

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
July 13, 2020 – 6:00 P.M.
Zoom Online Meeting <https://zoom.us/j/95286401246>

- Time & Place*** A regular City Commission meeting was held on Monday, July 13, 2020 at 6:00 p.m. via Zoom Online Meeting <https://zoom.us/j/95286401246>
- Members Present*** Mayor Collins requested City Clerk Clayborn call roll call: City Attorney Jodoin, Interim City Manager Reed, Commissioner Haladay, Commissioner Dean, Commissioner Logan, Commissioner O'Loughlin and Mayor Collins all responded present.
- Pledge of Allegiance*** **(9:12)** Mayor Collins asked those persons present to please stand and join him in the pledge of allegiance.
- Proclamations*** **(9:40)**
- A. Continental Divide Gateway Community
- Mayor Collins read aloud the Continental Divide Gateway Community proclamation.
- Consent Agenda*** **(12:27)**
- A. Claims
- B. Resolution Declaring Police K-9 "Dino" to be Surplus Property and Authorizing the Transfer of Ownership to John Kaleczyc
- C. Final passage of Ordinance No. 3281 clarifying discontinuation of Conditional Use Permits by amending Chapter 3 of Title 11 of the Helena City Code.
- D. Approval of the amended plat for the vacation of the full width of the 1st Street right of way between Lots 11 and 20 of Block 567 all in the Easterly Addition and Lots 2A and 1A-1 of Block 1A both in the Courthouse Addition in the City of Helena, County of Lewis & Clark, Montana, as shown on Certificates of Survey Nos. 3255657 and 3318059.
- E. Resolution granting Downtown Urban Renewal Tax Increment Financing funds to provide a public performance space and associated facilities at Hill Park.
- Discussion **(15:25)** Commissioner Dean asked that Consent Item E be removed from the Consent Agenda and added to the Regular Items for discussion.
- Motion*** **(17:21)** **Commissioner Haladay moved to approve Consent Agenda item A Claims, and items B-D.** Commissioner Logan seconded the motion.
- Discussion **(17:53)** Commissioner Haladay requested the individuals wishing to speak on the Proclamation be aloud to make some remarks.
- Vote*** **City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Dean voted aye, Commissioner Logan voted aye, Commissioner O'Loughlin voted aye and Mayor Collins voted aye. The motion carried, 5-0. (18:37)**

Public Comment **(19:05)** Mayor Collins asked if there was any public wishing to speak on the Proclamation or other items. Mike Rooney and Teresa Martinez gave brief remarks.

Bid Award (23:27) BID AWARD

A. 2020 Chip & Seal Bid Award

Transportation Systems Director Knoepke reported The 2020 Chip & Seal, City Project #20-12 will add a new wear surface and pavement sealer by applying a single application of asphalt oil followed by spreading a 3/8-inch gravel chip.

The City opened two bids for the 2020 Chip & Seal, Project #20-12 on June 23, 2020 and Helena Sand and Gravel Inc. was the lowest responsible bidder for schedules; A, Selected N-S Lower West Side City Streets; B, Selected E-W Lower West Side City Streets; C, Selected N-S Knoxville Addition City Streets; E, Airport Road Overlay; F, Gold Rush Avenue Overlay; and G, Tricia Street Overlay for a total of \$370,791.58 with a unit price \$1.75 of per square yard. Last year's unit price was \$1.70 per square yard. In addition, this year we are adding Additive Alternate #1 Fog Seal. The additional cost for this alternative is approximately \$0.72 per square yard or \$26,032.18, bringing the total amount to \$396,823.76.

Staff recommends awarding schedules A, B, C, E, F, G and Additive Alternate #1 Fog Seal to the lowest responsible bidder; Helena Sand and Gravel; which submitted the low bid of \$396,823.76. This project will complete approximately 11 miles of city streets this year compared to previous years; 2019/19.8 miles 2018/8 miles, 2017/12.2 miles, 2016/8.80 miles, 2015/8.70 miles, 2014/9.93 miles, and 2013/8.46 miles. A new wear surface extends the life of 11 miles of city streets. The Chip & Seal will extend the life of the streets.

Discussion **(25:50)** Commissioners Dean and Logan asked several questions regarding the process of the Chip & Seal Project.

Public Comment **(27:37)** Mayor Collins opened the floor to public comment. No public comment was given.

Motion (28:23) Commissioner Dean moved to award schedules A, B, C, E, F and G of City Project #20-12, 2020 Chip & Seal to the lowest, responsible bidder, Helena Sand and Gravel for the amount of \$396,823.76.

Commissioner Haladay seconded the motion. City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Dean voted aye, Commissioner Logan voted aye, Commissioner O'Loughlin voted aye and Mayor Collins voted aye. **The motion carried, 5-0. (28:58)**

B. Harris Street and DNRC Ponds Storm Sewer Improvements, City Project #19-24

City Engineer Matt Culpo reported the Harris Street and DNRC Ponds storm sewers are old and there are two failing portions of the same storm sewer trunk line on Sanders Street . The upper location is the outlet pipe of the City of Helena owned DNRC Pond located at 9th Avenue and Sanders Street. Replacement of this portion of storm sewer goes from 9th Avenue to the north side of 11th Avenue, crossing 11th Avenue. The storm sewer will be relocated to City right-of-way and off of private property. The second, downstream location is the outlet

pipe of the School District owned, City of Helena operated Harris Street Pond located at Townsend Avenue and Harris Street (Abandoned Sanders Street is owned by the School District, west of, and also adjacent to the Harris Street Pond.) Replacement of this portion of the storm sewer goes from mid-block on Townsend Avenue to Livingston Avenue.

The City of Helena hired Great West Engineering to prepare a construction contract for bidding to replace and realign the storm sewer pipes in the two locations. The City of Helena received one bid on June 16, 2020 for the project. The one bidder and lowest responsible bidder is Bullock Contracting, L.L.C. of Clancy, Montana with a bid of \$588,244.38. The City budgeted \$1,025,000 for the project.

Public Comment **(32:39)** Mayor Collins opened the floor to public comment. No public comment was given.

Motion

(33:04) Commissioner Logan moved to award the Harris Street and DNRC Ponds Storm Sewer Improvements, City Project #19-24 to Bullock Contracting L.L.C. in the amount of \$588,244.38. Commissioner Dean seconded the motion. City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Dean voted aye, Commissioner Logan voted aye, Commissioner O'Loughlin voted aye and Mayor Collins voted aye. **The motion carried, 5-0. (33:38)**

Discussion E. **(33:55)** Resolution granting Downtown Urban Renewal Tax Increment Financing funds to provide a public performance space and associated facilities at Hill Park.

Parks, Recreation & Open Lands Director Ponozzo reported the Downtown URD TIF Advisory Board recommended adoption of the Annual Work Plan for FY 20 and FY 21 at their May 19th, 2020 meeting, and the City Commission adopted it at their June 8th, 2020 meeting. The project priorities in the plan are intended to address the needs that are associated with the directives of the Lewis and Clark County Public Health Department, and the City of Helena's State of Local Disaster Emergency Declaration for the Covid-19 emergency. The three (3) project areas are: the development of branding and marketing plans focused on the Downtown URD businesses; a Health and Safety Improvement Program; and a Public Spaces Utilization Program. The City Parks and Recreation Department has submitted a request for Downtown URD TIF funds to build a performance stage at Hill Park. The City of Helena considered a couple of other options for event/stage/large event space at Memorial Park, with the band shell, and Mountain Meadows with an amphitheater-type set-up. However, both of those locations have a significant amount of background noise, with Memorial Park being right next to the baseball field (loud when there are games and announcements over the system), and Mountain Meadows being very windy. Particularly with the COVID-19 epidemic, there is a need for concert/special event areas that allow for social distancing, and this project provides those additional options for Helena and surrounding residents. On June 9th, 2020, the Downtown TIF Advisory Board heard the proposal from City staff. The Advisory Board voted to recommend using Downtown URD TIF funds to construct a performance stage and associated facilities at Hill Park. They recommended an allocation of \$19,391 for this purpose.

The purpose of the request is to obtain Downtown URD TIF funding for a performance space at Hill Park. The proposed stage

area/cement pad will be 30' X 30', as well as have ADA access and electricity. The space will allow additional use of Hill Park for plays, concerts and outdoor events. Currently, there is no designated stage area and events use the grass for setting up a temporary stage, which can damage vegetation. Alive at 5 and Meadowlark Music Festival regularly use Hill Park and Grand Street Theater has expressed interest in the park being more usable for outdoor plays. The facility will allow for concerts, plays classes and other activities to take place at the park without doing damage to the landscaping and lawn. The space will prove an alternative to indoor theaters, classes, concerts where appropriate social distancing cannot not be achieved. The project is also consistent with the goals of the Downtown URD Plan by adding to the vibrancy of the Downtown. It would also constitute a capital investment in the parks and open space to promote the URD area.

The use of tax increment financing funds for this purpose will address some of the health and safety concerns that arise when using indoor theaters or spaces for conducting performances, plays, classes, etc. in the District. The project will not only address the health and safety concerns but will also promote the Downtown area as a safer environment for both visitors and residents. It will also provide an additional performance space for the Downtown district going into the future. The Parks Department supports use of Hill Park for plays and concerts and the cement pad/stage area with electricity allows for more managed use with less resource damage.

- Discussion (37:17) Commissioner Dean made a statement regarding the use of TIF dollars for this project.
- Public Comment (40:27) Mayor Collins opened the floor to public comment. The following individuals gave public comment.
 (40:39) Kal Poole
 (49:30) Sean White
 (52:05) Riley Tubbs gave public comment in written form, this was read aloud into the record.
 (53:23) Pam Attardo
 (55:40) Kimberly Shire
 (56:19) Errol Koch
 (1:00:00) Campbell Mitchley
 (1:02:27) Lindsay Brown
- Discussion (1:04:18) Commissioner Logan gave remarks.
 (1:05:54) Commissioner Dean gave remarks.
 (1:07:57) Commissioner O'Loughlin asked several questions.
 (1:19:43) Commissioner Haladay gave remarks.
- Motion** (1:24:00) **Commissioner O'Loughlin moved to a resolution granting Downtown Urban Renewal Tax Increment Financing funds to provide a public performance space and associated facilities in Hill Park.**
 Commissioner Haladay seconded the motion.
- Amendment (1:24:22) Commissioner Dean moved to amend the motion, pending facilitated discussions with Parks Department, User groups, and Heritage Tourism Council and SHIPO. No second was given.
- Vote (1:25:40) City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Dean voted nay, Commissioner Logan voted nay, Commissioner O'Loughlin voted aye and Mayor Collins voted aye. The motion carried, 3-2. (1:25:56)

**Communications from (1:26:15) COMMUNICATIONS/PROPOSALS FROM CITY
City Commissioners COMMISSIONERS**

Commissioner O'Loughlin thanked the Commission for the discussion on Thursday.

**Report of the
City Attorney**

(1:31:22) City Attorney Jodoin had nothing to report.

**Report of the
City Manager**

(1:31:33) Interim City Manager Reed gave a report.

Report from HCC

(1:32:35) COMMUNICATIONS FROM THE HELENA CITIZENS COUNCIL

Nancy Perry gave an update from the Helena Citizens Council.

Regular Items

(1:35:25)

A. CONSIDER A SIDEWALK VARIANCE REQUEST 1301 UNIVERSITY STREET

Staff Report

(1:35:32) City Engineer Mark Young reported Siobhan K. Hathhorn and John Hines, the owners of 1301 University Street, are requesting a sidewalk variance. The property is located on the southwest corner of University and Allison streets. Both streets are fully developed with asphalt, curb, and gutter. The applicants' justifications are as follows: the grade (roughly 16%) on Allison Street does not allow for a safe and ADA compliant sidewalk, the proposed sidewalk would result in the loss of mature boulevard trees and shrubs, and the proposed sidewalk would not connect to any adjacent sidewalks. The only existing sidewalks nearby are two houses to the west of the property on University Street (a three-foot six-inch curbside sidewalk, not compliant to current standards) and a single boulevard sidewalk along Allison Street two blocks to the north. The owners are requesting a sidewalk variance to defer the installation of the proposed boulevard sidewalks along both University Street and Allison Street until sidewalks are installed throughout the area.

Public Comment

(1:37:40) Mayor Collins opened the floor to public comment.
Ms. Siobhan Hathhorn gave public comment.

Discussion

(1:44:05) Commissioner Dean and Commissioner O'Loughlin had follow-up discussion.

Public Comment

(1:49:57) Lee Flasnack gave public commentary.

Discussion

(1:53:02) Commissioner O'Loughlin made follow up comments to the matter.

Motion

(1:57:00) Commissioner Dean moved to approve the deferment of sidewalks at Allison Street until adjacent properties install sidewalks, and deny the deferment along University but allow a variance for curbside sidewalk. Commissioner O'Loughlin seconded the motion.

- Discussion (1:57:53) Additional discussion on the matter occurred from Commissioners Haladay and Dean, as well as follow up from City Engineer Young.
- Vote** City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Dean voted aye, Commissioner Logan voted aye, Commissioner O’Loughlin voted aye and Mayor Collins voted aye. The motion carried, 5-0. (2:01:32)
- Discussion (2:01:34) City Attorney Jodoin offered follow up to the variance discussion on future handling of the variances.
- Public Hearings** (2:02:30) PUBLIC HEARINGS
- A. CONSIDER FINAL PASSAGE OF AN ORDINANCE ESTABLISHING THE CITY’S ANIMAL CONTROL REGULATIONS BY ADOPTING CHAPTER 2 OF TITLE 5 OF THE HELENA CITY CODE.
- Staff Report City Attorney Jodoin reported Chapter 2 of Title 5 of the Helena City Code currently contains the various duties and responsibilities of dog (animal) owners in the City, and also includes various prohibitions such as keeping a nuisance dog. Further, the chapter outlines a process for declaring dogs potentially dangerous or dangerous, depending on the severity of the actions of the dog.
- The existing ordinance is, in many instances, redundant and conflicting, and it creates an inefficient mix of civil and criminal enforcement processes. Substantively there are three major concerns:
1. Presently if a dog bites or attacks another animal or human the only offense that can be cited is “nuisance animal” under Section 5-2-15, HCC, ostensibly because the dog has caused an “annoyance” to the person or animal by biting or attacking them. “Nuisance animal” is primarily oriented towards the prohibition of prolonged barking. Because there is no specific violation for a dog that bites or attacks another animal or human, we have to rely on the “nuisance animal” provision for criminal enforcement and restitution.
 2. There is also a civil “designation” and impoundment process where a dog is designated either “potentially dangerous” or “dangerous,” depending on the severity of the incident and prior history of the dog. When a dog acts in a manner that results in the dog being designated “dangerous,” the dog is seized by the animal control officer and impounded at the Lewis and Clark Humane Society shelter. The owner is cited for the applicable concomitant offenses of “nuisance animal,” failure to have the dog on a leash, failure to have proof of rabies vaccination, and/or no city dog license. Before the dangerous dog is released to the owner, the owner must (1) obtain a dangerous dog license from the City, (2) provide proof of liability insurance covering attacks by the dangerous dog, and (3) have a secure enclosure for the dangerous dog to be kept in, or keep the dangerous dog muzzled and on a leash when not in a secure enclosure.

Because there is no authority for the municipal court to decide whether the owner should be allowed to keep the dangerous dog under the civil dangerous dog designation we have had to wait until conviction of the underlying criminal “nuisance animal” citation. This process is incredibly inefficient, and the shelter incurs significant costs and other risks in boarding the dangerous dog often for several months until the dog owner is convicted. This proposed ordinance would create a process whereby the City can petition the Helena Municipal Court to order the relinquishment of a dog independent of any criminal prosecution. Thus, the City would not need to wait several months for a conviction in order to adjudicate the ownership of the dog while the shelter incurs costs that can reach thousands of dollars.

3. Finally, in terms of the “nuisance animal” portion of the City Code for barking dogs, the language is amended to incorporate the long-standing policy of the City Attorney’s office with regard to prosecution of owners who keep a nuisance barking dog.

Comprehensive rewrite of the City’s animal control regulations as follows:

- “Potentially Dangerous Dog and Dangerous Dog” designation and appeal process.
- Relinquishment of dangerous dogs for failure to comply severed from criminal process.
- Increase insurance requirements for keeping of dangerous dogs from \$50,000 to \$100,000.
- Delineate specific prohibited behavior for animals and owners:
 - o Specific offense for a dog that charges in a menacing fashion.
 - o Specific offense for a dog that causes injury to a human or domesticated animal.
 - o Codify objective criteria for barking dogs.
 - o Animal at-large
 - o Removal of excreta on public property
 - o Removal of excreta on private property weekly.
 - o Failing to keep dog on a leash (except within designated off-leash areas).
- Create consistency with Lewis and Clark County Board of Health rabies requirements.

Staff proposes one amendment to clarify that a shelter or other entity that holds animals for the City may seek and obtain emergency medical care before the animal is determined to be the property of that entity. The shelter may then seek to bill the owner prior to release of the animal.

Comprehensive rewrite of the City’s animal control regulations as follows:

- “Potentially Dangerous Dog and Dangerous Dog” designation and appeal process.
- Relinquishment of dangerous dogs for failure to comply severed from criminal process.
- Increase insurance requirements for keeping of dangerous dogs from \$50,000 to \$100,000.

- Delineate specific prohibited behavior for animals and owners: Specific offense for a dog that charges in a menacing fashion.
 - Specific offense for a dog that causes injury to a human or domesticated animal.
 - Codify objective criteria for barking dogs.
 - Animal at-large
 - Removal of excreta on public property
 - Removal of excreta on private property weekly.
 - Failing to keep dog on a leash (except within designated off-leash areas).
- Create consistency with Lewis and Clark County Board of Health rabies requirements.

Staff proposes one amendment to clarify that a shelter or other entity that holds animals for the City may seek and obtain emergency medical care before the animal is determined to be the property of that entity. The shelter may then seek to bill the owner prior to release of the animal. Eliminate redundancy and the inefficient mix of civil and criminal enforcement processes problematic in the current ordinance.

Public Comment	(2:04:48) Mayor Collins opened the floor to public comment. No public comment was given.
Amendment	(2:05:51) Commissioner Dean offered two amendments to the existing motion.
Discussion	(2:08:40) Discussion occurred on the Staff Amendment proposed in the Staff presentation, as well as, Commissioner Dean's Amendments.
Public Comment	(2:15:17) Molly Summridge gave public comment.
Motion	(2:16:55) <u>Commissioner O'Loughlin moved to approve final passage of ordinance establishing the City's Animal Control Regulations by Adopting Chapter 2 of Title 5 of the Helena City Code.</u> Commissioner Dean seconded.
Amendment	(2:17:40) <u>Commissioner Dean moved to amend to include the Staff Amendment, allowing for the care of impounded animals.</u> Commissioner O'Loughlin seconded the motion. City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted nay, Commissioner Dean voted aye, Commissioner Logan voted aye, Commissioner O'Loughlin voted aye and Mayor Collins voted aye. The motion carried,5-0.
Amendment	(2:19:00) <u>Commissioner Dean moved to amend to include Dean Amendment number 1, which clarifies attitude of attack.</u> Commissioner Logan seconded the motion. City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted nay, Commissioner Dean voted aye, Commissioner Logan voted aye, Commissioner O'Loughlin voted aye and Mayor Collins voted aye. The motion carried,5-0. (2:19:28)
Amendment	(2:19:42) <u>Commissioner Dean moved to amend to include Dean Amendment number 2, which allows a Non-City tag engraved with a City tag number.</u> Commissioner O'Loughlin seconded the motion. City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay

voted nay, Commissioner Dean voted aye, Commissioner Logan voted aye, Commissioner O'Loughlin voted aye and Mayor Collins voted aye.
The motion carried,5-0. (2:20:34)

Motion

(2:21:58) Commissioner Dean moved to approve final passage of the ordinance, as amended. Commissioner O'Loughlin seconded. City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted nay, Commissioner Dean voted aye, Commissioner Logan voted aye, Commissioner O'Loughlin voted aye and Mayor Collins voted aye.
The motion carried,5-0. (2:21:32)

Public Communications

(2:21:48) Mayor Collins opened the floor to public comment.
Ms. Summridge offered to continue discussions with the City.

Adjournment

(2:22:50) There being no further business to come before the City Commission, the meeting adjourned at 8:22 p.m.

/S/ WILMOT COLLINS

MAYOR

ATTEST:

/S/ DANNAI CLAYBORN

CLERK OF THE CITY COMMISSION