

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
April 25, 2005
6:00 P.M.

Time & Place

A regular City Commission meeting was held on Monday, April 25, 2005 at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena Montana.

Members Present

Mayor Smith indicated for the record that Commissioners Oitzinger, Cartwright, Parriman, and Pouliot were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Anne Pitchette representing the Youth Advisory Council and Tom Warsinski representing the Helena Citizens Council.

Pledge of Allegiance

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

Minutes

The minutes of the regular City Commission meeting of April 11, 2005, were approved as submitted.

Proclamation

Proclamation:

- A. Arbor Day Proclamation

Mayor Smith read the proclamation designating April 29, 2005 as Arbor Day.

Growing Friends of Helena President Bob Throssell accepted the proclamation and gave an update of current and future Growing Friend's projects. He also spoke of Trash for Trees, which will be held on April 30, 2005.

Appointment

Appointments:

- A. Civil Service Commission

Mayor Smith asked for Commission concurrence on the following appointment:

Civil Service Commission – Reappointment of Steve Netschert to the Civil Service Commission.

Public comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Pouliot moved approval of the reappointment of Steve Netschert to the Civil Service Commission. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Consent Agenda

CONSENT AGENDA:

- A. Claims
B. Authorize \$40,000 in CTEP funds for sidewalks around Smith School
C. Update of the Official Zoning Map for the City of Helena reflecting changes approved by Commission action since the last update in January 2004

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

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

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

Bid Awards

BID AWARD

- A. Jackson Street Parking Structure TIF Project
- B. Walking Mall TIF Project

Staff Report

City Manager Burton gave a power point presentation showing nine funding options for the three uncommitted TIF projects.

Discussion

Commissioner Cartwright referred to the "smaller projects and maintenance projects" costs represented in the power point presentation and asked the public not to consider the amounts as fixed. City Manager Burton stated the total amount of TIF funding is fixed, however dependent on Commission action, the various project funding may change.

Commissioner Cartwright asked City Manager Burton to give an update of the Exploration Works! Museum project.

City Manager Burton explained Community Works submitted a proposal for Commission consideration at the beginning of discussions on how to allocate TIF funds. The proposal stated if the City Commission allocated just under \$1,000,000 to build the Exploration Works! Museum, the Community Works Board would also meet certain fundraising benchmarks. Community Works has fulfilled and exceeded those commitments and the Exploration Works! Museum is a project submittal in good standing.

Commissioner Cartwright spoke of Commission action if the Exploration Works! project does not succeed financially. The building is located in a valuable neighborhood, which the city would be able to sell so public money is not at risk. He stated if this situation happens, he would like to use the money from the sale to fund TIF type projects.

City Manager Burton explained when the Commission originally allocated the TIF funds, the ordinance recognized that there was the potential that all of the projects may not go. The Commission also made eligible projects that were not in the funding, and the ordinance is crafted so the Commission can reallocate funds, depending upon project performance, before the timeframe of sunset occurs.

Mayor Smith asked if the Commission has until June 30, 2005 to reallocate TIF funds? City Manager Burton stated it would be prior to June 30th, as the Commission would need to go through the regular ordinance process.

- A. Jackson Street Parking Structure TIF Project

Staff Report

Community Facilities Director Gery Carpenter reported bids were opened on April 5, 2005 for the Jackson Street Parking Structure. Two contractors submitted bids, Dick Anderson Construction and Diamond Construction. Diamond Construction was the lowest bidder at \$3,163,900. Two alternates were included in the bid. Alternate one was

for electric heat in the south vehicle approach to the second level with a bid amount of \$20,000. Alternate two was for a minor plumbing addition that would provide a drain in the stair tower with a bid amount of \$1,000. The costs for the project are: Design Architectural/Engineering- \$181,149, Geotech Engineering- \$18,100, advertising costs- \$903, Surveying- \$3,250, Construction Engineering- \$25,000, Owner supplied equipment (ticket machines)- \$60,000 and Contingency funds \$100,000. The total cost of this project would be \$3,553,572.

Staff is proposing to award the bid to Diamond Construction including Alternate number two for the total amount of \$3,164,900. The parking structure will provide additional parking to the south end of downtown as soon as possible.

Commission comment

Mayor Smith referred to residential parking in the structure. Director Carpenter explained the project was designed to allow the residential amenities to be added in the future.

Commissioner Parriman referred to the contingency fund of \$100,000 and asked Director Carpenter if he anticipated needing the funds. Director Carpenter explained usually on a project costing over \$3 million the contingency fund would be 8-10%; this project is above ground level so a fund that large isn't necessary. However, staff is unsure of the conditions underneath the existing parking lot and rather than using a percentage of the project it was decided to allocate \$100,000.

Mayor Smith asked what would happen to the contingency funds if they were not needed? City Manager Burton stated the city could borrow less money on behalf of the Parking Commission to fund the garage.

Public comment

Mayor Smith asked called for public comment.

Hal Fossum, Downtown Helena Business Improvement District & Parking Commission Director, 225 Cruse Avenue, spoke in support of the parking structure.

Commission comment

Commissioner Pouliot stated he would support the bid award.

Commissioner Cartwright stated he is concerned with the cost of the parking structure and the lack of public interest in that cost, given all the concern over the money we allocated to the Great Northern garage, which cost half the price per space. However, he said he would support the project because even if it turns out there isn't a need for parking, the parking lots on Cruse will be very attractive for residential use and the city may not lose money by investing in the garage.

Motion

Commissioner Pouliot moved approval of the bid award for the Jackson Street Parking Structure Project to Diamond Construction in the amount of \$3,164,900 and authorized the City Manager to sign the contract. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

B. Walking Mall TIF Project

City Manager Burton explained that if the walking mall bid is

awarded, together with the parking structure, the project will be over budget. He explained the options available to secure additional funds.

Mayor Smith referred to CTEP funds being used to cover the needed monies. City Manager Burton spoke of the availability of the funds. Commissioner Cartwright stated CTEP funds cannot be spent on any project, they are meant for bike paths and sidewalks.

Mayor Smith referred to the recommended motion and asked how the different funding sources would be named. City Manager Burton explained that if the Commission approves the bid award they are committing the city to find the additional \$481,312, whichever way.

Staff Report

Community Facilities Director Carpenter reported bids were opened for the Walking Mall project on April 13, 2005, with one bid being received from Dick Anderson Construction, Inc. After review of the base bid quantities with HKM Engineering, the most applicable quantities meeting the design criteria of a concrete street, concrete sidewalks, landscaping, benches and the use of existing lighting would be \$929,215. The lease expensive alternate for brick pavers is Alternate No. 5-B, mortarless concrete brick, at \$200,000. The total contractor construction costs would be \$1,129,215, which includes Alternate 5-B. Other construction costs may include additional engineering costs of approximately \$30,000, construction engineering costs of approximately \$20,000 and a minimum contingency cost of \$70,000. This would bring the total construction costs to approximately \$1,249,215.

Staff made no recommendation but noted the Commission must approve, table or deny the bid.

Public comment

Mayor Smith asked for public comment.

The following persons addressed the Commission regarding their concerns with the physical appearance of the base bid design and the reallocation of TIF funds from smaller downtown projects, as well as the proposed postponement of the Henderson Street project to fund the reconstruction of the walking mall: Rachel Peura, 1100 Highland, representing Friends of Downtown Helena; Bob Decker, 726 South Rodney; Neil Haight; Allen Peura, 1100 Highland Street; Joe Kiely, 102 South Benton; Allison James, 1046 E. 6th Avenue; Amy Glasscock, 11 South Benton; Ken Saunders, 21 N Last Chance Gulch; and Brian Kahn, 430 Monroe Avenue.

Mrs. Dozen, 1210 Floweree Avenue, stated she supports a one-way street from 6th Ave to Broadway.

Joyce Saunders, 805 Tara Court, asked if sidewalk repair would be done to the south end of the walking mall and read a letter sent to the manager of the Placer Center from the City Engineering Department on August 4, 2001, regarding sidewalk repair.

Hal Fossum, Downtown Helena Business Improvement District & Parking Commission Director, 225 Cruse Avenue, spoke in support of the bid award for the Walking Mall project.

Discussion

Commissioner Pouliot stated he did support the original design but does not support the base bid because he does not think it captures the spirit of the original design. He believes acceptance by the public is important and stated he would not be supporting the bid award.

Commissioner Cartwright asked Director Carpenter if electrical work would be included in the base bid. Director Carpenter concurred. Commissioner Cartwright asked if there would be adequate power for

events, which currently there is not? Director Carpenter stated there would be increased power.

Director Carpenter addressed Ms. Saunders questions regarding sidewalk repairs; they are not included in the base bid. The initial design included reconstruction from building front to building front, east to west. Some of the options available to the Commission were stamped and colored concrete, which would require replacing the sidewalks, which would require repairing the underlying vaults. When the Commission elected to use brushed concrete sidewalks, replacing the sidewalks was not necessary and is not included in the bid award under consideration.

City Manager Burton stated both commercial and residential property owners are responsible for the maintenance and condition of sidewalks that run through and adjacent to their property. Mayor Smith asked if a letter similar to the one Ms. Saunders read to the Commission would be sent to all affected property owners? City Manager Burton responded a general letter would not be sent to all property owners and it has not been discussed, regardless; if a sidewalk is a safety hazard the property owners are responsible.

Commissioner Parriman stated he would be supporting the bid award. He believes it's time for a change, the current mall is not working. Also, safety is an issue when there is both pedestrian traffic and permitted traffic. The road would provide safety and would also be adaptable to any future uses. He stated he agrees that Henderson Street does need to be replaced but it is not a safety issue and can wait one year. He still thinks the project is worthwhile and a great improvement to the current situation, and if it is not completed now, it won't ever be.

Commissioner Oitzinger spoke of delaying repairs to Henderson Street and stated the project will be too expensive in the future. Conversely, if the Commission holds off on funding the walking mall project, only good things can happen. She clarified the kind of funding being discussed to be used for the walking mall design is gas tax money not street maintenance fees.

Commissioner Cartwright asked Ms. Peura if Friends of Downtown Helena supports redoing the fountain by the Neighborhood Center? Ms. Peura stated overall the Friends of Downtown Helena supports the maintenance project as put forth by Mr. Lilje.

Commissioner Cartwright spoke of the revitalization of Missoula's downtown, which includes mostly local businesses. He then discussed his experience with transportation and land use planning that came from being a member of the Smart Growth Coalition of Montana. During the course of the walking mall reconstruction planning, he contacted members of the group, which advocates pedestrian transportation and smart growth, who all said, "walking malls don't cut it, they work in very few situations". He also heard from members of Plan Helena who gave situations where traffic doesn't work.

Commissioner Cartwright stated the Friends of Downtown never gave any examples of what they would like. Many people have said the mall is rundown and that is why they don't visit. He believes it's rundown because they don't visit. Regarding the future, he is very concerned about changing population demographics and rising oil prices. He stated he leaned heavily towards the idea of a street and likes the concept but the project does not feel right and he doesn't feel comfortable supporting the bid award. If the Commission awards the construction contract, the smaller projects will not be completed. By performing the smaller projects in the area, such as patchwork and landscaping, it will start a

revitalization of downtown. He does believe the deferred maintenance plan for 6th to Broadway is good, but it does not include repair of electrical and subsurface problems.

Commissioner Cartwright addressed HKM Engineering and explained the one day they were given for visioning was not adequate.

Mayor Smith stated the Commission has taken quite a bit of criticism over this issue and he is also distressed over the criticism HKM Engineering has received throughout the project. He explained many elderly people have spoken to him about their desire to drive to stores downtown, allowing traffic would make it easier for them. He believes there has been a lot of resistance to option two because people believe the Commission is eager to perform the remodel and then immediately change the ordinance to allow traffic, which is disturbing because the public records indicate otherwise. He and Commissioner Oitzinger committed to the Friends of Downtown Helena last September to not even consider revising the ordinance to allow traffic for at least a two-year period, during which the Commission would participate in a community visioning process. Also, he was quoted in the Independent Record as saying that he didn't think he'd ever see traffic allowed on the mall in his lifetime. Currently, there is a petition circulating which would put the issue of allowing the ordinance to be changed to permit traffic on the November ballot.

Mayor Smith stated his beliefs stem from personal experience of walking through the mall twice a day, to and from work for the past 20 years. There has been a loss of vitality. Businesses have left and the buildings have remained empty.

Mayor Smith then referred to the Vigilante Parade and related safety concerns.

City Manager Burton referred to the Henderson Street project; currently it is not a funded project but there are monies available for consideration, which the Commission will set according to priority.

Mayor Smith asked if the Commission has officially set the construction project? City manager Burton explained it has been included in the 10-year Transportation Plan, but no official action has been taken.

Commissioner Pouliot referred to the criticism of HKM Engineering and the Duensing family and stated he was very distressed by their improper treatment.

Motion

Commissioner Oitzinger moved to deny the bid award on the Walking Mall project to Dick Anderson Construction in the amount of \$1,129,215. Commissioner Pouliot seconded the motion. Motion carried 3-2 with Mayor Smith and Commissioner Parriman voting no.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Cartwright expressed his appreciation to the staff at St. Peters Hospital for their professionalism while treating his son after an accident this past weekend.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

No report was given.

**Report of the City
Manager**

REPORT OF THE CITY MANAGER

City Manager Burton asked for Commission concurrence to proceed with an agreement between the City of Helena and Montana Rail Link to install a concrete railroad crossing on Benton Avenue. This project will also be coordinated with the Montana Department of Transportation's Urban Pavement Preservation Project, which will resurface Benton Avenue.

Public Works Director John Rundquist reported Montana Rail Link will provide all of the labor at no cost; the city only needs to supply materials.

**Report from the
Helena Citizens
Council**

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Tom Warsinski reported he joined the HCC because of the Walking Mall Project. After joining the HCC, he realized the vast responsibility held by the Mayor, Commission and city staff. He stated he appreciates the Mayor, City Manager and Chief of Police for attending the March HCC meeting. Mayor Smith expressed his appreciation for the HCC's work.

Resolution

CONSIDER A RESOLUTION RELATING TO FINANCING OF CERTAIN PROPOSED PROJECTS; ESTABLISHING COMPLIANCE WITH REIMBURSEMENT BOND REGULATIONS UNDER THE INTERNAL REVENUE CODE IN ADVANCE OF THE PROPOSED ISSUANCE BY THE CITY OF A WATER SYSTEM REVENUE BOND (DNRC DRINKING WATER REVOLVING LOAN PROGRAM) TO PROVIDE FUNDS TO PAY FOR THE COSTS OF A WATER METER PROJECT.

Staff Report

Administrative Services Director Tim Magee reported Public Works' staff received Commission approval to replace the existing water meters with radio read meters. Staff's intention, included in the 2005 adopted budget, is to fund the project by borrowing from the State Revolving Fund administered by the State Department of Natural Resources. The bonds will be paid off over twenty years at an interest rate of four (4) percent.

The city has spent \$83,725.90 to date on the project. Internal Revenue Service regulations require a resolution authorizing reimbursement of expenditures made prior to the official bond resolutions. The proposed resolution allows the reimbursement of all expenditures to date on the project, maximizing cash flow for the water fund.

Public comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Oitzinger moved approval of the resolution relating to financing of certain proposed projects; establishing compliance with reimbursement bond regulations under the Internal Revenue Code in advance of the proposed issuance by the city of a Water System Revenue Bond (DNRC Drinking Water Revolving Loan Program) to provide funds to pay for the costs of a water meter project. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Resolution #19210**

**Resolution of
Intention**

CONSIDER A RESOLUTION OF INTENTION TO ESTABLISH FEES TO BE CHARGED FOR PUBLIC RECORDS SEARCHES AND COPYING, AND REPEALING RESOLUTIN NO. 11710

Staff Report

City Attorney David Nielsen reported various city departments charge widely varying costs for searching and copying public records. Research indicates these charges should be set by the City Commission pursuant to City Charter requirements, and that the charges be uniform. On December 31, 2001, the Commission passed Resolution No. 11710 that established fees for records searches, copying, and other services provided by the Helena City Court that were not otherwise established by ordinance. Resolution No. 11710 will conflict with the current fee proposal.

Reasonable copying charges may be imposed to recover copying costs. This includes the primary cost of the copying media, whether print or non-print. Because a function of government is maintenance of public records and making those records accessible to the public for inspection and copying, up to fifteen copies would be furnished at no cost. When the number of copies exceeds fifteen pages, the copying charge would be 10¢ per page for anything over fifteen pages. This would reimburse the city for the cost of the media, wear and tear on copying equipment, and staff time for excess copies.

For records that the public has access to for inspection, there would be no charge for the search even though city staff might pull the records for inspection. When the records are in a non-paper format or stored in secured areas not accessible by the public, a search fee is charged. For example, the court's records are kept in a state-mandated computer system that may only be accessed by authorized users so retrieval for public inspection takes staff time for the entire search and inspection. The expense for providing access to information through the computer is allowable under Section 2-6-110, MCA. When the public wants additional inspection of the original documents that are the basis for the electronic format and that are stored in secured areas not accessible to the public, another search charge is imposed.

When records contain both confidential and public information, a search fee of \$1.00 per report for the special maintenance and, if necessary, the review for and redaction of the confidential information would be appropriate.

For motor vehicle accident reports, which are entirely confidential, the charge would be \$5.00 per report as reimbursement for searching and copying costs.

Staff recommended approval of the proposed resolution of intention, which will repeal Resolution No. 11710, to avoid confusion and conflicting fees between departments.

Commission comment

Mayor Smith and Commissioner Oitzinger stated they are pleased the city and county are working together to establish reasonable fees. Commissioner Oitzinger spoke of the Freedom of Information survey.

City Manager Burton stated the FOI survey is what produced this policy recommendation.

Public comment

Mayor Smith asked for public comment, none was received.

Motion **Commissioner Cartwright moved approval for a resolution of intention to establish fees to be charged for public records searches and copying, and repealing Resolution No. 11710, and set a public hearing date for May 9, 2005.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19211**

Ordinance CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING SECTION 4-13-4 OF THE HELENA CITY CODE TO CLARIFY EXEMPTIONS TO THE SMOKING PROHIBITIONS FOR ESTABLISHMENTS WITH ALCOHOLIC BEVERAGE LICENSES.

Staff Report City Attorney David Nielsen reported on April 8, 2005, District Court reversed the decision of the City Court that declared Title 4, chapter 13, Helena City Code, (Ordinance 2911) unconstitutional. Ordinance 2911 prohibits smoking of tobacco products in public places. The District Court decision reinstated Ordinance 2911 and it is fully enforceable. While awaiting the District Court ruling, the 2005 Montana Legislature passed HB 643, which imposes a statewide ban of smoking in public places except for certain types of establishments that are licensed for on-premise consumption of alcoholic beverages. HB 643 will become effective October 1, 2005, and preempts Ordinance 2911. Those licensed establishments are exempt from the smoking prohibition until September 30, 2009. If the city strictly enforces Ordinance 2911, the effect would be a temporary prohibition on smoking in licensed establishments that would later be exempt from the prohibition on October 1, 2005.

City Attorney Nielsen recommended amending Title 4, chapter 13, Helena City Code, and providing the same exemption to licensed establishments that they will have under HB 643 on October 1, 2005 to establish a smooth transition from the enforcement of Ordinance 2911 to the new provisions of HB 643. The amendment would retroactively apply to violations of Ordinance 2911 occurring subsequent to April 8, 2005, the date of the District Court decision. It would temporarily exempt licensed establishments from Ordinance 2911 until September 30, 2009, the same sunset for exemption under HB 643.

Commission comment Commissioner Cartwright expressed concern with enforcing the ordinance if the state law is overturned. He stated it might be appropriate to pass a resolution directing the City Manager to monitor the law enacted in the 2005 session and alert the Commission to any changes.

Commissioner Pouliot stated he would not support the ordinance, as it does not reflect what the citizens of Helena voted for.

Commissioner Cartwright concurred with Commissioner Pouliot but stated he would still support it as it is a statewide law.

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

Motion **Commissioner Cartwright moved approval for first passage of an ordinance amending section 4-13-4 of the Helena City Code to clarify exemptions to smoking prohibitions.** Commissioner Oitzinger seconded the motion. Motion carried 4-1 with Commissioner Pouliot voting no. **Ordinance #3025**

**Public
Communications**

PUBLIC COMMUNICATIONS

J.C. Winegartner, 1222 LeGrande Cannon, addressed the Commission on behalf of the property owners surrounding Kindrick Legion Field. The property owners are concerned with balls going over the fence and hitting property, cars and people. He passed out statistical information and pictures of damage to the Commission. In a prior meeting with city staff, property owners were told it would cost \$14,000 to screen the left side of the park.

Matt Werner, 1227 Peosta and owner of property behind the left field fence, urged the Commission to install screening.

Kathy Werner, 1227 Peosta, spoke of an incident where her daughter was almost hit with a ball while riding in a bus traveling by the field.

City Manager Burton stated the Commission gave him direction last year to work with the property owners as long as they were willing to participate financially. Staff spoke with the property owners and until now, had not heard back. Had they responded, City Manager Burton would've engaged the Commission. Mayor Smith asked the issue be placed on a future Administrative Meeting agenda.

Commissioner Pouliot requested a copy of the correspondence from City Attorney Nielsen to the property owners. Commissioner Oitzinger asked for a recap of the recent financial issues with the ballpark.

Mayor Smith urged Mr. and Mrs. Werner to contact the city to set up a meeting to resolve this issue.

**Meetings of
Interest**

MEETINGS OF INTEREST

The next Administrative Meeting is May 4, 2005 and the next Commission Meeting is May 9, 2005.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 9:08 p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission