

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**September 22, 2008**  
**6:00 P.M.**

***Time & Place***

A regular City Commission meeting was held on Monday, September 22, 2008 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, Peura, and Elsaesser were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Janet Hess Herbert 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 September 8, 2008 were approved as submitted.

***Appointments***

**APPOINTMENTS:**

- A. Helena Regional Airport Authority
- B. Board of Adjustment
- C. Helena International Affairs Council
- D. Helena Open Lands Management Advisory Committee
- E. Non-Motorized Travel Advisory Council
- F. City-County Parks Board
- G. Zoning Commission

Mayor Smith asked for Commission concurrence on the following appointments:

**Helena Regional Airport Authority (HRAA)**- Appointment of James J. White to the Helena Regional Airport Authority. Term will begin upon appointment and expire August 31, 2011.

**Commission comment**

Commissioner Cartwright indicated he would support the proposed appointment to the HRAA. He commented the HRAA is a 7 million dollar a year business and conservatively valued at 40 million. The Authority doesn't report to any shareholders or the voters, it is appointed by the Commission and charged to follow their conscience and do what's good for aviation and Helena; beyond that they are on their own. These appointments are not ones that have been vetted closely in the past, but going forward the Commission may want to think about treating future appointments with the gravity that an operation of the aforementioned size may demand. This is, in an institutional sense, removed from any personalities and not the best example of governance where the board does not answer to anybody. The authority has done much better than other airports in Montana which have had scandals and Helena's has had none. Commissioner Cartwright added he would like to review the appointment process before next year's appointment to the HRAA.

Commissioner Peura expressed support for the proposed appointment of Mr. White to the HRAA as he will bring a fresh set of eyes to the authority along with airline experience. He concurred with Commissioner Cartwright's comments and noted the decisions the HRAA makes can have an impact on issues the City and County Commissions have to address so appointments to the authority need to be vetted carefully.

Commissioner Oitzinger spoke in support of the current appointment process and thanked Mayor Smith for the work he has done making numerous, important appointments to all city boards and commissions. Mayor Smith noted the HRAA answers to voters and citizens and commented he takes all board appointments very seriously.

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

**Motion** Commissioner Cartwright moved approval of the board appointment to the HRAA as outlined above. Commissioner Peura seconded the motion. All voted aye, motion carried.

**Board of Adjustment-** Appointment of Cory Swanson to a first term on the Board of Adjustment. Term will begin upon appointment and expire on October 1, 2011. Re-appointment of Patricia Burke to the Board of Adjustment. Term will begin upon appointment and expire on March 30, 2009.

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

**Motion** Commissioner Cartwright moved approval of the board appointments to the Board of Adjustment as outlined above. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

**Helena International Affairs Council-** Appointment of Judith Nott to an unexpired term on the Helena International Affairs Council. Term will begin upon appointment and expire on October 28, 2009. Appointment of Shahid Haque-Hausrath to a first term on the Helena International Affairs Council. Term will begin on October 29, 2008 and expire on October 28, 2011.

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

**Motion** Commissioner Peura moved approval of the board appointments to the Helena International Affairs Council as outlined above. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

**Helena Open Lands Management Advisory Committee-** Appointment of Lois Olsen to a first term on HOLMAC. Term will begin upon appointment and expire June 30, 2011.

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

**Motion** Commissioner Peura moved approval of the board appointment to the Helena Open Lands Management Advisory

**Committee as outlined above.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

**Non Motorized Travel Advisory Council-** Appointment of William Snider to an unexpired on the Non Motorized Travel Advisory Council. Term will begin upon appointment and expire on March 31, 2010.

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

**Motion** **Commissioner Cartwright moved approval of the board appointment Non-Motorized Travel Advisory Council as outlined above.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

**City-County Parks Board-** Appointment of M.C. Beeby to a first term on the City-County Parks Board. Term will begin on October 1, 2008 and expire September 30, 2011.

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

**Motion** **Commissioner Cartwright moved approval of the board appointment to the City-County Parks Board as outlined above.** Commissioner Peura seconded the motion. All voted aye, motion carried.

**City Zoning Commission-** Reappointment of Dan Casey and Ethan Stapp to the Helena Zoning Commission. Terms of office will begin upon appointment and expire September 30, 2011.

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

**Motion** **Commissioner Peura moved approval of the board appointments to the Zoning Commission as outlined above.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.

**Consent Agenda** CONSENT AGENDA:  
A. Claims

City Manager Tim Burton recommended approval of the claims.

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

**Motion** **Commissioner Peura moved approval of item A on the consent agenda.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.

**Bid Award** BID AWARD:  
A. Brewers' clubhouse addition and remodel

Staff Report Community Facilities Director Gery Carpenter reported bids were opened for the project on September 10, 2008. Three bids were received from the following contractors: Diamond Construction, Wadsworth Builders and Yak and Abe Construction. The bid tabulation was attached to the transmittal memo.

Yak and Abe Construction was the low bidder at a base bid of \$179,000. With the inclusion of Alternate No. 1 at \$3,000 and Alternate No. 2 at \$3,000, the total bid would be \$185,000. Director Carpenter recommended a \$10,000 contingency for the project, which would bring the total project costs to \$195,000. This amount is within available funding.

Director Carpenter recommended award of the bid to Yak and Abe Construction in the amount of \$185,000 as the remodel would allow the Clubhouse to meet Minor League standards and the construction would be finished prior to the opening of the 2009 season.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

**Commissioner Peura moved approval for a bid award in the amount of \$185,000 for the Brewer's Clubhouse addition and remodel to Yak and Abe Construction, including Alternates No. 1 and 2.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

**Communications**

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Cartwright presented a graph titled "Helena Days Over 90 Degrees (Rolling 10 Year Average)", and commented on the need for the Commission, corporate leaders and ordinary folk to do more to offset the climate change.

Commissioner Elsaesser spoke of attending the Carnival Classic supporting the Helena Education Foundation and announced Growing Friends Trash for Trees would be held Saturday, September 27, 2008.

Mayor Smith thanked Commissioner Oitzinger for serving as Mayor Pro Tem on September 8, 2008.

Commissioner Peura spoke of the Global Climate Change Task Force's preliminary and future recommendations and thanked Commissioner Cartwright for sharing his graph related to Helena's weather.

Mayor Smith spoke of the Commission's recent tour of the Upper Tenmile Watershed.

**Report of the City Attorney**

REPORT OF THE CITY ATTORNEY

City Attorney Nielsen gave the history of Yellowstone Pipeline cutting down mature trees in Helena for aerial surveillance of their pipeline. An appraisal of the lost trees has been performed and the value of the trees on city property is a little over \$40,000 and the appraised value of the lost trees on School District property is a little more than \$67,000. The appraisals were sent to Yellowstone Pipeline and they returned correspondence to the city stating they will not perform their own appraisal of the trees and do not believe they owe the city or school district for any damages. City Attorney Nielsen noted he is again researching the easement and title trying to establish what sort of liability the Pipeline has for the easements. He added he will explore the legal theories and keep the Commission advised on the issue.

Commissioner Cartwright commented that the cost of litigation can be more than the amount of money to be won but stated this is a significant issue with any developer or property owner that destroys city property, and urged staff to pursue the issue as it is important to protect city property. Commissioner Peura and Commissioner Elsaesser concurred with Commissioner Cartwright's comments.

**Report of the City  
Manager**

REPORT OF THE CITY MANAGER

City Manager Burton asked Public Works Director John Rundquist to report on a water quality testing violation. Director Rundquist stated the City of Helena routinely tests for coliform bacteria in the water distribution system. Coliforms are bacteria which are naturally in the environment and are used as an indicator that other potentially harmful bacteria may be present. The procedures for sampling and testing are governed and monitored by the Montana Department of Environmental Quality (DEQ).

The city recently collected one repeat sample instead of the required three after a sampling site tested "positive" for coliform September 3, 2008. Whenever coliform bacteria are detected in any sample, follow-up testing is performed to see if other bacteria of greater concern, such as fecal coliform or E. coli, are present. Director Rundquist noted none of these bacteria were found in the subsequent testing and staff believes the original positive test resulted from a contamination error during sampling.

DEQ agrees there is no public health hazard but is requiring the City of Helena publish notice via the local newspaper and direct mail or a bill stuffer because of the protocol violation. Director Rundquist recommended approval of a proposed water bill insert regarding the testing issue and assured the Commission the sampling compliance error would not happen again.

**Motion**

**Commissioner Elsaesser moved approval for a water bill insert related to the coliform testing of the City of Helena's water system.** Commissioner Peura seconded the motion. All voted aye, motion carried.

**Report from the  
Helena Citizens  
Council**

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Janet Hess Herbert reported the HCC continues to work on the undeveloped parks project and surveys have been completed for all parks except Northgate and Janet Street. She noted the HCC would be holding a retreat instead of their regular September meeting and announced the meeting locations for the October 9, 2008 District Meetings.

**Public Hearings**

PUBLIC HEARINGS:

A. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3102 AMENDING SECTION 5-2-33 OF THE HELENA CITY CODE – DEFINITION OF DANGEROUS DOG.

**Staff Report**

City Attorney David Neilsen reported the current Animal Control chapter in the Helena City Code defines a dangerous dog as "any dog that . . . has inflicted severe injury on a human being . . ." Currently, the definition of severe injury includes language that a person must have a disfiguring laceration requiring sutures or cosmetic surgery. Physicians do not use sutures for most dog bites. Instead, they use steri-strips that allow the bites to drain and help avoid infection. Under the current City Code, if sutures are not used, injuries suffered as a result of a dog bite are not considered severe and the dog is not classified as dangerous.

Attorney Nielsen recommended the code be amended to comport with current medical practice. The revised language would allow the definition of severe injury to be broader and allow the Animal

Control Officer to designate a dog dangerous if it inflicts injuries that physicians no longer treat with sutures.

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. 3102 amending Section 5-2-33 of the Helena City Code.** Commissioner Peura seconded the motion. All voted aye, motion carried. **Ord #3102**

B. CONSIDER A RESOLUTION INCREASING WATER RATES UP TO OR LESS THAN 5.00%.

C. CONSIDER A RESOLUTION INCREASING WASTEWATER RATES UP TO OR LESS THAN 15.70%.

Staff Report

Administrative Services Director Tim Magee reported the Resolution of Commission Intent for FY2009 Annual Budget calls for Funding of Essential Services, including:

- Providing annual funding of regularly recurring Comprehensive Capital Improvement Program (CCIP) components.
- Annually reviewing rates to:
  - ensure adequate funding of operations, maintenance, and debt;
  - address capital project priorities;
  - provide for part or all of the impact of inflation; and
  - make incremental rate changes that are regular and predictable for citizens ....

Therefore, as a result of the City Commission's Comprehensive Capital Improvement Program (CCIP review), a rate increase up 5.00% is recommended in fiscal year 2009 for charges for water rates and a rate increase up to 15.70% was recommended for wastewater rates. Water and wastewater rates were last increased in November 2007.

Commission comment

Mayor Smith asked for the rate of inflation. Director Magee stated 4.1%. Commissioner Peura stated a wastewater rate increase of up to 15.70% would allow the city to reach its goal of 50% funding in capital improvement programs this year; subsequent years would only require an increase at the rate of inflation. Director Magee concurred and presented a spreadsheet showing what the average increase to monthly bills would be; a 15.70% wastewater rate increase would result in an average increase of \$2.87 per month. Commissioner Cartwright referred to the proposed water rate increase and noted a typical water bill would increase \$1.40 per month.

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.

Commissioner Peura referred to water rates and the supported percent of the CCIP. He noted all of the rates relate to businesses the city runs; as a part of running a business the Commission needs to worry about the financial support of its businesses, including the effective and efficient way to run the business of water delivery and wastewater and the affordability of the rates for the customer. He spoke in support of funding the city's assets at 50% and indicated he would support a 5% increase for water rates. Commissioner Cartwright concurred with Commissioner Peura's comments but indicated he would very reluctantly not support a 5% increase because of the wastewater rates that will also be considered by the Commission.

**Motion** **Commissioner Peura moved approval of a resolution increasing water rates 5.0%, effective November 1, 2008.** Motion died for lack of a second.

**Motion** **Commissioner Cartwright moved approval of a resolution increasing water rates 4.1%, effective November 1, 2008.** Commissioner Peura seconded the motion.

**Discussion** Commissioner Cartwright noted the Commission had received five letters from the public regarding water and wastewater rate increases; these letters are included in the Commission packet as part of the official record. He explained his support for an increase at the rate of inflation because the Commission is trading this increase off with other utilities, in particular, a proposal for a voter-approved public safety mill levy. While the city needs to catch up in water and sewer, it also needs to catch up in public safety. He noted water and sewer service are very important and to keep from going backwards he is recommending an increase at the rate of inflation.

Commissioner Elsaesser concurred with Commissioner Cartwright's comments but noted he would not support the increase because of the two initiatives on the ballot this November. Commissioner Oitzinger concurred with Commissioner Elsaesser's comments. She referred to the CCIP being an inexact science and stated with rising costs putting pressure on families the Commission should not disadvantage the population by trying to reach an arbitrary goal. Commissioner Oitzinger noted she would resist the motion.

Commissioner Peura stated he would support the motion and spoke in support of the CCIP. Mayor Smith indicated he would support an increase at the rate of inflation. He referred to the public safety mill levy and commented he is just not convinced there is that much catching up to do in those two departments.

**Vote** Motion carried 3-2 with Commissioners Elsaesser and Oitzinger voting no. **Res #19608**

**Motion** **Commissioner Elsaesser moved approval of a resolution increasing wastewater rates 2.0% effective November 1, 2008.** Commissioner Oitzinger seconded the motion.

**Comment** Commissioner Elsaesser spoke in support of increasing wastewater rates at half the rate of inflation because impact fees or new taxable value over the next year may help the city in funding wastewater.

Commissioner Oitzinger expressed support for increasing wastewater rates at half the rate of inflation and spoke of the importance of the public safety mill levy.

Commissioner Cartwright indicated he would vote against the motion as increases need to stay up with the rate of inflation so wastewater doesn't get set back. Commissioner Peura spoke in support of increasing wastewater rates at the rate of inflation and disagreed that newly taxable value will be able to keep up with the city's utility capital programs. He also noted impact fees wouldn't help because they can only pay for new expansion to capital programs, not ongoing maintenance. Mayor Smith concurred with Commissioner Peura and Cartwright and indicated he would not support an increase below the rate of inflation.

**Vote** Motion failed 2-3, with Mayor Smith and Commissioners Cartwright and Peura voting no.

**Motion** **Commissioner Cartwright moved approval of a resolution increasing wastewater rates 4.1% effective November 1, 2008.** Commissioner Peura seconded the motion. Motion carried 3-2, with Commissioners Oitzinger and Elsaesser voting no. **Res #19609**

**Public Communications** PUBLIC COMMUNICATIONS  
No public communications were given.

**Meetings of Interest** MEETINGS OF INTEREST  
The next Administrative Meeting is Wednesday, October 1, 2008 and the next Commission Meeting is Monday, October 6, 2008. The City/County Commission Joint Work Session will be held Thursday, October 2, 2008.

**Adjournment** There being no further business to come before the Commission, the meeting was adjourned at 7:17p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission