

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**February 25, 2019 - 6:00 P.M.**  
**City Commission Chambers, Room 330**

- Time & Place** A regular City Commission meeting was held on Monday, February 25, 2019 at 6:00 p.m., in the City Commission Chambers, 316 N. Park Avenue, Helena, Montana.
- Members Present** Mayor Collins requested City Clerk Havens call roll call: Attorney Thomas Jodoin, City Manager Ana Cortez, Deputy City Clerk Dannai Clayborn, City Commissioner Haladay, City Commissioner Wicks, City Commissioner Noonan, City Commissioner O'Loughlin and Mayor Collins all responded 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 February 11, 2019 were approved as submitted.
- Proclamation** PROCLAMATION:
- A. American Red Cross Month  
Mayor Collins read the American Red Cross Month Proclamation and presented it to Susan Hawthorne.  
Ms. Hawthorne made remarks regarding the assistance the Red Cross offers and thanked the commission for being an active supporter of their efforts. Abbie Colussi, Cindy Nelson, and Melissa Nichols were also present for the acceptance on behalf of the Red Cross.
- Discussion Commissioner Noonan expressed gratitude for the Red Cross, its volunteers, and the assistance their organization offers to the community.
- Board Appointments** BOARD APPOINTMENTS:
- A. Helena Housing Authority  
  
Mayor Collins recommended the following appointments:  
**Helena Housing Authority** – Appointment of David Ragghanti to the Helena Housing Authority, tenant representative. Unexpired term will begin upon appointment and expire August 1, 2019.
- Public Comment Mayor Collins asked for public comment, none was received.
- Motion** **Commissioner O'Loughlin moved approval of the appointment as outlined above.** Commissioner Haladay seconded the motion. Clerk Havens called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Wicks voted aye, Commissioner Noonan voted aye, Commissioner O'Loughlin voted aye, and Mayor Collins voted aye. The motion carried.
- Consent Agenda** CONSENT AGENDA:
- A. Claims  
  
City Manager Cortez recommended approval of the claims.
- Public Comment Mayor Collins asked for public comment. None was received.

**Motion** **Commissioner Haladay moved approval of the consent agenda, item A.** Commissioner Wicks seconded the motion. Clerk Havens called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Wicks voted aye, Commissioner Noonan voted aye, Commissioner O'Loughlin voted aye, and Mayor Collins voted aye. The motion carried.

**Communications** COMMUNICATIONS/PROPOSALS FROM CITY  
**From City Commissioners** COMMISSIONERS

Commissioner Wicks thanked the city staff for the response during the recent snow events, stating she had received multiple comments by residents expressing gratitude. Mayor Collins echoed the Commissioner's sentiments.

Commissioner Noonan spoke about the recent transition at Carroll College. He noted how the faculty and administration worked together in order to stave off budgetary issues, as an example of how collaborative efforts and candid discussions are necessary for healthy transitions in any organization.

**Report of the City Attorney** REPORT OF THE CITY ATTORNEY  
City Attorney Jodoin stated there was nothing to report.

**Report of the City Manager** REPORT OF THE CITY MANAGER  
City Manager Cortez reported the staff will be implementing a new timeline for the disposal of surplus properties, notifying the commission about such properties early in the process, to give the commission time to develop a plan of action for disposal. Manager Cortez reported the staff received direction from the commission at the strategic planning retreat which will help to prioritize the budget. Input from the HCC will be shared at the March 6<sup>th</sup> Administrative Meeting, and an update was given of the snow removal process. Finally, the Manager reported the staff has planned two events at the Civic Center in April and an open house in May to educate all relevant parties about the new parking meters. A soft roll-out of the program is planned for June, with a final implementation planned for July.

**Discussion** Commissioner Haladay thanked Manager Cortez for the retreat, stating it was a valuable exercise.

**Report from the Helena Citizens** REPORT FROM THE HELENA CITIZENS COUNCIL  
No report given.

**Regular Items** A. CONSIDER THE REVOCATION OF THE NOVEMBER 2, 2015, EXCLUSIVE RIGHT-OF-WAY USE AGREEMENT FOR THE USE OF THE GRAND STREET RIGHT-OF-WAY USE BY THE CLEMOV FAMILY TRUST.

**Staff Report** City Attorney Thomas Jodoin reported Helena City Commission approved an Exclusive Right-of-Way Use Agreement ("Agreement") on November 2, 2015, that permitted The George and Bobbie Clemow Family Trust ("Trust" or "User") the right to use and occupy the open air patio seating area located on the Grand Street public right-of-way ("Property") adjacent to the property with a street address of 101 North Last Chance Gulch. The minutes of that meeting are attached to this memo. Presently, the Trust leases the lower level of 101 North Last

Chance Gulch to the Sapphire Lodge. The Sapphire Lodge operates the space as a tavern and is the current user of the open-air patio.

The permission to use Property was subject to several conditions, including the following:

- User agrees to maintain the Property and all User's personal property situated on the Property in a neat and attractive condition at all times. User will not permit debris, junk, or other unsightly matter to accumulate upon the Property.
- User may not use or occupy the Property for any unlawful purpose, and User shall conform to and obey all present and future laws, ordinances, rules, and regulations of all governmental authorities or agencies, respecting the use of and occupation of the Property.
- User must control waste generated by the use of the Property and not allow litter to accumulate.
- Use of the Property may not inhibit or interfere with the peaceable, safe use of, or access to adjacent properties.

The City of Helena has received numerous complaints from area residents regarding the Sapphire Lodge. Beer bottles, cups, cigarettes, and vomit in the public rights-of-way adjacent to the Sapphire Lodge are evident. Patrons of the Sapphire Lodge using the Property routinely engage in loud, disorderly conduct, and smoke to the detriment of adjacent property owners, including, within the last week regarding vomit in the doorway of a local law firm.

The ownership and management of the Sapphire Lodge has been unable to ameliorate these issues despite being informed of the issues by city staff on multiple occasions. City staff has had to undertake additional efforts to remove the litter from the Pedestrian Mall near the Sapphire Lodge and the open air patio area. The conduct of the Sapphire Lodge patrons results in a large volume of calls for law enforcement response.

Section 7-13-5(B)(9) of the Helena City Code allows the City Commission to revoke any exclusive right of way use permit upon sixty (60) days notice to the permit holder of the City Commission's intention to revoke the permit.

Staff sent a letter to the Trust informing them of the City Commission's contemplated action and has provided copies of that letter to the chairman of the Placer Condo Association and the owner of the Sapphire Knights of Pythias Sapphire Lodge No. 1 and his attorney.

The City Commission affirmatively stated its intention to revoke the permit at its December 17, 2018, City Commission meeting. As a result, open containers of alcohol will no longer be permitted in the open air patio area. The area will not be exclusively used by the Trust or their tenants.

City Attorney Jodoin recommended the revocation of the Exclusive Right-of-Way Use Agreement for the use of the Grand Street Right-of-Way Use by the Clemow Family Trust granted by the City Commission on November 2, 2015.

#### Discussion

Commissioner Haladay asked City Attorney Jodoin if the Right of Way is a privilege and is subject to the discretion of the commission. City Attorney Jodoin concurred.

#### Public Comment

Mayor Collins called for public comment.

Bill Caccia spoke as a former resident of the Placer and President of the "Friends of the Placer". Mr. Caccia stated he no longer lives in the Placer, in part due to the issues at the Sapphire. He spoke in favor of revocation of the Right of Way. Mr. Caccia also stated he believes the issue with loud and unruly patrons would not be solved by simply revoking the Right of Way.

John Leidle General Manager of the Doubletree Hotel, he stated the hotel receives regular complaints and is forced to refund rooms due to the noise and other behavior at the Sapphire. He spoke in favor of the revocation of the Right of Way.

Ruth McArdle asked the commission what the revocation of the Right of Way would mean in practice and how would it be enforced.

City Attorney Jodoin stated the revocation would ultimately mean the Sapphire Bar would no longer be able to use the outdoor space exclusively, and will no longer be able to serve alcohol in the space, as well. City Attorney Jodoin stated regular patrols by city staff of the area would be the only reasonable means to enforce the revocation.

#### Motion

**Commissioner Noonan moved to revoke the Exclusive Right-of-Way Use Agreement for the use of the Grand Street Right-of-Way Use by the Clemow Family Trust granted by the City Commission on November 2, 2015.** Commissioner O'Loughlin seconded.

#### Discussion

Commissioner O'Loughlin addressed the issues raised by residents and businesses, stating it was clear the revocation would not resolve all areas of concern; and other discussions may need to occur in this matter. Commissioner O'Loughlin stated she supported the revocation.

Commissioner Noonan stated he remembered the events recalled by Mr. Caccia and the concerns raised at the time of the expanded gaming license. Commissioner Noonan stated he did not see evidence of mitigating efforts by the Sapphire Bar in response to the complaints received, and he would support the revocation.

Commissioner Haladay stated he has received many complaints about the Sapphire Bar, and while the revocation of the Right of Way would not alleviate all of the problems with the Sapphire, it was the appropriate action at this time. Commissioner Haladay further stated this use was a privilege, and had not been appropriately treated as such by the Sapphire; accordingly, he would support the revocation.

#### Vote

**Clerk Havens called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Wicks voted aye, Commissioner Noonan voted aye, Commissioner O'Loughlin voted aye, and Mayor Collins voted aye. The motion carried.**

- B. CONSIDER A RESOLUTION FOR THE REPEAL OF RESOLUTION 11577 APPOINTING THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT BOARD OF TRUSTEES AS THE HELENA PARKING COMMISSION AND AMENDING RESOLUTION NO. 10295 TO REQUIRE THAT ONE MEMBER OF THE HELENA PARKING COMMISSION ALSO SERVE ON THE DOWNTOWN BUSINESS IMPROVEMENT DISTRICT BOARD OF TRUSTEES.

#### Staff Report

City Attorney Thomas Jodoin reported on July 15, 1991, the Helena City Commission passed Resolution No. 10295 establishing a

separate Helena Parking Commission (“HPC”) pursuant to the provision of § 7-14-4603, MCA. On July 24, 2000, the Helena City Commission passed Resolution No. 11516 creating the Downtown Business Improvement District (“BID”) for a ten-year term. Subsequently, on October 16, 2000, the City Commission passed Resolution No. 11577 appointing the BID Board of Trustees as the HPC. This action is permitted by the provisions of § 7-14-4609(3), MCA, which allows the legislative body of a city to designate the board of trustees of a BID as the parking commission if the area of the BID is generally coterminous with the area designated in the resolution creating the parking commission. The City Commission passed Resolution No. 19766 on August 9, 2010, renewing the BID for another ten (10) year term.

The two entities operate very differently from each other. The HPC, although technically a separate legal entity under the law, operates more like a city department. All employees of the HPC are employees of the City, the City departments provide support services, such as legal advice and financial services, to the HPC, and the City is ultimately responsible for any debt obligations incurred by the HPC. The City Commission also has final approval of most HPC decisions especially as they relate to expenditure of funds. With respect to board membership, § 7-14-4609(1), MCA, states that the HPC must consist of not fewer than five (5) but no more than seven (7) electors of the city. Following initial appointment, commissioners are appointed for four (4) year terms. State law does not specify any requirement for board membership, however, Section 2-6-1 of the Helena City Code requires that, unless specified otherwise, board members must be adult citizens of the city and serve at the pleasure of the City Commission. Resolution 10295 that created the HPC states that the commission is to consist of seven (7) members.

The BID, however, is an entirely independent and separate legal entity from the City and has its own staff and budget. City staff does not provide support for BID’s operations and the BID operates independently of the City Commission’s approval. The only exception being, if the City Commission decides to allocate funds to the BID to support some aspect of the BID’s operation. With respect to board membership, § 7-12-1121(1), MCA, states the BID board of trustees must consist of not fewer than five (5) but no more than seven (7) owners of property within the district or their assignees. Board members serve four (4) year terms.

The City Commission now wishes to repeal Resolution No. 11577 so that two separate boards govern the BID and the HPC. Following this action, the authorizing resolution for the HPC will be amended to require that one member on the board must also serve on the BID’s Board of Trustees, to assure that each entity has a say in the affairs of the other and the lines of communication remain open.

Staff recommends that the present board members be permitted to select on which board they wish to serve out their terms with the City Commission appointing new members to any vacancies created as a result of this split.

City staff met with the HPC and the BID Board of Trustees and neither entity opposes this proposal.

Two separate boards will reduce the instances of potential conflict when the priorities of the BID do not fully align with the priorities of the HPC. However, the views of each body will still be represented on both boards as one member from each board will be appointed to the other. The City Commission will need to appoint more members to the two boards.

City Attorney Jodoin recommended approval of a resolution for the repeal of Resolution No. 11577 appointing the Downtown Business

Improvement District Board of Trustees as the Helena Parking Commission and to Amend Resolution No. 10295 to require that one member of the Helena Parking Commission also serve on the Downtown Business Improvement District Board of Trustees.

Discussion

Commissioner O'Loughlin asked if the Commission would still be responsible for appointing the Business Improvement District Board with the repeal of this resolution; and how it would impact the structure of the two boards going forward.

Deputy City Attorney Iryna O'Connor stated after repealing the resolution affecting the BID the overlap of the resolution would resolve the conflict and the amendment of resolution affecting the Helena Parking Commission would create the shared member between the two entities.

Commissioner O'Loughlin inquired about the timing of the appointments and how many positions would need to be filled. City Attorney Jodoin stated the resolutions would be effective immediately, if passed, meaning appointments are needed as soon as possible of at least 5, no more than 7 appointments for the BID, and the HPC. Commissioner Noonan confirmed no changes were needed at this time to the BID, but 6 new members would be needed to fill the HPC with one HPC member, chosen to serve as a representative on the BID. City Attorney Jodoin stated the current members would be allowed to choose which body they would prefer to serve on, and the commission would appoint members to the remaining open positions on each board. Commissioner Noonan asked if the current language would preclude more than one member to serve on both boards. City Attorney Jodoin stated no.

Commissioner Haladay asked if the current members of the board could be compelled to continue serving on the board, until such time, the necessary appointments could be made. City Attorney Jodoin concurred. Commissioner O'Loughlin expressed concern of leaving the parking commission without a full voting body. City Attorney Jodoin stated a further discussion should occur between staff and the commission, regarding the governing authority of the parking commission. Commissioner Noonan proposed the current board continue to serve while the new parking kiosks and meters are being introduced.

City Attorney Jodoin asked if the commission would like to pass the resolution as stated or change the language. Manager Cortez proposed passing the resolution, adding language making it effective on July 1, 2019, with the understanding action would be necessary on several items before the stated deadline.

Commissioner O'Loughlin stated she wanted to again revisit at a later date the issue of jurisdiction of the parking commission.

Commissioner Haladay asked if an implementation date was added to the language, would it impact the effectiveness of the boards. No issues were noted by either Manager Cortez or City Attorney Jodoin.

Public Comment

Mayor Collins asked for public comment. None was received.

Motion

**Commissioner Haladay moved to repeal Resolution No. 11577 appointing the Downtown Business Improvement District Board of Trustees as the Helena Parking Commission and to Amend Resolution No. 10295 to require that one member of the Helena Parking Commission also serve on the Downtown Business Improvement District Board of Trustees, and set an effective date of**

**7/1/2019.** Commissioner Wicks seconded. Clerk Havens called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Wicks voted aye, Commissioner Noonan voted aye, Commissioner O'Loughlin voted aye, and Mayor Collins voted aye. The motion carried.

**Resolution 20510**

**Public Hearings**

PUBLIC HEARINGS:

- A. CONSIDER ACCEPTANCE OF THE CAPITAL TRANSIT COORDINATION PLAN FOR FISCAL YEAR 2020.

Staff Report

Public Works Director Randall Camp reported a yearly updated Transportation Coordination Plan is a required segment of our 5311 Operating Funds Grant Request. The plan is prepared and approved by the Transportation Advisory Committee (TAC). The TAC includes representatives of public, private, and non-profit transportation and human-services providers, and other programs sponsored by federal, state, and local agencies.

The Transportation Coordination Plan helps indicate how transportation coordination is progressing in our community. Coordination plans are used by the State in their scoring metrics when considering all Capital requests submitted by each service area. The Coordination Plan maximizes the programs' collective coverage by minimizing duplication of services. The Transportation Coordination plan seeks to provide greater access to transportation services for people with disabilities, older adults, and individuals with lower incomes. The Coordination Plan will assist our community with its short and long term transit goals.

Director Camp recommended to accept the Capital Transit FY 2020 Coordination Plan and allow staff to include the document in its grant application package.

- B. CONSIDER SUBMISSION OF CAPITAL TRANSIT FISCAL YEAR 2020 REQUEST FOR MONTANA DEPARTMENT OF TRANSPORTATION (MDT) 5311 TRANSADE FUNDING.

Staff Report

Public Works Director Randall Camp reported each year communities and organizations request Transit Assistance for the Disabled and Elderly (TransADE) funds from the Montana Department of Transportation to provide transportation for seniors, elderly and disabled individuals. Helena's TransADE allocation is \$86,651.

Authorize Capital Transit proposes to submit the request to the Montana Department of Transportation for TransADE funds in the amount of \$86,651.

The request will aid in funding transportation for seniors, elderly and individuals with disabilities through Capital Transit's ADA Para Transit service is the primary transportation for many in our community. Without this funding many individuals would be left relying on friends, neighbors or relatives for transportation.

Director Camp recommended to accept, modify or deny staff's recommendation to submit the \$86,651 TransADE allocation as part of Capital Transit's preliminary 5311 Operating Grant Request.

- C. CONSIDER SUBMISSION OF THE CAPITAL TRANSIT SERVICE FISCAL YEAR 2020 MONTANA DEPARTMENT OF

TRANSPORTATION 5311 OPERATING GRANT REQUEST PACKAGE.

Staff Report

Each year Capital Transit submits a financial request on behalf of the City of Helena to the Montana Department of Transportation to support our public transit operations. Federal 5311 funds are available for FY2020 in the amount of \$868,810 with a 20% required non-federal match of \$173,762. The proposal to MDT is due March 1, 2019.

Submit our operating funds grant application to the Montana Department of Transportation for \$868,810 in 5311 operating funds plus the required match. Funds will be used to pay operational expenses for fixed route and para-transit services and administrative expenses within the Helena City limits and for the approved East Valley operations. Continued state assistance is critical to our transit operation's ability to provide citizens, seniors, the elderly, and individuals with disabilities access to necessary services. Public transportation helps improve our citizens' health as well as the environment by reducing traffic congestion, fuel consumption, and exhaust emissions.

Director Camp recommended to submit the preliminary FY 2020 5311 Operating Grant Request.

D. CONSIDER SUBMISSION OF THE CAPITAL TRANSIT FISCAL YEAR 2020 MONTANA DEPARTMENT OF TRANSPORTATION (MDT) 5311 GRANT REQUEST FOR CAPITAL EQUIPMENT.

Staff Report

Public Works Director Randall Camp reported The Transportation Advisory Committee (TAC) receives requests from the community for capital equipment and ranks the requests. Capital Transit is requesting two 6-14 passenger vehicles that have room for 1-4 wheel chair passengers. The cost is \$70,000 per vehicle plus match of \$14,000 per vehicle. Rocky Mountain Development Council has requested a 12 passenger vehicle at a cost of \$70,000 and WestMont has requested a non-ADA 6-replacement minivan at a cost of \$60,000. Capital Transit would also like to insulate and heat the cold storage building in order to protect our backup buses from significant damage and repair costs. The estimated cost for the heat and insulation project is \$40,000 plus match of \$8,000.

Director Camp asks the commission to provide Staff direction regarding submitting for Capital Equipment in its 5311 Operating Grant Request.

Director Camp stated the funds allow Capital Transit to continue to update and protect its bus fleet. Fleet replacement is vital to maintaining an effective operation, and new buses are more energy efficient and have up-to-date electronics and emission systems as required by the federal government.

Director Camp recommended to accept, modify or deny staff's recommendation to submit the Capital Transit 5311 Capital Equipment Request as part of Capital Transit preliminary 5311 Operating Grant Request.

E. CONSIDER SUBMISSION OF THE CAPITAL TRANSIT FISCAL YEAR 2020 MONTANA DEPARTMENT OF TRANSPORTATION (MDT) 5311 GRANT REQUEST PACKAGE.

## Staff Report

Public Works Director Randall Camp reported each year the lead agency must submit the grant funding request to the Montana Department of Transportation to assist in funding our public transportation program. The grant request includes the 5311 operating budget, capital equipment request, TransADE funding request, and the updated Coordination Plan.

Director Camp requested the commission authorize the City Manager to sign the 5311 grant request which includes the 5311 operating budget, capital equipment request, TransADE funding request, and the updated Coordination Plan for the City of Helena and to allow the City to submit the FY 2020 5311 Grant Request.

The 5311 Operating Grant, TransADE funds and Capital Equipment funding provided by the State of Montana Department of Transportation (MDOT) allows the City of Helena to continue to provide vital public transportation. Without the federal funding the city would need to totally fund the public transit operation. In addition, the use of public transportation can help reduce air pollution in our community, as well as to provide alternative transportation to the private vehicle. Using public transportation can help reduce air pollution in our community, as well as to provide alternative transportation to the private vehicle. Without the federal funding the city would need to totally fund the public transit operation.

Director Camp recommended to allow the City Manager to sign the 5311 Operating package request and to allow the City to submit the request electronically.

## Discussion

Commissioner O'Loughlin asked Director Camp to review the budget numbers provided within the Capital Transit packet.

Commissioner Haladay asked Director Camp to summarize the future plans for the Capital Transit Coordination Plan. Capital Transit Supervisor Elroy Goleman stated future funds could be pursued after the adoption of this Annual Coordination Plan grant package. The Commission could direct Capital Transit to request additional grant funds from the State of Montana should the need arise, at a 80/20 ratio of grant money, meaning the City would be responsible for a 20% financial commitment to any grant money provided by the state.

## Public Testimony

Mayor Collins declared the public portion of the hearings open and called for any public testimony on Items A-E. None was received.

## Motion

**Commissioner Haladay moved to accept the Capital Transit FY 2020 Coordination Plan and allow staff to include the document in its grant application package.** Commissioner Noonan seconded the motion.

## Discussion

Commissioner Haladay stated further discussion should occur at a later date regarding pursuit of further funding from the state for the expansion of the public transit system.

Commissioner Noonan thanked the Transportation Advisory Council for their efforts on expanding the public transportation services in the city.

## Vote

**Clerk Havens called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Wicks voted aye, Commissioner Noonan voted aye, Commissioner O'Loughlin voted aye, and Mayor Collins voted aye. The motion carried.**



by repealing Section 8-11-11: Parking Prohibition; Emergency Snow Routes; Termination; Precedence.

**Public Testimony**

Mayor Collins declared the public portion of the hearings open and called for any public testimony on Item F. None was received.

**Motion**

**Commissioner Wicks moved to approve final passage of Ordinance 3249 amending Chapter 11 of Title 8 of the Helena City Code by repealing Section 8-11-11: Parking Prohibition; Emergency Snow Routes; Termination; Precedence.** Commissioner Noonan seconded the motion. Clerk Havens called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Wicks voted aye, Commissioner Noonan voted aye, Commissioner O'Loughlin voted aye, and Mayor Collins voted aye. The motion carried. **Ordinance 3249**

**Public Communications**

PUBLIC COMMUNICATIONS  
No public communications.

**Adjournment**

There being no further business to come before the City Commission, the meeting was adjourned at 7:18 p.m.

**Meetings of Interest** MEETINGS OF INTEREST

City-County Joint Work Session - March 5, 2019 - 4:00 p.m. - Room 326, City-County Building

Administrative Meeting - March 6, 2019 - 4:00 p.m. - Room 326, City-County Building

Regular City Commission Meeting - March 11, 2019 - 6:00 p.m. - Commission Chambers, City-County Building

/S/ WILMOT COLLINS

MAYOR

ATTEST:

/S/ DEBBIE HAVENS

CLERK OF THE CITY COMMISSION