement District/Helena Parking Commission ,Montana Business Assistance Connection, Public Art Committee
– Commissioner Ed Noonan
 - f) Helena Citizens Council
7. **Review of agenda for October 17, 2016 Commission meeting**
8. **Public comment**
9. **Commission discussion and direction to City Manager**
10. **Adjourn**

City of Helena, Montana

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citycommunitydevelopment@helenamt.gov

316 North Park, Avenue, Room 440, Helena, MT 59623

City of Helena, Montana

MEMORANDUM

October 5, 2016

TO: Ronald J. Alles, City Manager
FROM: Thomas J. Jodoin, City Attorney
SUBJECT: Authority to require sidewalks along state highways

QUESTION POSED

At the September 26, 2016 regular City Commission meeting I was asked whether the City had the authority to require an adjacent property owner to install sidewalks along a Montana Department of Transportation (“MDT”) maintained and operated state highway.

SHORT ANSWER

No, the City does not have the authority to require an adjacent property owner to install sidewalks along an MDT maintained and operated state highway because the planning, design, and construction of any infrastructure on a State highway must be approved by the MDT. Since the City does not have the authority to force the MDT to install sidewalks on its highways, the authority of the City to force the adjacent property owner to do so cannot be practically enforced.

DISCUSSION

In Montana, the State has ultimate authority over streets and sidewalks along state highways. See, *Palffy v. City of Bozeman*, 168 P 108, 110-112, 540 P 2d 955 (1975). Further, the State “bear[s] the ultimate responsibility as owner of the street and sidewalk under Montana law.” *State v. Butte-Silver Bow County*, 2009 MT 414 ¶22, 353 Mont. 497, 220 P.3d 1115.

Since the MDT has the legal liability for state highways it has constructed, the MDT must ultimately approve the construction of any sidewalk placed along a state highway. While the City has technical legal authority to require construction of a sidewalk along streets by the adjacent property owner, the planning, design, and construction of the sidewalk must be approved by the MDT for those streets that are owned and operated by the MDT. Because the City does not have authority over the MDT, at the end of the day, the City’s legal ability to withhold building code-related approval is troublesome.

Unless there is a formal plan for non-motorized transportation facilities adjacent to a state highway which has been accepted or approved by the MDT, I would recommend that the City not condition the “final occupancy” of a building upon the construction of the sidewalk. The City still retains the ability to require adjacent property owners to construct sidewalks along streets adjacent to their property. When a sidewalk project is deemed appropriate by the MDT, the City could at that time require the adjacent property owner to construct the sidewalk without risk of withholding development approval.

c: Sharon Haugen, Community Development Director
Randall Camp, Public Works Director