

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
December 7, 2009
6:00 P.M.

Time & Place

A regular City Commission meeting was held on Monday, December 7, 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 Ron Alles, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Marshall Gingery representing the Helena Citizens Council.

Pledge of Allegiance

Mayor Smith asked the members of Boy Scout Troop #214 to lead those persons present in the pledge of allegiance.

Minutes

The minutes of the regular City Commission meeting of November 23, 2009 were approved as submitted.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Water bill insert – Street and sidewalk snow removal
- C. Waive Helena Area Transit Service (HATS) fees on fixed routes for school-ages youth traveling to city-operated ice rinks

City Manager Ron Alles 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 C on the consent agenda. Commissioner Peura seconded the motion. All voted aye, motion carried.

Bid Award

BID AWARD:

- A. Missouri River Treatment Plant Backup Power Contract

Staff Report

City Engineer Ryan Leland report over the past several years the City of Helena has received grants from the federal government to upgrade the Missouri River Treatment Plant (MRTP). Some of the projects have included filter upgrades, a new activated carbon feed system, installation of new valves and the recently completed Clearwell and Pump Station Project. As part of the Clearwell and Pump Station a new generator was installed. The generator is currently only connected to the new pump station. The MRTP Backup Power project is to install all the wiring and electrical components to connect the new generator to the entire plant. The new generator has enough capacity to allow the MRTP to run at half capacity and continue to produce water during a power outage.

The city opened three bids on October 29, 2009. The lowest responsible bidder was Townsend Electric of Townsend, Montana with a bid of \$69,690.00.

Staff recommended awarding the contract for the Missouri River

Treatment Plant Backup Power, City Project #10-3 to the lowest responsible bidder, Townsend Electric, Inc. in the amount of \$69,690.

Commission comment Mayor Smith thanked the Montana congressional delegation for their work in securing funding for upgrades to the treatment plants.

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

Motion Commissioner Peura moved to award the contract for the Missouri River Treatment Plant Backup Power, City Project #10-3 to the lowest responsible bidder, Townsend Electric, Inc. in the amount of \$69,690. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

A. Helena International Affairs Council (HIAC) Annual Report

HIAC Chair Jessica Peterson presented the annual report to the Commission. A hard copy of the report was given to the Commission members and is included in the Commission packet as part of the official record.

Commissioner Cartwright thanked City Manager Ron Alles and Community Development Director Sharon Haugen for setting up a recent meeting regarding the creation of a TIF district in the 6th Ward area. He referred to the Caird Project and noted while the Lewis & Clark County Commission will hold a hearing on the project, they would not vote at the Tuesday, December 8, 2009 Commission meeting.

Commissioner Elsaesser spoke in support of consent agenda Item C. He also referred to an article in the New York Times regarding Helena Police Department Sergeant John Fosket's police dog. Assistant Police Chief Dave Jezeritz gave an overview of the article. Commissioner Peura asked that a link to the NY Times story be added to the city's website.

Commissioner Peura spoke of the Caird Project and the grant application process. He expressed concern with Rocky Mountain Development Council (RMDC) applying for the NSP Grant through the Lewis & Clark County Commission as he believes it sets a concerning precedent and sends a disconcerting signal. Mayor Smith commented Lewis & Clark County is eligible to apply for the grant just as the city is and encouraged Commissioner Peura to express his concerns to the County Commission at the hearing for the grant application.

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 Alles reported the city is working with RMDC, Helena Indian Alliance and National Guard to set up emergency shelter for the homeless during this week's extremely cold weather.

**Report from the
Helena Citizens
Council**

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Marshall Gingery reported the HCC is hosting a potluck and new member orientation on December 9, 2009 at 6:00p.m., and gave an overview of marketing and budget committee activities.

**Storm Sewer
Ordinance**

CONSIDER FIRST PASSAGE OF AN ORDINANCE PROHIBITING ILLEGAL DISCHARGES AND CONNECTIONS TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM, AND REGULATING CONSTRUCTION AND POST CONSTRUCTION ACTIVITIES BY AMENDING CHAPTER 6 OF TITLE 6 OF THE HELENA CITY CODE.

Staff Report

Public Works Utility Maintenance Superintendent Kevin Hart reported in 2005 to comply with state and federal storm water regulations, the City of Helena applied for a small Ms4 permit, to authorize the ongoing discharge of stormwater from the incorporated limits of Helena. Authorization MTR04003 was issued to Helena in June 2006 and contains certain requirements known as minimum control measures and imposes certain obligations on the City of Helena in regard to our responsibility to control stormwater run-off and protect the quality of receiving downstream surface waters. A listing of the six minimum control measures and components Helena is committed to under the permit were attached to the staff report.

Helena has had a Storm Water Control Ordinance since 1991 which established the stormwater utility and contains requirements for storm water drainage plans and water quality protections. The ordinance is bolstered by adopted engineering standards which include design requirements for new stormwater infrastructure. These provisions while forward thinking at the time, are not sufficient to meet the requirements of the current Ms4 permit. Compliance will require revision in four key areas which include 1) Regulation of illegal discharges through detection and elimination and increased protection of drainage ways; 2) Increased regulation of construction activity and application of Best Management Practices (BMP's) prior to stormwater discharge into the current system and new regulation for construction activities affecting one-acre or more prior to new stormwater facilities being accepted by the city; 3) Increase regulation of post construction activity discharges to the storm system through best management practices to allow for city operation and maintenance of the facilities in ways that protect, maintain and provide opportunities for improvement of discharged stormwater quality; and 4) Increase internal regulation of Ms4 system and enforcement of these provisions.

The proposed ordinance meets the requirements of the current Ms4 permit obligations and will be considered an important element in the renewal and reauthorization of the city's MPDES discharge permit.

The proposed ordinance amendment complies with obligations of current Ms4 permit requirements. Adoption of the ordinance will remove risk that the city will be found out of compliance or not eligible for reauthorization of our storm water discharges, under the next permit cycle which begins January 2, 2010. Changes will provide the city with additional tools to control connections and operate and maintain its storm water system. If adopted the changes reinforce city policies to maintain and improve storm water discharge quality. The amended ordinance will obligate future commissions to take those actions necessary to ensure continued compliance with permit authorizations. Compliance would include the administrative actions necessary to support and fund a storm

water management utility and program for the City of Helena. Failure to adopt the ordinance changes may subject the city to compliance actions and/or fines from the Montana Department of Environmental Quality.

Superintendent Hart recommended approval for first passage of an ordinance prohibiting illegal discharges and connections to the municipal separate storm sewer system, and regulating construction and post construction activities by amending Chapter 6 of Title 6 of the Helena City Code.

Commission Comments Commissioner Peura asked that the cost of implementation, fine for non-compliance and source of additional funding related to the ordinance changes be provided to the Commission at the public hearing on December 21, 2009.

Commissioner Shropshire discussed compliance with the permit and changes to the ordinance in detail. She announced she would recuse herself from voting on the ordinance as she sits on a board for the State of Montana that sets the related rules.

Commissioner Cartwright asked if staff has received any public comment on the issue. Superintendent Hart answered no but noted local contractors are aware changes to the regulations are coming.

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

Motion **Commissioner Peura moved approval for first passage of an ordinance prohibiting illegal discharges and connections to the municipal separate storm sewer system, and regulating construction and post construction activities by amending Chapter 6 of Title 6 of the Helena City Code and set a public hearing date for December 21, 2009.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Ord #3120**

Helena City Court CONSIDER FIRST PASSAGE OF AN ORDINANCE TO BE EFFECTIVE MARCH 1, 2010, ABOLISHING THE HELENA CITY COURT, ESTABLISHING A MUNICIPAL COURT AND THE POSITION OF MUNICIPAL COURT CLERK AND SETTING COURT CIVIL FEES.

Staff Report City Attorney David Nielsen reported Helena currently has a city court that adjudicates certain civil cases and misdemeanor crimes committed in the city limits. When there is a criminal conviction in city court, the defendant can appeal to district court and get a trial de novo – a new trial. This means the case starts all over again. All the large cities in Montana use a municipal court. In a municipal court, the trial proceedings are recorded and when there is a conviction, the appeal to district court is only on the trial record. There is no right to a new trial simply because of the appeal. At present, there are over 50 criminal convictions from City Court that are on appeal to district court and all will receive a new trial. The prosecutor must try the case a second time. All the witnesses, including police officers, must come and testify a second time. If our police officers go to district court during their time off, they are deprived of much needed rest from work and the City pays them a minimum of four hours overtime. Lay witnesses are inconvenienced a second time. This is especially critical in partner/family member assault cases when the victim, who has been manipulated by the offender in the abuse, becomes subject to further abuse by having to testify in front of the abuser a second time.

The current fees for civil cases for City Court are higher than the amount a municipal court can legally charge, so in transitioning to a municipal court, we must adjust the civil fees to comply with state law.

City Attorney Nielsen recommended approval for first passage of an ordinance, to be effective March 2, 2010, abolishing the Helena City Court, establishing a municipal court and the position of Municipal court clerk, and setting court civil fees, and set a public hearing date of December 21, 2009.

Commission comment Commissioner Peura asked staff to provide the Commission with a projection of decreased revenue based on the reduced civil filing fee and the amount of savings due to reduced overtime for Police Department officers.

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

Motion **Commissioner Peura moved approval for first passage of an ordinance, to be effective March 2, 2010, abolishing the Helena City Court, establishing a municipal court and the position of Municipal court clerk, and setting court civil fees, and set a public hearing date of December 21, 2009.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ord #3121**

Public Hearings PUBLIC HEARINGS:
A. CONSIDER FINAL PASSAGE OF ORDINANCE 3119
 REQUIRING THAT REPLICAS OF HISTORICAL FIXTURES
 COMPLY WITH LIGHTING STANDARDS, ELIMINATING THE
 JANUARY 1, 2011 DEADLINE FOR STREET LIGHTING
 FIXTURES TO CONFORM TO CITY CODE, AND ELIMINATING
 THE REQUIREMENT THAT THE CITY MANAGER SUBMIT A
 PLAN FOR COMPLIANCE BY AMENDING SECTIONS 10-1-3
 AND 10-3-2, HELENA CITY CODE.

Staff Report Deputy City Attorney Thomas Jodoin reported the current definition of historic streetlight includes streetlights that are manufactured after January 1, 1950, and are designed to replicate streetlights that were manufactured prior to January 1, 1950. This definition permits replica streetlights that don't comply with City Code with respect to horizontal cut-off requirements.

City Code also requires that all street lighting fixtures that are not exempt and do not comply with the code must be brought into compliance by January 1, 2011. In furtherance of that goal, the City Manager was required to submit a plan to the City Commission by January 1, 2001, for bringing street lighting fixtures into compliance. Ten percent (10%) of nonconforming street lighting fixtures identified in that plan were required to be retrofitted each year.

Staff is recommending the ordinance require that all street lighting fixtures, except historic street lights, comply with street lighting standards by eliminating historic replicas from the definition of historic streetlights. Eliminate allowing non-exempt, nonconforming street lighting fixtures and eliminate the requirement that the City Manager submit a plan for bringing nonconforming fixtures into compliance and that 10% of nonconforming fixtures be retrofitted to comply with city code each year.

Deputy Attorney Jodoin recommended approval of final passage of Ordinance 3119 requiring that replicas of historical fixtures comply with lighting standards, eliminating the January 1, 2011 deadline for street lighting fixtures to conform to City Code, and amending the requirement that the City Manager submit a plan for compliance by amending Sections 10-1-3 and 10-3-2, Helena City Code.

Commission comment Commissioner Cartwright asked what impact these changes would have on private parking lots and private lighting. Deputy Attorney Jodoin explained this ordinance will only affect street lighting. Commissioner Cartwright recommended the same requirements be applied to private lighting in the future.

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 Elsaesser moved approval for final passage of Ordinance No. 3119 requiring that replicas of historical fixtures comply with lighting standards, eliminating the January 1, 2011 deadline for street lighting fixtures to conform to City Code, and amending the requirement that the City Manager submit a plan for compliance by amending Sections 10-1-3 and 10-3-2, Helena City Code.** Commissioner Shropshire seconded the motion. All voted aye, motion carried. **Ord #3119**

B. CONSIDER A VARIANCE FROM SECTION 11-4-2(E) OF THE HELENA CITY CODE TO EXCEED THE 70-FOOT HEIGHT LIMITATION FOR A TOWER LOCATED IN A B-3 (CENTRAL BUSINESS) DISTRICT; FOR PROPERTY GENERALLY LOCATED EAST OF CRUSE AVENUE AND SOUTH OF 7TH AVENUE.

Staff Report Planner Elroy Golemon reported a resident of the city contacted the Building Division on October 9, 2009, regarding the construction of a new tower at 317 N. Cruse Avenue, the Independent Record building. Staff inspected the site and confirmed that a new tower was recently constructed in this location. Upon reviewing Building Division records it was determined that no building permit had been issued for the new tower.

A review of information submitted by the applicant on October 29, 2009 indicated the new tower exceeded the 70-foot maximum height limitation of the B-3 (Central Business) District by 5 feet. In accordance to Section 11-5-3(A) of Helena City Code the city commission is the only body with the authority to consider height variances for towers.

The applicant is requesting a variance to exceed the maximum height allowed in the B-3 District by the additional 5 feet to accommodate the overall height of a newly constructed tower. According to the applicant the additional 5 feet is needed to provide line of sight communications path and to clear obstructions to the press facility located at 2222 Washington Street.

Planner Golemon stated staff does not have a recommendation for the variance. In the staff memo two recommended motions were listed, one to approve a variance and one to deny a variance.

Commission comment Commissioner Cartwright asked who usually pulls the building permit, the property owner or contractor? Planner Golemon stated either party. Commissioner Peura confirmed the Independent Record (IR) is in violation of the city's building ordinance and asked if there is a fine for the violation. Attorney Nielsen explained this violation is a misdemeanor and the standard maximum punishment is a \$500 fine and/or six months in jail. He noted the Commission could not levy the fine; a criminal complaint would need to be filed in the City Attorney's office.

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

Stan Elliason, Cutthroat Communications, representing the IR; urged the Commission to approve the variance and explained the oversight in failing to obtain a building permit.

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

Discussion Commissioner Peura indicated he would be comfortable approving the variance but stated the applicant should be penalized. City Attorney Nielsen recommended the Commission ask staff to file a criminal complaint.

Commissioner Elsaesser asked who owns the frequency of the tower. Mr. Elliason explained the new link is licensed; the IR owns its own frequency. Commissioner Elsaesser recommended tabling the variance to allow the applicant to apply for a building permit and go through the normal process.

Commissioner Shropshire asked why there is a 70-foot limitation in the B-3 District. Planner Golemon explained the Commission revised the height limitations in 2008 to allow for review of proposed towers by zoning district.

Commissioner Cartwright commented the contractor should know they need to obtain a building permit though the property owner bears ultimate responsibility. He suggested the IR perform community service project in lieu of a fine by replacing the four trees that have died in their parking lot.

Motion **Commissioner Peura moved approval of a variance from 11-4-2(E) of Helena City Code to exceed the 70-foot height limitation for a tower located in the B-3(Central Business) District by an additional 5 feet, to accommodate the height of a newly constructed 75-foot tower; with the condition that building permit must be obtained; for property legally described in the staff report and recommended city staff investigate and levy a \$150 penalty for the misdemeanor violation of Helena City Code 11-4-2(E).**

Commissioner Shropshire seconded the motion.

Friendly amendment Commissioner Cartwright offered the following friendly amendment:

Approval of a variance from 11-4-2(E) of Helena City Code to exceed the 70-foot height limitation for a tower located in the B-3(Central Business) District by an additional 5 feet, to accommodate the height of a newly constructed 75-foot tower; with the condition that building permit must be obtained; for property legally

described in the staff report and recommended city staff seek some kind of sanction or community service, such as planting trees for the misdemeanor violation of Helena City Code 11-4-2(E).

Commissioner Peura resisted the amendment.

Discussion

Commissioner Elsaesser indicated he would not support the motion. Mayor Smith indicated he would support the motion as other applicants have been penalized for not following the proper process.

Vote

Motion carried 4-1 with Commissioner Elsaesser voting no.

***Public
Communications***

PUBLIC COMMUNICATIONS

No public communications were given.

***Meetings of
Interest***

MEETINGS OF INTEREST

The next Administrative Meeting is December 16, 2009 and the next Commission Meeting is December 21, 2009.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:51 p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission