

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**April 11, 2011**  
**6:00 P.M.**

- Time & Place*** A regular City Commission meeting was held on Monday, April 11, 2011 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 and Elsaesser were present. Commissioner Thweatt was excused. City Manager Ron Alles, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present.
- 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 28, 2011 were approved as submitted.
- Proclamation*** PROCLAMATION:  
A. Helena Bighorns Hockey Team
- Mayor Smith read the proclamation designating April 11, 2011 as "Helena Bighorns Day" and congratulated the team on their national championship win. Coach Scott Cunningham and Assistant Coach Corey Sheehan accepted the proclamation and thanked the Commission for the recognition.
- Appointments*** APPOINTMENTS:  
A. Tourism Business Improvement District (TBID) Board & Non-Motorized Travel Advisory Council (NMTAC)
- Mayor Smith asked for Commission concurrence on the following appointments:
- TBID – Reappointment of Jeff Kurtz to a second term on the TBID; term begins upon appointment and expires April 20, 2015.
- NMTAC – Appointment of Melinda Barnes and Kyla Wiens to NMTAC; terms begin upon appointment and expire on March 31, 2014.
- Discussion** Commissioner Cartwright commented on the large amount of applications received for NMTAC and thanked all of the applicants for their desire to serve.
- Public comment** Mayor Smith asked for public comment, none was received.
- Motion** Commissioner Cartwright moved approval of the appointments to the TBID and NMTAC as outlined above. Commissioner Ellison seconded the motion. All voted aye, motion carried.
- Consent Agenda*** CONSENT AGENDA:  
A. Claims

- B. Utility Adjustment Agreement with MDT for South Montana mill and overlay project
- C. Construction Agreement with Montana Department of Transportation for the reconstruction and widening of the canal bridge on Custer Avenue east of Kelleher Drive
- D. Utility Agreement with the Montana Department of Transportation for the relocation and improvement of water and sewer infrastructure within the project area of the Custer Interchange
- E. Acceptance of FY2011 USDOT-HMEP Training Grant for Continuing Challenge HazMat Emergency Response Workshop
- F. Alternative Project Delivery Contract for a project at the Missouri River Treatment Plant
- G. Utility bill insert – City of Helena Parks & Recreation Department

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

**Communications**

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Cartwright spoke of eliminating price-fixing in the buying and selling of real estate to keep prices down. He expressed concern over people using government to advance their own interests and not for the good of the commonwealth.

Commissioner Elsaesser announced Trash for Trees will be held April 16<sup>th</sup> at Northgate Plaza from 9:00 am to 4:00 pm. He noted April 16<sup>th</sup> is also National Youth Service Day.

**Report of the City Attorney**

REPORT OF THE CITY ATTORNEY

City Attorney Nielsen reported in 2008 the city was sued for a refund of street maintenance assessments. The lawsuit alleged the city's street maintenance assessment methodology was flawed as it pertained to certain types of commercial property. Due to this litigation the city reviewed its methodology and revised it a year ago, though it was not to appease the particular taxpayer. He noted last week District Court issued a summary judgment in favor of city for the remainder of the lawsuit.

**Report of the City Manager**

REPORT OF THE CITY MANAGER

City Manager Alles reported the Street Department has been busy cleaning streets and working to repair potholes; he commended the department for their work.

**Report from the Helena Citizens Council**

REPORT FROM THE HELENA CITIZENS COUNCIL

No report was given.

**Airport BOA**

CONSIDER A RESOLUTION DEFINING APPOINTMENT OF THE AIRPORT BOARD OF ADJUSTMENT

Staff Report

City Attorney David Nielsen reported there is an inconsistency between City-County Joint Resolution No. 10677 and Section 11-35-10(B), Helena City Code, in regards to the appointment of the Airport Board of Adjustment (ABOA). Joint Resolution No. 10677 created the Helena Regional Airport Authority (HRAA) and in Section 7.01 provides that the HRAA serves as the ABOA in regard to airport zoning regulations under Title 11, Chapters 35 and 36, Helena City Code. Section 11-35-10(B), Helena City Code prohibits members of the ABOA from also being members of the HRAA.

Staff proposes to amend Section 7.01, Joint Resolution No. 10677 to conform to the requirements of Section 11-35-10 (B), Helena City Code by not permitting members of the HRAA to also serve as members of the ABOA. This will resolve the conflict between Joint Resolution No. 10677 and Section 11-35-10(B), Helena City Code. Separating the membership of the HRAA from the ABOA gives the ABOA independence from the HRAA, as the airport's governance body, in deciding issues of zoning variances.

Attorney Nielsen recommended approval of the resolution.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

**Commissioner Elsaesser moved approval of a resolution defining appointment of the Airport Board of Adjustment, which amends Section 7.01 of Joint Resolution No. 10677.** Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Res #19820**

**Mail Ballots**

CONSIDER A RESOLUTION REQUESTING MAIL BALLOT ELECTIONS FOR CITY PRIMARY AND GENERAL ELECTIONS.

Staff Report

Attorney Nielsen reported the Helena City Commission approved Resolution No. 19493, including Section 2 regarding the mailing timeline, requesting the election administrator use mail ballots for the city's 2007 elections.

Staff is recommending the Commission adopt a resolution requesting the Lewis & Clark County Clerk and Recorder, as election administrator for city elections, use mail ballots to conduct the city's primary election, if held, on September 13, 2011 and its general election on November 8, 2011.

The resolution requires the election administrator use AutoMARK machines for city elections, or other comparable and available technology for voters who may need or desire to use them. The resolution also requests the election administrator mail the ballots not sooner than the 19<sup>th</sup> day before the election.

Attorney Nielsen recommended approval of the use of mail ballots in the city's 2011 election as it may result in higher voter turnout and reduce the costs of conducting the elections because election judges will not be required.

Discussion

Commissioner Cartwright asked for state law regarding the timeframe for mailing the ballots. Attorney Nielsen stated he is unsure of

the state law requirements; however, the proposed resolution requires the same mailing timeframe as the 2007 election.

Commissioner Ellison asked for the cost difference between regular and mail ballot elections. Attorney Nielsen explained he did not have the exact figures but confirmed it is less costly to conduct a mail election. Commissioner Ellison asked if the city must pay postage costs to mail the ballots. Attorney Nielsen stated yes. Manager Alles noted staff would provide a cost comparison to the Commission. He added participation is much greater with a mail ballot format.

Commissioner Elsaesser asked if citizens could call for a replacement ballot if they were to lose theirs. Manager Alles explained they would need to come to the elections office and sign an affidavit stating they lost their ballot in order to receive a replacement one.

Commissioner Ellison spoke in opposition to the proposal as polling place voting is a great experience and in his opinion, the correct way to conduct elections. He noted in the last election only 40% of voters returned their mail ballots.

Commissioner Cartwright stated he would reluctantly support the mail ballot election because in the past it has resulted in higher voter turnout. Although 40% may seem like a small voter turnout, previous elections have only resulted in approximately 20% turnout. He noted holding elections via mail does result in the feeling of a loss to the sense of community.

Commissioner Elsaesser asked if citizens can still register to vote on the day of the election. Attorney Nielsen stated yes.

**Public Comment**

Mayor Smith asked for public comment.

Blair Crum, Helena; recommended providing pre-paid postage on the envelopes used to return ballots. Attorney Nielsen explained the city cannot pay the return postage as some citizens choose to hand-deliver their completed ballots.

**Motion**

**Commissioner Elsaesser moved approval of a resolution requesting a mail ballot election for the City's 2011 Primary and General Elections.** Commissioner Cartwright seconded the motion. Motion carried 3-1, with Commissioner Ellison voting no. **Res #19821**

**Public Hearings**

**PUBLIC HEARINGS:**

- A. CONSIDER FIRST PASSAGE OF AN ORDINANCE REQUIRING INSTALLATION, MAINTENANCE, AND ANNUAL INSPECTION OF BACKFLOW PREVENTION DEVICES BY AMENDING CHAPTER 2 OF TITLE 6 OF THE HELENA CITY CODE.

**Staff Report**

Utility Maintenance Superintendent Kevin Hart reported the City of Helena has adopted several codes that speak to the installation of devices to protect public water supplies from contamination. These codes also speak to prevention of cross connection of potable water supplies with non-potable supplies in order to protect public health. What is currently lacking is a program to consistently provide for ongoing testing and maintenance of installed devices mentioned in the codes. There is a general requirement in state and federal drinking water rules that Helena, as a purveyor of public drinking water, take steps necessary to protect the quality of water delivered by monitoring distribution system connections, identifying hazards and taking necessary steps to provide a

distribution system free of contamination sources. However, there is no current mechanism to provide coordination and oversight of the various code requirements with the specific purpose of protecting the quality of drinking water within Helena's water system. The lack of a central coordination function to monitor the installation, testing and maintenance of such devices is evident in the water rules. Explicit authority for the water utility to ensure protection of the drinking water supply from back flow and cross-connection hazards is necessary.

The proposed amendments to Title 6 Chapter 2 would provide the authority to establish a program within the water utility to require the installation maintenance and annual inspection of backflow devices installed at points of service and to eliminate cross connections of nondrinking water with the Helena water system. The program will focus on identifying and controlling backflow situations or eliminating cross connection hazards that pose a threat to the quality of Helena's drinking water.

Mr. Hart recommended approval of first passage of the ordinance as the proposed additions to the water code will provide a mechanism within the water utility to coordinate, control and monitor connections to the water system where other existing codes require such devices. The code will provide the utility with a tool to assist with protecting and maintaining the quality of water delivered and protection of Helena's water supply.

#### Discussion

Commissioner Cartwright asked how many higher-hazard facilities are within the city limits. Superintendent Hart stated according to a recent survey, approximately 75 facilities. Extrapolated it could be 500 facilities that require devices. Commissioner Cartwright asked if staff has contacted the properties that could be affected. Superintendent Hart stated yes.

Commissioner Elsaesser asked how businesses would assure the city they have complied with the proposed ordinance. Superintendent Hart stated staff envisions setting up a program linked by the plumbing code that requires annual testing. Businesses would be required to submit those test results to the city.

#### Public Testimony

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

Blair Crum, Helena; expressed concern over the cost of the testing.

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

#### Discussion

Commissioner Cartwright asked for more information on state law related to backflow devices. Attorney Nielsen summarized state law and explained it doesn't distinguish between commercial and residential.

Mayor Smith commented it was his understanding this ordinance was geared towards commercial businesses. Attorney Nielsen explained commercial business creates the greatest risk; staff will begin enforcement by contact entities that are the highest risk. Manager Alles noted staff is focusing on the highest risk locations; the intent of the ordinance is not to require this of all homeowners in Helena.

**Motion**

**Commissioner Ellison moved approval for first passage of an ordinance requiring installation, maintenance and annual inspection of Backflow Prevention Devices by amending Chapter 2 of Title 6 of the Helena City Code and set a date for second passage of April 25, 2012.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Ord #3143**

- B. CONSIDER A NEW FREEDOMS GRANT APPLICATION FOR ROCKY MOUNTAIN DEVELOPMENT COUNCIL'S SENIOR COMPANION PROGRAM.

**Staff Report**

HATS Superintendent Ed Robinson reported as the state designated lead agency for the Helena area, the Helena Area Transit Service (HATS) is required to include requests for grant funding from other agencies. In FY2012 Rocky Mountain Development Council (RMDC) has applied for a New Freedoms Grant of \$71,153.50, for its' Senior Companion Program. This program provides for reimbursement of vehicle expenses to volunteers providing transportation to seniors who have no other form of transportation.

Applications were due by March 1, 2011. Due to numerous changes in personnel at RMDC, this grant application and public notice were overlooked prior to the HATS Public Hearing. The New Freedoms Grant application was submitted along with the HATS grant applications, but approval of the HATS preliminary budget for grant submittal did not include this appropriation or respective revenues. Public notice of this grant request was advertised on March 3, 2011 and March 10, 2011. The HATS preliminary budget will be amended upon Commission approval to reflect these changes. Revenues and expenditures are offsetting and will not affect the City's appropriation for HATS. The preliminary budget will be reviewed and may be changed by the Commission during the regular budget process.

Superintendent Robinson recommended approval of the grant application as many elderly individuals rely on this transportation program for basic and essential needs.

**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 of Rocky Mountain Development Council's application for a FY2012 New Freedoms Grant for the Senior Companion Program.** Commissioner Ellison seconded the motion. All voted aye, motion carried.

**Public Communications**

**PUBLIC COMMUNICATIONS**

No public communications were given.

**Meetings of Interest**

**MEETINGS OF INTEREST**

The next Administrative Meeting is April 20, 2011 and the next Commission Meeting is April 25, 2011.

**Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at 7:12 p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission