

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**March 9, 2009**  
**6:00 P.M.**

**Time & Place** A regular City Commission meeting was held on Monday, March 9, 2009 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, Peura, Shropshire and Elsaesser were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Winston Greely 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 February 23, 2009 were approved as submitted.

**Appointments** APPOINTMENTS:  
A. Civic Center Board  
B. Helena International Affairs Council  
C. Non-Motorized Travel Advisory Council

Mayor Smith asked for Commission concurrence on the following appointments:

**Civic Center Board-** Appointment of Craig Wilkerson to an unexpired term on the Civic Center Board. Term would begin upon appointment and expire March 1, 2010. Reappointment of Joann Christnacht, Margaret Crennen, Mike DaSilva, William Hunter, Frank Montibeller and Nina Smith. Terms will begin upon appointment and expire March 1, 2012.

**Helena International Affairs Council-** Appointment of Anthony Warren and Robert Simpson to unexpired terms on HIAC. Terms would begin upon appointment and expire October 28, 2009.

**Non Motorized Travel Advisory-** Reappointment of Chris Bardash, Bruce Newell and David Warner. Terms will begin April 1, 2009 and expire March 31, 2012.

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

**Motion** **Commissioner Peura moved approval of the appointments to the Civic Center Board, Helena International Affairs Council and Non-Motorized Travel Advisory Council as outlined above.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.

**Consent Agenda**

CONSENT AGENDA:

- A. Claims
- B. Utility adjustment agreement with the Montana Department of Transportation for the mill and overlay project on Hauser between Henderson and Benton
- C. Utility Bill Insert - Growing Friends of Helena
- D. Utility Bill Insert - Prickly Pear Land Trust

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

Public Comment

Mayor Smith asked for public comment, none was received.

**Motion**

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

**Bid Award**

BID AWARD:

- A. Solid Waste Division – 2200 square foot office building

Staff Report

Community Facilities Director Gery Carpenter reported bids were opened on February 10, 2009 for a 2,184 square foot modular office building on a concrete foundation. The project was bid using two schedules. Schedule A included the modular office building delivered and setup on site with concrete block wanes-coating, steel siding and steel roofing. Schedule A also included two alternates. Alternate No. 1 provided the cost to upgrade the windows from PVC or fiberglass to aluminum clad wood. Alternate No. 2 provided the cost to upgrade from painted interior trim to nominal oak trim stained with a urethane finish.

Schedule B included all the site work, water and sewer, gas extraction system, footings, foundation and front and rear porches. The two schedules were independent. The bid documents stated that bidders could bid Schedule A, Schedule B or both Schedules A and B. The city could award Schedule A and B to one bidder or to separate bidders. These bidders provided bids: Diamond Construction, U.S. Modular Group Inc., and Yak & Abe Construction. The bid results were included in the Commission packet.

Director Carpenter recommended awarding Schedule A with Alternates 1 and 2 to US Modular Group, Inc. for a total amount of \$256,405. Staff additionally recommends awarding Schedule B to Yak & Abe Construction in the amount of \$49,600. The total cost to these two contractors will be \$306,005. This cost is within current funding. The proposed office building will provide office space for five employees with a conference room, lunch room, storage space and restroom facilities at the lowest cost possible.

Commission comment

Commissioner Cartwright asked if the building would preserve a corridor to locate a trail between the building and the edge of the city's property? Director Carpenter stated yes.

Public comment

Mayor Smith called for public comment, none was received.

**Motion** **Commissioner Cartwright moved to award Schedule A bid including alternates 1 and 2 to US Modular Group Inc., in the amount of \$256,405.** Commissioner Peura seconded the motion. All voted aye, motion carried.

**Motion** **Commissioner Cartwright moved to award Schedule B to Yak & Abe Construction in the amount of \$49,600.** Commissioner Shropshire seconded the motion. All voted aye, motion carried.

**Communications**

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Elsaesser spoke of attending the Live! at the Civic concert on March 8, 2009. He also spoke in support of the proposed MOU with Lewis & Clark County regarding water quality in the valley.

Commissioner Shropshire spoke of attending Saturday Night Live in Helena. She commended Lewis & Clark County for working with the city regarding water quality issues.

Mayor Smith spoke of participating in Saturday Night Live in Helena. He also asked City Manager Burton to brief the Commission on the proposed MOU with Lewis & Clark County during the Manager's Report.

Commissioner Peura invited the Commission to attend the Empty Bowls Fundraiser benefiting the Friendship Center on Thursday, March 12, 2009. He referred to the stimulus funding resolution and announced his intention to make a motion to amend the resolution by excluding item 12 on the current list of projects and adding the Global Climate Change Task Force's (GCCTF) recommendations numbered 2, 3, 4, 9 and 11.

**Amendment #1** **Commissioner Peura moved to amend the resolution to strike Item 12, Solar and Wind Turbine Projects, under the heading Alternative Energy, Energy Efficiency, Conservation and Public Art Projects on page 2 of Exhibit A.** Commissioner Cartwright seconded the motion.

**Amendment #2** **Commissioner Peura moved to amend the resolution to add the following five recommendations from the Global Climate Change Task Force under the Alternative Energy, Energy Efficiency, Conservation and Public Art Projects:**

**2. Professional development, training and coordination of City Green Team composed of current city staff (\$10,000);**

**3. Water conservation incentive rebate program for low-flush toilets, high-efficiency clothes washers, low-flow shower heads, evapotranspiration (ET) irrigation controllers, etc. (\$200,000);**

**4. Audit water usage in city operations (\$50,000);**

**9. Infrastructure and development of neighborhood community gardens in five undeveloped parks to include fencing, irrigation, garden bed construction (\$25,000); and**

**11. Develop an online billing system for water and wastewater utility accounts with accessible usage data and transparent usage accounting, e.g. gallons instead of CCFs (\$60,000).**

Commissioner Shropshire seconded the motion.

**Amendment #3**

**Commissioner Peura moved to amend page 2, item B to read “projects 1-21 as shown on Exhibit A”.** Commissioner Shropshire seconded the motion.

**Comment**

Commissioner Peura explained why he did not support all of the recommendations from the GCCTF and the solar and wind turbine projects. He spoke in support of the resolution and project list. Commissioner Shropshire indicated she would not support the amendment to strike the solar and wind turbine projects but would support the addition of the recommendations from the GCCTF. She spoke in support of the city keeping its options open for funding and projects and noted the stimulus funding is a jobs package. Commissioner Elsaesser spoke in support of the proposed amendments but noted he would not support Amendment #1. Mayor Smith indicated he would not support Amendment #1. Commissioner Cartwright spoke in opposition to the solar and wind projects for electricity because the cost of the projects does not make sense related to how much electricity they generate. He did support the roof top solar PV because they provided back-up for our communication systems. He indicated he would not support Amendment #2 or the resolution as a whole because the Commission needs to take the project list more seriously, using the rationale that it include “shovel-ready” projects that would already be completed if it were not for a lack of funding. He withdrew his concern for low-income projects as he has learned the city would be the conduit for the funding for bureaucratic reasons, and not responsible for managing the projects.

**Vote on Amend. #1**

Motion failed 2-3, with Mayor Smith and Commissioners Elsaesser and Shropshire voting no.

**Vote on Amend. #2**

Motion carried 4-1, with Commissioner Cartwright voting no.

**Vote on Amend. #3**

Motion carried 4-1, with Commissioner Cartwright voting no.

**Public comment**

Mayor Smith called for public comment, none was received.

**Motion**

**Commissioner Elsaesser moved approval of a resolution qualifying certain public projects in the City of Helena for economic stimulus funding, as amended.** Commissioner Peura seconded the motion. Motion carried 4-1, with Commissioner Cartwright voting no.

***Report of the City Attorney***

REPORT OF THE CITY ATTORNEY  
No report was given.

***Report of the City Manager***

REPORT OF THE CITY MANAGER  
Manager Burton gave an overview of the proposed MOU between the City of Helena and Lewis & Clark County (county) related to water quality issues. The county would need to enact zoning and a septic maintenance district in order for the city to keep assisting areas with failing septic systems.  
Manager Burton spoke of the recent explosion disaster in Bozeman and noted he had made Bozeman’s City Manager aware of the City of Helena’s desire to provide assistance.

Manager Burton asked Police Chief Troy McGee to explain a bank robbery and Mountain West Bank; Chief McGee gave an overview of the robbery.

Manager Burton asked Police Chief Troy McGee to introduce newly promoted Assistant Police Chief David Jezeritz. Chief McGee gave Assistant Chief Jezeritz's history with the Police Department and congratulated him on his promotion. Mayor Smith and the Commission members commended Assistant Chief Jezeritz for his work and wished him well on his promotion.

Manager Burton asked Human Resources Director Rae Lynn Nielsen to report on the settlement of the Support Services Division and Police Department negotiations and labor contract; Director Nielsen gave an overview of the proceedings.

**Report from the  
Helena Citizens  
Council**

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Winston Greely gave an overview of the HCC's Neighborhood Fair and spoke of a recent recommendation from the HCC regarding the city's budget.

**Issuance of Bonds**

CONSIDER A RESOLUTION GRANTING PRELIMINARY APPROVAL TO THE PROPOSED ISSUANCE OF GENERAL OBLIGATION REFUNDING BONDS AND AUTHORIZING THE CITY MANAGER AND THE ADMINISTRATIVE SERVICES DIRECTOR TO PROCEED WITH PIPER JAFFRAY & CO. FOR THE ISSUANCE OF REFUNDING BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$2,900,000.

Staff Report

Administrative Services Director Tim Magee reported the city issued \$3,375,000 of general obligation bonds in 1997 and \$2,000,000 in 2001 to purchase a fire truck (\$375,000) and open space (\$5,000,000). There is a total of \$2,680,000 of bonds outstanding for both issues.

The city's financial advisors estimate we can save \$222,843 in interest expense over the life of the bonds, or approximately \$25,000 per year, by refunding these bonds based on current interest rates. Rates are volatile and actual savings will depend on the rate obtained on the date of sale. Interest rates are currently 5% for the 1997 bonds and 4.5% for the 2001 bonds, with an estimated interest rate of 2.55% for the new bonds.

The proposed resolution authorizes staff to work with Piper Jaffray & Co. as financial advisors and Kennedy & Graven, Chartered, P.C. as bond council to complete the refunding. Mr. Jorgenson recommended approval of the resolution as it would save taxpayers money.

Commission comment

Commissioner Cartwright asked if the savings refer to the net amount? Director Magee stated yes, the amount of \$222,843 is after all costs.

Commissioner Peura spoke in support of the proposed resolution.

Public comment

Mayor Smith called for public comment, none was received.

**Motion**

**Commissioner Peura moved approval for a resolution granting preliminary approval to the proposed issuance of general obligation refunding bonds and authorizing the City Manager and**

**the Administrative Services Director to proceed with the issuance of refunding bonds in an aggregate principal amount not to exceed \$2,900,000.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res #19631**

***Traffic Calming Prog.*** CONSIDER IMPLEMENTATION OF A CITY OF HELENA TRAFFIC CALMING PROGRAM.

Staff Report

Neighborhood Transportation Coordinator Allen Cormany reported one of the goals of the city's Non-motorized Travel Advisory Council (NMTAC) is the implementation of a citywide traffic calming program. The purpose of a traffic calming program is to study traffic concerns in response to neighborhood requests, with the goal of installing traffic calming measures. The proposed Traffic Calming Program will allow citizens to identify traffic concerns in their neighborhoods and request traffic calming techniques be installed to better manage traffic, whether motorized or non-motorized. Techniques typically consist of the installation of one or more devices in the street right-of-way that encourages motorists to drive slower or to use other collector and arterial streets as throughways.

Coordinator Cormany referred the commission to the attached Traffic Calming Program that is proposed by the NMTAC. The Program will be an annual cycle to assist in traffic calming on non-collector and non-arterial neighborhood streets. The city will provide public coordination, solicitation of proposals, screening of applications and documenting traffic flows to determine installation designs. Depending on the traffic calming needs and future City Commission action, city funds may be needed to construct some of the traffic calming devices. Neighborhoods will be expected to provide a portion of the project costs.

Staff supports the Traffic Calming Program with the following amendments:

1. Staff recommends at least a \$100 application fee be required with petitions for traffic calming measures. We believe this will encourage serious proposals and more neighborhood participation.
2. As written, the process would allow petitions from renters as well as property owners. Staff believes it would be best that petitions be allowed from affected property owners only, as it is the property owners that will be responsible for participatory costs.

Commission comment

Commissioner Cartwright spoke in support of the plan. Discussion was held on the application fee proposed by staff and how Special Improvement Districts would be formed and affected areas defined.

Public comment

Mayor Smith called for public comment, none was received.

Discussion

Commissioner Cartwright indicated he would support no application fee in the first year because the city will be less likely to get trivial applications. He stated he would support staff's second recommendation as it could be removed in the future if it doesn't work. He also noted the application deadline will need to be extended.

- Discussion Commissioner Shropshire spoke against charging a fee and spoke in support of allowing renters to participate in the program. Commissioner Elsaesser concurred that renters should be allowed to participate.
- Amendment** **Commissioner Cartwright moved to amend the application due date to read “April 30, 2009”.** Commissioner Peura seconded the motion. Motion carried 4-1, with Commissioner Elsaesser voting no.
- Motion** **Commissioner Elsaesser moved approval of the implementation of a Traffic Calming Program for the City of Helena as presented by the Non-Motorized Travel Advisory Committee, as amended.** Commissioner Peura seconded the motion. All voted aye, motion carried.
- Comment Commissioner Peura asked staff to report to the Commission in 2010 regarding the program, specifically the amendments that were not included.
- Public Hearings** PUBLIC HEARINGS:  
A. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3107 AMENDING TITLE 7 OF THE HELENA CITY CODE TO REGULATE THE PRIVATE USE OF PUBLIC RIGHTS-OF-WAY BY ADDING A NEW CHAPTER 13, AND AMENDING SECTIONS 7-9-4 AND 7-9-12.
- Staff Report Deputy City Attorney Thomas Jodoin reported the city has had numerous requests from private restaurants to use adjacent ROW to operate sidewalk cafes over the last several years. The City Commission has approved these uses through ROW use agreements particular to each request. Concurrently, there has been an increase in unauthorized private commercial use of public ROW. A review of other private uses of ROW, ranging from encroachments such as placement of private irrigation systems to conducting commercial activities on the streets and sidewalks, made it apparent that our current city code does not provide comprehensive guidance for this problem. Presently, under §7-9-4 Helena City Code, a mall sale permit is required to sell goods on the pedestrian walking mall and §7-9-12 prohibits obstructions except when by a permit under §7-9-4. Because portions of §7-9-4 and §7-9-12, Helena City Code, are inconsistent with the proposed ordinance, they must be amended for conformity.  
Deputy Attorney Jodoin recommended final passage of the proposed ordinance in order to provide comprehensive regulation of all private encroachments and uses on public ROW. It would allow certain encroachments and uses by right, non-exclusive uses would be subject to review and permitting through the City Manager, and exclusive uses would require City Commission approval.
- Commission comment Commissioner Cartwright referred spoke of allowing commercial signs, such as menus. He recommended adding the following language to 7-13-4: Non-Exclusive Right of Way Use: J. Signs are not permitted unless they comply with Title 11, Chapter 23, of this code and the size, location and type of sign are approved by the City Manager in conjunction with a on-exclusive right-of-way permit. He also

recommended adding the following language under 7-13-5: Exclusive Right of Way Use: B. Exclusive right-of-way use permits that are granted by the City Commission are subject to the following conditions:

3. Signs are not permitted unless they comply with Title 11, Chapter 23, of this code and the size, location and type of sign are the approved by the City Commission in conjunction with an exclusive right-of-way permit.

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.

Amendment

**Commissioner Cartwright moved to include proposed amendments to §§7-13-4-J and 7-13-5-B.3 as listed above.**

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

Motion

**Commissioner Shropshire moved approval of final passage of Ordinance No. 3107 that regulates the private use of public ROW by adding a new Chapter 13 to Title 7 and amending §§7-9-4 and 7-9-12, Helena City Code, as amended.**

Commissioner Cartwright seconded the motion.

Vote

All voted aye, motion carried. **Ord #3107**

B. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3108 REPEALING SECTION 5-9-1: STREET STANDS, HELENA CITY CODE.

Staff Report

Deputy City Attorney Jodoin reported Section 5-9-1 of the Helena City Code permits street stands that do not cause interference with traffic and pedestrians. The proposed ROW regulation and control ordinance provides for a comprehensive legal process for reviewing and approving various private uses of public ROW. The proposed ordinance creating a new regulation and control on private uses of ROW creates a conflict with §5-9-1.

Deputy Attorney Jodoin recommended repealing §5-9-1 in order to place review of street stands under the new ROW regulation and control ordinance and eliminate the conflict.

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 Ordinance No. 3108 repealing §5-9-1, Helena City Code.**

Commissioner Peura seconded the motion. All voted aye, motion carried. **Ord #3108**

**Public Communications**

PUBLIC COMMUNICATIONS

No communications were given.



***Meetings of  
Interest***

MEETINGS OF INTEREST

The next Administrative Meeting is March 18, 2009 and the next Commission Meeting is March 23, 2009.

***Adjournment***

There being no further business to come before the Commission, the meeting was adjourned at 8:13p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission