

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**October 29, 2018 - 6:00 P.M.**  
**City Commission Chambers, Room 330**

- Time & Place** A regular City Commission meeting was held on Monday, October 29, 2018 at 6:00 p.m., in the City Commission Chambers, 316 N. Park Avenue, Helena, Montana.
- Members Present** Mayor Collins indicated for the record that City Commissioners Farris-Olsen, Noonan and O'Loughlin were present. Commissioner Haladay was excused. City Attorney Thomas Jodoin, City Manager Dennis Taylor and City Clerk Debbie Havens were present.
- Pledge of Allegiance** Mayor Collins 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 October 15, 2018 were not available for approval.
- Consent Agenda** CONSENT AGENDA:  
A. Claims  
  
City Manager Taylor recommended approval of the claims.
- Public Comment** Mayor Collins asked for public comment, none was received.
- Motion** **Commissioner O'Loughlin moved approval of Item A on the consent agenda.** Commissioner Noonan seconded the motion. All voted aye, motion carried.
- Communications From City Commissioners** COMMUNICATIONS/PROPOSALS FROM CITY COMMISSIONERS  
No communications.
- Report of the City Attorney** REPORT OF THE CITY ATTORNEY  
City Attorney Jodoin had not items to report on.
- Report of the City Manager** REPORT OF THE CITY MANAGER  
Manager Taylor reported the PSA was released today announcing the vacancy on the city commission, effective December 17, 2018. The deadline to submit applications is 1:00 p.m. on Friday, November 16, 2018.  
Commissioner Noonan asked if the dates for the interviews for the City Manager have been confirmed. Manager Taylor noted the interviews with the commission will be on Saturday, November 10<sup>th</sup> and Sunday, November 11<sup>th</sup>. The HCC is hosting an open house on Friday, November 9<sup>th</sup>. He is prepared to issue a news release in the next couple of days.
- Report from the Helena Citizens** REPORT FROM THE HELENA CITIZENS COUNCIL  
HCC Representative Maureen Kiely reported the HCC is working on improving their capacity for better outreach to their constituents.
- Regular Items** A. CONSIDER A RESOLUTION TO ESTABLISH A MONTHLY CHARGE TO FUND THE RESIDENTIAL WATER AND WASTEWATER SERVICE LINE REPLACEMENT LOAN PROGRAM.
- Staff Report** Attorney Jodoin reported pursuant to the Helena City Code, property owners are responsible for maintenance and repairs, including

emergency repairs, of water and wastewater service lines from the city main. Service line repairs are generally not covered by homeowners insurance absent a special provision and even when covered will frequently exclude repairs needed in the section of the line located within the city's right-of-way. On average, an emergency service line repair costs \$15,000 and thus presents a significant financial hardship for many city residents. Many city residents are forced to take out bank loans at high interest rates to pay for the repairs

The objective is to establish a Residential Water and Wastewater Service Line Replacement Loan Program ("Program"). The proposed parameters of the Program are as follows:

**Eligibility:** All property owners of property with a single residential dwelling unit per lot or parcel that is connected to city water or wastewater systems are eligible for the program. Owners of commercial properties or properties with multiple dwelling units per lot or parcel are not eligible for program funds. Funds can be used for costs, including labor, materials, permits, and inspections associated with emergency replacement or repair of water or wastewater service lines.

**Funding Assistance:** Eligible property owners are eligible to receive up to a \$15,000 loan per water or wastewater service line at zero percent (0%) interest for 10 years.

- 1) The total amount of the loan will be determined upon submission of required invoices for eligible work to the city.
- 2) Loans must be repaid through equal monthly payments on the utility bill.
- 3) Loan balance must be repaid at sale or transfer of property. Eligible property owners that fall below 80% of the median household income are not required to repay the loan except at sale of property. To be eligible for the funds, a property owner must fill out an application provided by the city and enter into an agreement to ensure full payment of the loan and consent to repayment via monthly water bill. These agreements will be recorded upon execution.

The City Commission proposes to fund the Program through a monthly charge on the eligible property owners' monthly water and wastewater bill. The amount of the proposed charge is being considered in separate resolution.

The Program will provide financial assistance to property owners faced with emergency service line repairs. Availability of financial assistance will encourage property owners to make timely and proper repairs to their service lines rather than using stopgap measures to minimize out of pocket expenses resulting in a more reliable public water and wastewater infrastructure system.

The Program creates additional financial responsibility for the city that will need to be funded and increases administrative costs.

Attorney Jodoin recommended approval of a resolution establishing a Residential Water and Wastewater Service Line Replacement Loan Program.

Attorney Jodoin recommended amending Section 7 of the resolution to read: **Property owners that are below 80% of Median Family Income are not required to repay the loan except upon sale of the property.** This would allow more families to qualify for the program and repayment exemption.

**Motion**

**Commissioner Noonan moved approval of the resolution to establish a monthly charge to fund the Residential Water and Wastewater Service Line Replacement Loan Program including the following amendment: Section 7 of the resolution to read: Property owners that are below 80% of Median Family Income are not required to repay the loan except upon the sale of the property.**

Commissioner Farris-Olsen Haladay seconded the motion.

**Discussion**

Commissioner O'Loughlin spoke in support of the program and the recommended amendment. This will help those who need assistance.

**Vote**

All voted aye, motion carried. **Resolution 20494**

- B. CONSIDER FINAL PASSAGE OF ORDINANCE 3242 CREATING THE DOWNTOWN URBAN RENEWAL DISTRICT, ESTABLISHING THE BOUNDARIES THEREOF, AND ADOPTING THE DOWNTOWN URBAN RENEWAL DISTRICT PLAN, INCLUDING A TAX INCREMENT PROVISION PURSUANT TO TITLE 7, CHAPTER 15, PARTS 42 AND 43, MONTANA CODE ANNOTATED.

**Staff Report**

Community Development Director Haugen reported on September 24, 2018, the City Commission held a public hearing to consider final passage of an ordinance creating the Downtown Urban Renewal District and establishing its boundaries including considering a tax increment provision. As part of the presentation, staff presented several amendments to the resolution that incorporated recommended changes to the Downtown Urban Renewal Plan and the subsequent resolution creating the District.

Several people spoke in favor of creating the District, including members of the Helena Business Improvement District and no one spoke in opposition to its creation. One question was raised about whether the Plan contemplated the demolition of historic buildings since previous urban renewal efforts included the removal of several buildings. During the public hearing, Commissioner O'Loughlin asked how the boundary was determined and what the process would be to alter the boundary at this time in the process. The property that Commissioner O'Loughlin wanted to consider adding into the District is the land between Rodney Street and the current boundary, beginning at 6th Avenue going south to Pine Street. The City Commission asked staff to research what would be the process for amending the boundary at this time and what would be the advantages and disadvantages of amending the boundary now or to adopt the District as proposed and amend the boundary next spring. After much discussion, the City Commission approved the changes as recommended by the Planning Board and tabled the adoption of the final ordinance to the call of the City Manager.

Subsequent to the meeting, City staff has reviewed state law and processes used by other Cities for amending the boundaries of an urban renewal district. City staff also met with the Helena BID to solicit their input and support with regard to adding the additional property to the URD boundary. After discussion, the Helena BID Board voted to recommend that the City Commission adopt the boundary as currently proposed so that the District is established this year and indicated support for adding the additional property next spring, if the City Commission proposes that addition.

The purpose of the action is to take public comments to create the Downtown Urban Renewal District and adopt its boundaries and accompanying plan with regard to the formation of the Downtown Urban Renewal District and the proposed Downtown Urban Renewal District Plan.

The creation of the District and resulting opportunities associated with the various mechanisms identified in the Plan would help to encourage revitalization and redevelopment of the Downtown. The City of Helena Growth Policy identifies this area as an area with potential for infill and redevelopment and as a designated "Mixed Use" area. The approval of the Downtown Neighborhood Plan further identified the creation of the URD as one of the tools for implementing the goals in the Plan. The creation of the District will help accomplish some of these goals and is one of the few tools that cities have to encourage redevelopment in an area. It encourages public/private partnerships.

It is anticipated that the actions resulting from the implementation of the Plan will increase the overall taxable value of the proposed District. The increased tax revenue that is associated with that increase in taxable value will be redirected back into the district and will not be available to be used elsewhere in the city, the county or the School District.

Director Haugen recommended approval for final passage of Ordinance 3242 creating the Downtown Urban Renewal District and establishing the boundaries thereof; adopting the Downtown Urban Renewal District Plan, with the amendments recommended by the Helena/Lewis and Clark County Consolidated Planning Board, including a tax increment provision pursuant to Title 7, Chapter 15, parts 42 and 43.

#### Discussion

Commissioner Noonan asked if passed as is and the boundaries are amended next year, what does it mean for the properties that are added to the district; will those properties have a separate timing for the increment and being incorporated into the Downtown Urban Renewal District. Director Haugen noted only difference would be the base year for the additional properties would be 2019 instead of 2018.

#### Public Comment

Mayor Collins called for public comment. Mark Roylance, BID member, confirmed the BID voted in support of the ordinance, as described by Director Haugen.

#### Motion

**Commissioner O'Loughlin moved approval for final passage of Ordinance 3242 creating the Downtown Urban Renewal District and establishing the boundaries thereof; adopting the Downtown Urban Renewal District Plan, with the amendments recommended by the Helena/Lewis and Clark County Consolidated Planning Board, including a tax increment provision pursuant to Title 7, Chapter 15, Parts 42 and 43.** Commissioner Farris-Olsen seconded the motion.

#### Discussion

Commissioner O'Loughlin thanked staff for the outreach to discuss the expansion of the boundary. She fully supports final passage of the ordinance and she looks forward to discussing expanding the boundary in the future. Mayor Collins echoed Commissioner O'Loughlin's comments.

Commissioner Noonan noted this is a continuation of the implementation of the Downtown Master Plan; which is a working document. This is an important part and it will bring additional financing to the district.

**Vote**

All voted aye, motion carried. **Ordinance 3242**

**Public Hearings**

PUBLIC HEARINGS:

- A. CONSIDER FINAL PASSAGE OF ORDINANCES 3244, 3245 AND 3246 AMENDING CHAPTERS 1, 2, AND 6 OF THE HELENA CITY CODE, TITLE 12, SUBDIVISION REGULATIONS.

**Staff Report**

Planner Morell-Gengler reported Revisions to the City Subdivision Regulations have been prompted by legislative changes to the Montana Code Annotated (MCA) amending the Montana Subdivision and Platting Act (MSPA) which affect local subdivision regulations. Although most of the proposed revisions to the city regulations are to incorporate legislative amendments, additional changes are proposed to address the Legacy Ranch court ruling regarding public participation and extensions of preliminary plat approval. Comments from stakeholders' meetings, and staff-initiated proposals were also taken into consideration. A Consolidated Planning Board work session was held on October 19, 2017 to review proposed changes and to solicit comments on the planned amendments to the subdivision regulations. The Planning Board held a public hearing on November 21, 2017 and voted to recommend proposed changes to the city subdivision regulations.

The proposed changes to the City Subdivision Regulations were presented to the City Commission at an Administrative meeting on March 21, 2018. The Commission noted at that meeting that previous revision to the city subdivision regulations relating to installation of sidewalks generated considerable interest and discussion in the community. The Commission requested that staff meet with additional interested parties to discuss the proposed changes to the subdivision sidewalk installation proposal. Staff held a stakeholders meeting on April 12, 2018 to discuss the proposed changes to the sidewalk installation timing for subdivision final plats.

The City Commission, at the September 5, 2018 Administrative meeting, reviewed the submitted comments and heard from interested individuals. Per discussions at those meetings, staff recommends changes to the Planning Board recommendations to better clarify the final plat and infrastructure process. In addition, staff will include the ADA Committee and the Non-Motorized Travel Advisory Committee on the "Request for Review and Comment" distribution list for subdivision review.

The City Commission approved first passage of ordinances amending Chapters 1, 2, and 6 of the Helena City Code, Title 12, Subdivision Regulations on October 15, 2018 and set the public hearing date for October 29, 2018. At that meeting, there was a concern expressed that the current process for soliciting comments on a proposed subdivision was not sufficient to address sidewalk installation timing.

Comments indicated a desire to look at adding additional subdivision reviews before the City ADA Compliance Committee and the Non-Motorized Travel Advisory Committee in the City Subdivision Regulations. Staff has reviewed MCA and the City Subdivision regulations (attached). This review found the Planning Board, 76-1-107, MCA, is specifically identified as having authority to evaluate a

subdivision proposal and 76-3-621, MCA, identifies the Parks Board as having authority to weigh in on parkland dedication.

Although the Planning Board and Parks Board provide direct recommendations to the City Commission, the City solicits comments on a proposed subdivision from a number of entities. Per 76-3-504 (1) (i) and (q), MCA, those entities must be identified and the comments must comply with 76-3-608 (9), MCA. The current process for soliciting comments during subdivision review did not identify the ADA Committee and the Non-Motorized Travel Advisory Committee in the agency review list and thus they were not sent a request to review and comment. This has been rectified. Future applications for subdivision review will be submitted to these committees for review.

If the City Commission wishes to move forward with including an additional City ADA Committee and the Non-Motorized Travel Advisory Committee subdivision review process in City Code, a number of sections in the City Subdivision Regulations may need to be revised. The review process before the new entities would have to be developed similar to 12-2-6: Community Development Department Review, 12-2-7: City-County Parks Board Recommendation, 12-2-9: Planning Board Public Hearing and Recommendation for Subdivisions, and 12-2-10: Planning Board Report. The resolutions establishing the City ADA Committee and the Non-Motorized Travel Advisory Committee may need to be updated to accommodate this additional review responsibility and process.

If the Commission decides to move forward with adding a new subdivision review process for the City ADA Committee and the Non-Motorized Travel Advisory Committee, adequate time must be provided for staff to review MCA, case law, and how other jurisdictions have addressed additional reviewing entities. This change to the City Subdivision Regulations and possible changes to the resolutions establishing the ADA Committee and the Non-Motorized Travel Advisory Committee would require Planning Board review and public hearings. Thus, to include the above changes, staff would recommend tabling the subject ordinances.

The ordinances amending the City Subdivision Regulations are being presented to the City Commission for approval of final passage.

Approval of the amendments to the City Subdivision Regulations will update the regulations to better reflect the changes made to state law, recent court rulings, and community concerns.

Planner Morell-Gengler reviewed the changes to the Subdivision Regulations and then recommended approval for:

Final passage of Ordinance No. 3244 adding a definition of phased development by amending Title 12, Subdivision Regulations, Chapter 1, Title, Purpose, and Definitions, of Helena City Code.

Final passage of Ordinance No. 3245 revising subdivision application requirements, extensions of preliminary plat approval, public improvement installation options, and final plat application requirements and review by amending Title 12, Subdivision Regulations, Chapter 2, Procedures, of Helena City Code.

Final passage of Ordinance No. 3246 revising the subdivision application fee structure by amending Title 12, Subdivision Regulations, Chapter 6, Amendments, Fees, General Provisions, of Helena City Code.

Public Testimony

Mayor Collins declared the public portion of the hearing opened and called for any public testimony.

Maureen Kiely, private citizen, spoke in support of the proposed changes to the Subdivision Regulations.

There being no further public testimony, Mayor Collins closed the public hearing.

Motion

**Commissioner O'Loughlin moved approval of final passage of Ordinance 3244 adding a definition of phased development by amending Title 12, Subdivision Regulations, Chapter 1, Title, Purpose, and Definitions, of Helena City Code.** Commissioner Noonan seconded the motion. All voted aye, motion carried. **Ordinance 3244**

Motion

**Commissioner Noonan moved approval of final passage of Ordinance 3245 revising subdivision application requirements, extensions of preliminary plat approval, public improvement installation options, and final plat application requirements and review by amending Title 12, Subdivision Regulations, Chapter 2, Procedures, of Helena City Code.** Commissioner O'Loughlin seconded the motion. All voted aye, motion carried. **Ordinance 3245**

Motion

**Commissioner Farris-Olsen moved approval of final passage of Ordinance 3246 amending revising the subdivision application fee structure by amending Title 12, Subdivision Regulations, Chapter 6, Amendments, Fees, General Provisions, of Helena City Code.** Commissioner Noonan seconded the motion. All voted aye, motion carried. **Ordinance 3246**

B. CONSIDER A RESOLUTION ESTABLISHING A MONTHLY CHARGE TO FUND THE RESIDENTIAL WATER AND WASTEWATER SERVICE LINE REPLACEMENT LOAN PROGRAM AND AMEND RESOLUTION 20488

Staff Report

Attorney Jodoin reported pursuant to the Helena City Code, property owners are responsible for maintenance and repairs, including emergency repairs, of water and wastewater service lines from the city main. On average, an emergency service line repair costs \$15,000 and thus presents a significant financial hardship. In order to help alleviate this hardship the City Commission established the Residential Water and Wastewater Service Line Replacement Loan Program ("Program") which provides zero percent interest loans to owners of single dwelling unit properties for the purpose of emergency water and wastewater service line repairs. The City Commission proposes to fund this Program through a monthly charge on the eligible property owners' water and wastewater bill.

The City Commission proposes the following additional monthly charges for owners of single dwelling unit properties to fund the Program: a monthly charge of \$2.50 on the water bill, and a monthly charge of \$6.47 on the wastewater bill. These proposed charges were calculated based on the average number of emergency water and wastewater service line replacements over the last six years with an estimated average cost of replacement being \$15,000.

The collected charge will fund the Program which will provide financial assistance to eligible property owners facing emergency repairs due to a failed water or wastewater service line.

If passed, the resolution will increase the monthly water and wastewater charge for owners of single dwelling unit residential property.

Attorney Jodoin recommended approval of a resolution establishing a monthly charge to fund the Residential Water and Wastewater Service Line Replacement Loan Program and Amend Resolution No. 20488.

Public Testimony

Mayor Collins declared the public portion of the hearing opened and called for any public testimony.

There being no public testimony, Mayor Collins closed the public hearing.

Discussion

Commissioner O'Loughlin asked when would the change in fees reflected on the utility bills. Attorney Jodoin stated the change would show on the next billing cycle.

Motion

**Commissioner Farris-Olsen moved approval of a resolution establishing a monthly charge to fund the Residential Water and Wastewater Service Line Replacement Loan Program and Amend Resolution No. 20488.** Commissioner O'Loughlin seconded the motion. All voted aye, motion carried. **Resolution 20495**

C. CONSIDER FINAL PASSAGE OF ORDINANCE 3247 PROHIBITING SELF-SERVICE DISPLAYS OF TOBACCO PRODUCTS.

Staff Report

Attorney Jodoin reported the State of Montana currently controls youth access to tobacco pursuant to the "Youth Access to Tobacco Products Control Act" ("Act") found in Title 16, Chapter 11, Part 3 of Montana Code Annotated. The Act generally prohibits the sale and distribution of tobacco products, alternative nicotine products, or vapor products to anyone under 18 years of age. This includes the sale of tobacco products, alternative nicotine products or vapor products through vending machines, except in locations where alcoholic beverages are sold and consumed on premises. Section 16-11-311 of the Act permits local governments to adopt regulations on the same subject of the Act so long as such regulations are not more stringent.

The Act does not appear to explicitly regulate the sale of "self-service displays" which by definition are open displays of tobacco products wherein the products are accessible without assistance of the retailer. However, as explained above the Act does prohibit retailers from selling or distributing tobacco products, alternative nicotine products, or vapor products to individuals under 18 years of age. Further, §45-5-637, MCA, prohibits the possession of tobacco products, alternative nicotine products, or vapor products by persons under the age of 18. Thus, it would functionally be illegal under state law to have "self-service displays" which are accessible without assistance of the retailer since the minor would be able to possess the product in violation of state law and the retailer would be in violation of the Act.

Federal regulations (21 CFR 1140.14) already preclude the "self-service" displays of tobacco and smokeless tobacco by requiring the purchaser to produce identification during a face-to-face exchange.

This ordinance will provide an additional, local regulation of self-service displays of tobacco products which should not present

substantively additional requirements of tobacco retailers than what is already required under federal and state law.

Attorney Jodoin recommended tabling final passage of Ordinance 3247 prohibiting self-service displays of tobacco products to allow him time to review the correspondence received today requesting the commission consider giving an exemption to age restricted stores on prohibiting self-serve tobacco displays.

Discussion

Mayor Collins noted he received some correspondence which he hasn't had the opportunity to review. He also referenced an email forwarded to the commission from Commissioner O'Loughlin.

Commissioner Noonan referred to the adult only stores and asked if that would change the provisions for self-display in adult only stores. Attorney Jodoin stated he would like to spend more time on this as he hasn't looked into that specific details. His general understanding is if you have an age restricted store, you do not have to meet all the obligations under Youth Access to Tobacco Products Control Act. Again, he would like additional time to look at this in detail.

Commissioner O'Loughlin how does a city ordinance, once it is passed, interplay with the state law; what extent can the city go beyond what state law regulates. If the state law does not address the adult only stores, how does this work if the city were to prohibit self-service displays. Attorney Jodoin stated the Youth Access to Tobacco Products Control Act, "the Act" allows local governments to adopt regulations that are not more stringent than this code. He noted that is the question he is asking himself, did we miss something by not including age restricted stores in the first draft of the ordinance.

Attorney Jodoin recommended tabling final passage due to the request for an amendment to allow self-service tobacco displays in age restricted stores. Again, he is not sure what that means if minors are allowed in the store at all. He wants to make sure we do not adopt an ordinance that is not more stringent than state law.

Public Testimony

Mayor Collins declared the public portion of the hearing opened and called for any public testimony.

The following persons spoke in support of the ordinance: Jody Medlar, American Cancer Society, Cancer Action Network; Jim Benish, Chair of the Lewis and Clark County Board of Health; Lois Fitzpatrick, Senior Leadership for American Cancer Society, Oliver Godsky; Dr. Greg Holtz; Representative Mary Ann Dunwell; Colleen Smith, Youth Connections; Nicole Awney; Reverend Kathy Barkwell; Kiely Emon, Carroll College student; and Reg Hageman, Capital High School Health teacher and candidate for Superintendent of Schools.

The following persons spoke in opposition of the ordinance: Brenda Brewer, Man Store and Brad Longcake, Montana Petroleum and Convenience Store Association.

There being no further public testimony, Mayor Collins closed the public hearing.

Discussion

Attorney Jodoin stated he reviewed the Youth Access to Tobacco Products Control Act and was reminded from the first passage of the ordinance that the Act only regulates vending

machines and not self-service displays. He then read the definition of the self-service display that is in the ordinance. Going back to our analysis from the first meeting, since the Act doesn't control or regulate open self-service displays of tobacco, therefore, it is his opinion the city has the authority to regulate them. For age restricted stores, vending machines are allowed in bars, alcohol establishments or restaurants that are attached to a bar. If it is the desire of the commission to consider an amendment, he would encourage a tabling action to allow staff to give proper public notice.

Mayor Collins thank Attorney Jodoin and stated he supports the recommendation to table final passage.

Commissioner Noonan stated he believes spending the time to get wording correct is worth it; however, the ordinance will come forward and he believes it will be approved. He is glad to hear a draft bill is being prepared the 2019 legislative session. He would also like to engage the county commission and the Health Department in the discussion.

Commissioner O'Loughlin stated she is not sure there is consensus to consider an amendment; however, she asked Attorney Jodoin to provide additional information on how the ordinance might be amended. As she understands it, what the commission adopted two weeks ago did make an exemption for adult only stores in the ban of flavored products. Is that what staff is suggesting, a similar definition for adult only retail stores providing that type of exemption from behind the counter. Attorney Jodoin stated this exactly what he had in mind; he would recommend an amendment copying federal regulations requiring 18-years of age. He asked commission consensus for him to draft an amendment.

Commissioner Farris-Olsen stated he does not believe the ordinance needs to be amended to be consistent to with state law. Attorney Jodoin concurred. Commissioner Farris-Olsen asked would we have to amend it to exclude the vending machines like we did for the flavored tobacco projects. Attorney Jodoin stated the original ordinance draft was difficult as there were issues with some of the terminology. Looking at the ordinance and the Act and because this ordinance does not regulate vending machines; we took out the language relating to bars and restaurants attached to bars. The vending machine language was not necessary.

Commissioner Farris-Olsen again stated there is no reason to amend the ordinance.

Commissioner Noonan referred to 4-14-3 – Sale of Tobacco Products by Self-Service Display Prohibited and read the definition and asked if language was added to read "A tobacco retailer in a facility that also serves youth under the age of 18, may not..." and asked if that language would cover it.

Attorney Jodoin stated he would like additional time to prepare a draft amendment. Retailers cannot sell tobacco products to anyone under the age of 18; that is already state law. What we are proposing is the sale of tobacco products by a self-service display in an age restricted store. What we are talking about here is open displays of tobacco products. Under federal law, that is already precluded, you have to have a face to face transaction where the retailer has to identify the age with an ID. There is a gap in state law, there isn't that specific requirement where you have to identify the age with an ID. This precludes the

retailer from having any tobacco product by a self-service display. Attorney Jodoin stated a clearer amendment would be to say "except in an age restricted store". Although he would prefer the federal language.

Commissioner Noonan asked if there is interest in amending the ordinance tonight and to final pass it.

Commissioner Farris-Olsen stated he will not support an amendment. Commissioner O'Loughlin commented it is a challenging situation because what we have heard tonight is the focus of youth usage of these products. The original proposal had an exception for adult only retail stores regarding the flavored tobacco products. Commissioner O'Loughlin expressed a little frustration that this issue didn't come up during that public comment at the October 15<sup>th</sup> commission meeting. Given there is consensus these products need to be put behind the counter; she is comfortable moving forward; however, she is also comfortable with taking another couple of weeks to assure the language is correct.

Mayor Collins again stated he supports tabling final passage to the call of the city manager. Attorney Jodoin stated if the ordinance is tabled, it will give the public the opportunity to address the proposed amendment. He will draft the amendment and bring it forward to the commission for final consideration.

Commissioner Farris-Olsen stated he believes the commission is passing up a unique opportunity to protect the youth of our community

Commissioner Noonan stated with trepidation, he will support tabling final passage.

## Motion

**Commissioner Noonan moved to table, to the call of the City Manager, final passage of Ordinance 3247 prohibiting self-service display of tobacco products and asked City Attorney and City Manager to bring back amendments.**

Commissioner O'Loughlin seconded the motion. Motion carried 3-1 with Commissioner Farris-Olsen voted not.

D. CONSIDER FINAL PASSAGE OF ORDINANCE 3243 AMENDING REGULATIONS CONCERNING THE PARKING OF VEHICLES, TRAILERS, RECREATIONAL VEHICLES, AND BOATS ON CITY STREETS DURING WINTER BY AMENDING TITLE 7, CHAPTER 8 OF THE HELENA CITY CODE.

## Staff Report

Streets, Traffic and Fleet Services Superintendent Knoepke reported currently, the City has over 50 miles of snow routes. The ability to comply with the current snow policy and reach local streets is difficult during large snow events. Vehicles parked along snow routes make clearing of the roadway troublesome. Towing of vehicles along these snow routes can only happen after a declaration of a snow emergency by the City Manager. Then notices and time allowance to remove vehicles has to occur. This adds time that allows for the snow on the ground to become packed down and more difficult to remove, especially after it freezes.

The snow routes were revised in order to better manage snow plowing operations. The number of miles of snow routes was reduced from over 50 miles to just over 10 miles. This should allow the operators to clear the snow routes more quickly thus allowing them to reach the

collector and local streets sooner. The towing portion of the ordinance should allow for quicker response to snow events and plowing of the snow along snow routes. The other portion of the towing revisions is to remove stored items from the public right-of-way. Plowing next to these stored items over time narrows the roadway causing a safety issue for all the travelling public. The revised ordinance would allow for these stored items to be towed from the right-of-way between specified dates.

Public outreach will include a direct mailing of the changes to all residents who receive a utility bill, door hangers on residences along the revised snow routes, interviews with the local newspaper, TV stations, and morning radio programs. The changes will also be posted on the City website and on social media.

The advantage is to provide a quicker response to snow events for the traveling public. Removal of vehicles allows for more thorough plowing.

Revised snow routes decrease the number of snow routes but those routes are captured in the priority one and two routes. Increase in the number of vehicles/stored items being towed.

Superintendent Knoepke noted staff is prepared to do the following public outreach and implementation:

- City will contract to have such vehicles towed and stored at the expense of the registered owner of the vehicle.
- Staff is also looking at towing options on the emergency snow routes that include a soft enforcement where the vehicle would be towed around the corner during the first storm.
- Door hangers will be placed on all parked cars and residences along snow routes.
- Proposed implementation dates is November 19, 2018; public notice will include press releases; social media ; door hangers; informational brochure; mass mailing and roll-out of snow plowing map. It will be one consistent message regarding the snow plowing policy.

Summary of progress –

- GPS software installed into snow control equipment.
- Public notice is ongoing.
- Informational brochure in progress of being developed and printed.
- Snow and ice control plan will revised per tonight's actions.
- Development of the GIS snow plowing map; working the IT&S.
- RFP out for plowing and removal of snow in downtown area; clearing of ADA ramps and private plowing of streets.

Superintendent Knoepke recommended approval for final passage of Ordinance 3243, amending regulations concerning the parking of vehicles, trailers, recreational vehicles, and boats on city streets during winter by amending Title 7, Chapter 8 of the Helena City Code.

Mayor Collins asked if Lyndale Avenue is included in the proposal. Superintendent Knoepke stated MDT oversees Lyndale Avenue.

Commissioner Noonan noted after one administrative meeting, he volunteered to double check Carroll's understanding of the new ordinance. Carroll is making arrangements for students to park on campus over the holidays. Commissioner Noonan asked if the snow plowing map is connected to an application. Superintendent Knoepke stated initially the map will be connected to the city's GIS map.

Commissioner O'Loughlin asked in relation to what is currently in the ordinance, removal of parked and recreational vehicles, do we currently tow vehicles off of the emergency snow routes. Superintendent Knoepke stated currently the City Manager or the Chief of Police have to declare an emergency and then towing can begin. Since his time at the city, the city has not towed vehicles from snow routes.

Commissioner O'Loughlin asked what does the ongoing outreach to the citizens look like. Last year one of the challenges last winter was the first efforts to have people voluntarily move their cars off the snow routes that worked really well at first; however, it then faded out. It is important to keep the public informed, what specific outreach will be done. Superintendent Knoepke stated staff hopes with the initial outreach, citizens will become educated and will know if it snows, they need to move their vehicles to allow the street to be plowed. With the reduction of the snow routes, it is a limited amount of residents who will be affected. Staff will continue to work with the all the media to educate the public. Another option staff is looking at hiring a consultant to help with the public outreach campaign.

Manager Taylor commented staff is prepared to do everything that has been talked about and additional efforts to keep the citizens informed throughout a large snow event.

Staff wants to assure the residents get the information and urge their compliance. The mailers are being sent to the property owners directly and not as a utility bill insert.

Mayor Collins thanked staff for the work they have done.

#### Public Testimony

Mayor Collins declared the public portion of the hearing opened and called for any public testimony.

Wilbur Rehmann, Chair of the Non-Motorized Transportation Committee spoke in support of the ordinance. One of the concerns he has had is the cars being left on Benton Avenue during holiday breaks. NMTAC did not take a position on snow removal. This kind of policy is great. He suggested one minor change that would help is for Carroll College to educate their students to park their cars in the lots during holiday breaks.

Mr. Rehmann also suggested adding Peosta back in as an emergency snow route as there are none on the lower Westside of the city.

Brad Nelson, 1617 Winne, expressed concern with Winne Avenue being removed as an emergency snow route as it currently feeds the main entrance to the hospital

There being no public testimony, Mayor Collins closed the public hearing.

#### Discussion

Commissioner O'Loughlin noted the commission went through a very detailed process on why the streets are being recommended as emergency snow routes. She asked Superintendent Knoepke to review the conversation and how staff made the recommendations to reduce the number of miles.

Superintendent Knoepke noted when staff did the matrix, they looked at what snow routes do and where they are connected to emergency services. The roads being recommended came to the top. He also explained the levels of street prioritization staff will use during a snow event. Staff will get drivers out in the front of the storm; and the majority of the snow will be plowed from the

priority one streets. He also noted staff will adjust the schedules to make sure the public can get to their destinations.

Mayor Collins concurred it is important to reach out to Carroll College and St. Peter's Hospital. Superintendent Knoepke stated staff will reach out to Carroll College; St. Peters and the State of Montana.

Commissioner O'Loughlin commented this is a significant change; however, not the only one to improve the overall plan to improve services.

Commissioner Farris-Olsen asked staff to look at an appeal process for those who cannot afford to have their vehicles towed.

**Motion** Commissioner O'Loughlin moved approval for final passage of Ordinance 3243 amending regulations concerning the parking of vehicles, trailers, recreational vehicles, and boats on city streets during winter by amending Title 7, Chapter 8 of the Helena City Code, including amendments recommended by staff. Commissioner Farris-Olsen seconded the motion. All voted aye, motion carried.  
**Ordinance 3243**

**Public Communications** PUBLIC COMMUNICATIONS  
There were no public communications.

**Meetings of Interest** MEETINGS OF INTEREST  
Administrative Meeting is scheduled for October 31, 2018, City-County Joint Work Session is scheduled for November 1, 2018 and the next City Commission Meeting is November 5, 2018.

**Adjournment** There being no further business to come before the City Commission, the meeting was adjourned at 8:00 p.m.

/S/ WILMOT COLLINS  
MAYOR

ATTEST:

/S/ DEBBIE HAVENS  
CLERK OF THE CITY COMMISSION