

**CITY OF HELENA
REGULAR CITY COMMISSION MEETING
November 7, 2011
6:00 P.M.**

Time & Place

A regular City Commission meeting was held on Monday, November 7, 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 City Clerk Debbie Havens were present. Others present were Lora Behlmer representing the Helena Citizens Council.

Pledge of Allegiance

Mayor Smith asked those persons present to stand and join him in the pledge of allegiance.

Minutes

The minutes of the regular City Commission meeting of October 17, 2011 were approved as submitted.

Board Appointments

BOARD APPOINTMENTS:

- A. Business Improvement District/Helena Parking Commission (BID/HPC), Bill Roberts Golf Advisory Board and Helena Housing Authority

Mayor Smith asked for Commission concurrence for the following appointments:

Business Improvement District/Helena Parking Commission – Appointment of Al Roy to the BID/HPC; first term will begin upon appointment and expire October 31, 2015.

Bill Roberts Golf Advisory Board – Reappointment of Peter Aspinwall to a first full term on the Golf Advisory Board; term will begin upon appointment and expire October 30, 2014. Appointment of Lynn Staley to a first term on the Golf Advisory Board; term will begin upon appointment and expire October 30, 2014.

Helena Housing Authority – Appointment of Devin McGee to a first term on the Helena Housing Authority; term will begin upon appointment and expire August 1, 2016. Appointment of Mark A. Jankowski as a tenant representative on the Helena Housing Authority; unexpired term will begin upon appointment and expire August 1, 2012. Appointment of S. Renea Stanger as a tenant representative on the Helena Housing Authority; first term will begin upon appointment and expire August 1, 2013.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Ellison moved approval of the appointments to the BID/HPC, Golf Advisory Board and Helena Housing Authority as outlined above. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Consent Agenda

CONSENT AGENDA:

- A. Claims
- B. Resolution declaring certain personal property to be abandoned and unclaimed (bicycles) **Res# 19885**
- C. Utility bill insert - City Parks & Recreation Winter Activities
- D. Utility bill insert - Lewis & Clark Humane Society

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 D on the consent agenda. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Bid Award

BID AWARD:

- A. Waste Transfer Station Recycling Area and Drainage Improvements, City Project #11-13

Staff Report

City Engineer Ryan Leland reported the City of Helena Transfer Station currently takes used motor oil and other liquid waste for recycling. The used oil container is located on the bare ground next to the solid waste administrative offices. The Department of Environmental Quality has notified the City that the liquid waste container must have a containment vault around the container in case of a leak or spill. The City of Helena hired Great West Engineering to design the recycling and drainage improvements.

The project was bid with two different schedules: Schedule 1 for the earthwork and asphalt work and the second schedule for the containment structure. The City opened 3 bids for the project on September 6, 2011. Two of the bids were received for Schedule 2, the containment structure and only one bid was received for Schedule 1, the earthwork and asphalt work. Both of the bids for Schedule 2 were above the engineer's estimate and project budget; staff is recommending that Schedule 2 not be awarded at this time. Since the city only received one bid for Schedule 1, staff was able to negotiate with Helena Sand & Gravel Inc, because the bid was also more than the engineer's estimate. Helena Sand & Gravel Inc., Great West Engineering and staff were able to negotiate a price of \$71,540 which was reduced from \$93,780. The price was reduced through valued engineering and the removal of a couple of bid items.

Engineer Leland recommended awarding the Waste Transfer Station Recycling Area and Drainage Improvements, City Project #11-13 to Helena Sand & Gravel Inc., who submitted the negotiated low bid of \$71,540.

Public comment

Mayor Smith called for public comment; none was received.

Motion

Commissioner Cartwright moved to award Schedule 1 of the Waste Transfer State Recycling Area and Drainage Improvements, City Project #11-13, to the lowest, responsible bidder, Helena Sand & Gravel, Inc. in the amount of \$71,540. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Ellison noted Veteran's Day coincides with the 11th day of the 11th month of 2011 (11-11-11) this year. He acknowledged and thanked all of the men and women who are serving our country and encouraged Helena's citizens to do the same.

Commissioner Elsaesser concurred with Commissioner Ellison's comments and congratulated the Carroll College Saints football team for moving onto the playoffs.

Commissioner Cartwright spoke of a recent trip to Chicago.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

City Attorney Nielsen reported the city has initiated a lawsuit against property owners who re-roofed their house without a building permit. In addition to not having a building permit, they were installing cedar shakes which are not allowed in the city limits. Even though they were warned the shakes were illegal, they then finished the job using them. The city has issued a citation and would like to file a lawsuit requesting the shingles be removed. City Attorney Nielsen asked for concurrence to move forward from the Commission.

Commissioner Thweatt noted the city's ordinance prohibiting wooden cedar shakes protects public health and safety due to the city being located in a wildland/urban interface and stated he supports moving forward with the suit. Commissioners Cartwright, Ellison, Elsaesser and Mayor Smith also concurred to move forward.

Report of the City Manager

REPORT OF THE CITY MANAGER

City Manager Alles reported the Fire Department responded to a structural fire today on the west side of town in the west side fire service area and commended the firefighters who responded.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Lora Behlmer invited the Commission to a celebration on November 16th for the murals recently finished on the walking mall.

Bob Habeck, HCC member, updated the Commission on the Winne Avenue traffic issues and the neighborhood's safety concerns. Mr. Habeck noted the next phase of the process is to find out additional information on the traffic issues; they will then contact city staff and the City Commission to engage in a solution.

Commissioner Thweatt asked if traffic counts will be available to the group. Mr. Habeck noted a lot of the information is already available. City staff will work with the citizen group when appropriate.

Mayor Smith noted the Commission discussed this issue in depth at the November 2nd Administrative Meeting. City Manager Alles added he has offered staff assistance to the neighborhood group.

Public Hearings

PUBLIC HEARINGS:

- A. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW A CASINO WITH UP TO 20 GAMING MACHINES TO BE LOCATED IN THE B-2 (GENERAL COMMERCIAL) DISTRICT; GENERALLY LOCATED NORTH OF EAST CUSTER AVENUE, EAST OF NORTH SANDERS STREET, WEST OF INTERSTATE 15 AND SOUTH OF LOWES HOME IMPROVEMENT STORE.

Staff Report

Planner Elroy Golemon reported the applicant has submitted an application to establish a Convenience Store/Gas Station/Casino business on a vacant and undeveloped lot located in a B-2 District. The proposed store and gas station uses are permitted uses in the B-2 District and can be established without a CUP. However, a CUP must be obtained prior to establishing the proposed casino use in this location. On Tuesday, October 11, 2011, the Helena Zoning Commission held a public hearing on the proposed CUP and recommended approval, (2:1 vote) for the adoption of a resolution granting a CUP to allow a casino with up to 20 gaming machines to be located in the B-2 (General Commercial) District, subject to the following condition: a building permit must be obtained within one year from the date of approval of the CUP.

Issues addressed when reviewing the proposal include: pedestrian, vehicular, and bicycle traffic; on-street parking; noise, glare and odor; and types and size of structures and improvements and their relative location on the subject property. As of November 7, 2011, no opposition to the CUP has been received.

Mr. Golemon noted the proposed conditional use will not significantly reduce or impair the peaceful use of existing property or improvements in the vicinity or in the zoning district in which the subject property is located, and recommended approval of the CUP.

Discussion

Commissioner Elsaesser asked if sidewalks are required for Custer Avenue and Sanders Street. Mr. Golemon noted sidewalks are required per city code along Sanders Street. City Engineer Leland noted there will be sidewalks and a bike path installed along Custer Avenue as part of the interchange project.

Commissioner Ellison asked if there would be any issue with the construction of the interchange prohibiting the one-year requirement to obtain a building permit. Mr. Golemon stated no.

Commissioner Thweatt asked what type of liquor license this establishment would have. City Attorney Nielsen stated he did not know. Commissioner Thweatt asked how many establishments currently serve alcohol within a quarter of a mile of the proposal. Mr. Golemon stated he is aware of two or three casinos in the general area; however, he cannot be sure they are all within a quarter mile of the proposal.

Commissioner Cartwright asked for clarification on a condition related to access on North Sanders Street that was recommended by staff to the Zoning Commission but then removed prior to tonight's hearing. Mr. Golemon explained the condition duplicated what is already required by city code so it was unnecessary and removed.

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 a resolution granting a Conditional Use Permit (CUP) to allow a casino with up to 20 gaming machines to be located in the B-2 (General Commercial) District; for property legally described in the resolution subject to the following condition: a building permit must be obtained within one year from the date of approval of the CUP.

Commissioner Cartwright seconded the motion. Motion carried 4-1 with Commissioner Thweatt voting no. **Res #19886**

- B. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP, DESCRIBED IN SECTION 11-2-1 OF THE HELENA CITY CODE AND ADOPTED BY REFERENCE, FOR A ZONE CHANGE FROM CLM TO B-1 DISTRICT FOR PROPERTY LOCATED AT 1200 BOULDER AVENUE.

Staff Report

Planner Kathy Macefield reported On Tuesday, October 11, 2011 the Helena Zoning Commission unanimously recommended APPROVAL (3:0 vote) for the adoption of an ordinance amending the Official Zoning Map described in Section 11-2-1 of the Helena Zoning Ordinance, change from CLM (Commercial-Light Manufacturing) to B-1 (Neighborhood Business) District for lots and closed alleys as described in the staff report and located at 1200 Boulder Avenue.

As of Wednesday, October 26, 2011, one written letter of protest was submitted that had copies of a petition submitted to the City Commission for a November 2, 2009 hearing on a resolution to consider the NSP application attached to the letter. Therefore, the City Attorney has opined "that the 2009 petition of opposition may not be used as a protest of proposed zoning changes for the property. The petition was not related to any zoning action but was only to resist a funding proposal. Zoning is concerned with proper use of property and is never involved in the financing of the improvements upon the property. Therefore, my opinion is the 2009 petition has no legal effect upon proposed zoning amendments or changes." As a result, the submitted petition is not a petition from the adjacent property owners to be considered as written protest on this current proposal.

Ms. Macefield reported a petition was received today, (November 7, 2011) with a number of property owner signatures. After staff reviewed the signatures, there are enough adjacent property owners protesting the zone change to require a super majority vote of the Commission to approve the zone change. In addition there was a letter submitted withdrawing the signature of Scott Thiel; however, this withdrawal did not reduce the opposition to fewer than 25%.

Ms. Macefield recommended approval of the zone change and noted this area has been designated as a mixed use area on the Future Land Use map of the 2001 City of Helena Growth Policy and the B-1 zoning district is more consistent with this designation than the CLM District. The proposed B-1 District is more restrictive for uses and their size than the CLM District which can help minimize the amount of traffic that would be generated; provides a transition between the B-2 zoning located west of Montana Avenue and the R-2 zoning located to the east; and provides a greater opportunity to encourage a mixed use redevelopment of the property than is currently available with the existing CLM District. The proposed B-1 District is a mixed use zoning designation that is consistent with the 2011 City of Helena Growth Policy and the Montana zone change criteria.

Discussion

Commissioner Thweatt asked staff to review the history of the neighborhood's effort to develop a neighborhood plan. Ms. Macefield gave the history of the 6th Ward/Mid-Towne Neighborhood Association, which has discussed developing a neighborhood plan. She stated city staff had attended some of their meetings; however, she does not have an update on where the proposal is at this time.

Commissioner Thweatt stated neighborhood planning is addressed in the Growth Policy. He asked what kind of advantages could be accomplished for this area and the subject property by completion of a neighborhood plan. Ms. Macefield explained the benefits of neighborhood plans and noted following updates to the city's Zoning Ordinance and Subdivision Regulations, the Commission could identify neighborhoods in the future that would advantage from establishing neighborhood plans.

Commissioner Thweatt asked for the benefit of a neighborhood plan specifically for the subject property/area. Ms. Macefield commented neighborhood planning can benefit any neighborhood. She acknowledged this neighborhood has done a lot of work in that regard; however, she does not have an update on their process to create a neighborhood plan.

Public Testimony

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

Joe Mueller, Realtor representing property owners; spoke in support of the zone change. Mr. Mueller stated he has had this property listed for sale since 2003 and has not been successful in selling it. He addressed traffic and environmental issues that exist on the property.

John Madsen, Social Worker, 1814 Livingston; spoke in opposition to the location of additional low income housing in the neighborhood. Mr. Madsen noted the area is saturated with government assisted housing and listed the locations of various subsidized housing developments in the neighborhood. He spoke against RMDC's proposal to build additional low income housing in the neighborhood and commented the City Commission has voted to not support the project in the past.

Leroy Beebe, 1620 Townsend Avenue; spoke against the zone change and noted he does not want to see another piece of property leave the tax base. He questioned how many more non-taxable/non-profit projects the city should approve. He commented RMDC is a development company and a non-profit; therefore they do not face any tax implications. Mr. Beebe noted it is unfortunate the Caird property is zoned CLM but that is how the current owners bought the property and should not profit from the proposed zone change.

Bonnie Lorang, 1512 Butte Avenue, Chair of the 6th Ward/Mid-Towne Association; stated there was a critical piece of information missing in the agenda packet, which was the petition/application for the zone change. She noted if the Commission is going to consider the proposed zone change, they should know who the applicant is and they should speak to why they are requesting it. Ms. Lorang noted the zone change is not all that is being considered; the NSP grant received by RMDC through Lewis & Clark County is also an issue and the Neighborhood Association does not feel this grant will be good for the neighborhood.

Andy Skinner, PO Box 544, Helena; spoke in opposition to the zone change. He noted he submitted a petition and asked for confirmation that the Commission had received a copy of it. Mr. Skinner commented this property should be considered like a subdivision, the Commission should know what is going to be built on it. He expressed concern for the allowed density and parking requirements of the proposed zoning designation. Mr. Skinner commented he does not believe there is a need for additional low income housing in Helena.

Rose Casey, 1422 Walnut Street; spoke in opposition to the zone change. The 6th Ward/Mid-Towne Neighborhood Association was formed to watch out for the neighborhood's best interests and has had to cease its neighborhood planning effort to focus on keeping the subject property zoned CLM. Ms. Casey stated she worked to obtain some of the signatures on the petition and there are very concerned and frustrated business owners in the area. She noted the Commission has an obligation to do the right thing for the community and referenced the large amount of community opposition to RMDC's proposal for housing on the property. Ms. Casey commented that if the Commission approves this zone change request, her children and others would still be suffering from its effects forever and they will never be able to reclaim the property.

Ms. Casey also discussed the city's Growth Policy and stated it is a guideline and does not obligate the Commission to approve the proposal. She urged the Commission to support revitalization of the area by turning it into a railroad business district.

Mary Cheryl (M.C.) Beebe, 1620 Townsend; summarized the neighborhood does not support the zone change or NSP grant and spoke to the history of the proposal. She urged the Commission to deny the zone change and not allow the high school to be bookended with low income housing. Ms. Beebe stated her definition of mixed-use is not a commercial zone with a compound of housing.

George McCauley, 926 5th Avenue; urged the Commission to deny the zone change.

Terry Krantz, 1413 Boulder Avenue; concurred with Mr. Mueller's comments and stated he would love to see the area developed as it is time to do something with the property.

Gene Leuwer, RMDC Executive Director, 1601 Jerome; urged the Commission to support the zone change. He acknowledged RMDC does have a buy-sell agreement for the property and offered to answer questions on the housing development proposed for the area.

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

Discussion

Commissioner Cartwright commented tonight's proposal is specific to the Caird property and asked Ms. Macefield what other CLM property is located in the area. Ms. Macefield stated the Smitham Auto building, former Foley Mill building, Pattern House, Helena School District property and some single-family residential properties are located in the CLM District. Commissioner Cartwright asked if approval of the zone change would create "island zoning". Ms. Macefield explained staff would monitor the possible creation of "island zoning" into the future and noted city staff had reached out to existing CLM zoned properties to discuss changing their zoning designation but did not receive interest from the property owners. Commissioner Cartwright referred to the Growth Policy, which identifies this property to be changed, and asked what would happen if the property owner did not want it changed. Ms. Macefield stated per state law, if the properties included in the zone change protest the change it requires a super majority vote of the City Commission to override the protest.

Motion

Commissioner Elsaesser moved approval of first passage of an ordinance amending the Official Zoning Map described in Section 11-2-1 of the Helena Zoning Ordinance, changing from CLM

(Commercial Light Manufacturing) to B-1 (Neighborhood Business) District for lots and closed alleys as described in the ordinance and located at 1200 Boulder Avenue. Commissioner Ellison seconded the motion.

Discussion

Commissioner Elsaesser commented this is first passage of the ordinance. A lot of business owners signed the petition in opposition to the zone change and he would like to hear public comment from them during final passage of the ordinance on November 21, 2011. He added the Commission's duty is to decide what zoning is best for the neighborhood.

Commissioner Ellison stated the Zoning Commission voted 3-0 in favor of the zone change on October 11, 2011. He noted some of the public comment given at tonight's hearing has been targeted towards the housing development and not the proposed zone change. While he is sensitive to the neighborhood's concerns, he concurs with the applicant's rationale for the zone change and stated he would vote in support of first passage of the ordinance. Commissioner Ellison encouraged additional public comment be given during final passage of the ordinance.

Commissioner Cartwright asked Mr. Mueller if the installation of a round-about in the area would meet traffic concerns. Mr. Mueller stated he does not believe a round-about will ever be built.

Commissioner Cartwright asked if the super majority vote requirement would apply to first and final passage of the ordinance. City Attorney Nielsen stated yes, unless some of the adjacent property owners withdraw their names from the petition.

Commissioner Thweatt stated he is very torn on the proposal and everyone wants to see the property developed in a good way. The Growth Policy has two concepts: mixed-use and neighborhood planning. He asked what it would take to complete the neighborhood planning process, how small of an area could be used for the plan and how long it would take to develop the plan using information collected in the past. Ms. Macefield stated it is difficult to say how long it would take and explained staff would have to work on the plan while receiving and reviewing additional land use applications/cases as part of their normal workload. Planning staff is also set to begin review of the signage portion of the Zoning Ordinance. She noted past 6th Ward/Mid-Towne neighborhood meetings on the subject have had small attendance; staff would need to receive larger representation from the neighborhood. She summarized it would be a lengthy process. Commissioner Thweatt asked how much opportunity the neighborhood has had to submit comments regarding a neighborhood plan and if it would be possible to complete in one year. Ms. Macefield stated she could not confirm the length of time it would take to complete a plan. She explained past meetings of the 6th Ward/Mid-Towne Neighborhood Association were mentioned in the Community Calendar section of the Independent Record and the Association used an email list to notify residents and interested public of meeting dates and agenda topics. The Association was not legally required to advertise their meetings. Ms. Macefield noted there has been preliminary groundwork done towards the creation of a neighborhood plan; however, she is not certain if the same people that participated in the beginning of the project are still involved and still representative of the neighborhood.

Mayor Smith asked Ms. Macefield if she could describe the boundaries of the neighborhood. Ms. Macefield stated no. Mayor Smith

asked if the 6th Ward/Mid-Towne Association is a legal not-for-profit entity. Ms. Macefield stated yes. Mayor Smith asked how a neighborhood plan would be dealt with by the Commission if received. Ms. Macefield explained the City Commission would need to determine what function they would want the plan to serve and then consider its adoption.

Commissioner Cartwright indicated he may offer a tabling motion for the zone change. He discussed the role of RMDC in the community; when it originated it was to defend neighborhoods against city and state government. He does believe working with neighborhoods is still at their core and still their mission. There are several reasons he does not want to vote on the zone change at this time. First, is what a development like this says about the city's ability to provide housing for seniors, the estimated cost per unit is greater than the average price of a full size house.

The second reason is though the Growth Policy lays out the general intent for the area, it doesn't get into specifics and property owners are able to protest the plan if they don't like the proposed zoning.

Also, you don't see housing of any kind at a major intersection except in cities where there is nowhere else to go. He disagreed with RMDC's view that there is no place else to go and gave an example of land by Mergenthalers. He reiterated he does not believe this property is appropriate for any kind of housing.

Finally, this project has taken an unconventional path by bouncing from one unit of government to another with people working one unit and another; it doesn't feel right.

He recommended backing off the proposal to address these issues with all interested parties and to find out the truth about what RMDC really plans to develop on the property.

Commissioner Elsaesser commented this has been a long process and the Commission needs a mechanism to assure proper development of the property. The adjacent property owners, Commission and the community need to come together to decide what zoning designation is most appropriate for the area.

Mayor Smith indicated he would vote in support of the zone change as he believes it is appropriate for the neighborhood and the city. He also spoke in support of the NSP grant project. He referred to Ms. Casey's testimony where she said "we will never be able to reclaim the property" and noted it's not the city's or neighborhood's or Ms. Casey's property to begin with. In all the discussion and debate about the property, no one has talked about the current property owners, willing buyer and sellers.

Commissioner Thweatt read excerpts from the city's Growth Policy- Land Use Chapter related to neighborhood plans and mixed-use areas. He stated this neighborhood is very much in need of the kind of land use planning the Growth Policy discusses and recommended setting some parameters for what mixed-use areas are beyond the B-1 zoning criteria.

Substitute Motion

Commissioner Cartwright moved to table first passage of the ordinance to the call of the City Manager, but no sooner than the end of March 2012. Commissioner Thweatt seconded the motion. Motion failed 2-3, with Commissioners Ellison, Elsaesser and Mayor Smith voting no.

Comment

Commissioner Cartwright commented this ordinance needs to be considered fairly.

Vote on Original Motion

Motion carried 4-1, with Commissioner Cartwright voting no.

Ord #3147

- C. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3146 PROHIBITING THE OPERATION OF A MOTOR VEHICLE WHILE USING A MOBILE TELEPHONE OR OTHER CERTAIN TYPES OF MOBILE ELECTRONIC DEVICES.

Staff Report

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

Attorney Nielsen stated the proposed prohibition against the use of mobile telephones and other certain types of electronic devices reduces one form of distraction that drivers of vehicles encounter while attempting to safely operate motor vehicles on city streets and highways.

Following the submission of amendments to allow hands-free devices by Commissioner Ellison at the November 2, 2011 Administrative Meeting, a revised ordinance was drafted for consideration. This ordinance was provided to the Commission prior to tonight's meeting and is included in the Commission packet as part of the official record.

Public Testimony

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

Sarah Etchart, 801 Flowerree; spoke in support of the ban of cell phones while driving, both hand-held and hand-free devices.

Bob Filipovich, 926 8th Avenue; spoke in support of the ban of cell phones while driving, both hand-held and hand free devices.

George McCauley, 926 5th Avenue; spoke in support of the ban of cell phones while driving, both hand-held and hand free devices.

Connie House, 1217 Wilder; spoke in opposition to the ordinance in its entirety. There are existing laws that address distracting driving practices.

Adam Harbor, 5504 Cannon Court; spoke on what other communities have adopted regarding use of cell phones and texting. Mr. Harbor stated he does not support a cell phone ban when all distractions need to be addressed.

Connie Rarshing, 5 Strawberry Court; spoke in opposition to the ban on cell phones, both hand held and hands free devices. There are current laws for distracted driving.

Tom Bournes, 2108 E. Broadway; spoke in support of the ban of cell phones, both hand held and hands free devices.

Leroy Beebe, 1620 Townsend; spoke in opposition to the proposed ordinance. Drivers have to pay attention to what is going on around them.

Robert Brown, 3825 Wylie Drive; spoke in opposition to the ban on cell phones, both hand held and hand free devices. Mr. Brown expressed concern for the enforceability of the ordinance.

Todd Lovshin, 706 S. Hoback; spoke in opposition to the ordinance noting he uses his cell phone for business on a daily basis.

Bonnie Lorang, 1512 Butte Avenue; spoke in support of the ban on hand held devices but not hands free. Ms. Lorang asked how persons from out of town would be alerted to the ban and if you would violate the ordinance by pulling over to talk on a hand held phone.

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

Motion

Commissioner Ellison moved approval of final passage of Ordinance No. 3146 prohibiting distracted driving by operators of motor vehicles, including bicycles, due to use of mobile telephones or certain other types of mobile electronic devices. Commissioner Cartwright seconded the motion.

Discussion

Commissioner Ellison stated this began as a public safety issue in the City of Helena and an attempt to make the streets safer for all users. He commented his first choice would be to ban all cell phone usage while driving, both hand held and hands free; however, following first passage of the ordinance he heard a great deal of public comment from constituents supporting the ban on hand held devices but not hands free. He thanked citizens for getting involved and commenting on the issue.

Commissioner Elsaesser indicated he would support the ordinance with hands free devices being allowed.

Commissioner Cartwright stated he too favors the ordinance allowing the use of hands free devices for enforceability reasons. He addressed some of the public testimony given and spoke to the many studies that have been referenced throughout the testimony.

Commissioner Thweatt spoke to the issue of distracted driving and commented it is an epidemic in the United States.

Mayor Smith stated he too would support the ordinance, with the amendment to allow hands free devices. He noted this is an appropriate action for local government since the legislature has failed to enact a statewide law.

Amendment

Commissioner Ellison moved to amend Ordinance No. 3146, paragraph 8-2-2, Section B by adding sub-paragraph 3 and the following language: "the use of hands-free accessory or hands free mobile telephone would be allowed" and to reflect the amendment throughout the document as appropriate. Commissioner Elsaesser seconded the motion.

Mayor Smith confirmed the amendment is to allow the use of a hands free accessory or hands free mobile telephone.

Commissioner Ellison thanked everyone that provided testimony on the ordinance and commended City Attorney Nielsen for his assistance in drafting the ordinance and amendments.

Commissioner Thweatt stated he will not support the amendments as he does not believe hands free devices make driving any safer than a hand held device.

Commissioner Ellison thanked Commissioner Thweatt for his comments and tireless research on the subject.

Vote on Amendment

Motion carried 4-1 with Commissioner Thweatt voting no.

City Attorney Nielsen noted the amendment includes minor clean-up language that was meant to address operating. Commissioner Ellison confirmed his amendment should include the clean-up language recommended by Attorney Nielsen.

Motion

Commissioner Ellison moved approval of final passage of Ordinance No. 3146 prohibiting distracted driving by operators of motor vehicles, including bicycles, due to use of mobile telephones or certain other types of mobile electronic devices, as amended.

Commissioner Cartwright seconded the motion. All voted aye, motion carried. **Ord #3146**

D. CONSIDER A RESOLUTION ESTABLISHING A RATE MATRIX AND CONSIDER A RATE INCREASE FOR SERVICE CHARGES FOR COMMERCIAL COLLECTION AND DISPOSAL OF GARBAGE AND REFUSE IN THE CITY OF HELENA FOR FISCAL YEAR (FY) 2012

Staff Report

Administrative Services Director Tim Magee reported the Resolution of Commission Intent for the FY2012 Annual Budget calls for funding of essential services, including providing annual funding of regularly recurring Comprehensive Capital Improvement Program (CCIP) components and annually reviewing rates to ensure adequate funding of operations, maintenance and debt; addressing capital project priorities; providing for part or all of the impact of inflation; and making incremental rate changes that are regular and predictable for citizens. Therefore, a rate increase to cover the cost of providing commercial sanitation is recommended in FY2012, effective for the November 2011 billing cycle to be sent out December 1, 2011.

Director Magee recommended approval of a resolution to establish a rate matrix and setting rates to cover the cost of services for commercial collection and disposal of garbage and refuse in the City of Helena, Montana for fiscal year 2012.

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 of a resolution to establish a rate matrix for service charges for commercial collection and disposal of garbage and refuse in the City of Helena, Montana for FY2012. Commissioner Ellison seconded the motion.

Comment

Commissioner Elsaesser thanked Directors Magee and Rundquist for reviewing the commercial solid waste matrix and making it equitable and transparent for all.

Vote

All voted aye, motion carried. **Res #19887**

Public Communications

PUBLIC COMMUNICATIONS

No public communications were given.

***Meetings of
Interest***

MEETINGS OF INTEREST

The next Administrative Meeting is November 16, 2011 and the next Commission Meeting is November 21, 2011.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 9:12 p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission