

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
May 22, 2006
6:00 P.M.

Time & Place

A regular City Commission meeting was held on Monday, May 22, 2006 at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.

Members Present

Mayor Pro Tem Oitzinger indicated for the record that Commissioners Cartwright, Peura, and Pouliot were present. Mayor Smith was excused. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Amy Glasscock representing the Helena Citizens Council.

Pledge of Allegiance

Mayor Pro Tem Oitzinger asked those persons present to please stand and join her in the pledge of allegiance.

Minutes

The minutes of the regular City Commission meeting of May 8, 2006 were approved as submitted.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Accept FY 05 US Department of Homeland Security grants for Hazmat trailer equipment in the amount of \$7,525.74 and up to \$10,000 for maintenance of the Hazmat trailer and equipment
- C. Resolution amending Resolution No. 11316 to revise the Public Art Committee membership requirement **Resolution #19340**
- D. Authorize the City Manager to sign the Section 5311 contract for the purchase of the new Helena area transit service bus for an amount not to exceed \$13,426.60
- E. Final passage of Ordinance No. 3056 amending City of Helena Ordinance No. 2359, and amending the official zoning map thereof, for a zone change from R-O (Residential Office) and R-3 (Medium Density Residential) Districts to PLI (Public Lands and Institutions) District for property generally located north of Broadway and west of Colonial Drive **Ordinance #3056**
- F. Final passage of Ordinance No. 3057 amending City of Helena Ordinance No. 2359, and amending the official zoning map thereof for a zone change from PLI (Public Lands & Institutions) to B-2 (General Commercial) District for approximately 58.85 acres and from PLI (Public Lands & Institutions) to Airport Zoning District for approximately 48.282 acres for property generally located south of Custer Avenue and east of Washington Street **Ordinance #3057**

City Manager Tim Burton recommended approval of the claims and the consent agenda.

Public Comment

Mayor Pro Tem Oitzinger asked for public comment, none was received.

Motion

Commissioner Pouliot moved approval of items A through F on the consent agenda. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Bid Award

BID AWARD:

A. 300 BLOCK LAST CHANCE GULCH STREETScape, CITY PROJECT NO. 06-17

Staff Report

City Engineer Ryan Leland reported this project includes 3306 square feet of sidewalk and installs traffic calming islands, landscaping and replaces traffic signals along the 300 Block of Last Chance Gulch.

The project was advertised and bids were opened on May 2, 2006. Two contractors submitted bids. Rod Tabbert Construction of Helena submitted the low bid of \$336,208.25.

Funding for this project is from the Downtown Tax Increment Fund. A total of \$450,451.30 remains for the project.

Staff recommended awarding the base bid to Rod Tabbert Construction in the amount of \$336,208.25.

Commission comment

Commissioner Pouliot asked for the Engineer's estimate for the project. Mr. Leland stated \$329,447. Commissioner Peura asked for the start date of the project. Mr. Leland stated barring any unforeseen circumstances with the contractor, construction would start June 12, 2006 and should be completed within 45 days. Also, any remaining funds would be applied to walking mall projects.

Public Comment

Mayor Pro Tem Oitzinger asked for public comment, none was received.

Motion

Commissioner Peura moved to award the bid of City Project Number 06-17 to Rod Tabbert Construction in the amount of \$336,208.25. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Pouliot asked that the citizen proposed resolution to support the troops and end the war in Iraq be placed on a City Commission agenda at the call of the City Manager. Mayor Pro Tem Oitzinger asked City Attorney Nielsen if the resolution could be placed on the agenda by consensus. City Attorney Nielsen indicated a formal vote would give a better record.

Motion

Commissioner Pouliot moved the citizen proposed resolution to bring home the troops and end the war in Iraq be placed on a City Commission agenda. Commissioner Peura seconded the motion.

Commissioner Cartwright asked Commissioner Pouliot if he would support the resolution as a referendum. Commissioner Pouliot indicated at this time, he supports moving forward with Commission consideration of the resolution. Commissioner Cartwright asked Commissioner Pouliot if he intends on supporting the resolution. Commissioner Pouliot concurred. Commissioner Cartwright spoke of his belief that the Iraq war is an energy war and stated he would like the resolution to include language asking President Bush and Congress to take steps to reduce oil consumption, including efficiency standards and

petroleum consumption taxes. Commissioner Pouliot indicated he would not support Commissioner Cartwright's recommended language.

Commissioner Cartwright stated he has received comments from people asking him to oppose the resolution, support the resolution, and citizens that were concerned that the resolution is not something the City Commission should be involved in. He commented that making decisions on foreign policy affairs are not in the city charter and gave examples of city-wide projects and concerns the Commission should be attending to. He added that this is not a trivial war and summarized that a resolution of City Commission is not as important as a vote of the people.

Mayor Pro Tem Oitzinger stated her first preference would be to put it to a citizen vote; she does not want to divide the community. She spoke of previous Commission energy initiatives in which the purpose was to prevent future wars. A resolution would need to include tangible energy saving commitments to optimize energy sources that are not based on oil use. Mayor Pro Tem Oitzinger recommended Commissioner Pouliot withdraw his motion in order to provide time for further discussions regarding the addition of energy saving obligations in the resolution.

Commissioner Pouliot indicated if Commissioners Cartwright and Oitzinger would support the resolution with amendments he would withdraw his motion. Commissioner Peura recommended moving forward with the motion and amending the resolution at the time of the public hearing. Mayor Pro Tem Oitzinger indicated she would rather hold discussions regarding the proposed resolution before placing it on a Commission agenda; she also noted that Mayor Smith is not present.

Commissioner Pouliot withdrew his motion. Commissioner Peura withdrew his second. City Manager Burton stated the next Administrative Meeting is June 14, 2006; the Commission could add an extra hour to the meeting for discussion of the resolution. Commissioner Cartwright indicated he would be out of state. There was Commission concurrence to meet on June 5, 2006 at 4:00pm to discuss the resolution.

Commissioner Pouliot stated he looks forward to working with the Commission members on the resolution.

Commissioner Cartwright spoke of planting trees over the weekend and encouraged citizens to make sure their trees are getting enough water and also encouraged the Parks & Recreation Department to provide adequate water to city trees and parks.

Mayor Pro Tem Oitzinger asked City Planner Kathy Macefield to distribute the Public Art Committee's publication about art in Helena.

Report of the City

REPORT OF THE CITY ATTORNEY

No report was given.

Report of the City Manager

REPORT OF THE CITY MANAGER

City Manager Burton referred to signs for the city's bike route. The signs cannot be manufactured and hung prior to the Governor's Cup but will be put up as soon as possible.

Report from the Helena Citizens

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Amy Glasscock reported there would be an ice-

- Council** cream social regarding the Midtown revitalization process on May 30, 2006 at 7:00pm at the Helena College of Technology. Ms. Glasscock also announced the next HCC meeting would be Wednesday, May 24, 2006 and reviewed the agenda.
- City of Helena Natural Parks** CONSIDER A RESOLUTION DECLARING CERTAIN CITY-OWNED PROPERTY MANAGED AS CITY PARKS TO BE NATURAL PARKS WHERE DOGS ARE EXEMPT FROM THE LEASH REQUIREMENTS OF SECTION 5-2-14 OF THE HELENA CITY CODE
- Staff Report Parks & Recreation Director Randy Lilje reported based on the recommendation of the Helena Open Lands Management Committee and other testimony at the public hearing, the City Commission approved revision of City Code 5-2-14 by stating "all dogs must be kept under control, either by leash or within sight and under voice control of their owners or other competent persons when they are within any "natural park" as defined in Section 7-12-1 of this code and as designated by the City Commission. Dogs must be kept on leash within one hundred (100) yards of any trailhead in any natural park."
Director Lilje recommended approval of a resolution declaring certain city-owned property managed as city parks to be natural parks where dogs are exempt from the leash requirements of Section 5-2-14 of the Helena City Code.
- Commission comment Commissioner Pouliot asked if there are six different places identified as natural parks? Director Lilje concurred. Commissioner Peura asked how the requirement that citizens clean up dog waste applies to these areas. Director Lilje stated the requirements are the same as for any park. Mayor Pro Tem Oitzinger asked if the punishment is a misdemeanor? Director Lilje stated yes. Commissioner Cartwright asked if the resolution would need to be amended as properties are added. City Attorney Nielsen concurred.
- Public comment Mayor Pro Tem Oitzinger called for public comment, none was received.
- Motion** Commissioner Cartwright moved approval resolution declaring certain city-owned property managed as city parks to be natural parks where dogs are exempt from the leash requirements of section 5-2-14 of the Helena City Code. Commissioner Peura seconded the motion.
- Comment Commissioner Pouliot indicated he would not support the motion, as he believes it will create additional complaints and problems regarding dogs being off leashes and dog owners not picking up dog waste.
- Vote** Motion carried, 3-1 with Commissioner Pouliot voting no.
Resolution #19341
- Softball Assoc. Lease** CONSIDER A LEASE AGREEMENT WITH THE HELENA SOFTBALL ASSOCIATION
- Staff Report Parks & Recreation Director Randy Lilje referred the Commission to the lease agreement. The Helena Softball Association

(HSA) is the umbrella organization over a variety of adult and youth softball leagues around Helena.

Every few years, staff reviews and updates our lease and use agreements with the various youth and adult recreational and sports organizations that use city parks and facilities. This agreement outlines all the parks that the Helena Softball Association uses within the city's parks system.

New to the list is the Centennial Park Softball complex, which is yet to be developed. When the City Commission approved the use of Open Space Bond funds to assist with the development of the complex, it stipulated that this was contingent on the Helena Softball Association entering into an agreement with the city to pay for the maintenance. This agreement fulfills this requirement.

Director Lilje recommended approval of the Lease Agreement with the Helena Softball Association.

Public comment

Mayor Pro Tem Oitzinger called for public comment, none was received.

Motion

Commissioner Pouliot moved approval of the Lease Agreement with the Helena Softball Association. Commissioner Peura seconded the motion. All voted aye, motion carried.

Right-of-Way Use Agreement

CONSIDER A RIGHT-OF-WAY USE AGREEMENT FOR A SIDEWALK CAFÉ FOR RILEY'S IRISH PUB.

Staff Report

City Engineer Ryan Leland noted Riley's Irish Pub would like to use a portion of the 6th avenue right-of-way for placement of an outdoor sidewalk café. Eric Dittbrenner, owner of Riley's Irish Pub, proposes to construct a bulb-out into the 6th Avenue right-of-way for this purpose and relocate the public sidewalk within the bulb-out. The Use Agreement would establish an annual fee for the use of the property.

Also, the owner of Riley's is requesting to have an interim café on the existing sidewalk, which is 10-feet wide, while the bulb-out is being constructed. The proposal is to fence an area extending four feet into the existing sidewalk in front of Riley's Irish Pub.

This proposal promotes the economic vitality of downtown Helena through market attraction from uniqueness of open-air sidewalk cafés, which are presently exclusive to the downtown area.

If approved, there would be a possible inconvenience for pedestrian and vehicular traffic using 6th Avenue because both the public sidewalks and traffic lands would be narrowed. The bulb-out would also eliminate one on-street parking space.

There was no staff recommendation on the right-of-way use agreement.

Commission comment

Discussion was held on procedure for differentiating between the temporary design and the permanent design if the Use Agreement were approved. City Manager Burton explained the permanent proposal has staff support, but there are concerns with the temporary design. Commissioner Cartwright asked if approval of the Use Agreement would allow construction of the permanent proposal? City Manager Burton stated he has the authority to approve the permanent design; the temporary design would need Commission concurrence.

- Public comment Mayor Pro Tem Oitzinger called for public comment.
Police Chief Troy McGee explained the Police Department's concerns with the temporary design and confirmed the HPD is supportive of the permanent design.
- Discussion Commissioner Peura asked for the timeframe of the project. Mr. Leland explained the timeframe is purely based on the contractor's ability to perform the work after approval.
- Motion** Commissioner Peura moved approval of a Right-of-Way Use Agreement with Condo Master to use a portion of the 6th Avenue right-of-way for a permanent sidewalk café. Commissioner Cartwright seconded the motion.
- Comment Commissioner Peura indicated his motion was for approval of the permanent design; he does not support the temporary design. He also thanked Riley's Irish Pub for making this investment in the downtown area. Commissioner Cartwright encouraged the applicant to not plant trees for space reasons and noted there is space available behind the Rialto for another sidewalk café.
- Vote** All voted aye, motion carried.
- Right-of-Way Use Agreement** CONSIDER A RIGHT-OF-WAY USE AGREEMENT FOR A SIDEWALK CAFÉ FOR THE WINDBAG SALOON & GRILL
- Staff Report City Engineer Ryan Leland noted the Windbag Saloon & Grill Inc. would like to use a portion of the Last Chance Gulch right-of-way for placement of an outdoor sidewalk café. Randy Beckner, owner of the Windbag Saloon & Grill, proposes to construct a fenced area into the Last chance gulch right-of-way for use as an Outdoor Café on the walking mall. The use agreement would establish an annual fee for the use of the property.
This proposal promotes the economic vitality of downtown Helena through market attraction from uniqueness of open-air sidewalk cafés, which are presently exclusive to the downtown area.
If approved, there would be a possible inconvenience for pedestrian and authorized vehicular traffic using the walking mall. Both the public sidewalks and traffic lanes would be narrowed.
There was no staff recommendation on the right-of-way use agreement.
- Public comment Mayor Pro Tem Oitzinger called for public comment, none was received.
- Motion** Commissioner Pouliot moved approval of a Right-of-Way Use Agreement with the Windbag Saloon & Grill to use a portion of the Last Chance Gulch right-of-way for a sidewalk café. Commissioner Cartwright seconded the motion. All voted aye, motion carried.
- Comment Commissioner Peura thanked the Windbag and also Bert & Ernie's, for their investment in revitalizing downtown.

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER THE INSTALLATION OF A 152-FOOT TALL, REPLACEMENT ANTENNA TOWER WITH A 16-FOOT ANTENNA ARRAY, FOR A TOTAL HEIGHT OF 168-FEET, TO BE LOCATED AT THE LAW ENFORCEMENT CENTER, 221 BRECKENRIDGE, HELENA, MT IN ACCORDANCE WITH REQUIREMENTS LISTED IN SECTION 11-2-10B: ESSENTIAL PUBLIC AND PRIVATE FACILITIES, SERVICES AND USES.

Staff Report

Building Official Brandt Salo explained the existing tower height is inadequate to provide the level of service and clarity of communications required for current countywide law enforcement, emergency services (fire and medical), and public service traffic.

The proposal is to replace the existing 100-foot tall tower located between the LEC and the County Courthouse with an adjacent, new self-supporting 152-foot tower and additional 16-foot tall antenna array and once operational, remove the original tower.

This tower will enhance the performance of the existing emergency communications system by eliminating "multi-path reflection" and system dead zones where service is unreliable.

The advantage is the location according to communications-system upgrade proponents; it is convenient because of its proximity adjacent to the existing communications tower and the LEC facility; is adequate relative to service criteria and proposed height; and will be physically secure.

The disadvantage is the height of the tower, according to FAA obstruction analysis, this tower will require installation of two, 40-watt, steady-state red fixtures to assure visibility; perceived height of the tower against horizon and existing sky-line elements is an aesthetic concern. No disadvantages noted relative to the serviceability of the equipment and its ability to function as required from the site.

Mr. Salo recommended approval of the installation of a 152-foot tall, replacement antenna tower with a 16-foot antenna array, for a total height of 168-feet, and located between the LEC and the Courthouse.

Commission comment

Commissioner Peura asked if the proposed tower would complement the new Nob Hill Tower and county-wide communications system. Mr. Salo concurred.

Public Testimony

Mayor Pro Tem Oitzinger declared the public portion of the hearing open and called for any persons wishing to address the Commission.

Lewis & Clark County Undersheriff Leo Dutton introduced Radio System Manager Jack Spillman, Chuck Hanson, Engineer for the project and Lieutenant Corey Livesay. Mr. Spillman gave a detailed explanation of the problems with the current tower and an overview of the proposed tower.

There being no further persons wishing to address the Commission, Mayor Pro Tem Oitzinger closed the public hearing.

Commission comment

Commissioner Cartwright asked if this problem is a result of the new digital system? Mr. Spillman concurred. Commissioner Cartwright asked if public notice has been given. Mr. Spillman stated yes. Commissioner Cartwright asked for the height of the current tower. Mr.

Spillman indicated the tower is 98 feet with a 16-foot antenna. Commissioner Pouliot asked if the towers on Mount Helena would be removed? Mr. Spillman stated no. Commissioner Cartwright asked if the required FAA lights would be shielded. Mr. Spillman explained they cannot be shielded and would be similar to the size of a porch light.

Motion

Commissioner Pouliot moved approval of the installation of a 152-foot tall, replacement antenna tower with a 16-foot antenna array, for a total height of 168-feet, and located between the LEC and the Courthouse. Commissioner Peura seconded the motion.

Comment

Commissioner Cartwright stated he is concerned there was not more public comment on the proposed tower, and asked if postponing the decision for two weeks would be detrimental to the project. Mr. Spillman indicated no; however, the tower must be installed in order to provide important public safety services. Commissioner Peura stated he agrees with Commissioner Cartwright's concerns but believes it is a benefit to minimize the impact on Mount Helena. He asked the Sheriff's office to inform the public of the project when they begin installing the equipment. Commissioner Cartwright asked all city and county agencies to reach out to the community when these projects arise.

Vote

Motion carried 3-1 with Commissioner Cartwright voting no.

B. CONSIDER A RESOLUTION REVISING HELENA AREA TRANSIT SERVICE CHARTER AND ADVERTISING RATES EFFECTIVE JULY 1, 2006.

Staff Report

Fleet Superintendent Ed Robinson reported the Helena Area Transit Service (HATS) presently provides limited charters and advertising on its buses. Charter rates are currently \$35.00 per hour for buses and \$75.00 per hour for the trolley. Advertising rates are \$50.00 per month for the largest signs at the rear of the bus and \$35.00 per month for any other signs. The current rates have been effective for five years.

Staff is recommending authorization to increase charter and advertising rates. In addition, staff is recommending the implementation of a new interior bus advertising program. The purpose of this proposal is to increase revenues, improving the financial position of the bus service. All increases would begin July 1, 2006.

Fleet Superintendent Ed Robinson recommended approval of a resolution revising Helena area Transit service charter and advertising rates effective July 1, 2006.

Comment

Commissioner Pouliot asked for the anticipated revenue of the sign program. Mr. Robinson stated the revenue for the current fiscal year is projected at \$5,600; the increased rates would equal about \$8,400 for existing advertising next year. The proposed interior advertising program would result in an additional \$5,700 in revenue. Commissioner Pouliot asked if advertising is consistent on the bus. Mr. Robinson stated a couple spots are not being used, primarily because they are currently taken by other signs, which could be removed.

Public Testimony Mayor Pro Tem Oitzinger declared the public portion of the hearing open and called for any persons wishing to address the Commission.

There being no persons wishing to address the Commission, Mayor Pro Tem Oitzinger closed the public hearing.

Motion

Commissioner Cartwright moved approval for a resolution revising Helena area Transit service charter and advertising rates effective July 1, 2006. Commissioner Peura seconded the motion. All voted aye, motion carried. **Resolution #19342**

C. CONSIDER A RESOLUTION VACATING A PORTION OF WEST MAIN STREET RIGHT-OF-WAY.

Staff Report

City Engineer Ryan Leland reported Drew T. and Vicki A. Holliday have applied to vacate a portion of the West Main Street right-of-way (ROW) located just north of the Reeder's Village Drive intersection. The property was recently sold and the new property owners discovered the encroachment.

There are old rock walls, porches, and a portion of a house constructed in the ROW. No utilities have been identified in the portion of the ROW proposed to be vacated. The applicants will pay the established fee of \$2,015.86 for the vacated ROW they receive.

Mr. Leland recommended approval of a resolution to vacate a portion of the West Main Street right-of-way.

Commission Comment

Commissioner Pouliot asked if the sidewalks would remain city property? Mr. Leland stated yes.

Public Testimony

Mayor Pro Tem Oitzinger declared the public portion of the hearing open and called for any persons wishing to address the Commission.

There being no persons wishing to address the Commission, Mayor Pro Tem Oitzinger closed the public hearing.

Motion

Commissioner Peura moved approval of a resolution to vacate a portion of the West Main Street right-of-way. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Resolution #19343**

Comment

Commissioner Pouliot commented West Main Street should be renamed to South Park Avenue.

Public Communications

PUBLIC COMMUNICATIONS

Diane Carlson Evans, 526 South Harris; thanked the Commission for moving the citizen proposed resolution to a work session. Ms. Evans indicated their committee would appreciate being able to review the results of the Commission work session before it is voted on. Mayor Pro Tem Oitzinger and Commissioner Cartwright spoke regarding the process for considering the resolution.

George McCauley, 926 5th Avenue; urged the Commission to keep the strong wording in the current resolution and also stated that his belief is that city leaders should make a public statement on the war.

Barbara Rush, 720 Holter; stated the City Commission is not elected to and does not have the authority to represent the opinions of the citizens of Helena on national issues.

Mayor Pro Tem Oitzinger asked City Attorney Nielsen to clarify if the City Commission is empowered to pass a resolution on policy. Mr. Nielsen stated this resolution is outside of the legislative process because it is not creating a law; it is a resolution expressing the sentiments of the city as a body politic.

Amy Orser, 1019 Middlemas Road; spoke against the proposed resolution and expressed concern that the Commission members have been working with the Helenans Support for Troops and Military Withdrawal Committee to bring the resolution forward.

Commissioner Oitzinger stated she is not aware that any Commission members have been working with the group. Commissioner Cartwright noted all that was agreed upon tonight was to hold a work session to discuss the resolution.

Meetings of Interest

MEETINGS OF INTEREST

The next Administrative Meeting is, June 14, 2006 and the next Commission Meeting is June 5, 2006. There are Commission budget work sessions scheduled for Wednesday, May 31, 2006 and Tuesday, June 6, 2006. Commissioner Pouliot stated May 29 is Memorial Day and urged citizens to participate in celebrations. Commissioner Peura added the Downtown Visioning Partnership will hold a town meeting on Tuesday, June 20, 2006 at 6:30 in the Civic Center auditorium.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:45p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission