

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
May 9, 2005
6:00 P.M.

Time & Place A regular City Commission meeting was held on Monday, May 9, 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 and Parriman were present. Commissioner Pouliot was excused. 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 George Hoff 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 25, 2005 were approved as amended.

Proclamations PROCLAMATIONS
A. Poppy Day Proclamation

Mayor Smith read the proclamation designating May 16th through May 21st as Buddy Poppy Week.

Ms. Helen Dawson and Ms. Sonja DeHennis accepted the proclamation and Ms. DeHennis gave a brief history of Buddy Poppy Day.

B. Law Day Proclamation

Mayor Smith read the proclamation designating May 2005 as Law Day Month.

Appointment APPOINTMENT
A. Civic Center Board

Mayor Smith asked for Commission concurrence on the following board appointment:

Civic Center Board – Appointment of Lana S. Anderson to the Civic Center Board

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

Motion **Commissioner Parriman moved approval of the appointment of Lana S. Anderson to the Civic Center Board.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Consent Agenda CONSENT AGENDA:
A. Claims
B. Amended plat of Lots 7, 8, 9 and 10, Block 54 of the Original Helena Townsite to meet the conditions of Resolution No. 19200 which vacated a portion of Howie Street
C. Water bill insert - Lewis & Clark Library

D. Water bill insert - Water/Wastewater Treatment Facility

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

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Oitzinger reported she will be out of the state for a period of time.

She spoke of attending the Celebration of Children Breakfast at the Colonial and stated it was inspirational to see so many people there who are advocates for the prevention of child abuse and neglect. She also spoke of attending Canine Officer Ulrich's memorial service on Saturday, May 8, 2005 and thanked Police Chief McGee and Officer Shane Moos for giving the community the opportunity to share the loss of Ulrich.

Mayor Smith spoke of his upcoming trip to Washington DC with City Manager Burton and Public Works Director John Rundquist. They will be meeting with Senator's Burns and Baucus and Representative Denny Rehberg to discuss funding for the Missouri River Treatment Plant.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

No report was given.

Report of the City Manager

REPORT OF THE CITY MANAGER

A. Remaining TIF allocation

City Manager Burton reported there is roughly \$669,000 remaining in TIF funds that needs to be allocated and asked for Commission direction on how the remaining funds should be spent.

Staff has put together a range of projects; discussion of concerns has been held regarding the original proposal presented by the Parks Department, through the TIF Committee, which would cost an estimated \$500,000.

Also, staff has designed the Last Chance Gulch 300 Block project, which is not identical but mirrors the 400 Block project. This project is a long-term investment and there has been much success with the 400 Block project. The cost would be \$517,000. If the Commission proceeds with this project it would leave \$152,000 for deferred maintenance and safety repairs on the Walking Mall from 6th to Broadway.

City Manager Burton spoke of another allocation option; the Jackson Street Parking Structure, for which the bid came in slightly over budget, but stated the Helena Parking Commission has agreed to bond and borrow \$1.1 million for the project. Even so, the Commission could choose to allocate the remaining funds to the project.

City Engineer Ryan Leland gave a power point presentation showing the different reconstruction options for the 300 Block of Last Chance Gulch, which included new light fixtures, landscaping, bulb-outs and stamped concrete crosswalks.

Mr. Leland spoke of the Walking Mall and stated safety repairs would be the only improvements that could be afforded. Staff's proposal would add vertical curbs to delineate the street and protect landscaping, replace bricks that are a trip hazard and replace cracked sidewalks. The playground, the kiosk at the north end of the mall and the stage located adjacent to Medical Arts Building would remain as is.

Commissioner Cartwright asked if landscaping would be included on the 6th to Broadway section? Mr. Leland stated basically no; just vertical curb and trip hazards. Commissioner Cartwright asked if problem trees would be removed? Mr. Leland replied no, they would not be removed.

Commissioner Parriman asked if there were vaults to be replaced or repaired in the 300 Block? Mr. Leland stated there are some vaulted sidewalks but there will be very little intrusion, no work will be done inside the vaults.

Commissioner Cartwright asked for clarification that there is \$100,000 set aside for signage, which would be completed first. Mr. Leland concurred that the signage is budgeted. Commissioner Cartwright stated he supports the improvements to the 300 Block so one block will be completely done. He has concerns about the connection between Neill Avenue, Fuller Avenue and the Great Northern but believes the 300 Block is a higher priority; improvements to Neill and Fuller can be discussed while working through the Transportation Plan.

Mayor Smith stated he believes staff has submitted a good, sound proposal and he intends to support it.

Public comment

Mayor Smith called for public comment.

Bill Schneider, Friends of Downtown Helena, stated FDH has consistently supported what has been called "small projects" and is disappointed there is not enough money to fund all of them or adequate time to consider which ones should be done, but FDH strongly supports the plan before the Commission to divide the remaining monies between the 300 Block and whatever can be done for safety repairs and enhancements between the 6th to Broadway section of the Walking Mall.

He suggested the Commission might be tired of this process and considering putting all of the remaining TIF monies into the Jackson Street Parking Garage. He urged the Commission to put all of the money possible into the Walking Mall and 300 Block of Last Chance Gulch. There has been widespread support from businesses and the community for the small projects from the beginning of the TIF process.

As far as the 300 Block, the total amount of \$517,000 might not be needed, there could be cost savings. For the \$150,000 plus left over for the Walking Mall, he stated instead of having the city get out a laundry list of projects and decide which ones should be done, he'd like to suggest to form a small working group that would include members of the Commission, the Mayor, key city staff, key business owners, members of the community, members of FDH, members of the Historic Preservation Commission and members of the BID. As an alternative way of doing things, have a walk through of the mall with the working group then meet for an hour or two and go over the list of projects. FDH knows there will not be complete agreement over which projects should be done but he is confident there would be widespread if not unanimous approval on many of them. Then the entire community would have been engaged in the process instead of just the Commission and city staff making the decisions. It would be a great way to let the community know they can be involved in the decisions and lessen the controversy and contention of the project.

He stated the FDH strongly supports dividing this money between the 300 Block of Last Chance Gulch and the appropriate safety repairs and enhancements on the Walking Mall.

He submitted survey comments from the community regarding the vision for downtown to staff.

David Duensing, representing the Business Improvement District Board, spoke in support of improvements to the 300 Block of Last Chance Gulch and whatever can be afforded on the Walking Mall; anything that can be done will be better than nothing.

Jim McHugh, 4799 Echo Drive, Director of Downtown Helena Inc., and Assistant BID Director, spoke in support of the improvements to 300 Block and the signage program but stated more money should be allocated to the Walking Mall in order to remove the kiosk and the stage. He asked that if additional monies become available the removal of those items be top priority.

Joe Kiely, 102 S Benton Avenue, spoke of monetary support for the Great Northern development and his perception of a lack of support for downtown. He stated it was never the intent for TIF money to be spent on public safety and deferred maintenance; those improvements should be ongoing functions of the city. He urged the Commission to provide funding to remove the kiosk at the north end of the walking mall and suggested the TIF monies be spent on a façade improvement program.

Toby DeWolf, 611 Cannon, spoke in support of improvements to 300 Block, which he believes will bring vitality to the area. He urged the Commission to remove the kiosk on the walking mall.

Discussion

Commissioner Parriman referred to Mr. Kiely's statements regarding a façade improvement fund. City Attorney Nielsen stated under TIF regulations it would have been possible to set up such a project, but under the existing timeframe it is too late in the TIF process.

Mayor Smith asked if the timeframe were not an issue, would a façade improvement fund be allowable? City Attorney Nielsen concurred and stated the project would have to include identified properties and be obligated or spent by June 30, 2005.

Commissioner Parriman referred to Mr. Schnieder's comments and stated he resents the insinuation that the public has not been involved in the TIF funding decision; he believes that over the past two years the public has had the opportunity and been involved in the process.

Commissioner Oitzinger asked Mr. Leland if the safety hazards on the Walking Mall are in the common area and not within the responsibility of business owners? Mr. Leland concurred and stated most needed repairs are in the public right-of-way.

Commissioner Oitzinger referred to the electronics for the streetlight at 6th Street, which are contained in the kiosk. She stated she is disinclined to remove the electronics from the kiosk, being that there is limited funding and discussions with the public will be held in the future to form a vision for the walking mall. She asked if there is any way to move electronics and lower the profile of the kiosk? Mr. Leland stated it is a physical possibility but maintenance could become a problem; a smaller space will make it hard to work on repairs.

Commissioner Oitzinger stated maintenance needs began to arise before the community got involved in the TIF discussions; the city has been left with an unsafe right-of-way and safety repairs are a legitimate use for TIF monies.

Commissioner Cartwright stated TIF is connected to Urban Renewal and the area must be considered blighted before TIF monies can be implemented. He explained if an area is considered blighted, it means it needs maintenance improvements so he is not concerned with using the funds for deferred maintenance.

He referred to the 300 Block and stated the majority of the funding has been spent south of 6th Avenue while a majority of the development has been north of 6th Avenue. He referred to the kiosk and stated he too is concerned with its placement and thought it originally had a much smaller profile. He asked if the signal equipment has grown and if it takes up the entire closed area of the kiosk? Mr. Leland stated the kiosk also contains some irrigation controls and is not totally full with equipment; he can look into downsizing the profile of the kiosk but is unsure at this point.

Commissioner Cartwright stated he hopes the visioning process for the Walking Mall is not over and hopes the community can engage in a walk through process for future projects.

Mayor Smith stated the third option for allocation of the TIF funds is to revert the money back to where it came from. He then listed the three funding options:

- A. Improvements to the walking mall and 300 Block of Last Chance Gulch.
- B. Jackson Street Parking Structure
- C. Revert the money to the taxing jurisdictions

Commissioner Cartwright stated there is \$760,903.00 to be allocated, which includes signage.

Motion

Commissioner Cartwright moved to allocate up to \$100,000 for signage, redo the 300 Block along the lines presented by staff, and the remainder to go into Walking Mall safety and aesthetic improvements. Commissioner Otizinger seconded the motion. All voted aye, motion carried.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL
No report given.

FY 2006 Preliminary Budget

PRESENTATION OF CITY MANAGER'S FISCAL YEAR 2006 PRELIMINARY BUDGET.

Staff Report

City Manager Tim Burton referred the Commission to a power point presentation and reported in accordance with 7-6-4020 MCA, a preliminary annual operating budget has been prepared by staff for review by the City Commission. Commission budget work sessions have been scheduled as follows:

Thursday, May 05, 2005	3:00 to 6:00pm	Room 326 (JWS)
Monday, May 16, 2005	3:00 to 6:00pm	Room 326
Wednesday, May 18, 2005	3:00 to 6:00pm	Room 326
Wednesday, May 25, 2005	3:00 to 6:00pm	Room 326
Wednesday, June 1, 2005	3:00 to 6:00pm	Room 326

7-6-4021, MCA requires the governing body to "cause a notice of public hearing on the preliminary or amended budget to be published".

7-6-4024, MCA requires the City Commission to hold a public hearing on the preliminary budget prior to adoption.

City Manager Burton stated the following development steps are proposed:

1. A budget overview by the City Manager at the May 9, 2005 Commission meeting.
2. A detailed budget review by the City Commission at the scheduled meetings in May and June.
3. Notice of public hearings to be published on June 17 and 24, 2005.
4. Hold the annual hearing on the Preliminary Budget at the June 27th City Commission meeting.
5. Identify all Commission budget amendments to be made as a result of the hearing.
6. Adopt the amended budget as the FY06 Annual Budget, preferably also at the June 27th meeting.

These steps will ensure completion of the annual budget process in a timely manner, after proper opportunity for public input. City Manager Burton recommended the Commission acknowledge the Fiscal Year 2006 Preliminary Budget, set the public hearing for June 27, 2005, and order notice of the public hearing.

Commission comment Commissioner Cartwright spoke about tax revenues increasing in 1993, which was when growth started increasing. While tax levies have gone up, the number of people to be served has increased also. He asked if on a per square mile basis levies are still going down? City Manager Burton concurred.

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

Motion **Commissioner Parriman moved to acknowledge the Fiscal Year 2006 Preliminary Budget and set the public hearing for June 27, 2005.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Memorandum of Agreement CONSIDER A MEMORANDUM OF AGREEMENT, I-15 SOUTH HELENA INTERCHANGE AND WEST SIDE FRONTAGE ROAD.

Staff Report City Manager Burton reported the Memorandum of Agreement (MOA) is between the Montana Department of Transportation, City of Helena, Lewis & Clark County, Jefferson County, Padbury Ranch Properties, LLC and Nob Hill Properties, LLC.

The Highway Corridor Study has been approved by the State of Montana and Federal Highways, with authorization for several projects such as the Lincoln Interchange, the Montana City Interchange, the construction of the South and Custer Interchanges and improvements to Cedar Street. Former Department of Transportation Director, Mr. Galt, engaged the Transportation Coordinating Commission and suggested the City of Helena proceed on the South Interchange, then move onto the Custer Avenue Interchange. Recently the MDT approved the design work for the Custer Avenue Interchange.

City Manager Burton explained the general MOA for the South Interchange is before the Commission for consideration. However, earlier this afternoon staff was informed that the MOA is still in legal review at

MDT, with only minor changes expected. City Manager Burton asked the Commission to table the MOA for two weeks at which time it will be through MDT review.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Parriman moved to table the Memorandum of Agreement, I-15 South Helena Interchange and West Side Frontage Road to the call of the City Manager. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Amended Plat and Lease Agreement

CONSIDER THE AMENDED PLAT OF LOT 2 AND THE PARKLAND IN BLOCK 3, SLEEPING GIANT ADDITION P.U.D., AND

CONSIDER A LEASE AGREEMENT WITH THE STUDENT ASSISTANCE FOUNDATION FOR PARKLAND IN BLOCK 3 OF THE SLEEPING GIANT SUBDIVISION.

Staff Report

Parks and Recreation Director Randy Lilje reported on February 28, 2005 the City Commission approved the trade of 83,813 square feet of city-owned parkland valued at \$59,507 for 19,320 square feet of Student Assistance Foundation property valued at \$59,506 in the above named block. The City Commission also approved relocating the boundary lines so that all the parkland is one contiguous piece, contingent upon review and approval of an amended plat submitted by the Student Assistance Foundation. Finally, the Commission also authorized the negotiation with the SAF for a long-term lease for parkland in Block 3 of the Sleeping Giant Addition.

The amended plat has been prepared by the SAF and reviewed by staff. Staff is recommending approval of the amended plat.

Also, the lease agreement has been negotiated and is now being submitted for review and approval. The agreement leases the parkland to SAF for a term of 50 years for use as park and parking lot. In consideration for the lease, SAF agrees to landscape the park to the city's specifications and to maintain the parkland including the adjacent sidewalks and boulevards. SAF may elect to extend the lease for another 50 years. The public will still have access to the park.

Mr. Lilje stated the amended plat and lease agreement facilitate the development and maintenance of parkland that would probably not be developed by the city. It also facilitates commercial development within the city and consolidates the parkland within the block. The parkland will be landscaped and maintained without expense to the city while retaining access to parkland for the public.

Mr. Lilje recommended approval of the amended plat and the lease agreement.

Public comment

Mayor Smith called for public comment, none was received.

Motion Commissioner Parriman moved approval for the amended plat of Lot 2 and the parkland in block 3, Sleeping Giant Addition, P.U.D. 13. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Motion Commissioner Parriman moved approval of the agreement to lease 51,325 square feet of parkland in Block 3 of the Sleeping Giant Addition. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Right-of-Way Use Agreement CONSIDER A RIGHT OF WAY USE AGREEMENT BETWEEN CITY OF HELENA AND DEWOLF'S LLC (BERT & ERNIE'S).

Staff Report City Engineer Ryan Leland reported DeWolf's LLC, doing business as Bert & Ernie's Dining Saloon & Grill, is located at 361 North Last Chance on the southeast corner of the intersection of Last Chance Gulch and Lawrence Street. DeWolf's LLC also operates Bleachers Sports Pub and a new wine bar called Sommeliers, both with the same address of 361 North Last Chance Gulch. The right-of-way in the 400 block of North Last Chance Gulch was recently improved with planters and bulb-outs on both the northeast and northwest corners of the intersection of North Last Chance Gulch and Lawrence Street.

DeWolf's LLC would like to use a portion of the North Last Chance Gulch right of way in front of Bert & Ernie's and the East Lawrence Street right-of-way to the north of Bleachers Sports Pub and Sommeliers for placement of an outdoor, sidewalk café. DeWolf's LLC proposes to construct a bulb-out into these rights-of-way for this purpose and relocate the public sidewalk within the bulb-out. Mr. DeWolf would pay the city's established annual fee for use of the property.

The proposed ROW Use Agreement would promote the economic vitality of downtown Helena through market attraction from uniqueness of open-air sidewalk cafes, which are presently exclusive to the downtown area. The proposed bulb-out is consistent and compatible with the other bulb-outs constructed by the city in the 400 block of North Last Chance Gulch. Staff is recommending approval of the ROW Use Agreement with DeWolf's LLC to use a portion of right-of-way for a sidewalk café.

Commission comment Commissioner Cartwright stated he likes the design and asked if the cost and construction could be coordinated between the city and Bert & Ernies during renovations to the 300 Block? Mr. Leland concurred and stated Bert & Ernies could pay the city for their portion of the construction and the city would contract out the work.

Commissioner Cartwright stated he is concerned with the proposed five-foot width of the sidewalk and asked if the width is driven by ordinance? Mr. Leland concurred and stated the ordinance requires a five-foot wide sidewalk. Commissioner Cartwright stated five-foot sidewalks are pretty narrow and he hopes the final design takes this into account. City Engineer Leland stated the five-foot sidewalks are just a proposal, only the ROW Use Agreement is under consideration tonight.

City Manager Burton stated several businesses are interested in having sidewalk cafés. This Use Agreement is the legal way to allow the cafés and discussion will need to be held on the ordinance and policy.

Mayor Smith asked if the proposed barrier would be concrete or wrought iron. Mr. Leland stated the schematic he was given included a wrought iron fence.

Public comment

Mayor Smith called for public comment.

Toby DeWolf, 611 Cannon, spoke in support of the ROW Use Agreement and stated they have recently decided to use a concrete barrier instead of wrought iron. He stated they are willing to work with city staff and are prepared to begin construction in the near future.

Jim McHugh, 4799 Echo Drive, BID Assistant Director, spoke in support of the ROW Use Agreement and stated it is a good private/public partnership.

Discussion

Mayor Smith asked Mr. DeWolf if he is comfortable with the cost sharing agreement as proposed by staff? Mr. DeWolf stated it has not been fully discussed but he is comfortable with any participation between the City of Helena and DeWolf's, LLC.

Commissioner Cartwright stated the Use Agreement sets a minimum sidewalk width of five feet, but does not set a maximum or say what it will be. He urged staff to keep both pedestrian and Bert & Ernie's needs in mind when working through the construction plans.

Motion

Commissioner Cartwright moved approval of a Right-of-Way Use Agreement with DeWolf's LLC to use a portion of right-of-way for a sidewalk café. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Ordinance

CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING ORDINANCE NO. 2963 THAT DESIGNATED AND APPROVED CERTAIN PROJECTS AS URBAN RENEWAL PROJECTS IN THE CONSOLIDATED CENTRAL HELENA URBAN RENEWAL AREA, AND AMENDED ORDINANCE NO. 2559.

Staff Report

The City Commission approved awarding the contract for construction of the Jackson Street Parking Structure in the amount of \$3,164,900 on April 25, 2005. Ordinance #2963 limits the funding of the walking mall and parking improvements to \$4,100,000 and the Jackson Street Parking Structure to \$2,000,000.

Staff is proposing to remove the \$4,100,000 funding cap on the walking mall and parking improvements under Section 2 of Ordinance #2963 and increase the funding cap for the Jackson Street Parking Structure under Section 2a from \$2,000,000 to \$3,797,200. Because certain subprojects have been completed and better predictions for remaining TIF funds are available, the previous funding cap of \$4,100,000 is no longer accurate. This overall cap is no longer needed since there is only one remaining subproject left- the Jackson Street Parking Structure. Increasing the funding for this subproject allows greater flexibility in allocation of the use of TIF funds and borrowed funds in paying for the project. \$1,100,000 is an advance to the Helena Parking Commission (HPC) for its promised contribution to the project. The HPC will repay the advance to the city with interest. Though the total cost of the parking structure project is projected to be \$3,553,572, raising the funding cap to equal all available TIF funds gives the greatest protection that total funding for the project is available after termination of the TIF district on June 30, 2005. Because the project will not be constructed until after the termination of the TIF district, if some unforeseen complication occurs in construction, the ordinance's funding cap could not be amended after that time to provide additional money. The projects and allocated funding must be authorized by the ordinance prior to termination of the TIF district.

The proposed ordinance would provide the ability for any savings from any project, unexpended contingency, failure of a project to be funded or any other unforeseen complication, to be applied to the Jackson Street Parking Structure. This will provide funding for other area projects through the repayment of these funds by HPC.

Director Carpenter recommended approval of an ordinance amending Ordinance No. 2963 that designated and approved certain projects as Urban Renewal Projects in the Consolidated Central Helena Urban Renewal Area, and amended Ordinance No. 2559, to increase funding for the Jackson Street Parking Structure to \$3,797,200, and set a public hearing date of May 23, 2005.

Commission comment Commissioner Cartwright asked if the amount of TIF money allocated for the parking structure and downtown improvements would change if the proposed ordinance were approved? Director Carpenter replied no.

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

Motion **Commissioner Parriman moved approval for first passage of an ordinance amending Ordinance No. 2963 that designated and approved certain projects as Urban Renewal Projects in the Consolidated Central Helena Urban Renewal Area, and amended Ordinance No. 2559, to increase funding for the Jackson Street Parking Structure to \$3,797,200, and set a public hearing date of May 23, 2005.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ordinance #3026**

Ordinance CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING ORDINANCE NO. 2804 THAT DESIGNATED AND APPROVED THE GREAT NORTHERN AREA PROJECT AS AN URBAN RENEWAL PROJECT TO AMEND THE TERM OF THE LOAN.

Staff Report City Attorney David Nielsen reported the City Commission passed Ordinance No. 2804 in 1997, approving and designating the Great Northern Area Project as an urban renewal project. The city loaned Artisan, LLP \$880,000 in tax increment funds to purchase land and install infrastructure and improvements thereon. Ordinance No. 2804 stated that the loan carried an interest rate of three percent (3%) per annum with monthly payments amortized for 15 years. The final payment was due on July 31, 2016. Since the passage of that ordinance, the City Commission has approved agreements to amend the terms of the original loan. The last agreement was to extend the loan term until March 1, 2034 and adjust the payment schedule. This last loan amendment triggers a legal need for an amendment to the ordinance to extend the loan term beyond July 31, 2016. Ordinances may only be amended by the statutory ordinance procedure, so the agreement to amend the loan term is legally insufficient to amend the underlying ordinance that provided the authority for the loan.

City Attorney Nielsen stated amending the ordinance would memorialize the chronology of adjustments and amendments to the original loan provisions and authorizes the extension of the term of the loan. Mr. Nielsen recommended the Commission approve an ordinance amending Ordinance No. 2804 to extend the term of the loan to Artisan, LLP to March 1, 2034 and adjusting the loan payment schedule, and set a public hearing date of May 23, 2005.

Commission comment Commissioner Parriman stated he did not support the loan restructure in the past and would not support the motion to approve.

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

Motion **Commissioner Cartwright moved approval for first passage of an ordinance amending Ordinance No. 2804 to extend the term of the loan to Artisan, LLP to March 1, 2034 and adjusting the loan payment schedule, and set a public hearing date of May 23, 2005.** Commissioner Oitzinger seconded the motion. Motion carried 3-1 with Commissioner Parriman voting no. **Ordinance #3027**

Water Main Rebates CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING SECTION 6-2-6 OF THE HELENA CITY CODE TO CLARIFY THE FORMULA FOR REBATES FOR WATER MAIN EXTENSIONS.

Staff Report Public Works Director John Rundquist reported sometimes developers extend water mains from offsite when city mains are not adjacent to the development, and/or, are required to extend mains across the property frontage in compliance with the rules for main extensions. The city allows for compensation for main extensions that can serve others through rebate agreements. A rebate agreement requires that the city collect a proportional cost of the water main when others connect to the water main. This cost or fee is then distributed to the party named in the rebate agreement.

Helena City Code 6-2-6 currently requires that applicants for rebate agreements pay an administrative fee of 5% of the water main project cost. This can be a significant burden and deterrent to building water main extensions that benefit more than the development. Administration of rebate agreements is a relatively simple task and does not usually require the 5% fee to offset costs and there is no similar administrative fee required for sewer main extension rebates.

Staff is recommending elimination of the 5% fee currently in ordinance for water main extensions. Removing the 5% fee will bring the water ordinances in closer consistency with wastewater ordinances that do not require a similar fee. In addition, eliminating the rebate fee will remove a disincentive to construction to off-site and fronting main extensions.

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

Motion **Commissioner Parriman moved approval for first passage of an ordinance amending Section 6-2-6 of the Helena City Code to clarify the formula for rebates for water main extensions and set a public hearing date for June 13, 2005.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ordinance #3028**

Public Hearings PUBLIC HEARINGS:

A. CONSIDER FIRST PASSAGE OF AN ORDINANCE PRE-ZONING TO R-4 (HIGH DENSITY RESIDENTIAL) DISTRICT FOR APPROXIMATELY 9.28 ACRES, AND TO B-2 (GENERAL COMMERCIAL) DISTRICT FOR APPROXIMATELY 10.29 ACRES (19.57 TOTAL ACRES); GENERALLY LOCATED WEST OF MONTANA AVENUE AND NORTH OF PTARMIGAN LANE.

Staff Report

City Planner Belinda Waters reported this proposal is for pre-zoning designations for property currently located in the county's Special Zoning District No. 2 with R-1 zoning. The applicant proposes to pre-zone to R-4 (High Density Residential) District, 9.28 acres and to B-2 (General Commercial) District for approximately 10.29 acres (19.57 total acres) as shown on COS #274489. The applicant is not proposing to annex this property into the city at this time.

On Tuesday, April 12, 2005, the Helena Zoning Commission made no recommendation due to a tied 2:2 vote for adoption of an ordinance for pre-zoning to R-4 (High Density Residential) District, 9.28 acres and to B-2 (General Commercial) District for approximately 10.29 acres (19.57 total acres) as shown on COS #274489.

This property is located adjacent to the city limits and would not create any wholly surrounded property, pre-zoning this property with the two zoning districts would encourage annexation in the future and the utilization of city services that would facilitate compliance with city regulations. Staff recommended approval for first passage of an ordinance for pre-zoning designations prior to annexation to R-4 (High Density Residential) District for 9.28 acres and to B-2 (General Commercial) District for 10.29 acres of a single undivided property with a total acre size of 19.57, generally located west of Montana Avenue and north of Ptarmigan Lane.

Commission comment

Commissioner Cartwright asked if the applicants plan to annex into the city? Ms. Waters replied there are no current plans for annexation but by doing pre-zoning the applicants are showing good planning for the property; it will be more marketable.

Commissioner Parriman asked if the trailer park will stay or be removed? Ms. Waters stated B-2 zoning is being proposed for marketing reasons; there are no current plans to move the mobile home park, but possibly in the future. Commissioner Parriman spoke of a recent Board of Adjustment meeting where standards for mobile home parks within the city limits were discussed.

Public Testimony

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

Jeff Larson, 3530 Centennial Drive, Stahly Engineering, representing the applicant, spoke in support of the pre-zoning and stated the applicant has no intention to bring the trailer park into the city because it does not meet current standards; the park will eventually move from the property.

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

Motion

Commissioner Parriman moved approval for first passage of an ordinance for pre-zoning designations prior to annexation to R-4 (High Density Residential) District for 9.28 acres and to B-2 (General Commercial) District for 10.29 acres of a single undivided property with a total acre size of 19.57 as legally described in the attached ordinance.

Discussion

Commissioner Oitzinger asked for clarification of the Zoning Commission's concerns.

Director Haugen reported the Zoning Commission held discussions regarding the continuation of commercial enterprises on North Montana and the displacement of the mobile home residents. If

the Commission approves the pre-zoning, it is not confirming the residents will be displaced.

Commissioner Cartwright stated this seems like a good proposal, but not a planned development.

Motion 2nd and vote

Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ordinance #3029**

B. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CITY OF HELENA ORDINANCE NO. 2359 AND AMENDING THE OFFICIAL ZONING MAP THEREOF, FROM R-1 (SINGLE-FAMILY RESIDENTIAL - LARGE LOT) TO R-2 (SINGLE-FAMILY RESIDENTIAL) DISTRICT FOR PROPERTY GENERALLY LOCATED WEST OF HARRISON AVENUE BETWEEN CHATHAM AND DONALDSON STREETS.

Staff Report

City Planner Kathy Macefield reported on April 12, 2005 the Helena Zoning Commission unanimously recommended approval (4:0 vote) for the adoption of an ordinance for a zone change from R-1 (Single-Family Residential – Large Lot) to R-2 (Single-Family Residential) District for property legally described as Block 71, Original Helena Townsite, Helena, Montana; generally located west of Harrison Avenue between Chatham and Donaldson Streets.

As of Tuesday, April 5, 2005, seven letters had been received opposing the proposed zone change. Montana law (76-2-305 MCA, attached) states if 25% of the property owners within 150 feet of a proposed zone change object in writing, a 2/3 vote of the governing body is required to over-ride those objections. Fifteen property owners are within 150 feet of the proposed zone change, which would require written objections from four of those property owners. Five of the submitted letters meet this criteria; therefore, this proposed zone change will require approval by four of the five City Commissioners to overcome these written protests.

The applicant has requested a zone change from R-1 (Single-Family Residential – Large Lot) to R-2 (Single-Family Residential) District to accommodate up to 6 single-family residences instead of three residences on a half block containing approximately 42,000 square feet. This proposal represents infill development, and efficient use of energy, infrastructure and resources and is generally consistent with the 2001 Helena Growth Policy and Zoning Ordinance, the Montana zone change criteria, and is compatible with the surrounding land uses.

Commission comment

Commissioner Cartwright asked if the applicant would be allowed to build six houses but plans to construct five? Ms. Macefield stated the applicant has indicated he plans to build four to five houses. Commissioner Cartwright confirmed there would be between four and six houses adjacent to six already constructed houses.

Commissioner Oitzinger asked what access road would be used? Ms. Macefield stated the infrastructure plans indicate the primary access would be off of Reeder's Village Lane, with the secondary access being Morelli Bridge.

Commissioner Cartwright asked if the development would use water from the Reeder's Village pump station? Director Rundquist concurred.

Public Testimony

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

The following persons addressed the Commission regarding concerns with piecemeal development, lot size and traffic: Lyle Pratt, 7 Reeder's Village Drive; Nikki DesRosier, 19 Reeder's Village Drive; Martin Lewis, 3 Reeder's Village Drive; and Joe Amestoy, 10 Reeder's Village Drive.

Doug Krebs, 69 Hill Brothers Road, and William Harper, 712 Power Street, owner of subject property, spoke in support of the zone change.

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

Discussion

Commissioner Cartwright asked if Harrison Street meets city standards? Director Rundquist explained the property owners have worked over several years to develop an engineered plan to address access issues and utilities. Currently, Harrison Avenue intersects Reeder's Village Drive at the steeper, 13% grade. The design proposes Harrison Avenue intersect at that grade, then go immediately into a vertical curve which will decrease the grade. A substantial length of Harrison Avenue is above the city standard of a 10% grade; but there is no practical way to build the street and meet the standard within the existing platted right-of-way. He added that staff has approved the road design.

Commissioner Cartwright asked if because this is previously platted property, if it meets minimum safety standards, it doesn't have to meet incline standards for subdivisions? Director Rundquist concurred.

Commissioner Cartwright asked if staff approval includes the Police and Fire Departments? Director Rundquist concurred.

Commissioner Cartwright stated it seems as if there is a fairly unified development plan and he would support the zone change.

Mayor Smith stated access to the subdivision is better at the south end of Harrison Street than access from the north end. He believes it is time to acknowledge the work that has gone into the project and move forward.

Commissioner Oitzinger stated she appreciates the work that has gone into the development, but she can't support increasing density in an area with such a steep incline. Because of a confluence of variables, she will not support the zone change.

Commissioner Parriman stated he would support the zone change. He doesn't believe that it is right to build six houses in such a small area but does believe the developer has worked hard on the project and will not overbuild.

Motion

Commissioner Cartwright moved approval for first passage of an ordinance amending Ordinance No. 2359 and amending the Official Zoning Map thereof, from R-1 (Single-Family Residential - Large Lot) to R-2 (Single-Family Residential) District for property legally described in the attached ordinance. Commissioner Parriman seconded the motion. Motion carried 3-1, with Commissioner Oitzinger voting no. **Ordinance #3030**

C. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW OFFICES TO BE LOCATED IN THE CLM (COMMERCIAL-LIGHT MANUFACTURING) DISTRICT AT 2687 AIRPORT ROAD; GENERALLY LOCATED SOUTH OF THE AIRPORT BETWEEN PEPSI COLA AVENUE AND CARTER DRIVE.

Staff Report

City Planner Kathy Macefield reported on April 12, 2005 the Helena Zoning Commission recommended approval for a resolution granting a Conditional Use Permit (CUP) to allow offices in the CLM District. This property is legally described as a tract of land in the NW ¼, Section 28, T10N, R3W, Helena, Montana as described on Warranty Deed #557222; generally located south of the airport between Pepsi Cola Avenue and Carter Drive at 2687 Airport Road. This approval is subject to the following condition:

Onsite Parking Revisions

Parking spaces located on the east side of the building must be installed and striped so they do not conflict with vehicular access. Parking spaces must be installed to comply with ADA requirements.

The proposed offices would be located in an existing building that formerly contained an engineering office. According to the applicant, the offices would operate Monday-Friday from 8:00am – 6:00pm and weekends by appointment; a maximum of ten employees would serve a maximum of 20 clients at one time. The submitted site plan indicates a total of 24 parking spaces are located on the east, northeast and south sides of the building, and approximately 12,000 square feet of landscaped area is provided on the northern portion of the property.

This property was annexed in 1995 and originally contained the Montana Gambling Control Division. Later the building was occupied by an engineering office; engineering, architectural and surveying services are permitted uses in the CLM District. Chapter 21 of the Zoning Ordinance identifies both "other office activities" as a conditional use in the CLM District so a CUP is required for the current proposal.

This proposal represents infill development, and efficient use of energy, infrastructure and resources and is generally consistent with the 2001 Helena Growth Policy and Zoning Ordinance and is compatible with the surrounding land uses.

Public Testimony

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

John Johnson, 2737 Airport Road, spoke of concerns with parking and urged the Commission to support parallel parking instead of angled.

Craig Bahny, 2733 Snowdrift Road, stated the wrong site plan was submitted; the parking will be parallel and is painted as such.

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

Motion

Commissioner Parriman moved approval of a resolution granting a Conditional Use Permit to allow offices in the CLM District for property legally described in the staff report, subject to the condition stated in that same report. Commissioner Oitzinger seconded the motion.

Discussion

Mayor Smith asked Commissioner Parriman for confirmation that he supports the parallel parking plan instead of the seven angled spots? Commissioner Parriman concurred.

Mayor Smith asked Ms. Macefield to ensure an updated parking plan be submitted to the Community Development Department.

Vote

All voted aye, motion carried. **Resolution #19212**

D. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW AN ADULT PERSONAL CARE HOME SERVING FOURTEEN PERSONS IN A R-4 (HIGH DENSITY RESIDENTIAL) DISTRICT FOR PROPERTY GENERALLY LOCATED EAST OF JANET STREET AND SOUTH OF TRICIA STREET.

Staff Report

City Planner Belinda Waters reported the property is currently vacant and undeveloped. The total property area is 16,321 square feet and the proposed facility will consist of 5,320 square feet. The lot size does meet the lot area requirement for residential uses of 5,000 square feet.

On Tuesday, April 12, 2005, the Helena Zoning Commission recommended approval (3:1 vote) for the adoption of a resolution granting a CUP to allow an adult personal care home serving fourteen persons in an in an R-4 (High Density Residential) District. This approval included the following condition:

Because the retention pond located in the northeast corner of Lot 3B will need to be increased, a storm water drainage plan must be submitted Public Works for review and approval, and all required storm water improvements must be installed by the applicant.

The Helena Zoning Commission recommended approval (3:1 vote) for a variance request form Section 11-7-5 (B) of the Helena Zoning Ordinance to allow the new facility to be located 10 feet from the rear property line instead of the of the required 20 feet.

The applicant is proposing to allow the construction of an adult personal care home serving fourteen persons. The applicant originally requested two variances: one from section 11-7-5 (B) of the Helena Zoning Ordinance to allow the new facility to be located 10 feet from the rear property line instead of the required 20 feet; the second variance from Section 11-22-5 (X) of the Helena Zoning Ordinance that requires one parking space for ever three dwelling units plus one ADA space.

Further research and discussions with the applicant and city staff indicate only one ADA accessible space is required because of the overall number of parking spaces for these uses, under one property owner, is less than 25 parking spaces. An ADA space is already located in front of the existing residential community facilities. Per the applicant's request, the variance request for the parking spaces has been withdrawn because the applicant has agreed to come into compliance by providing the required five spaces onsite or with a cross parking agreement with the property owner to the west if necessary.

The proposed CUP appears to lend support to the existing uses in the area. The proposed residential use would be infill development with infrastructure to serve the proposed use already in place, which represents efficient use of land, infrastructure, energy and other resources; therefore, this project is consistent with the 2001 Helena Growth Policy.

Public Testimony

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

Sherri Maharg, 1729 Silverette Street, applicant, spoke in support of the CUP.

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

Motion

Commissioner Parriman moved approval for a resolution granting a Conditional Use Permit to allow an adult personal care home serving fourteen persons in an R-4 (High Density Residential) District for property legally described in the staff report and subject to the condition stated in that same report. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19213**

Motion

Commissioner Parriman moved approval for a variance request from Section 11-7-5 (B) of the Helena Zoning Ordinance to allow the new facility be located 10 feet from the rear property line instead of the required 20 feet. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

E. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3024 AMENDING SECTION 7-6-1 OF THE HELENA CITY CODE TO CLARIFY THE BASIS FOR DETERMINING BUILDING NUMBERING.

Staff Report

City Attorney David Nielsen reported the numbering of buildings in Helena is set through the establishment of a grid with north-south and east-west axes. Currently, for streets running east and west of Last Chance Gulch, the numbering starts at one on each side of the street. Streets running east and west that are located east of Last Chance Gulch are called "East" and those located west of Last Chance Gulch are called "West". For example, East Broadway. The numbering and designation for streets running east and west start at a combination of Edwards, Broadway, Ming Place and Ming Street. Since the initial adoption of the first addressing grid, the City has expanded to the north substantially and since Last Chance Gulch runs northeast and eventually east, it is not reliable as the east-west axis once it crosses Lyndale. Through the years, address numbering north of Lyndale appeared to use an imaginary line extending north from the beginning of Last Chance Gulch at the old Federal Building. That imaginary line runs east of Benton Avenue and through the Bill Roberts Golf Course. At Custer and north, the east-west axis is at a section corner located at the northwest corner of Ryan Field. At this point, the numbering coincides with the county's numbering system. In most cases, streets located east of Last Chance Gulch, or the imaginary line north of Lyndale, are known as "East". The exception is Custer Avenue. The point of the east-west designation for Custer Avenue is Montana Avenue, even though the numbering commences at the section corner at Ryan Field.

Staff is recommending final passage of Ordinance No. 3024, an amendment that recognizes past practices in determining building numbering and establishes an addressing grid that can be used for new addressing north of Custer Avenue and coordinates with county addressing in these areas. A logical numbering system for building addresses is necessary for people to find an address, for delivery of mail and for emergency services. Also, it will bring the City Code up to date.

Public Testimony

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

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

Motion

Commissioner Cartwright moved approval for final passage of Ordinance No. 3024 amending Section 7-6-1 of the Helena City Code to clarify the basis for determining building numbering.

Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ordinance #3024**

F. CONSIDER A RESOLUTION CHANGING THE NAMES OF NORTH MAIN STREET AND CEDAR STREET IN THE CITY OF HELENA TO LAST CHANCE GULCH.

Staff Report

City Attorney David Nielsen reported Last Chance Gulch begins at the former Federal Building south of the Lewis and Clark Library. It then runs north, crosses Lyndale Avenue, eventually turns east and intersects with North Montana Avenue. After Lyndale, there is confusion over the exact point at which the name changes to North Main Street. This street then becomes Cedar Street on the east side of North Montana Avenue and continues as Cedar Street up to the intersection of Cedar Street and North Washington Street (Army helicopter located at this intersection). Main Street was renamed Last Chance Gulch by passage of Ordinance No. 1475 in July of 1953. That ordinance did not describe the beginning or ending points of Last Chance Gulch and the required plat showing the name change was never filed. Certain buildings on Last Chance Gulch still retain mailing addresses that use North Main Street instead of Last Chance Gulch as the street name.

Staff recommended a resolution to change the names of North Main Street and Cedar Street to Last Chance Gulch. The proposed resolution will clear up addressing confusion caused by one street having three different names and clean up the 1983 action that changed the name of Main Street to Last Chance Gulch.

Public Testimony

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

Steve Skinner, 1805 N. Lamborn and owner of property on Cedar Street, spoke in opposition of the name change and urged the Commission to retain the name Cedar Street. He submitted a petition from opposing property owners located on Cedar Street into the record.

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

Discussion

Commissioner Oitzinger expressed concern that the one-year transition period was not listed in the resolution. City Attorney Nielsen stated the transition period refers to the post office's transition period for property owners whose addresses will change.

Commissioner Cartwright asked what property owners were surveyed? City Manager Burton stated the HCC did some work on the issue but all property owners were formally notified by mail on April 12, 2005.

Commissioner Parriman stated there would be a transition period but the name change would help invite tourists to Helena and the downtown area.

Motion

Commissioner Parriman moved approval for a resolution changing the name of North Main Street and Cedar Street to Last Chance Gulch and establish both a starting and ending point for the street. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19215**

G. CONSIDER A RESOLUTION ESTABLISHING FEES TO BE CHARGED FOR PUBLIC RECORDS SEARCHES AND COPYING, AND REPEALING ORDINANCE 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, which will repeal Resolution No. 11710, to avoid confusion and conflicting fees between departments.

Public Testimony

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

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

Motion

Commissioner Cartwright moved approval of a resolution to establish fees to be charged for public records searches and copying, and repealing Resolution No. 11710. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.
Resolution #19214

H. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3025 AMENDING SECTION 4-13-4 OF THE HELENA CITY CODE TO CLARIFY EXEMPTIONS TO SMOKING PROHIBITIONS.

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 final passage of Ordinance No. 3025 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.

City Manager Burton stated part of the discussion during the legislative session was what the City of Helena's position was. The Commission was polled and the direction given to staff was that even though HB 643 isn't quite what the Commission wanted, there was concurrence to support the compromise because for the long term it accomplishes the statewide goals and objectives of the city's ordinance as well.

Commission comment

Commissioner Cartwright spoke of his concerns if House Bill 643 is overturned and asked if it would be possible to draft a resolution to direct the City Manager to monitor it.

Public Testimony

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

Dr. Richard Sargeant, 635 South Tamarack, Dr. Robert Shepherd, Jefferson County, and Jonathan Motl, 401 N Last Chance Gulch; spoke in support of HB 643 and the proposed ordinance but urged the Commission to put an automatic sunset period in the ordinance and an amendment stating if HB 643 is overturned then the City of Helena's original ordinance stands.

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

Discussion

City Manager Burton spoke of the conditions of the compromise between the city and state, including the effective date and the enforcement of age restrictions. He stated per the city ordinance the City/County Health Department is the enforcing agency and he does believe they currently have adequate staff to do that.

Mayor Smith referred to provisions of the state law regarding people under 18 in establishments and infiltration and asked if they become effective on October 1, 2005? City Attorney Nielsen concurred.

Joan Miles, County Health Officer, stated the Health Department would not be enforcing the ban until October because the state rules won't be written yet. She added that the Board of Health is in support of the proposed ordinance under consideration.

Motion

Commissioner Cartwright moved to table final passage of Ordinance No. 3025 amending section 4-13-4 of the Helena City Code to clarify exemptions to smoking prohibitions to May 23, 2005.
Commissioner Oitzinger seconded the motion.

Discussion

Commissioner Parriman stated he would not support the tabling motion; even though the ban won't start until October, if something happens to the state law, the Commission can enact Helena's ordinance very quickly. He believes the compromise between the city and state is very reasonable.

Commissioner Oitzinger stated Commissioner Pouliot did not support this ordinance and since he is absent, it might be appropriate to table it.

Mayor Smith stated for the record that he lobbied for the American Cancer Society in the 2005 legislative session. The ACS did not support the compromise between HB 643 and the city ordinance. He did not testify as a proponent or opponent to the bill and was not involved in any negotiations on behalf of the ACS. However, on behalf of the city he did support the compromise so he will not support the tabling motion.

Vote

Motion failed 2-2, with Mayor Smith and Commissioner Parriman voting no.

Motion

Commissioner Parriman moved approval for final passage of Ordinance No. 3025 amending section 4-13-4 of the Helena City Code to clarify exemptions to smoking prohibitions to May 23, 2005.
Motion died for lack of a second.

I. CONSIDER A RESOLUTION AMENDING RESOLUTION NO. 12054 WHICH CREATED SPECIAL IMPROVEMENT LIGHTING DISTRICT NO. 207 ALONG THE STREETS AND AVENUES IN PARTS OF CRYSTAL SPRINGS SUBDIVISION.

Staff Report

Administrative Services Director Tim Magee reported on October 20, 2003 the City Commission passed Resolution No. 12054, which created Special Improvement Lighting District No. 207 in the Crystal Springs Subdivision.

The property owners have submitted a petition to create a Special Improvement Lighting District in Phase II of the Crystal Springs Subdivision. This proposed district is contiguous to Special Improvement Lighting District No. 207. It appears to be in the best interest of the City of Helena and the affected property owners to amend Resolution No. 12054 and include all the property described in Exhibit "B" attached to the Resolution of Intention.

The proposed facilities will consist of six additional units, with underground wiring, fiberglass or metal poles for 14 foot mounting heights, and glass enclosed cut-off luminaries with 100-watt high-pressure sodium vapor lamps. The estimated cost of maintenance, electrical energy, and administration for the first year is \$2,561.98. This amount includes an additional assessment to be charged by the city to establish a cash reserve and recover any costs the district incurred prior to receipt of the first assessments.

Staff recommended approval of a resolution amending Resolution No. 12054, which created Special Improvement Lighting District No. 207 along the streets and avenues in parts of Crystal Springs Subdivision in the City of Helena, Montana.

Public Testimony

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

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

Motion

Commissioner Parriman moved approval of the resolution amending Resolution No. 12054 which created Special Improvement Lighting District No. 207 along the Streets and Avenues in the Crystal Springs Subdivision. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19216**

J. CONSIDER A RESOLUTION CREATING SPECIAL IMPROVEMENT LIGHTING DISTRICT NO. 211 ALONG THE STREETS AND AVENUES IN PARTS OF THE NOB HILL SUBDIVISION.

Staff Report

Administrative Services Director Tim Magee reported the property owners have petitioned to have a light district created. The proposed facilities will consist of forty-one (41) units, with underground wiring, fiberglass or metal poles for 16 foot mounting heights, and glass enclosed cut-off luminaries with 100-watt high-pressure sodium vapor lamps.

The estimated cost of maintenance, electrical energy, and administration for the first year is \$12,164.40, said amount to be paid by the property owners. This amount includes an additional assessment to be charged by the city to establish a cash reserve and recover any costs of the district incurred prior to receipt of the first assessments. Thereafter, the annual assessment will be approximately one-half of the first year's assessment.

Staff recommended approval of the resolution to create Special Lighting District No. 211 in the City of Helena, in order for lights to be installed in the Nob Hill Subdivision.

Public Testimony

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

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

Motion

Commissioner Parriman moved approval of a resolution to create Special Improvement Lighting District No. 211. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19217**

Public Communications

PUBLIC COMMUNICATIONS

Police Chief Troy McGee reported that Sunday, May 15 is National Peace Officer Memorial Day and gave a listing of events commemorating the day in the Helena area.

Meetings of Interest

MEETINGS OF INTEREST

The next Administrative Meeting is May 18, 2005 and the next Commission Meeting is May 23, 2005.

Discussion

City Manager Burton stated that he needs direction from the Commission on how to proceed with the proposed smoking ban ordinance as no action was taken.

Lengthy discussion was held with Commissioner Parriman and Mayor Smith supporting the ordinance and Commissioners Cartwright and Oitzinger opposing it.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 10:45 p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission