

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
April 6, 2009
6:00 P.M.

Time & Place A regular City Commission meeting was held on Monday, April 6, 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 Kent Schlosser 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 March 23, 2009 were approved as submitted.

Appointments APPOINTMENTS:
A. Board of Adjustment

Mayor Smith asked for Commission concurrence on the following appointments:

Appointment of Michele Peterson to an unexpired term on the Board of Adjustment. Term will begin upon appointment and expire October 1, 2011.

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

Motion Commissioner Cartwright moved approval of the appointment of Michelle Peterson to an unexpired term on the Board of Adjustment. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Consent Agenda CONSENT AGENDA:
A. Claims
B. Acceptance of FY09 Bureau of Justice Assistance Edward Byrne Memorial Justice Assistance Grant (JAG) Funding
C. First passage of an ordinance clarifying that a violation of the Social Host ordinance is a municipal infraction by amending §5-14-5, Helena City Code **Ord #3110**
D. Construction agreement with Montana Department of Transportation for construction of mill and overlay improvements on Custer Avenue between Montana Avenue and Green Meadow Drive
E. Construction agreement with Montana Department of Transportation for construction of mill and overlay improvements on Benton Avenue between Euclid Avenue and Gilbert Street
F. Construction agreement with Montana Department of Transportation for construction of mill and overlay improvements on Hauser Boulevard between Benton Avenue and Henderson Street

G. Utility bill insert – Animal Control

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

Commission comment Commissioner Elsaesser asked item C be removed for further discussion.

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

Motion Commissioner Elsaesser moved approval of items A, B, D, E, F and G on the consent agenda. Commissioner Peura seconded the motion. All voted aye, motion carried.

Discussion Commissioner Elsaesser expressed concern with the Social Host Ordinance and noted he would discuss his concerns at the public hearing on April 20, 2009.

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

Motion Commissioner Elsaesser moved approval of items C on the consent agenda. Commissioner Shropshire seconded the motion. All voted aye, motion carried.

Communications COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS
Commissioner Elsaesser announced Trash for Trees-Growing Friends/Community Recycling Drive will be held on April 25, 2009 in the Northgate Plaza parking lot.

Report of the City Attorney REPORT OF THE CITY ATTORNEY
Attorney Nielsen updated the Commission on the lawsuit the City and Helena School District filed against Yellowstone Pipeline; the company has been served.

Report of the City Manager REPORT OF THE CITY MANAGER
Manager Burton reported the three construction agreements on the consent agenda are stimulus funded projects via the Montana Department of Transportation.
Manager Burton spoke of the deer reduction program and notified the commission of his intent to use \$9,500 in contingency funds to pay for the purchase of new traps and strengthen the existing ones and cover personnel costs. There was Commission consensus to use the contingency funding.
Manager Burton noted the Transfer Station would be closed on Sunday, April 12, 2009 due to light/non-use.
He asked City Controller Glenn Jorgenson to report on the recent Open Space bond sale. Mr. Jorgenson gave an overview of the results of the refinancing. Contact Adam Safer at 1-303-820-5881 at Piper Jaffray to purchase unsold bonds.
Commissioner Cartwright spoke of the road construction projects on the consent agenda and noted they exactly fit the definition of "shovel ready". He commended the deer reduction project for operating on a budget of only \$39,000.

**Report from the
Helena Citizens
Council**

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Kent Schlosser reported Ms. Bonnie O'Neill will be the new HCC VISTA, and will begin her position in July. He announced there will be a discussion about bikes on the walking mall at 6:30pm in City/County Building Room 326 before the regular HCC meeting on April 22, 2009. Mayor Smith acknowledged the HCC's recommendation regarding undeveloped parks and noted he is working on a response.

MMIA Benefits Prog

CONSIDER A RESOLUTION AUTHORIZING CITY OF HELENA PARTICIPATION IN THE MONTANA MUNICIPAL INTERLOCAL AUTHORITY (MMIA) EMPLOYEE BENEFITS PROGRAM.

Staff Report

Human Resources Director Rae Lynn Nielsen reported currently the City of Helena benefits program is self-funded with Allegiance Benefit Plan Management as the third party administrator. The plan is well managed and as of the date of this memo has a cash reserve in the medical account of \$1,295,169; a cash reserve in the dental account of \$45,361 and a cash reserve in the vision account of \$45,095. She noted Fiscal Year 2008 was a particularly bad year for the medical plan and reserves were drawn down by about \$493,000.

Staff is recommending moving the medical employee benefits plan to MMIA and to keep the dental and vision plan self-funded. This would give the city the ability to spread the risk of medical claims and utilize a risk retention pool. Ability to offer employees choices on medical plans, one which will now include the ability to purchase a Health Savings Account (HAS). It would also provide the ability to budget premium amounts rather than claims.

Commission comment

Discussion was held on medical fund reserves. Commissioner Cartwright asked if the city could terminate the agreement. Director Nielsen explained it is a five year agreement but the city could terminate with the required 30 day notice. Commissioner Peura spoke in support of the new medical insurance coverage.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Peura moved approval of a resolution authorizing the City of Helena participate in the Montana Municipal Interlocal Authority (MMIA) employee benefits program.

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

Ambulance Service

CONSIDER APPROVAL OF AN AMBULANCE SERVICE AGREEMENT.

Staff Report

Fire Chief Steve Larson explained the agenda item and reported the current five year agreement expired on March 31, 2009. The Lewis & Clark County/City of Helena Ambulance Board has voted to accept the proposed ten year agreement. Chief Larson recommended approval of the agreement as it would provide seamless coverage from a proven provider of excellent ambulance service.

Commission comment

Commissioner Cartwright asked for confirmation this is a coordination agreement and the hospital is responsible for billing for the service. Chief Larson concurred. Mayor Smith referred to the six rural

fire departments listed in the agreement and asked for more information. Chief Larson explained the county represents the rural fire departments.

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

Motion **Commissioner Shropshire moved approval for a ten (10) year Ambulance Service Agreement with St. Peter's Hospital and authorized the City Manager to sign the agreement.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Observation Beehive CONSIDER FIRST PASSAGE OF AN ORDINANCE PERMITTING AND REGULATING THE KEEPING OF OBSERVATION BEEHIVES WITHIN CITY LIMITS BY AMENDING §5-3-5, HELENA CITY CODE.

Staff Report Deputy City Attorney Thomas Jodoin reported Exploration Works desires to display an observation beehive at its location in the Great Northern Town Center. Section 5-3-5 of the Helena City Code prohibits the keeping of bees within the city limits.

In order to permit and regulate the keeping of bees for exhibition purposes only, §5-3-5 must be amended. The amendment proposes to permit a premise to have one observation hive consisting of up to three frames, each 10" x 20" in size, with a maximum of two pounds of bees for the entire observation hive.

Deputy Attorney Jodoin recommended approval of the ordinance.

Public comment Mayor Smith called for public comment. Ed Heinlien, bee expert; explained the frame of the observation hive.

Chris Talliff, Exploration Works; spoke in support of the proposed ordinance and display at Exploration Works.

Discussion Thorough discussion was held on the proposal and the Commission requested further clarification at the April 20, 2009 public hearing on the following: the specific definition of an observation hive; how to ensure only certain types of bees are allowed; whether a third dimension to the frame is necessary; and liability issues if someone were to get stung. Mr. Heinlien announced he would bring an observation hive to the April 20, 2009 Commission Meeting.

Motion **Commissioner Peura moved approval for first passage of an ordinance permitting and regulating the keeping of observation beehives within city limits by amending §5-3-5, Helena City Code, and set a public hearing date of April 20, 2009.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ord #3111**

Alley Vacations CONSIDER A RESOLUTION OF INTENTION TO VACATE SEVERAL ALLEYS WITHIN HELENA SCHOOL DISTRICT PROPERTIES AT LINCOLN, BRYANT AND CENTRAL SCHOOLS AND SET A PUBLIC HEARING DATE OF APRIL 20, 2009.

Staff Report City Engineer Ryan Leland reported John Carter, Facilities Manager for the Helena School District #1, has submitted a petition to vacate the following alleys:

Bryant School: The 20-foot wide east-west alley right-of-way (ROW) located between Lots 5-8 and Lots 9-12 in Block 44 of the Northern Pacific Addition

Lincoln School: The 20-foot wide east-west alley ROW between Lots 3-8 and Lots 9-12 in Block 12 of the Flower Garden Addition

Central School: The 16-foot wide east-west alley ROW between Lots 1-7 and Lots 8-14 of Block 419 of the Helena Townsite (1849 plat)

There are no utilities located in any of the proposed portions of ROW to be vacated. The school district has been maintaining these ROWs and they currently have structures and other improvements located on them.

The school district desires to clean up property boundary issues and eliminate encroachments onto city ROW. Staff is recommending that any fees associated with the vacation of these ROW be waived due to the fact that the school district has donated property for city ROW in other areas and has been maintaining the ROWs proposed to be vacated. Mr. Leland recommended approval of the resolution of intention.

Public comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Cartwright moved approval of a resolution of intention to vacate three platted, unconstructed alley ROWs in Block 44 of the Northern Pacific Addition; Block 12 of the Flower Garden Addition; and in Block 419 of the Helena Townsite (1869 plat) and set a public hearing date for April 20, 2009. Commissioner Peura seconded the motion. All voted aye, motion carried. **Res #19638**

Alley Vacation

CONSIDER A RESOLUTION OF INTENTION TO VACATE THE PLATTED, UNCONSTRUCTED ALLEY BETWEEN LOTS 7-11 AND LOTS 24-28 OF THE COURTHOUSE ADDITION, GENERALLY LOCATED SOUTH OF IOWA STREET, EAST OF BEATTIE STREET AND WEST OF SOUTH RALEIGH STREET.

Staff Report

Mr. Leland reported Neil Templeton and Erin McMahon have purchased the above referenced lots. They have applied for vacation of an unconstructed east/west alley that divides their property. There are no utilities in this ROW. Iowa Street and Raleigh Street are not constructed and Lots 7-11 and Lots 24-28 in Block 8 cannot be physically accessed by city emergency services. The applicants have not provided a proposal for extension of utilities or streets to this property.

The applicants wish to vacate the 16-foot wide and 125-foot long alley between Lots 7-11 and Lots 24-28 in Block 8 of the Courthouse Addition. The alley proposed to be vacated is approximately 2,000 square feet. The fee for the vacation is \$2,890 based on the square footage value for the alley ROW determined by the Montana Department of Revenue (DOR). The alley ROW currently has a value of \$1.21 per square foot for the north half and \$1.68 for the south half of the alley. Upon vacation, the ROW would be deeded to the adjacent property owners. Staff has suggested that an exchange of ROW for additional

ROW along Iowa Street would be appropriate as future construction of Iowa Street would cross and existing drainage and additional ROW width will be needed in that area. The applicant was originally not supportive of an exchange but has since changed his mind. Mr. Leland recommended denial of the proposal in order to allow time for staff to form an agreement with the applicant.

- Commission comment Mayor Smith asked for other property vacations in the area. Mr. Leland explained other vacations in the area on a map.
- Public comment Mayor Smith called for public comment.
Neil Templeton, applicant; spoke in support of the vacation.
- Discussion Commissioner Cartwright indicated he would be comfortable tabling the proposal to allow the applicant to work with staff and not have to pay another application fee. Mayor Smith concurred.
- Motion** **Commissioner Elsaesser moved to table a resolution of intention to vacate the east/west alley ROW between Lots 7-11 and Lots 24-28 in Block 8 of the Courthouse Addition to the City of Helena to the call of the City Manager.** Commissioner Cartwright seconded the motion. All voted aye, motion carried.
- Water Park Fees** CONSIDER A RESOLUTION OF INTENTION TO ESTABLISH FEES TO BE CHARGED FOR THE LAST CHANCE SPLASH WATER PARK FOR THE 2009 SEASON. (TABLED ON MARCH 23, 2009)
- Staff Report Parks & Recreation Director Amy Teegarden reported city staff recently completed a detailed operation and financial analysis. Revenue projections were based on seven alternative fee structures. Projected revenues are based on a 100% increase in visitor use (doubles the historical use season total of 17,600 to 35,600).
Projected expenditures were based on historical data as well as anticipated increases in costs based on increased staffing levels, and operational expenses. Projected expenses for FY10 (which overlaps portions of two swim seasons) are estimated to be \$382,438. This is an increase of more than 100% over the 2008 actual expenditures of \$155,709. The most significant increases are in temporary salaries, clothing allowance, concessions resale inventory, utilities and chemicals.
Historically the pool has not successfully generated revenue to meet expenses. Based on an average of the last three years, the city has provided a pool subsidy of \$117,128. Attachment A summarized each alternative by projected revenues, expenditures and the net city subsidy required for each alternative. In addition to proposed fee increases, changes in revenue/operational policies are included in the analysis.
City staff is confident that projections for both revenue and expenditures for the 2010 swim season will be fine-tuned based on the 2009 season. In addition, for the first time, pool staff will be utilizing computer software that will assist them in documenting ticket sales, lessons, rentals and concession sales.
On March 18, city staff presented an analysis and a recommended alternative. Since that presentation, city staff developed additional alternatives (4-A, 5-A and 6-A). These alternatives reduce the cost of water activities (lap swim, water aerobics, etc.) to \$2.50 and \$2.00 as well as increase the city discount for punch passes.

Based on its review, city staff is recommending approval of the resolution using Alternative 6-A as outlined on the spreadsheet included in the Commission packet. This would give the Commission the flexibility to approve lower rates without needing to hold an additional public hearing.

Commission comment

Commissioner Shropshire asked why there is a height limit placed on open swim? Director Teegarden explained the fee structure is based on height because staff's analysis of operations indicated it would not be conducive to charge for separate activities or uses; there is one fee for the entire facility and the height limit is based on the manufacturer's policy for the waterslide. Commissioner Elsaesser asked for the schedule of use at the pool. Director Teegarden reported the Lions Swim Team will practice from 6:30 – 9:00am; 9:30 – 11:45am is reserved for swim lessons, and lap swim and water aerobics are scheduled from noon to 1:00pm. The water park is scheduled to be open from 1:00pm to 8:00pm, Monday through Friday. Commissioner Peura asked for the difference between open swim and water activities. Director Teegarden explained open swim relates to use of the entire facility; water activities are scheduled uses such as lap swim, water aerobics, and water walking. She noted the punch cards are only valid for the 2009 season and children age 7 and younger must be accompanied by an adult.

Public comment

Mayor Smith called for public comment.
Michael Downey, 1620 Ohio Avenue; spoke in opposition to the resolution of intention.
Doug Compton, Helena; spoke in opposition to the resolution of intention.
Larry Keaton, 1331 Knight Street; spoke in opposition to increasing the fees.
Helena Paulson, 709 8th Avenue; spoke in opposition to increasing the fees and suggested implementing group rates.

Discussion

Commissioner Cartwright addressed Mr. Downey's concerns. He asked staff to revisit the projected expenses due to the lower cost of gas. Manager Burrton agreed to double check staff's original assumptions.
Commissioner Peura asked if the 48" height requirement relates to safety requirements of the water park amenities? Director Teegarden stated yes. Commissioner Peura asked if the staffing levels are driven by state regulations? Director Teegarden stated yes and explained there are state statute driven, fixed staff costs based on the square footage of water, not the amount of swimmers present.
Commissioner Shropshire spoke of concerns with not offering a discounted group rate.

Motion

Commissioner Peura moved approval of a resolution of intention using Alternative 6-A to establish fees to be charged for the Last Chance Splash Water Park and Pool for the 2009 season, and set a public hearing date for April 20, 2009. Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Res #19639**

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER A RESOLUTION VACATING THE CLOSED ALLEY IN BLOCK 24 OF THE GRAND AVENUE ADDITION, GENERALLY LOCATED NORTH OF LAST CHANCE GULCH AND SOUTH OF ASPEN STREET.

Staff Report

City Engineer Leland reported Knox Flower Shop, Inc. and Troy Gary of Gary's Auto Plaza have applied to vacate the closed alley that divides their respective businesses in Block 24 of the Grand Avenue Addition. Gary's Auto Plaza is located on Lots 4-6 of Block 24 and Knox Flower Shop is located on Lots 7-11 of Block 24. The alley is generally located north of Last Chance Gulch and South of Aspen Street. The alley was closed many years ago and the Department of Revenue assigned GEO codes to each half of the alley and sent tax bills to the adjacent property owners who paid taxes on the closed alley.

The applicant proposes the city vacate the 16-foot wide closed alley in Block 24 of the Grand Avenue Addition. There are no utilities in this right-of-way. The western portion of the closed alley adjacent to Knox Flowers is 1136 square feet. The eastern portion of the alley adjacent to Gary's Auto Plaza is 1102 square feet. Upon vacation, the ROW would be deeded to the adjacent property owners. Because property owners have been paying taxes and maintaining the property for over 20 years, it is recommended that the city waive the property vacation fee in this instance. The calculated fees are \$12,280 for the west portion and \$12,695 for the east portion.

Mr. Leland recommended approval of resolution as it would clean up the property boundaries and provide title to property the owners have been using for which they have paid taxes.

Public Testimony

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

Troy Gary and Mike Lemm, applicants; urged approval of the vacation.

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

Motion

Commissioner Peura moved approval of a resolution to vacate the closed alley in Block 24 of the Grand Avenue Addition. Commissioner Shropshire seconded the motion. All voted aye, motion carried. **Res #19640**

Motion

Commissioner Peura moved to waive the fees associated with the vacation of the closed alley in Block 24 of the Grand Avenue Addition. Commissioner Shropshire seconded the motion. All voted aye, motion carried.

B. CONSIDER A RESOLUTION VACATING THE CLOSED ALLEY AND THE WEST 35 FEET OF CLOSED COOKE STREET, BOTH IN BLOCK 23 OF THE NORTHERN PACIFIC ADDITION, GENERALLY LOCATED EAST OF THE CLOSED PORTION OF COOKE STREET, SOUTH OF GALLATIN AVENUE AND NORTH OF HELENA AVENUE.

Staff Report

Mr. Leland reported the Montana Credit Unions League building is currently located at 1236 Helena Avenue. The applicants, the League Service Group, owners of the property at 1236 Helena Avenue, and Region IV Family Outreach, Inc., are requesting the proposed ROW vacations so the Montana Credit Unions League existing building may be expanded and to accommodate the associated parking and landscaping requirements.

The proposal is to vacate the 20-foot wide closed east-west alley adjacent to Lots 12-15 in Block 23 and the west 35 feet of closed Cooke Street in Block 23, both in the Northern Pacific Addition. There are no utilities in the ROWs. Upon vacation, the ROW would be deeded to the League Service Group. The square footage of the proposed alley vacation is 1387.3 with a calculated fee of \$15,454.52 according to Montana Department of Revenue values. Mr. Leland noted a private appraisal was valued at \$5.07 per square foot. The square footage for the proposed closed Cooke Street vacation is 3969 square feet, with a calculated fee of \$25,695.17. The total fee to be paid to the City for both property vacations is \$41,149.69.

Mr. Leland recommended approval of the vacations as they would provide revenue to the city and allow the use of previously closed ROW.

Public Testimony

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

Tracy Kenyan, President of Montana Credit Union Network, 1236 Helena Avenue, applicant; spoke in support of the vacations.

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

Commission comment

Commissioner Cartwright asked for more information on using a private appraisal to calculate a vacation fee. Mr. Leland explained staff has never used a private appraisal before but has worked out discrepancies with Department of Revenue valuations.

Commissioner Elsaesser expressed concern for pedestrian and bike access to the future transit site. He recommended approval of the proposal to vacate the west 35 feet of Cooke Street and tabling the vacation of the closed alley in order to work on pedestrian access issues. Manager Burton concurred with Commissioner Elsaesser and noted he would provide the Commission with the preliminary transit site design.

Motion

Commissioner Cartwright moved to approve a resolution to vacate the west 35 feet of closed Cooke Street, in Block 23 in the Northern Pacific Addition to the City of Helena. Commissioner Peura seconded the motion. All voted aye, motion carried. **Res #19641**

Motion

Commissioner Cartwright moved to waive the fee for the vacation of the west 35 feet of closed Cooke Street. Commissioner Peura seconded the motion. All voted aye, motion carried.

Motion

Commissioner Cartwright moved to table a resolution to vacate the closed alley of Cooke Street, in Block 23 in the Northern Pacific Addition to the City of Helena to the call of the City Manager. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Comment

Mayor Smith, Commissioner Peura and Commissioner Cartwright indicated they would not accept the private appraisal as it would deviate from past practice. City Attorney Nielsen noted city code requires the Commission to use the Department of Revenue appraisal but a blending of values may be possible.

**Public
Communications**

PUBLIC COMMUNICATIONS
No public communications were given.

**Meetings of
Interest**

MEETINGS OF INTEREST
The next Administrative Meeting is April 15, 2009 and the next Commission Meeting is April 20, 2009.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 8:32p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission