

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
December 5, 2005
6:00 P.M.**

Time & Place

A regular City Commission meeting was held on Monday, December 5, 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 Teresa Klotz 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 November 21, 2005 were approved as submitted.

Appointments

APPOINTMENTS:

- A. Civic Center Board
- B. Helena Open Lands Management Advisory Committee

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

Civic Center Board – Appointment of Karen Seiler.

Helena Open Lands Management Advisory Committee – Appointment of Melissa Broch.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Oitzinger moved approval of the appointments to the Civic Center Board and Helena Open Lands Management Advisory Committee. Commissioner Cartwright seconded the motion. All voted aye, motion carried.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Utility bill insert - Montana Legal Services Association
- C. Accept U.S. Department of Homeland Security, Buffer Zone Protection Program (BZPP) Grant funding in the amount of \$50,000.
- D. Resolution declaring tangible personal property owned by the City of Helena to be surplus property and authorizing the disposal of that property (miscellaneous pipe, water meters, fire hydrants, equipment). **Resolution #19305**
- E. Final passage of Ordinance No. 3048 pre-zoning Aspen Trails Ranch Major Subdivision to R-2 (Single-Family Residential); R-4 (High Density Residential) District; and B-2 (General Commercial) District; prior to annexation into the City of Helena, Montana for property generally located east of Juniper Drive,

north of York Road, west of Prickly Pear Creek, and south of Munger Road.

- F. Construction Agreement with the Montana Department of transportation for MDT Project No. NH-STPHS 8-2(61)46, Roadway and Roadway Safety Improvements, Helena – East Helena

City Manager Tim Burton recommended approval of the claims and the consent agenda. He noted that he had already signed item C, the U.S. Department of Homeland Security, Buffer Zone Protection Program (BZPP) Grant; pending Commission approval because it was the last day it could be submitted to the Department of Justice.

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

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

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

- A. Helena International Affairs Council (HIAC) Annual Report

Mayor Smith introduced Mr. Kevin Nielsen, Chairman of the Helena International Affairs Council. Mr. Nielsen presented the HIAC annual report and introduced members of the council in attendance. He also thanked City Clerk Havens and Helena International Affairs Council intern Austin Mapston for their work with the council and expressed his gratitude to the City of Helena, PPL Montana and the Friendship Force of Helena for their financial support. He encouraged the Commission to attend the next HIAC meeting, which will be held at 5:30pm on Tuesday, December 20, 2005 at the Law Offices of Gough, Shanahan, Johnson and Waterman.

Commissioner Cartwright expressed his appreciation for the Council's effort and noted he is very interested in work being done with Canada. Mayor Smith thanked the Mr. Nielsen and the Council for their work.

Commissioner Cartwright remarked he had visited his mother in St. Louis. He spoke of the new Medicare drug program and stated it is very confusing and encouraged people to sign up as the current coverage ends on December 31, 2005. Mayor Smith added through the local Area Agency on Aging office, there is a SHIP Program that will help interested senior citizens sign up for the drug coverage. He also suggested asking your pharmacist for help.

Commissioner Oitzinger stated Betty Beverly of the MT Senior Citizens Association would also be very helpful in assisting citizens sign up for the new drug program.

Mayor Smith noted he would be out of town December 7-14, 2005.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

City Attorney Nielsen reported the Helena Rotary Foundation had sent a letter asking if the City of Helena's donation for Hurricane Katrina relief could also be used to assist victims of Hurricane's Rita and Wilma. The Commission concurred to allow use of the funds for the additional hurricanes.

**Report of the City
Manager**

REPORT OF THE CITY MANAGER

City Manager Burton asked Police Chief Troy McGee to report on the train derailment at Helena's depot. Chief McGee explained the accident and the traffic problems associated with it.

City Manager Burton asked Public Works Director John Rundquist to explain the city's snow removal policy. Mr. Rundquist explained the procedure and noted when there is constant snowfall sometimes the emergency routes are all there is time to plow. To include new growth, at some point the plan will be reviewed and come before the Commission for consideration.

Commissioner Cartwright stated sometimes the snowplows block sidewalks, garage entrances and alleys and encouraged staff to try to avoid creating that situation. Mayor Smith asked Director Rundquist if he anticipates going over budget for staff overtime because of the amount of snow? Director Rundquist stated it depends on the amount of snow Helena gets over the entire winter; the budget is formed from the average amount. He noted if the department needs to increase the budget it would require Commission consideration.

Mayor Smith referred to the sidewalk snow removal policy and asked if there was any assistance available to persons that can't shovel their own sidewalk? Director Rundquist stated no. City Manager Burton stated the option could be discussed during the budget process. Currently, and in the past, community service workers have been used but one problem is identifying people in need of help. There is no list so the City Attorney's office has worked with non-profit agencies in the area to find citizens that need help.

City Manager Burton further stated another issue that is constantly being discussed is service level expectations; the more snow there is the more time it takes to plow. He encouraged citizens to help their neighbors with snow removal. Mayor Smith encouraged citizens to complain about sidewalks that are not shoveled. Commissioner Oitzinger suggested placing a phone number on the city's website and HCTV that could direct elderly and disabled citizens to where to find help with their sidewalks.

City Manager Burton referred to a your turn article written by the Board of Trustees of the Helena Valley Volunteer Fire District. There has been a lot of growth in the city and Lewis and Clark County and discussions have been held on water quality issues. Many county property owners have requested to hook into the city infrastructure and annex into the City of Helena. There have also been inquiries from neighborhoods with failing septic systems or poor water quality that want to know the requirements to retrofit their neighborhoods. The city will not forcibly annex anyone, however, as a neighborhood faced with the difficulties of water quality issues does their due diligence and looks at their options if they choose to hook into city infrastructure the Commission will require they annex into the city at some point in time. Staff is also looking at an interim policy for Commission review that would allow, where cost effective and appropriate, certain properties located so far away from the city that it wouldn't make sense to annex them now, to use the city sewer or water system but not annex immediately. The properties would have to waive their right to protest annexation in the future.

Also, the Commission authorized the fire service review study, which is presently underway, in the fiscal year 2006 budget. City staff

has met with the rural fire departments and they are informed relative to growth and water quality issues. City Manager Burton spoke of the good relationship the Helena Fire Department has with the rural fire departments and stated the rural departments must be appreciated.

Commissioner Cartwright stated he is concerned with citizens that suggest there is a City or County Commission conspiracy when they are unhappy with various issues.

**Report from the
Helena Citizens
Council**

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Teresa Klotz reported the next HCC meeting is December 14, 2005 at 7:00pm in City/County Room 326. She noted the Council would be discussing the election of HCC officers and a "complaint policy" to help citizens report violations to city ordinances.

**Annexation- Nob Hill
Subdivision-Phase IV**

CONSIDER A RESOLUTION ANNEXING BLOCKS 1 THROUGH 7 AND 15 THROUGH 21, OF THE NOB HILL MAJOR SUBDIVISION - PHASE IV, AND THE ADJACENT FULL WIDTH RIGHT-OF-WAY OF INTERSTATE 15; GENERALLY LOCATED SOUTHWEST OF I-15, EAST OF THE NOB HILL WATER TANK AND NORTH OF THE JEFFERSON COUNTY LINE.

**Final Plat- Nob Hill
Subdivision- Phase IV**

CONSIDER FINAL PLAT APPROVAL FOR BLOCKS 1 THROUGH 7 AND BLOCKS 15 THROUGH 21 OF THE NOB HILL MAJOR SUBDIVISION - PHASE IV; AND ACCEPT THE DEDICATION TO THE CITY OF THE PROPERTY FOR PUBLIC IMPROVEMENTS DESIGNATED THEREON FOR PROPERTY GENERALLY LOCATED SOUTHWEST OF INTERSTATE -15, EAST OF THE NOB HILL WATER TANK, AND NORTH OF THE JEFFERSON COUNTY LINE.

Staff Report

City Planner Belinda Waters reported Nob Hill Properties, LLC is proposing to complete the annexation for Phase IV of the Nob Hill Major Subdivision. Completing this annexation is a prerequisite to enabling the City to approve Phase IV of the Nob Hill subdivision final plat.

On August 16, 2004, the City Commission established conditions for annexation of the Nob Hill Subdivision (Res. #19154), and established pre-zoning designations for the properties (Ord. #2999). On that same date, the Commission conditionally approved the Nob Hill major subdivision preliminary plat creating 153 commercial and residential lots.

Conditions for annexation included the following:

Taxes and Assessments: Taxes and assessments must be paid and current at the time of filing the Resolution of Annexation.

Review of new construction: For all construction commenced prior to annexation, the property owners shall submit plans for review by the City of Helena to ensure compliance with infrastructure, zoning, and Uniform Fire Code requirements of the City, and shall agree to pay all fees for such reviews in the same manner and basis as do owners of properties already in the City.

Any residential construction work following passage of this resolution would be undertaken in anticipation of annexation. Therefore, any construction prior to annexation should be completed in

conformance with city requirements, including zoning, building, public works, and fire codes. A condition is included to ensure that any further building prior to annexation would be reviewed by the City for conformance with its zoning and infrastructure requirements.

Final Plat: Present subdivision of final plat for Commission approval.

Completion of Conditions: The applicant must notify City Planning in writing upon completion of the conditions for approval of annexation, which must be on or before the date of completion of conditions for subdivision of this property and is subject to the same time limitations. If the conditions are not completed within that time frame, the City is under no obligation to annex the property and may discontinue any City services, including water and sewer.

The conditions of annexation have been fulfilled and all procedural and due process requirements have been completed. Annexation has been requested by the applicant and is recommended by staff.

Ms. Waters noted effective October 1, 2003, in all instances of annexation, the municipality must include the full width of any public streets or roads, including the rights-of-way that are adjacent to the property being annexed. Therefore, the resolution of annexation includes the adjacent Interstate 15 public right-of-way.

Ms. Waters further reported the applicant is requesting approval of the final plat for Phase IV of the Nob Hill Major Subdivision. On August 16, 2004, the City Commission gave preliminary plat approval subject to the conditions stated in the Findings of Fact.

Phase IV of the Nob Hill major subdivision consists of four zoning districts. All of Blocks 1, 2, 3, 4, 7, and Lots 1 through 4, Block 5 are zoned B-2 (General Commercial) District; all of Blocks 16, 18, 21 and Lots 5 and 6, Block 17 are zoned R-2 (Single-Family Residential) District; all of Blocks 6, 15, and 19, Lots 5 and 6, Block 5, and Lots 1 through 4, Lots 7 and 8 of Block 17 are zoned R-3 (Medium Density Residential) District; and all of Block 20 is zoned R-O (Residential-Office) District.

Ms. Waters recommended final plat approval and stated the 2001 Growth Policy land use map identifies this property in three classifications: "Open Space", "Residential - Low Density", and "Residential - Medium/High Density". The proposed subdivision would provide mixed in-fill residential, office and commercial development and is adjacent to other similar types of City developments. The proposed subdivision appears to be generally consistent with the goals and objectives and policies stated in the Growth Policy. The conditions of preliminary plat approval have been satisfied.

Public comment

Mayor Smith called for public comment.

Bob Peccia, Nob Hill Development, spoke in support of the annexation and final plat.

Motion

Commissioner Cartwright moved approval of a resolution annexing property and the adjacent Interstate 15 right-of-way as legally described in the attached Resolution of Annexation, into the City of Helena, Montana, for property generally located southwest of I-15, east of the Nob Hill Water Tank, and north of Jefferson

County line. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Resolution #19306**

Motion

Commissioner Cartwright moved approval for the final plat of Nob Hill Major Subdivision – Phase IV - creating Blocks 1 through 7 and Blocks 15 through 21, and accept the dedication to the City of the property for public improvements designated thereon.

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

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3047 AMENDING CHAPTERS 1 AND 2 OF TITLE 5 OF THE HELENA CITY CODE TO ALLOW DISCHARGING OF FIREARMS IN THE HELENA CITY LIMITS FOR THE MANAGEMENT AND POPULATION CONTROL OF WILD OR DANGEROUS ANIMALS.

Staff Report

Police Chief Troy McGee reported Montana Department of Fish, Wildlife and Parks (FWP) wardens have been using firearms in the City to destroy marauding and dangerous deer that have frightened citizens. From time to time, City police officers have used firearms to euthanize deer that are seriously injured after being hit by automobiles or illegally hunted in the City. Section 5-1-4 of the Helena City Code prohibits the discharge of firearms in the city. Section 5-2-30 of the Helena City Code only allows the animal control officer to use a tranquilizer gun to subdue dangerous and vicious animals, but in reality the Police Department's tranquilizer gun has not been used in years because of unavailability of the appropriate drug. There are more modern and better methods to control dangerous animals, such as netting. On rare occasions, however, lethal action may be the only alternative to controlling and subduing dangerous animals.

Chief McGee recommended approval of the proposed ordinance and noted the amendment would clarify that the discharge of firearms in the City is permissible in limited situations. If the city adopts a plan with Fish, Wildlife and Parks for the control of the deer population, the code change would accommodate that plan, and it would allow the animal control officer to use reasonable methods, including lethal ones, to handle dangerous animals.

Commission comment

Commissioner Parriman asked if FWP game wardens are considered law enforcement officers? City Attorney Nielsen concurred.

Public Testimony

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

Tom DeYoung, 551 Diehl Drive, stated the reason for euthanizing a deer needs to be clarified in the ordinance.

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

Discussion

Commissioner Cartwright stated the proposed ordinance is not changing any city policy or program; it is clarifying the ordinance to alleviate Commission, Police Department and FWP concerns with discharging firearms within the city limits when they must euthanize an animal.

Mike Korn, FWP, stated FWP responds to complaints about wildlife, it does not "hunt" within the city limits. Officers respond to complaints, specifically identify the deer responsible, and remove them from the area. He also noted FWP works in cooperation with local law enforcement when they must dispatch an animal.

Commissioner Oitzinger thanked Mr. Korn for giving her a tour of highly populated deer areas and asked Mr. Korn to explain the safety procedures used when they dispatch an animal. Mr. Korn explained FWP's procedure for euthanizing dangerous or injured animals.

Mayor Smith asked Chief McGee if the HPD has a similar policy for dispatching dangerous or injured animals? Chief McGee concurred.

Motion

Commissioner Cartwright moved approval for final passage of Ordinance No. 3047 amending Chapters 1 and 2 of Title 5 of the Helena City Code to allow discharging of firearms in the Helena city limits by law enforcement officers or other persons authorized by the City Commission for the management and population control of wild or dangerous animals. Commissioner Oitzinger seconded the motion. All voted aye, motion carried. **Ordinance #3047**

B. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3046 AMENDING CHAPTER 3 OF TITLE 5 OF THE HELENA CITY CODE TO PROHIBIT FEEDING DEER IN THE CITY LIMITS.

Staff Report

Police Chief Troy McGee reported the urban deer population has grown considerably in the last few years. The deer wander around on the city streets, creating potential traffic hazards, and ruining landscaping on both public and private property within the city.

Staff is proposing to amend the Helena City Code to prohibit purposely or knowingly feeding deer within the city limits, and make any violation thereof a misdemeanor, with a fine not to exceed \$500 and/or a jail term not to exceed six (6) months. This would discourage deer from congregating in certain areas and in herds that may foster disease, and encourage the deer to feed outside the city limits. It would also provide City staff with the tools necessary to discourage deer feeding in the city limits. The Department of Fish, Wildlife & Parks is the only entity with that authority at this time.

Chief McGee recommended approval for final passage Ordinance No. 3046, amending Chapter 3 of Title 5 of the Helena City Code to prohibit feeding deer in the city limits.

Public Testimony

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

Jo Lynn Eggert, 1505 Missoula Ave, spoke in opposition to the proposed ordinance because she believes feeding deer should be a municipal infraction, not criminal.

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

Discussion

Commissioner Cartwright asked what the usual punishment is for violation of city ordinances? City Attorney Nielsen stated it is unlikely that anyone would get jail time or a \$500 fine for feeding deer; the infraction would be similar to a traffic infraction. He stated it does not matter to his office if the infraction is municipal or criminal but usually municipal infractions do not carry the higher standard of criminal intent.

Commissioner Cartwright stated he would be more comfortable leaving the ordinance as proposed. Mayor Smith stated he is comfortable with the ordinance because he has seen pictures of feeding stations around town that show people are knowingly and intentionally feeding the animals, not just an occasional squirrel feeder or an apple that has fallen from a tree. Commissioner Oitzinger stated she understands that landscaping attracts deer to the area but believes a misdemeanor is the right charge for people that are deliberately feeding deer.

Motion

Commissioner Cartwright moved approval for final passage of Ordinance No. 3046 amending Chapter 3 of Title 5 of the Helena City Code to prohibit feeding deer in the city limits. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.
Ordinance #3046

Public Communications

PUBLIC COMMUNICATIONS

Meetings of Interest

MEETINGS OF INTEREST

The next Administrative Meeting is December 14, 2005 and the next Commission Meeting is December 19, 2005. Commissioner Cartwright asked for the status of the process for approval of the Transportation Plan. City Manager Burton explained staff is working with Lewis and Clark County to find a date and time everyone can meet.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:39p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission