

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
December 21, 2010
6:00 P.M.**

Time & Place

A regular City Commission meeting was held on Monday, October 19, 2010 at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.

Members Present

Mayor Smith indicated for the record that Commissioners Cartwright, Peura, Shropshire and Elsaesser were present. City Manager Ron Alles, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Randy Phillips representing the Helena Citizens Council.

Pledge of Allegiance

Mayor Smith asked those persons present to please stand and join him in the pledge of allegiance.

Minutes

The minutes of the regular City Commission meeting of December 7, 2010 were approved as submitted.

Appointments

APPOINTMENTS:

- A. Civic Center Board
- B. Business Improvement District
- C. Helena International Affairs Council
- D. Public Art Committee
- E. Helena Zoning Commission
- F. Lewis & Clark /City County Library Board

Mayor Smith asked for Commission concurrence on the following appointments:

BID/HPC - Appointment of Randy Riley to the Business Improvement/Helena Parking Commission. First term will begin upon appointment and expire October 31, 2013.

Civic Center Board - Appointment of John Cameron to a first term on the Civic Center Board. Term will begin upon appointment and expire March 1, 2013. Appointment of Susan Dostal to an unexpired term on the Civic Center Board. Term will begin upon appointment and expire on March 1, 2011.

Helena International Affairs Council - Appointment of Mark A. Huber to a first term on the HIAC. Term will begin upon appointment and expire October 28, 2012.

Lewis & Clark City/County Library - Reappointment of Jesse Franzen as the joint member on the Library Board. First full term will begin on January 1, 2010 and expire December 31, 2014.

Public Art Committee - Appointment of Cheryl Cote to a first term on the Public Art Committee as a citizen at large representative. The term will begin on January 1, 2010 and expire on December 31, 2012.

Helena Zoning Commission - Appointment of Timothy Meldrum to an unexpired term on the Zoning Commission. Term will begin upon appointment and expire September 30, 2011.

Public comment Mayor Smith asked for public comment, none was received.

Motion Commissioner Cartwright moved approval of the appointments to the Civic Center Board, Business Improvement District, Helena International Affairs Council, Public Art Committee, Helena Zoning Commission and Lewis & Clark City/County Library Board as outlined above. Commissioner Peura seconded the motion. All voted aye, motion carried.

Consent Agenda CONSENT AGENDA:
A. Claims
B. Utility Adjustment Agreement – Custer Interchange Phase I- Cedar Street Reconstruction
C. Acceptance of FY2010 USDOT-HMEP Training Grant for hazmat specialized operations training
D. Acceptance of the 2009 Comprehensive Annual Financial Report (CAFR)

City Manager Ron Alles recommended approval of the claims and the consent agenda.

Public Comment Mayor Smith asked for public comment, none was received.

Motion Commissioner Peura moved approval of items A through D on the consent agenda. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Communications COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS
Commissioner Elsaesser spoke of attending a memorial for the homeless.

Commissioner Cartwright thanked Commissioners Shropshire and Peura for their service. He referred to the Caird Project and reported some citizens have issues with Mayor Smith's past service on the Rocky Mountain Development Council Board (RMDC) and with County Commissioner Hunthausen being the current chair of the RMDC Board. He stated there is no conflict; Commissioners are expected to sit on boards and be involved with providing recommendations.

Mayor Smith thanked Commissioners Shropshire and Peura for their service and concurred with Commissioner Cartwright's comments regarding the RMDC Board.

Commissioner Peura thanked the citizens of Helena for electing him to serve them. He thanked city staff for their continued good work and the Commission members for their service to the City of Helena.

Commissioner Shropshire spoke of her year of service and stated the city is in excellent hands.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

No report was given.

Report of the City Manager

REPORT OF THE CITY MANAGER

City Manager Alles reported city employees donated 2,784 items of food to Helena Food Share and adopted a family from RMDC's Headstart Program for Christmas. He added City Court collected over 17.5 tons of food in lieu of fines over the past several weeks.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Randy Phillips gave an overview of the December 9, 2009 HCC Meeting.

Intent to Annex

CONSIDER A RESOLUTION OF INTENTION TO ANNEX LOTS 9 THROUGH 11, BLOCK 162 OF THE BRADFORD ADDITION, AND THE FULL WIDTH OF THE ADJACENT RIGHTS-OF-WAY, ALL LOCATED IN LEWIS AND CLARK COUNTY, INTO THE CITY OF HELENA AND ESTABLISH CONDITIONS FOR ANNEXATION.

Staff Report

City Planner Dustin Ramoie reported the applicant, Jill Caldwell, is requesting to annex the property located at 1801 Hauser Boulevard, generally located south of Hauser Boulevard and west of Laurel Street, containing approximately .43 acre. The property is occupied by a single family home and is pre-zoned R-2. Adjacent rights-of-way have been included in the annexation proposal per the requirements of state law.

For the City of Helena to consider annexation of property under MCA Section 7-2-46, annexation by petition, the owner of 50% of the property to be annexed must petition the city for annexation. The applicant is the sole property owner for the property under consideration, and has petitioned the city for annexation. There is a temporarily repaired and failing well on the property which meets the criteria set forth in Section 1 of the City Commission approved annexation work plan regarding a hardship on the property.

The conditions for annexation are proposed as follows:

Infrastructure: The property owner must install all infrastructure improvements required by the city, to city standards, or enter into a development agreement acceptable to the city that define responsibility for installation or deferment of the improvements.

Review of New Construction: The property owner must submit plans for review by the City of Helena for all construction commenced subsequent to the adoption of this resolution and prior to annexation of the property to ensure compliance with infrastructure, zoning, and all other Code requirements, including building and fire codes, and pay all fees for such reviews in the same manner and on the same basis as do owners of properties already in the city.

Taxes and Assessments: Taxes and assessments must be paid and current at the time of filing the Resolution of Annexation.

Mr. Ramoie recommended approval of the resolution of intention to annex as it would facilitate the provision of city services to the area

and is consistent with the city's Growth Policy and land use and infrastructure objective.

Commission comment Commissioner Cartwright asked if this property was located in the recent proposed Westside Sewer District that was voted down. Mr. Ramoie stated yes. Commissioner Cartwright expressed concern with the recent vote against the district and suggested staff concentrate their work on annexations in areas where there is a real interest in being a part of the City of Helena, not just using its services. He noted he would reluctantly support the proposed annexation as it was applied for before the vote. Mayor Smith concurred with Commissioner Cartwright.

Public comment Mayor Smith called for public comment, none was received.

Motion **Commissioner Cartwright moved approval of a resolution of intention to annex Lots 9 through 11, Block 162 of the Bradford Addition and the full width of the adjacent ROW, all located in Lewis & Clark County, into the City of Helena and establish conditions for annexation.** Commissioner Peura seconded the motion. All voted aye, motion carried. **Res #19715**

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3120 PROHIBITING ILLEGAL DISCHARGES AND CONNECTIONS TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM, AND REGULATING CONSTRUCTION AND POST CONSTRUCTION ACTIVITIES BY AMENDING CHAPTER 6 OF TITLE 6 OF THE HELENA CITY CODE.

Staff Report

Utility Maintenance Superintendent Kevin Hart reported on December 7, 2009 the City Commission first passed a proposed stormwater control chapter revising and replacing existing ordinance to comply with requirements of Helena's current MS4 permit. Authorization MTR04003 was issued to Helena in June 2006 and contains certain requirements known as minimum control measures and imposes certain obligations on the City of Helena in regard to our responsibility to control stormwater run-off and protect the quality of receiving downstream surface waters. A listing of the six minimum control measures and components Helena is committed to under the permit were attached to the staff report.

Helena has had a Stormwater Control Ordinance since 1991 which established the stormwater utility and contains requirements for storm water drainage plans and water quality protections. The ordinance is bolstered by adopted engineering standards which include design requirements for new stormwater infrastructure. These provisions while forward thinking at the time, are not sufficient to meet the requirements of the current MS4 permit. Compliance will require revision in four key areas which include 1) Regulation of illegal discharges through detection and elimination and increased protection of drainage ways; 2) Increased regulation of construction activity and application of Best Management Practices (BMP's) prior to stormwater discharge into the current system and new regulation for construction activities affecting one-acre or more prior to new stormwater facilities being accepted by the city; 3) Increase regulation of post construction activity discharges to the storm system through best management practices to allow for city operation and

maintenance of the facilities in ways that protect, maintain and provide opportunities for improvement of discharged stormwater quality; and 4) Increase internal regulation of MS4 system and enforcement of these provisions.

The proposed ordinance meets the requirements of the current MS4 permit obligations and will be considered an important element in the renewal and reauthorization of the city's MPDES discharge permit.

The proposed ordinance amendment complies with obligations of current MS4 permit requirements. Adoption of the ordinance will remove risk that the city will be found out of compliance or not eligible for reauthorization of our storm water discharges, under the next permit cycle which begins January 2, 2010. Changes will provide the city with additional tools to control connections and operate and maintain its storm water system. If adopted the changes reinforce city policies to maintain and improve storm water discharge quality. The amended ordinance will obligate future commissions to take those actions necessary to ensure continued compliance with permit authorizations. Compliance would include the administrative actions necessary to support and fund a storm water management utility and program for the City of Helena. Failure to adopt the ordinance changes may subject the city to compliance actions and/or fines from the Montana Department of Environmental Quality.

Superintendent Hart recommended approval for first passage of an ordinance prohibiting illegal discharges and connections to the municipal separate storm sewer system, and regulating construction and post construction activities by amending Chapter 6 of Title 6 of the Helena City Code.

Public Testimony

Mayor Smith 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 Smith closed the public hearing.

Discussion

Commissioner Peura referred to fiscal impacts of the proposed ordinance and spoke against unfunded mandates. He noted the city may need to raise the storm water utility assessment to cover costs of the program.

Commissioner Shropshire announced she sits on the Board of Environmental Review and would recuse herself from voting. She spoke of the requirements of the permit and the increased cost being the cost of doing business, as the city is running a business.

Mayor Smith and Commissioner Elsaesser concurred with Commissioner Peura and Shropshire's comments.

Motion

Commissioner Peura moved approval for final passage of Ordinance No. 3120 prohibiting illegal discharges and connections to the municipal separate storm sewer system, and regulating construction and post construction activities by amending Chapter 6 of Title 6 of the Helena City Code and set an effective date of January 21, 2010. Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Ord #3120**

B. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3121 TO BE EFFECTIVE MARCH 1, 2010, ABOLISHING THE HELENA CITY COURT, ESTABLISHING A MUNICIPAL COURT AND THE POSITION OF MUNICIPAL COURT CLERK AND SETTING COURT CIVIL FEES.

Staff Report

City Attorney David Nielsen reported Helena currently has a city court that adjudicates certain civil cases and misdemeanor crimes committed in the city limits. When there is a criminal conviction in city court, the defendant can appeal to district court and get a trail de novo – a new trial. The means the case starts all over again. All the large cities in Montana use a municipal court. In a municipal court, the trial proceedings are recorded and when there is a conviction, the appeal to district court is only on the trial record. There is no right to a new trial simply because of the appeal. At present, there are over 50 criminal convictions from City Court that are on appeal to district court and all will receive a new trial. The prosecutor must try the case a second time. All the witnesses, including police officers, must come and testify a second time. If our police officers go to district court during their time off, they are deprived of much needed rest from work and the City pays them a minimum of four hours overtime. Lay witnesses are inconvenienced a second time. This is especially critical in partner/family member assault cases when the victim, who has been manipulated by the offender in the abuse, becomes subject to further abuse by having to testify in front of the abuser a second time.

The current fees for civil cases for City Court are higher than the amount a municipal court can legally charge, so in transitioning to a municipal court, the city must adjust the civil fees to comply with state law. Attorney Nielsen provided the Commission with the fiscal impacts of establishing a municipal court, including HPD overtime costs and some other costs.

City Attorney Nielsen recommended approval of final passage of an ordinance, to be effective March 2, 2010, abolishing the Helena City Court, establishing a municipal court and the position of Municipal court clerk and setting court civil fees.

Public Testimony

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

Claudia Bagley, City Court Administrator; expressed concerns with the proposed ordinance and urged the Commission to delay passage.

City Court Judge Bob Wood; explained City Court staff does not oppose becoming a municipal court but have concerns that the change is made efficiently and carefully for the citizens of Helena.

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

Commission comment

Commissioner Cartwright expressed concern with staff's comments as this has been discussed numerous times at Administrative Meetings. Commissioner Peura asked if municipal court could be implemented at a date later than March 1, 2010. City Attorney Nielsen explained why the date of March 1st was selected and noted a later date would be acceptable. Further discussion was held regarding City Court staff's concerns and tabling the ordinance.

Motion

Commissioner Peura moved approval of final passage of Ordinance #3121, to be effective July 1, 2010, abolishing the Helena City Court, establishing a municipal court and the position of Municipal Court Clerk, and setting court civil fees. Commissioner Cartwright seconded the motion.

Substitute Motion

Commissioner Shropshire moved to table final passage of Ordinance #3121, to be effective July 1, 2010, abolishing the Helena City Court, establishing a municipal court and the position of Municipal Court Clerk, and setting court civil fees to the January 11, 2010 Commission Meeting. Commissioner Elsaesser seconded the motion. Motion carried 3-2 with Commissioners Peura and Mayor Smith voting no.

Public Communications

PUBLIC COMMUNICATIONS
No public communications were given.

Meetings of Interest

MEETINGS OF INTEREST
The next Administrative Meeting is January 6, 2010, the next Commission Meeting is January 11, 2010 and the next City/County Joint Work Session is January 7, 2010. Mayor Smith noted the Swearing In Ceremony would be held on January 4, 2010 at 10:00a.m.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:00p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission