

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
August 22, 2005
6:00 P.M.

Time & Place

A regular City Commission meeting was held on Monday, August 22, 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 Cartwright, Oitzinger, 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 Jim Christnacht representing the Helena Citizens Council and Anne Pichette representing the Youth Advisory 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 August 8, 2005 were approved as amended.

Presentation

A. POLICE DEPARTMENT CHAPLAIN, SAM HUGHES

Police Chief Troy McGee introduced Police Department Chaplain Sam Hughes and announced he has resigned and is moving to Mississippi. He extended his appreciation to Pastor Hughes and presented him with a plaque.

Russ Geanot, head of the chaplain program at the Helena Police Department, commended Mr. Hughes for his dedication.

The Commission thanked Mr. Hughes for his work with the HPD and the community.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. A resolution declaring certain personal property to be abandoned and unclaimed (bicycles). **Resolution #19269**
- C. Expenditure of \$20,000 in 9-1-1 funds for half the cost of a new generator for the City/County Building.
- D. Consider final passage of Ordinance No. 3036 pre-zoning Big Sky Estates Subdivision to R-4 (High Density Residential) District prior to annexation into the City of Helena, Montana. **Ordinance #3036**
- E. Consider final passage of Ordinance No. 3037 pre-zoning to R-2 and R-3 Districts prior to annexation for property described as a 38-acre tract of land. **Ordinance #3037**
- F. Consider final passage of Ordinance No.3038 amending City of Helena Ordinance No. 2359 and amending the official zoning map thereof in reference to property described as Lots 4 and 1A of Block 4, Helena Industrial Sites, Helena, Montana, from M-I (Manufacturing and Industrial) to CLM (Commercial-Light Manufacturing) District for property generally located north of Bozeman Avenue and east of Carter Drive, with a property address of 3000 Bozeman Avenue. **Ordinance #3038**

- G. Consider a resolution adopting a National Incident Management System for the City of Helena, Montana. **Resolution #19270**

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 G on the consent agenda.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Oitzinger spoke of attending the Western Rendezvous of Art and the dedication of the Bob & Florence Tubbs Gateway to Mount Helena Park, and the Swaney Trail.

Mayor Smith thanked Commissioners Cartwright, Oitzinger and Parriman for attending recent local events in his absence.

Commissioner Cartwright noted he has received a lot of comments from people that watch the City Commission Meetings on HCTV and expressed appreciation to the viewers.

He referred to an unofficial poll in the Independent Record (IR) that calculated the amount of people that care for their boulevard sidewalks; he urged citizens to maintain the property. He added that a deer had recently killed a dog in his neighborhood and warned citizens to be cautious.

Mayor Smith agreed with Commissioner Cartwright that urban wildlife issues need to be addressed, perhaps by submitting a management program to MT Fish Wildlife and Parks.

City Manager Burton discussed the possibility of forming an urban wildlife program.

Commissioner Oitzinger referred to Commissioner Cartwright's comments and stated education is an important component of controlling the deer population around the city and urged citizens to not feed deer. She stated that many people might not have participated in the IR poll regarding boulevard maintenance.

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 reported the City of Helena leases office space from the Helena Regional Airport. The agreement expired on June 15, 2005 and he asked for Commission consensus to extend the agreement for 6 months in order to form another five-year agreement. The Commission concurred to the extension of the agreement.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

There was no report given.

Homeland Security Grant CONSIDER ACCEPTANCE OF A U.S. DEPARTMENT OF HOMELAND SECURITY, OFFICE OF DOMESTIC PREPAREDNESS (ODP) HOMELAND SECURITY GRANT PROGRAM FUNDING IN THE AMOUNT OF \$18,225.

Staff Report Police Chief Troy McGee reported K-9 Ulrich passed away in April 2005. He was the only bomb/explosives detection canine in the State of Montana other than those belonging to the military at Malmstrom Air Force Base in Great Falls. Ulrich and his handlers' services proved to be an invaluable asset not only to the Helena Police Department (HPD), but also to other agencies and organizations within the state that requested this type of service. In addition to assisting law enforcement, Ulrich had been used to search school buildings, suspicious packages in business and parking lots, the airport, the capitol building and various other government structures.

The death of Ulrich came unexpectedly so the HPD wasn't able to budget for a replacement K-9 and training costs which are between \$15,000-\$18,000. An alternate funding source, a terrorism grant from Disaster and Emergency Services, was discovered. After submitting a proposal to the state Department of Homeland Security, the HPD received formal approval for 100% of grant funding for the purchase of a new K-9, training and equipment. The officer selected to be the new handler attended training in North Carolina with the new K-9, "Roy". They graduated on August 21st and returned to Helena to begin their new duties.

Chief McGee introduced Officer Jay Hellbusch and K-9, Roy. He also reported Walmart has granted the HPD \$1,500 toward K-9 supplies and equipment.

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

Motion Commissioner Oitzinger moved approval for acceptance of grant funding from the U.S. Department of Homeland Security, Office of Domestic Preparedness, Homeland Security Grant Program Funding in the amount of \$18,225.00. Commissioner Parriman seconded the motion. All voted aye, motion carried.

Tax Levy- FY 2006 CONSIDER A RESOLUTION PROVIDING FOR THE ANNUAL TAX LEVY IN MILLS FOR FISCAL YEAR JULY 1, 2005 THROUGH JUNE 30, 2006.

Staff Report Administrative Services Director Tim Magee reported as required by 15-10-203 MCA, the City of Helena:

- o held a public hearing before passing a resolution to Budget additional property tax revenue;
- o adopted a resolution to budget additional property tax revenue after the public hearing; and
- o adopted the final budget.

MCA 7-6-4036 now requires the City Commission to set the tax levy no later than the 2nd Monday in August or within 45 calendar days after receiving certified taxable values.

- ✓ certified taxable values were received on August 2, 2005.
- ✓ the city is required to fix tax levies by September 16, 2005.

Under MCA 2-9-212, Group Health Insurance tax levies may include annual increases for insurance premiums. However, that tax increase must be levied or the authority to levy in future years is lost. The city has annually levied for group health insurance, including annual premium increases. The fiscal year 2006 budget provides for \$648,562 or 14.02 mills, to be levied for group health insurance premiums in 2005 for FY 2006, including a premium increase of \$4,022, as allowed under MCA 2-9-212. Director McGee recommended approval of the annual mill levy resolution.

He added new property values were estimated at 5.1%; they have come in at 9.3%.

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

Motion Commissioner Cartwright moved approval for a resolution approving the annual mill levy. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. Resolution #19271

Sidewalk violations CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING SECTION 7-4-2 OF THE HELENA CITY CODE TO MAKE THE PENALTY FOR VIOLATION A MUNICIPAL INFRACTION.

Staff Report Section 7-4-2 of the Helena City Code sets forth the standards for construction of sidewalks and boulevards on rights-of-way by persons owning adjacent property. A violation of this section is punishable under §1-3-1 of the Helena City Code as a misdemeanor with a maximum fine of \$500 and/or incarceration in the Lewis & Clark Detention Center for a period not to exceed six months. Thus, a property owner who does not install a boulevard in compliance with the standards of §7-4-2 of the Helena city code, which is grass and trees unless a variance is granted, is subject to prosecution as a misdemeanor and is liable for the expenses of restoration of the boulevard to grass and trees.

The proposal is to amend §7-4-2 of the Helena City Code to make a violation of that section a municipal infraction and retain the liability of property owners to restore noncompliant boulevards.

In order to de-criminalize violations of the sidewalk and boulevard standards, the offense would be subject to sanctions as a municipal infraction, which is a civil offense, not criminal. The liability on the owner for restoration of the boulevard would be retained.

With the offense a civil offense rather than criminal there is less reluctance to enforce the sidewalk and boulevard standards. By using a municipal infraction as the enforcement remedy the owner is not made a criminal and the procedure for enforcement is simpler for the City.

Commission comment Commissioner Cartwright noted it would be good to review all city ordinances to see if any others should be changed to a municipal infraction instead of a misdemeanor.

Commissioner Parriman asked after a violation is issued, what is the timeframe for compliance? City Attorney Nielsen stated the

timeframe would be at the discretion of the City Manager and department that is responsible for enforcing the ordinance.

Commissioner Parriman stated he would like full enforcement of the ordinance so property owners would take the violations seriously and come into compliance. City Manager Burton and Parks & Recreation Director Randy Lilje explained the process for compliance with the ordinance.

Commissioner Parriman stated he supports the condition that states the offending property owner is liable for the expenses of restoration of the boulevard grass and trees.

Commissioner Oitzinger stated she is uncomfortable with the daily tolling. City Attorney Nielsen explained the process; a separate complaint would have to be filed for each day, there is no automatic escalation for each day the property owner is in violation.

Commissioner Oitzinger asked what rational basis does the city have for differentiating between people with sidewalks and people without sidewalks as to right-of-way maintenance?

City Manager Burton explained the differences in policy between neighborhoods with no sidewalks and those with boulevard sidewalks and gave the history of the city's sidewalk policy.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Cartwright moved approval for first passage of an ordinance amending Section 7-4-2 of the Helena City Code to make the penalty for violation a municipal infraction and set a public hearing date of September 12, 2005. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ordinance #3039**

Discussion

Commissioner Cartwright expressed his disappointment that property owners do not desire to maintain their boulevards to city standards. He stated he supports the policy of boulevard sidewalks.

Mayor Smith stated he feels the city should resume the responsibility of watering the boulevards; he is hopeful that will be a viable option in the future.

Commissioner Oitzinger concurred with Mayor Smith and stated she hoped the ordinance could be revised to be more accommodating. People that do not have boulevard sidewalks are treated differently.

Commissioner Parriman noted he wishes he could instill the concept of neighborhood and personal property pride into property owners who do not maintain their boulevards. He reiterated he supports bringing the boulevards into compliance and charging the cost, via tax bill, to the offending property owner.

Mayor Smith stated it is hard to understand why certain people won't conform. He agrees with Commissioner Parriman that the ordinance should be enforced as written.

Right-of-Way Use Agreement

CONSIDER A RIGHT-OF-WAY USE AGREEMENT FOR A SIDEWALK CAFE FOR THE RIALTO BAR.

Staff Report

City Engineer Ryan Leland reported the Rialto Bar is located at 52 N Last Chance Gulch. There is an unusual public right-of-way (ROW) off Hibbard Way between the parking garage and the Power Block Building.

The Rialto would like to use a portion of the Hibbard ROW behind the bar for the placement of an outdoor, sidewalk café. The Rialto proposes to fence off this portion of the ROW. It would pay the city's established annual fee for the use of the property.

Mr. Leland stated the 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.

Commission comment Commissioner Cartwright asked if the applicant has considered purchasing the property from the city? Mr. Leland stated the applicant has considered the option but the area is surrounded by many different property owners and dividing up ownership would be difficult; Mr. Cetraro might pursue that option in the future.

Public comment Dex Cetraro, representing the Rialto, spoke in support of the agreement.

Motion **Commissioner Cartwright moved approval for a right-of-way use agreement for a sidewalk café for the Rialto Bar.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Public Hearings PUBLIC HEARINGS:

***Fee increase-
discharge of hauled
waste*** CONSIDER A RESOLUTION TO INCREASE THE FEE FOR DISCHARGE OF HAULED WASTE INTO THE CITY OF HELENA'S SEWER SYSTEM AND AUTHORIZE THE CITY MANAGER TO SIGN THE INTER-LOCAL ON-SITE WASTEWATER MAINTENANCE PROGRAM MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF HELENA AND LEWIS AND CLARK COUNTY.

Staff Report Wastewater Superintendent Donald Clark reported the city currently charges septic hauler contractors \$35.04 per 1,000 gallons to cover the cost to treat waste at the Wastewater Treatment Plant. Lewis and Clark County is requesting the city provide them with \$30.00 per 1,000 gallons to fund the Memorandum of Understanding (MOU), raising the fee of the septic hauler to \$65.04 per 1,000 gallons.

The program will be implemented and administered by the Lewis & Clark County Health Department as outlined in the MOU.

The county is seeking to increase awareness to residents about the importance of maintaining their septic systems to avoid contaminating the ground water. The city's Wastewater Treatment Facility will benefit, as more frequently pumped systems are easier to treat and have less odor than systems that have not been pumped on a regular basis. Mr. Clark recommended approval of the fee increase.

Commission comment Commissioner Parriman asked if the county has approved the MOU? Mr. Clark stated he believes both the Lewis & Clark County Commission and Lewis & Clark County Board of Health have approved the MOU.

Mayor Smith referred to the possibility of the program being funded by a tax based district and asked if the proposed program would fall under the mission of the Water Quality Protection District (WQPD)? Kathy Moore, Lewis & Clark County Environmental Health Division Administrator, explained it would fall under the mission of the

Environmental Health Division (EHD); the WQPD is only active within a small portion of the county, the EHD is active within the entire county boundary. Ms. Moore stated the EHD would like to provide education throughout the county and spoke in support of the resolution and agreement.

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 spoke in opposition of the fee increase:

Paul Bartsch, owner of Helena Septic Pumping Service; Bruce Wood, owner of Big Sky Septic; Representative John Ward, owner of Little John's Septic Service.

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

Commission comment

Commissioner Parriman stated he is uncomfortable approving the fee increase with the inequities of the program. He stated he would support tabling the agreement and resolution.

Commissioner Cartwright asked what percentage of the septic haulers submitted public testimony? Mr. Clark responded almost half of the local pumpers.

Commissioner Oitzinger asked if there have been similar programs set up in other areas? Ms. Moore stated Public Works Director John Rundquist approached the county about a similar program in Vancouver, Washington.

City Manager Burton stated discussion needs to be held with the County Commission to find out the status on this agreement.

Mayor Smith stated he is concerned with the resolution and isn't comfortable supporting it in its current form.

City Manager Burton stated although there are serious concerns with septic systems in the valley, the proposed increase to city services might not be the right funding mechanism.

Commissioner Parriman stated he does support the program but would like to make sure the funding source is appropriate.

Motion

Commissioner Parriman moved to table a resolution to increase hauled waste fees to \$65.04 per 1,000 gallons and to authorize the City Manager to sign the Inter-local On-Site Wastewater Maintenance Program between the City of Helena and Lewis & Clark County to the call of the City Manager.

Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Public Communications

PUBLIC COMMUNICATIONS

Meetings of Interest

MEETINGS OF INTEREST

The next Joint Work Session is September 1, 2005, Administrative Meeting is September 7, 2005, and Commission Meeting is September 12, 2005. Mayor Smith announced on August 30, 2005 at 4:00 at the Great Northern will be a program coordinated by local law enforcement to stop the use of methamphetamine by children.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:57p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission