

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**September 26, 2011**  
**6:00 P.M.**

***Time & Place***

A regular City Commission meeting was held on Monday, September 26, 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, Thweatt and Elsaesser were present. City Manager Ron Alles, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Carrie Severson 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 September 12, 2011 were approved as submitted.

***Consent Agenda***

CONSENT AGENDA:

- A. Claims
- B. A resolution authorizing borrowing \$34,776.34 from the State of Montana, Board of Investments, INTERCAP Loan Program to fund the 2010 Sidewalk Loan Program **Res #19879**
- C. A contract for a Preliminary Engineering Report to analyze alternatives for improvements to the Neill Avenue, Helena Avenue, Last Chance Gulch and Cruse Avenue Intersection.
- D. An amendment to the Professional Services Agreement for utility construction administration and inspection agreement for the Custer Interchange Water and Sewer Main Relocations
- E. Acceptance of the August pledged collateral report
- F. A resolution allowing the City Manager to declare certain tangible personal property owned by the City of Helena to be surplus property and authorizing the disposal of that property to city employees retiring from city employment **Res #19880**
- G. Sale/transfer of ownership of Bus #611 **Res #19882**
- H. A resolution declaring tangible personal property owned by the City of Helena to be surplus property and authorizing the disposal of that property (Police Dept. vehicles) **Res #19881**

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

***Communications***

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Cartwright spoke of recent rogue trading by a United Bank of Scotland employee and stated there have been precious few bankers that have been busted over the debacle of the economy the past two or three years. As a City Commissioner this concerns him as it effects what local government gets to do and the services cities can provide.

Commissioner Elsaesser reported he participated in the NAMI walk on September 25, 2011 and thanked city staff for their participation. He also thanked city staff for their work at a recent e-waste event. He expressed delight for the newly installed bike lanes on Helena Avenue.

Commissioner Ellison referred to improvements to the disc golf area on the east side of town and commended staff and volunteers for their work on the improvements. He also spoke of construction of the pedestrian bridge on Highway 12/Prospect Avenue and noted he is glad to see the project progressing.

Commissioner Ellison commented he was honored to be a part of the delegation that visited the USS Helena last week in Florida; it was a great trip and reminder to be thankful everyday for those men and women serving in uniform for the benefit of the rest of us.

***Report of the City Attorney***

REPORT OF THE CITY ATTORNEY

No report was given.

***Report of the City Manager***

REPORT OF THE CITY MANAGER

A. Certificate of Achievement for Excellence in Financial Reporting

City Manager Alles announced the City has received its 21<sup>st</sup> consecutive Certificate for Achievement for Excellence in Financial Reporting (CAFR). He commended City Controller Glenn Jorgenson, Accounting Supervisor Liz Hirst, and Accounting and Finance Department staff for their work on the CAFR. Mr. Jorgenson and Ms. Hirst spoke about working on the CAFR. Mayor Smith and the Commission members thanked staff for their outstanding work.

City Manager Alles announced he has approved a participation agreement with Northwestern Energy for the Continuous Energy Improvement Program. Helena is one of five or six communities in the state to participate in the program; it will aid in implementing energy efficiency programs and provide reporting to pass on to other communities. Manager Alles noted he would provide the Commission with a report on the project as it progresses.

***Report from the Helena Citizens Council***

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Carrie Severson reported the next HCC meeting will be held Wednesday, September 28, 2011 at 7:00 p.m. in City/County Building- Room 326.

Ms. Severson introduced the newly hired HCC Coordinator, Shannyn Henkel. Mayor Smith welcomed Ms. Henkel to her position with the City of Helena.

***Regular Items***

REGULAR ITEMS:

- A. CONSIDER FIRST PASSAGE OF AN ORDINANCE PROHIBITING OPERATING A MOTOR VEHICLE WHILE USING A HAND-HELD MOBILE TELEPHONE AND OTHER CERTAIN TYPES OF MOBILE ELECTRONIC DEVICES

**Staff Report**

City Attorney Nielsen reported persons who talk on hand-held mobile telephones while operating vehicles on streets and highways are distracted from safe operation of the motor vehicle. Drivers of vehicles are also distracted from the safe operation when they operate other types of mobile electronic devices, such as portable computers, smart phones, games and video players.

The proposed ordinance would prohibit drivers of vehicles from talking on hand-held mobile telephones and using other mobile electronic

devices while operating vehicles, including motor vehicles and bicycles, in driving lanes of city streets and highways.

The prohibition against the use of hand-held mobile telephones and certain mobile electronic devices reduces one form of distractions that drivers of vehicles encounter while attempting to safely operate vehicles on city streets and highways.

Discussion

Commissioner Thweatt clarified the draft ordinance in the Commission packet does not prohibit hands-free devices. Attorney Nielsen concurred.

Commissioner Elsaesser asked if dialing would be prohibited. Attorney Nielsen stated the draft ordinance does not prohibit dialing but you cannot hold the phone to talk.

Commissioner Thweatt announced he would be proposing amendments to the ordinance that will also prohibit hands-free devices.

Public Testimony

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

Randy Phillips, 3215 Dunlap Drive; expressed concern for the proposed ordinance and submitted studies regarding cell phone use related to traffic accidents for the record.

James Driggers, 1520 Peosta; spoke in support of the proposed ordinance.

Dave Duffy, 3311 Violet; urged the Commission to allow the use of hands-free devices.

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

Discussion

Commissioner Ellison stated reports show that 85% of adults have cell phones now; people keep these phones with them at all times and use them whenever necessary, such as in vehicles, which has made our streets less safe as a consequence. He noted public safety, for drivers, pedestrians and cyclists, is what is driving his support for the proposed ordinance; the streets are not as safe as they were five or twelve years ago, when he moved here. There is plenty of scientific data available that shows that municipalities and states that have enacted restrictions on the use of cell phones have made an impact on the driving safety in their community or in their state. He added several conclusive studies have shown that a person driving and using a cell phone, hand-held or hands-free, is distracted to the point or beyond the point of the legal limit for driving under the influence of alcohol.

Motion

**Commissioner Ellison moved approval of first passage of an ordinance prohibiting distracted driving of operators of vehicles due to use of hand-held mobile telephones and certain mobile electronic devices, and set a public hearing date of November 7, 2011.** Commissioner Thweatt seconded the motion.

*Note: All amendment documents are included in the Commission packet as part of the official permanent record.*

Amendment

**Commissioner Thweatt moved to amend the ordinance to include hands-free devices as outlined in the "Thweatt Amendments" document.** Commissioner Ellison seconded the motion.

Discussion

Commissioner Elsaesser stated he is in support of the ordinance in general but would resist the Thweatt Amendment as the original draft

of the ordinance already addresses concerns related to dialing and texting.

Commissioner Elsaesser referred to his amendments and explained the main components prohibit dialing, allow hands-free device use and clarify areas where bikes could travel to use their devices.

Commissioner Cartwright noted his amendment is more technical than substantive; it clarifies that the ban would also include texting on a mobile phone.

Commissioner Ellison noted he would support Commissioner Thweatt's amendments as hands-free devices allow for conversations with someone that is far distant from the user's immediate location causing as much distraction and decrease in safety as someone driving under the influence of alcohol.

Commissioner Cartwright commented the science related to distracted driving is on the side of Commissioners Ellison and Thweatt but added it is difficult to legislate against stupidity. He recommended whatever ordinance is passed be enforceable and supported by the community. He noted he would support the "Thweatt Amendment" tonight but looks forward to hearing community sentiment regarding the ban during public testimony at final passage of the ordinance on November 7, 2011.

Mayor Smith indicated he would not support the amendment as the original draft of the ordinance goes far enough with this public policy issue. The "Thweatt Amendment" would set up a very difficult standard for law enforcement to monitor.

Commissioner Thweatt stated he believes there is very good science behind the banning of hands-free devices as well as hand-held and referenced a study done by University of Utah. If the Commission passes an ordinance that allows the use of hands-free devices it could send a message that using such devices is okay and a safe thing to do. All laws function, in large part, by voluntary compliance and establish a social norm about what is the correct way to behave. New technology requires new social norms. By looking at Helena drivers' behavior, common sense and personal responsibility is unfortunately not effective at stopping the epidemic of driving while talking on a cell phone. To establish the social norm that people should not use any kind of cell phone while they are driving, the Commission needs to include hands-free devices in the ban.

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

**Amendment** Commissioner Elsaesser moved to amend the ordinance as outlined on page 2 of the "Elsaesser Amendments" document.  
Commissioner Ellison seconded the motion.

**Friendly Amendment** Commissioner Elsaesser offered a friendly amendment to page 2 of the "Elsaesser Amendments" document to strike the entire second sentence under the definition of "HANDS-FREE".  
Commissioner Ellison accepted the amendment. Motion carried 3-2 with Mayor Smith and Commissioner Thweatt voting no.

**Discussion** Commissioner Elsaesser asked Attorney Nielsen for his opinion of the amendment listed on page 4 of the "Elsaesser Amendments". Attorney Nielsen commented the proposed language may be problematic as there is no legal definition of "trails" and it would be too broad of a description.

**Amendment** Commissioner Elsaesser moved to amend the ordinance as outlined in page 4 of the "Elsaesser Amendments" document and to strike the word "trails" from the amended language. Commissioner Cartwright seconded the motion. Motion carried 3-2 with Mayor Smith and Commissioner Thweatt voting no.

**Amendment** Commissioner Cartwright moved to amend the ordinance as outlined under "MOBILE ELECTRONIC DEVICE" on the "Cartwright Amendments" document. Commissioner Thweatt seconded the motion.

**Friendly Amendment** Commissioner Thweatt offered a friendly amendment to strike "used for text messaging" from the "Cartwright Amendments" document. Commissioner Cartwright accepted the amendment. Motion carried 4-1, with Mayor Smith voting no.

**Motion** Commissioner Ellison moved approval of first passage of an ordinance prohibiting distracted driving of operators of vehicles due to use of hand-held mobile telephones and certain mobile electronic devices, as amended, and set a public hearing date of November 7, 2011. Commissioner Cartwright seconded the motion. All voted aye, motion carried. Ord #3146

**Comment** City Manager Alles noted if the ordinance is approved signage will be placed throughout the city alerting drivers to the ban.

Mayor Smith spoke in support of the city taking on the distracted driving issue in order to be responsive to Helena's citizens, and thanked the Commission members for their work on the issue.

**Public Communications** PUBLIC COMMUNICATIONS  
No public communications were given.

**Meetings of Interest** MEETINGS OF INTEREST  
The next Administrative Meeting is September 28, 2011 and the next Commission Meeting is October 3, 2011.

**Adjournment** There being no further business to come before the Commission, the meeting was adjourned at 7:11 p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission