

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**July 26, 2010**  
**6:00 P.M.**

***Time & Place***

A regular City Commission meeting was held on Monday, July 26, 2010 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, Ellison, Thweatt and Elsaesser were present. City Manager Ron Alles, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Jim Penner 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 July 12, 2010 were approved as submitted.

***Consent Agenda***

CONSENT AGENDA:

- A. Claims
- B. Utility Bill Insert - Utility Customer Service-water/wastewater rate increases
- C. Buy/Sell Agreement with Marilyn Maddox and Susan Ayres for LeGrande Cannon Boulevard
- D. Buy/Sell Agreement with Nancy and Dennis Peterson for LeGrande Cannon Boulevard
- E. Sanders Street right of way (ROW) dedication
- F. Resolutions of intention to levy and assess annual charges on the following districts for fiscal year 2011 and setting a public hearing date:
  - 1. Open Space Maintenance District
  - 2. Sidewalk Improvement Program
  - 3. Special Improvement Districts (SID's)
  - 4. Storm Water Utility
  - 5. Street Lighting Districts
  - 6. Tree Planting and Maintenance District
- G. Resolution of Intention to levy and assess the annual charge for Street Maintenance District #1 ("District") for fiscal year 2011 and setting a public hearing date
- H. Resolution of intention to increase water charges for all customers and setting a public hearing date
- I. Resolution of intention to increase water rates up to 4.72% for all customers and setting a public hearing date
- J. Resolution of intention to increase wastewater charges for all customers and setting a public hearing date
- K. Resolution of intention to increase wastewater rates up to 4.72% for all customers and setting a public hearing date
- L. Resolution of intention to establish charges and consider a fee increase up to 6.32% for collection and disposal of residential garbage and refuse in the City of Helena, Montana, for fiscal year 2011 and setting a public hearing date

- M. Resolution of intention to levy an assessment for and approve the proposed work plan and budget for the Tourism Business Improvement District (TBID) for fiscal year 2011 and setting a public hearing date
- N. Resolution of intention to levy an assessment for and approve the proposed work plan and budget of the Business Improvement District (BID) for fiscal year 2011 and setting a public hearing date

City Manager Ron Alles recommended approval of the claims and the consent agenda.

Mayor Smith noted the public hearings for items F through N would be held on August 23, 2010. Commissioner Cartwright referred to the rate/assessment resolutions and explained at the public hearings the Commission will be able to consider increasing rates up to or lower than the advertised amount.

**Public Comment**

Mayor Smith asked for public comment.  
Bill Staffelt, MT Landlords Association, Jefferson County; expressed concern for item L.

**Motion**

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

**Communications**

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Ellison thanked Commissioner Cartwright for his Letter to the Editor in the Independent Record published July 26, 2010.

Commissioner Cartwright reminded citizens to water their trees. He referred to controversy regarding the Helena School District's proposed curriculum related to sexual education and noted many of the protests came from people that do not reside in Helena.

Commissioner Thweatt explained the city's Comprehensive Capital Improvement Program (CCIP) to citizens in attendance and viewers watching HCTV. The city would need to raise rates by \$471/per property to fund the CCIP at 100%. At the June 21, 2010 Administrative Meeting there was Commission consensus to raise rates by \$61/per property. Mayor Smith recommended the Commission hold educational sessions on the CCIP for interested citizens.

Commissioner Elsaesser announced "Running for Water", a benefit for the Tenmile Watershed, will be held on Saturday, July 31, 2010.

**Report of the City Attorney**

REPORT OF THE CITY ATTORNEY

Attorney Nielsen reported City Manager Alles reviewed and approved a settlement with Conoco Phillips/Yellowstone Pipeline on Friday, July 23, 2010.

**Report of the City Manager**

REPORT OF THE CITY MANAGER

A. "Running for Montana's Future"

Assistant Chief of Police Dave Jezeritz explained the "Run for Montana's Future" 6K race and 1K walk to benefit underprivileged youth and educate kids on risky behaviors in Montana communities. Helena's race will be held on August 29, 2010.

**Report from the  
Helena Citizens  
Council**

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Jim Penner reported the HCC is currently hosting a survey to judge resident interest in train-related quiet zones.

**Commercial Refuse**

CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING THE DEFINITION OF COMMERCIAL REFUSE GENERATOR BY AMENDING SECTION 6-1-1 AND SETTING A PUBLIC HEARING DATE OF AUGUST 9, 2010.

**Staff Report**

Assistant Public Works Director Phil Hauck reported the City Commission has expressed a desire to insure all city residents (owners and renters) have access to the Transfer Station either for disposal or recycling. In order to accomplish this objective, staff has proposed classifying Class II Residential properties, those properties having more than four (4) units in once structure, as being residential. The current ordinance and rate resolutions define a residential property as those having up to four units. Multi-family dwelling units in excess of four units are currently defined as a commercial refuse generator. Following discussion at the July 21, 2010 Administrative Meeting, language was added to the proposed ordinance to include community facilities, Type II as defined in Section 11-2-4, Helena City Code and to add a termination date of five years to Section 6-1-18.

Assistant Director Hauck recommended approval of first passage of the ordinance as all residential properties would be eligible for Transfer Station residential permits and Bulk Collection Service (Tramp Truck). Advantages include: issuing recycling-only permits to full use permits that are currently just issued to residential property owners and establishing appropriate service levels for multi-family properties. Many of these properties are currently under-served resulting in over-full containers and debris around containers and in city alley-ways.

Assistant Director Hauck gave a detailed explanation of how the proposed solid waste rates would impact residential and commercial properties.

**Discussion**

Commissioner Cartwright clarified the residential classification would not include places like Carroll College and larger assisted living facilities. Assistant Director Hauck concurred those facilities would be classified as commercial. Commissioner Cartwright asked if residential hotels would be reclassified. Assistant Director Hauck noted the commercial definition includes hotels. Commissioner Cartwright commented the addition of language related to community facilities, type II, clarifies and alleviates some concern.

Commissioner Elsaesser asked how mobile homes are currently defined. Assistant Director Hauck stated they are classified as residential. Commissioner Elsaesser asked if mobile homes located in parks are considered individual units. Assistant Director Hauck explained the land is usually owned by one person and the trailers are personal property. The city doesn't not put an assessment against personal property, just land. There are a few different scenarios in use; some mobile home park owners pick up their own garbage and haul it to the transfer station, others use city services at the same cost charged to residential and multi-family units. Commissioner Elsaesser asked if it would remain the responsibility of the landowner of the park to set up a commercial arrangement to self-haul and not be assessed. Assistant

Director Hauck stated yes and added they could also call for commercial service.

Public Comment

Mayor Smith asked for public comment.

Bill Staffelt, MT Landlords Association, Jefferson County; expressed concern for the proposed reclassification.

Gary Spaeth, City-County Sanitation; expressed concern for Section 6-1-18,C. of the proposed ordinance. He indicated he understood there would be a grandfather clause, not a sunset clause.

Motion

**Commissioner Elsaesser moved denial for first passage of an ordinance amending Section 6-1-1 of the Helena City Code and set a public hearing date of August 9, 2010.** Commissioner Ellison seconded the motion.

Discussion

Commissioner Ellison thanked city staff for their work on the ordinance but expressed concern for language relating to grandfathering private collection. He also expressed concern over how an ordinance related to collection of commercial solid waste would encourage increased recycling and urged staff to deal with recycling separately. He commented a public hearing on the proposed ordinance on August 9, 2010 would not allow adequate time to address concerns in the ordinance.

Commissioner Elsaesser stated the goal of the ordinance is unclear and it confuses recycling and commercial waste. He indicated he and the public have not had enough time to review the new language and recommended denial of the ordinance.

Commissioner Cartwright also expressed concern for the new language included in the ordinance and indicated he would support a tabling motion. He stated similar types of units should be paying the same amount and recommended staff address the issue in the future.

Mayor Smith expressed belief that the proposed ordinance is consistent with the Commission's direction to staff and consistent with discussions over the past two years. He commented he will only vote for the status quo regarding recycling in the future as the Commission has been unable to take a step in any direction on the issue.

Vote

Motion failed 3-2, with Mayor Smith, Commissioner Cartwright and Commissioner Thweatt voting no.

Motion

**Commissioner Cartwright moved to table first passage of an ordinance amending Section 6-1-1 of the Helena City Code to the call of the City Manager.** Commissioner Thweatt seconded the motion.

Comment

Commissioner Elsaesser indicated he would not vote for the tabling motion as it is not clear how the ordinance will tangibly improve recycling. Commissioner Cartwright stated this is an important issue and discussions on it shouldn't end. Commissioner Thweatt indicated he would support the motion to table the ordinance to allow for further discussion and understanding. Commissioner Elsaesser stated to bring everyone into the system for the purposes of recycling should be done by assessment and this ordinance doesn't do it and doesn't provide clear direction. Commissioner Ellison agreed with Commissioner Elsaesser's concerns and urged city staff to take the Commission's concerns under advisement when working on the wording of the draft ordinance. Mayor

Smith indicated he would not support the motion as he has asked interested parties repeatedly for better ideas to solve the issues and has not heard anything.

**Vote**

Motion carried 3-2, with Mayor Smith and Commissioner Elsaesser voting no.

**Tenmile Creek Flow**

CONSIDER AN AGREEMENT WITH MONTANA FISH WILDLIFE AND PARKS FOR TENMILE CREEK MAINTENANCE FLOW.

**Staff Report**

Water/Wastewater Superintendent Don Clark reported the Upper Tenmile Creek Watershed is the historic primary water supply for the City of Helena. With our priority water rights and system of intakes, reservoirs and piping, the city uses much of the available stream flow during the late summer through winter low stream flow periods. The natural base flow in Tenmile Creek near Rimini is about 4 cubic feet per second (cfs) without the impact of city withdrawals. The Record of Decision for the Upper Tenmile Superfund project calls for restoration of stream base flows to assist with dilution of residual mine wastes in the streambed downstream of city intakes, and to assist with reestablishment of aquatic habitats. With new capacity and reliability installed at the City's Missouri River Water Treatment Plant, we can now begin exploring water management options for releasing maintenance flows to Tenmile Creek.

Staff has been working with the Montana Fish Wildlife and Parks, Fisheries Division to initiate a trial period to test our water management systems to affect a release of one (1) cfs when Tenmile Creek stream flows drop below 4 cfs. MFWP has drafted the attached agreement similar to a water lease agreement which would allow this trial effort to proceed without risk to the city's water rights.

Release of maintenance flows to Tenmile Creek will improve aquatic and fisheries habitat in Tenmile Creek below the city's intakes and help to remove and dilute hazardous mine wastes resident in the streambed below the city's intakes. Water releases in the Tenmile watershed will need to be offset with increased production from the Missouri River Water Treatment Plant. This will result in increased electrical demand estimated in the range of 700 kwh per day.

Superintendent Clark recommended approval of the proposed agreement with MFWP allowing the release of one (1) cfs of combined flow from the City's Beaver Creek and Tenmile Creek intakes upstream of Rimini. MFWP would install necessary staff gauges to measure the flows. Staff would manage releases from Chessman Reservoir and Scott Reservoir to assure the available water to the intakes while maintaining adequate supply to the Tenmile Water Treatment Plant. If this trial effort is successful, the city could consider a new agreement that would ultimately allow releases of up to 4 cubic per second.

**Discussion**

Commissioner Cartwright asked how many days/weeks of the year water would be released. Superintendent Clark indicated the watershed is ever-changing due to pine beetle kill in the area; according to historical data it could be anywhere from 150 to 294 days.

Commissioners Ellison, Cartwright and Elsaesser spoke in support of the agreement.

Public Comment Mayor Smith asked for public comment.  
Don Scarr, State of Montana - Fish, Wildlife and Parks; urged the Commission to support the agreement.

**Motion** Commissioner Ellison moved approval of an agreement with Montana Fish, Wildlife and Parks for releasing water to Tenmile Creek. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

**Public Hearings** PUBLIC HEARINGS:  
A. CONSIDER FIRST PASSAGE OF AN ORDINANCE FOR A PRE-ZONE TO PLI (PUBLIC LANDS & INSTITUTIONS) DISTRICT FOR A TRACT OF LAND CONTAINING APPROXIMATELY 2.34 ACRES; PROPERTY IS GENERALLY LOCATED SOUTH OF STUART STREET AND EAST OF GRANITE AVENUE WITH A PROPERTY ADDRESS OF 2450 FLOWERREE STREET.

Planner Dustin Ramoie reported the applicant has submitted a written request that this agenda item be tabled to the call of the City Manager.

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 to table first passage of an ordinance pre-zoning property located at 2450 Flowerree Street to the call of the City Manager. Commissioner Thweatt seconded the motion. All voted aye, motion carried.

B. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3128 ADOPTING THE 2009 EDITION OF THE INTERNATIONAL ENERGY CONSERVATION CODE (IECC) AS AMENDED BY THE STATE OF MONTANA, BUILDING CODES BUREAU OF THE DEPARTMENT OF LABOR AND INDUSTRY.

Staff Report Chief Building Official Brandt Salo reported the City Commission first passed an ordinance on June 21, 2010 to adopt the 2009 edition of the IECC. Staff provided a copy of the code to the City Clerk's office for the 30 day comment period required prior to adoption. No comments have been received to date.

Mr. Salo reported final passage of the ordinance will bring Helena's code adoption and enforcement in line with that mandated by the State of Montana. The city is required to adopt the energy code as it has been amended by the state and may not exceed those provisions. Approval of the ordinance establishes the process whereby new and remodeled residential and commercial structures will be required to conform to the updated and more conservation-conscious 2009 energy code standards. This will include enhanced basic wall and roof assembly insulation values, the use of more energy efficient building envelope components such as doors and windows, and more efficient mechanical equipment and appliances inclusive of controls such as dual switching and motion-sensitive devices for lighting systems. The code

will result in local contribution to the overall reduction in the consumption of energy resources through conservation achieved by the code's requiring or allowing use of state of the art technology and through the encouragement of integration of active building systems with the use of passive design features to get more efficiency out of the energy consumed. The energy issues and "green building standards" advanced through adoption of the IECC have become a focus area for acquisition of "continuing education" for building review and field inspection personnel of the Building Division.

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 Thweatt moved approval for final passage of Ordinance No. 3128 adopting the 2009 Edition of the International Energy Conservation Code as amended by the State of Montana .**

Commissioner Ellison seconded the motion. All voted aye, motion carried. **Ord #3128**

- C. CONSIDER FIRST PASSAGE OF AN ORDINANCE PERMITTING GENERAL RETAIL SALES BY RIGHT IN THE COMMERCIAL LIGHT MANUFACTURING DISTRICT AND CONSOLIDATING THE DEFINITIONS OF GENERAL/SPECIALTY SALES AND SECONDHAND SALES BY AMENDING SECTION 11-2-3 AND 11-2-4 OF HELENA CITY CODE.
- D. CONSIDER FIRST PASSAGE OF AN ORDINANCE EXCLUDING THE FIRST TWO FEET OF ROOF EAVES FROM THE CALCULATION OF LOT COVERAGE BY AMENDING SECTION 11-4-1 OF HELENA CITY CODE.
- E. CONSIDER FIRST PASSAGE OF AN ORDINANCE CLARIFYING THAT THE VEHICULAR ENTRANCE TO A GARAGE MUST BE SETBACK TWENTY FEET FROM THE PROPERTY LINE WHERE THE DRIVEWAY CURB CUT IS LOCATED BY AMENDING SECTION 11-4-2 OF HELENA CITY CODE.
- F. CONSIDER FIRST PASSAGE OF AN ORDINANCE PERMITTING COMMUNITY RESIDENTIAL FACILITIES, TYPE II, (13 OR MORE RESIDENTS) IN THE R-3 AND R-4/R-O RESIDENTIAL DISTRICTS BY AMENDING SECTION 11-2-3 OF HELENA CITY CODE.
- G. CONSIDER FIRST PASSAGE OF AN ORDINANCE PERMITTING EMERGENCY SHELTERS IN THE B-2 (GENERAL COMMERCIAL), B-3 (CENTRAL BUSINESS) AND PLI (PUBLIC LANDS AND INSTITUTIONS) DISTRICT BY AMENDING SECTION 11-2-3 OF HELENA CITY CODE.

- H. CONSIDER FIRST PASSAGE OF AN ORDINANCE PERMITTING INDOOR ENTERTAINMENT, SPORTS AND RECREATION USES BY RIGHT IN THE PLI (PUBLIC LANDS AND INSTITUTIONS) DISTRICT BY AMENDING SECTION 11-2-3 OF HELENA CITY CODE.
- I. CONSIDER FIRST PASSAGE OF AN ORDINANCE PERMITTING COMMUNITY RESIDENTIAL FACILITIES, TYPE I, (1-12 RESIDENTS) IN THE PLI (PUBLIC LANDS AND INSTITUTIONS) DISTRICT BY AMENDING SECTION 11-2-3 OF HELENA CITY CODE.

Staff Report

City Planner Elroy Golemon reported the Helena Zoning Commission conducted a work session in June of 2009 to discuss changes on how to calculate lot coverage. In addition, the Helena Zoning Commission conducted two additional work sessions this spring to discuss additional amendments to the Zoning Ordinance Land Use Table and definitions. On Tuesday, June 08, 2010 the Helena Zoning Commission held a public hearing to consider the adoption of Ordinances amending the Land Use Table for Zoning Districts for Uses such as Community Residential Facilities Type I (1-12 residents) and Type II (13 or more residents), Emergency Shelters, Indoor Entertainment, Sports and Recreation, General/Specialty Sales, Secondhand Sales/Auction Sales and amending the definitions of lot coverage, garage entrance setbacks and general/specialty sales.

The Zoning Commission made no recommendation, for the adoption of an Ordinance, amending the Land Use Table for Zoning Districts in Section 11-2-3 making Community Residential Facility, Type I as a permitted use in the PLI District. The Zoning Commission recommended approval of the other amendments.

Mr. Golemon recommended approval of the proposed amendments as they are consistent with the City of Helena Growth Policy. In addition, the proposed zoning ordinance amendments support and encourage mixed use development. Further, the proposed amendments and could improve access for all citizens to uses and services such as: public transportation; places of employment; commercial businesses; government services and centers; cultural and recreational activities; and affordable housing options. They will also encourage a more efficient use of the land and possible infill development.

Discussion

Regarding Item C, Commissioner Cartwright asked for the difference between auction sales, excluding livestock, and other sales. Mr. Golemon explained an example would be an E-Bay or antique store with daily/weekly auctions. He noted the Zoning Commission proposed the amendment.

Regarding Item D, Commissioner Cartwright asked if the two feet is calculated from the wall out rather than from the edge of the eve in. Mr. Golemon stated yes; however, if there is a three foot overhang one foot of the overhang counts toward lot coverage. Commissioner Cartwright noted the outer foot counts towards lot coverage, which covers a larger area than the inner foot. Commissioner Elsaesser asked if the amendment would affect height calculations. Mr. Golemon stated no.

Commissioner Cartwright spoke in support of Item E.

Commissioner Cartwright referred to Item F and asked if there is a limit to the size of housing in the R-3 District. Mr. Golemon explained the allowable lot area per dwelling unit in the R-3 and R-4/R-O Districts. Commissioner Cartwright asked if the allowable lot area per dwelling unit would apply to Community Residential Facilities, Type II. Mr. Golemon stated no because they are considered commercial even though there is a residential appearance to them.

Regarding Item F, Mayor Smith asked if God's Love has a defined length of stay. Mr. Golemon indicated he did not know.

Regarding Item G, Commissioner Cartwright asked for the rationale of PLI zoning as opposed to regular zoning districts. Mr. Golemon explained the rationale and distinction between public, quasi-public and private uses. Commissioner Elsaesser asked if quasi-public is defined in the zoning ordinance. Mr. Golemon stated it is not; for clarification, the definition in the staff report came from Websters Dictionary. Commissioner Cartwright commented on PLI zoning.

Regarding Item H, Commissioner Ellison referred to the Zoning Commission's split decision and asked how tie-vote recommendations have been handled in the past. Commissioner Cartwright noted the Zoning Commission is an advisory body. If the City Commission has a strong feeling on a zoning item it will make a decision. If the Commission does not have a strong feeling it defers to the Zoning Commission recommendation and if the advisory body is split the Commission could table the proposal. He added the Commission is not bound by the Zoning Commission's recommendation. Commissioner Elsaesser asked if this were tabled would the Zoning Commission be able to reconsider it in order to provide a recommendation to the Commission. Mr. Golemon indicated yes; however, it could take some time because of other proposals the Zoning Commission is working on. He noted these amendments are not time sensitive and are clean-up from adoption of the new Zoning Ordinance. Commissioner Thweatt asked for more information on the Zoning Commission's issues with Item H. Mr. Golemon gave an overview of Zoning Commission discussion. Commissioner Ellison asked what percentage of Helena is zoned PLI? Mr. Golemon indicated he did not know. Commissioner Thweatt spoke of the zoning of Our Redeemers Subdivision.

#### Public Testimony

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

Margaret Godolfin, 19 South Davis; spoke in support of public hearing Item D.

Susan Bjerke, 545 South Harris; spoke in support of public hearing Items D and E.

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

#### Discussion

Mayor Smith asked Ms. Godolfin how item D would impact a design. Mr. Godolfin explained she does not foresee any negative consequence; however, it will depend on the project.

Commissioner Elsaesser asked if the proposed amendments have been requested by specific parties or the Zoning Commission. Mr. Golemon explained the amendments are related to correcting past zoning issues and clean-up from passage of the new Zoning Ordinance in 2009.

Commissioner Elsaesser expressed concern for some of the amendments affecting the integrity of the city's zoning.

Commissioner Cartwright expressed concern for item G as it would more appropriately be allowed by CUP.

- Motion** Commissioner Cartwright moved approval of first passage of an ordinance permitting General Retail Sales by right in the Commercial Light Manufacturing District and consolidating the definitions of General/Specialty Sales and Secondhand Sales by amending Section 11-2-3 and 11-2-4 of Helena City Code, as described in the ordinance. Commissioner Ellison seconded the motion. Motion carried 4-1, with Commissioner Elsaesser voting no. **Ord #3129**
- Motion** Commissioner Ellison moved approval of first passage of an ordinance excluding the first two feet of roof eaves from the calculation of Lot Coverage by amending Section 11-4-1 of Helena City Code, as described in the ordinance. Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ord #3130**
- Motion** Commissioner Ellison moved approval of first passage of an ordinance clarifying that the Vehicular Entrance to a Garage must be setback twenty feet from the property line where the driveway curb cut is located by amending Section 11-4-2 of Helena City Code, as described in the ordinance. Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Ord #3131**
- Motion** Commissioner Ellison moved approval of first passage of an ordinance permitting Community Residential Facilities, Type II, (13 or more residents) in the R-3 and R-4/R-O Residential Districts by amending Section 11-2-3 of Helena City Code, as described in the ordinance. Commissioner Thweatt seconded the motion.
- Friendly Amendment** Commissioner Cartwright moved to amend the motion to Strike "R-3 and" from the motion. Commissioner Ellison accepted the amendment. All voted aye, motion carried.
- Vote** Motion carried 4-1, with Commissioner Elsaesser voting no. **Ord #3132**
- Motion** Commissioner Thweatt moved approval of first passage of an ordinance permitting Emergency Shelters in the B-2 (General Commercial), B-3 (Central Business) and PLI (Public Lands and Institutions) District by amending Section 11-2-3 of Helena City Code, as described in the ordinance. Commissioner Ellison seconded the motion. Motion failed 3-2, with Commissioners Cartwright, Thweatt and Elsaesser voting no.
- Motion** Commissioner Ellison moved approval of first passage of an ordinance permitting Indoor Entertainment, Sports and Recreation Uses by right in the PLI (Public Lands and Institutions) District by amending Section 11-2-3 of Helena City Code, as described in the ordinance. Commissioner Thweatt seconded the motion. Motion carried 4-1 with Commissioner Elsaesser voting no. **Ord #3133**

**Motion** **Commissioner Thweatt moved to table of first passage of an ordinance permitting Community Residential Facilities, Type I, (1-12 residents) in the PLI (Public Lands and Institutions) District by amending Section 11-2-3 of Helena City Code, as described in the ordinance to the call of the City Manager.** Commissioner Ellison seconded the motion.

**Discussion** Commissioner Cartwright asked if property taxes are levied on zoning or specific operation. Manager Alles explained taxes are based on ownership, not the zoning designation. Commissioner Elsaesser spoke in support of tabling the proposed ordinance.

**Vote** Motion carried 4-1 with Mayor Smith voting no.

J. **CONSIDER A RESOLUTION INCREASING THE FEES CHARGED BY THE HELENA CIVIC CENTER.**

**Staff Report** Civic Center Manager Diane Stavnes reported the current fee schedule for rental of the Civic Center facility was adopted prior to the 2008-2009 season. A fee increase is now necessary to generate additional revenue for the City of Helena. The proposed increase would still leave us competitively priced with similar facilities in the region based on a survey of regional rental facilities. The Civic Center Board in conjunction with Civic Center staff developed the proposed rate schedule. At the Civic Center Board's June 10, 2010 meeting, the Board recommended approval of the proposed rates. The increase would affect both facility rental fees and equipment rental fees and would take effect on September 1, 2010.

Manager Stavnes recommended approval of the resolution, as an increase in fees is necessary to have users of the building assume more of the cost of the operation of the facility, thus decreasing the general fund support for operation of the Civic Center. She noted as it is practicable to administer, users of the building will assume a pass through cost for their use of energy for their events.

**Discussion** Commissioner Thweatt asked how the Civic Center's rates compare to other facility charges in the state. Manager Stavnes noted it is hard to compare; however, staff believes the Civic Center is right in line.

Commissioner Cartwright asked how much additional revenue the fee increases would bring in. Manager Stavnes estimated \$15,000.

Commissioner Elsaesser asked if the Civic Center will look into changing charges for unit/items to a general charge. Manager Stavnes explained the Civic Center believes in equity. A general facility use charge would be better for larger shows and too expensive for smaller shows. Manager Stavnes noted the Helena Symphony has expressed support for the rate changes and will be prepared by including the increased costs in their budget.

Commissioner Cartwright asked when sub-metering of power would be in effect. Manager Stavnes noted the metering would not be ready by September 1, 2010. It was noted it will be actual measurements, not estimations.

Commissioner Elsaesser asked how previous bookings would be notified of the new charges. Ms. Stavnes explained the Civic Center's

policy that previous bookings are not-withstanding and no event is grandfathered in.

Public Testimony

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

Walt Joyce, Live! at the Civic; asked the Commission to phase in the increased costs over a two-year period as they have already set their budget and are done fundraising for the year. Mr. Joyce also expressed concern over the variable cost of power.

Judy Kline, Civic Center Board; spoke in support of the proposed fee increase.

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

Motion

**Commissioner Elsaesser moved approval for a resolution increasing the fees charged by the Helena Civic Center for facility and equipment rental effective September 1, 2010.** Commissioner Ellison seconded the motion.

Amendment

**Commissioner Thweatt moved to amend the resolution to include an effective date of September 1, 2010.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Comment

Commissioner Cartwright requested the fee increases be added to the civic center website. He expressed concern for underutilization of the facility and noted he would hesitantly support the rate increase.

Mayor Smith spoke in support of the fee increases and discussed ways to increase use of the facility.

Vote

All voted aye, motion carried. **Res #19762**

K. CONSIDER A RESOLUTION TO CLOSE A PORTION OF BENTON TRAIL RIGHT OF WAY (ROW) ADJACENT TO LOTS 19, 20, 25, 26 AND 27 IN BLOCK 61 OF THE ORIGINAL HELENA TOWNSITE.

Staff Report

City Engineer Ryan Leland reported the Benton Trail, from the end of Benton Avenue to Reeder's Alley, was temporarily closed to vehicle traffic in the spring of 2007. The closure was done as a safety measure because of the condition of the road and the failure of the guard rail.

Staff is proposing to permanently close Benton Trail to vehicle traffic. The trail will still be open to non-motorized uses and staff is proposing to construct a fence along the closed street for pedestrian safety. The design of the fence will be presented for Commission consideration in the near future. Mr. Leland recommended approval of the resolution in order to prohibit vehicle traffic on a dangerous road.

Discussion

Commissioner Cartwright spoke in support of the resolution of and encouraged staff to provide an aesthetically pleasing and affordable fence.

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 a resolution to close a portion of Benton Trail right-of-way (ROW) adjacent to Lots 19, 20, 25, 26 and 27 in Block 61 of the Original Town Site of the City of Helena.** Commissioner Thweatt seconded the motion. All voted aye, motion carried. **Res #19763**

L. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3126 AMENDING CHAPTER 9 (FIRE PREVENTION CODE) OF TITLE 3 OF THE HELENA CITY CODE.

Staff Report

Fire Marshal Craig Trapp reported in order to remain current with new technology and processes, stay consistent with State of Montana's adoption, and change to a fire code consistent with other adopted codes within the City of Helena, staff is recommending adoption of the 2009 International Fire Code and amending Chapter 9, Title 3 of the Helena City Code. Fire Marshal Trapp gave an overview of changes to the existing code.

Discussion

Commissioner Cartwright recommended staff continue to work on ways to strengthen the city's wildland urban interface related standards.

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 Ellison moved approval of final passage of Ordinance No. 3126 amending Chapter 9 (Fire Prevention Code) of Title 3 of the Helena City Code.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ord #3126**

**Public Communications**

PUBLIC COMMUNICATIONS

No public communications were given.

**Meetings of Interest**

MEETINGS OF INTEREST

The next Administrative Meeting is August 4, 2010 and the next Commission Meeting is August 9, 2010.

**Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at 9:04 p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission