

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
March 26, 2012
6:00 P.M.

Time & Place A regular City Commission meeting was held on Monday, March 26, 2012 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 Elsaesser, Ellison, Thweatt and Haque-Hausrath were present. City Manager Ron Alles, Acting City Attorney Thomas Jodoin and Deputy City Clerk Robyn Brown were present. Others present were Randy Phillips 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 March 12, 2012 were approved as submitted.

Consent Agenda CONSENT AGENDA:
A. Claims
B. Utility Adjustment Agreement with the Montana Department of Transportation associated with the resurfacing of 11th Avenue
C. Interlocal Agreement establishing the Lewis & Clark County Heritage Preservation and Tourism Council
D. By-laws of the Lewis & Clark County Heritage Preservation and Tourism Development Council
E. Proposed rejection of bid proposals for four new 2013 single axle automated side-loading refuse trucks for the Solid Waste Division
F. Acceptance of the February 2012 pledged collateral report

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

Commissioner Ellison asked that item D be removed for discussion. Commissioner Elsaesser asked that item E be removed for discussion.

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

Motion **Commissioner Ellison moved approval of items A, B, C and F on the consent agenda.** Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried.

D. BY-LAWS OF THE LEWIS & CLARK COUNTY HERITAGE PRESERVATION AND TOURISM DEVELOPMENT COUNCIL

Commissioner Ellison noted the Commission had received a memo from staff outlining two changes to the bylaws and asked for an explanation. City Manager Alles gave an overview of the memo and asked Community Development Director Sharon Haugen to report to the Commission on the amendments being proposed by staff.

Director Haugen reported staff had further reviewed the draft

bylaws for the above referenced council and based on that review recommended two changes to the language in the current draft under Article IV, Membership.

Under Article IV, Section 1, the current draft states that three (3) of the jointly selected members shall have professional expertise in a variety of disciplines. Since there is only one jointly appointed member staff is recommending that the word "jointly" be removed and the draft language be revised as follows:

A. "Three (3) of the ~~jointly~~ selected members as provided in this Article, Section 2. below shall have professional expertise . . ."

Director Haugen explained one of the roles of the previous Historic Preservation Commission was to serve as a local review board to advise the governing bodies on the appropriateness of granting a tax abatement for the restoration, rehabilitation, expansion, and new construction of properties located within national register historic districts and properties listed in the National Register of Historic Places. MCA 15-24-1605 outlines the makeup of that board. While the council membership as described in the bylaws generally meets the requirements set in this statute, state law specifies that one of the members must also be an architect. If it is the intent of the governing bodies to use this council as a recommending board for historic tax abatement, it is staff's recommendation that the bylaws be amended under Article IV Membership, 1. Number and Qualifications of Members, to add the following language:

C. "One member of the selected members shall be an architect".

Commissioner Elsaesser asked if the council approves of the amendments. Director Haugen stated yes.

Commissioner Haque-Hausrath referred to a stipulation of the bylaws requiring a City and County Commissioner sit as a liaison on the council and noted that is not a requirement of the current bylaws. Manager Alles concurred with Commissioner Haque-Hausrath and explained Lewis & Clark County is in support of the requirement and would like a liaison appointed to the position. He explained a City or County Commissioner will not be required to attend the council meetings, only be appointed liaison, but could if there was an item of interest on the agenda.

Commissioner Elsaesser asked if final approval of tax abatements and other items related to historic preservation would still require approval by the City and County Commissions. Director Haugen stated yes.

Amendment

Commissioner Ellison moved to amend the Bylaws of the Lewis & Clark County Heritage Preservation and Tourism Development Council as recommended in staff's memo dated March 26, 2012. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Motion

Commissioner Ellison moved approval of item D on the consent agenda, as amended. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Commissioner Elsaesser echoed Commissioner Ellison's comments regarding the addition of a flight between Helena and Billings.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

Attorney Jodoin reported a new city prosecutor had been hired, Mr. Todd Baker.

Report of the City Manager

REPORT OF THE CITY MANAGER

No report was given.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Randy Phillips reported the HCC will hold their regular monthly meeting this Wednesday, March 28th at 7:00p.m. and invited the Commission to attend.

Regular Items

REGULAR ITEMS:

A. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING TITLE 3, BUILDING REGULATIONS, TO ADD LANGUAGE CLARIFYING THE BUILDING DIVISION, THE POSITION OF THE BUILDING OFFICIAL, AND THE APPLICATION OF BUILDING CODES.

Staff Report

Chief Building Official Brandt Salo reported the proposed changes to the ordinance provide some needed clarification and updates to Title 3, Building Codes.

The change in the title of Chapter 1 will now reflect the Building Division as part of the Community Development Department and the head of the division is now referred to as the "building official", a term more commonly used in the currently adopted codes.

The current title of Chapter 2 refers to housing regulations indicating reference to the repealed uniform housing code and not the current International Residential Code. The Board of Appeals process has minor administrative and procedural issues and contains outdated references to the uniform codes.

The proposed language changes in the building and residential codes clarify and reaffirm the city's authority to enforce the building codes for all types of structures; including all categories of residential structures.

Mr. Salo recommended approval of the above changes as they would provide for consistency between code and functioning of the Building Division and its enforcement of the currently adopted codes.

Public comment

Mayor Smith called for public comment; none was received.

Motion

Commissioner Elsaesser moved approval of first passage of an ordinance clarifying the building division, the position of the building official, and the application of building codes by amending Title 3 of the Helena City Code, and setting a public hearing date of April 23, 2012. Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried. **Ord #3151**

B. CONSIDER A RESOLUTION OF INTENTION TO VACATE THE FULL WIDTH OF AN ALLEY BETWEEN LOT 1-36 IN BLOCK 1 OF THE COURT HOUSE ADDITION TO THE CITY OF HELENA.

Staff Report

Public Works Director John Rundquist reported David Jackson, owner of the subject property, submitted an application to vacate the full width of the alley between Lots 1-36 in Block 1 of the Court House Addition. The alley and adjacent lots are currently undeveloped at this time.

The applicant is requesting vacation of the full width of the alley between Lots 1-36 in Block 1 of the Court House Addition in order to develop the lots with at least two single family residences. There were no objections by the utilities; however, the Public Works Department expressed interest in swapping the square footage of the alley for the additional 30-feet of Hoback right-of-way (ROW) needed to match the rest of the Hoback Street ROW. The applicant rejected the proposed swap with the city. The square footage of the alley to be vacated is 7,288 with the square foot value averaging \$1.42 from the State of Montana Department of Revenue. The total value of the land is \$10,348.96.

Director Rundquist reported staff had no recommendation on the proposal. He noted Commissioner Haque-Hausrath had asked for more information on the proposed vacation and gave the following details.

- The applicant will have to pay the \$10,348.96 vacation/transfer fee, if the Commission approves the vacation without a land trade.
- The Commission is not required to vacate any right-of-way within the City of Helena. This action is at the full discretion of the City Commission.
- The actions for the vacation are to deny, table, approve, or approve with conditions. If the Commission will approve the vacation with the land swap, it would be appropriate to approve the vacation with the condition of the land swap. Then the applicant can decide if they want to proceed with the vacation and land swap.
- The Engineering Department did not receive an objection to the vacation of the alley from either the Public Works Department or the Fire Department.
- The applicants are the owners of all the lots in Block 1 and are requesting the entire alley to be vacated. Some of the other alleys in the area have been vacated and some have not. All vacations are reviewed on a case-by-case basis upon receiving an application for vacation of right-of-way.

Public comment

Mayor Smith called for public comment; none was received.

Motion

Commissioner Thweatt moved to deny a resolution of intention to vacate the full width of the alley between Lots 1-36 in Block 1 of the Court House Addition to the City of Helena.

Commissioner Haque-Hausrath seconded the motion.

Discussion

Commissioner Thweatt recommended denial of the proposal as it is unknown if the city may need this hard-to-come-by ROW in the future. He noted there is potential in these lots to retain the ability to create many small buildable lots; it is in the city's advantage to not facilitate merging them.

Commissioner Ellison noted he is torn on the requested vacation. He expressed concern that the city's reasonable request to trade ROW was rejected and hopes by denying the vacation the applicant will decide to work with the city on an arrangement that is mutually beneficial.

Mayor Smith indicated he would support the motion for denial as it is important to keep connectivity between city parcels and the city's request to trade ROW was reasonable. He noted he wished the applicant would've attended tonight's meeting to provide testimony. Commissioner Elsaesser indicated he too would vote to deny the vacation as he would be more comfortable if the proposal included trading ROW.

Vote All voted aye, motion carried.

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING TITLE 11 OF THE HELENA CITY CODE, REPEALING CHAPTER 22, OFF-STREET LOADING AND PARKING AND ESTABLISHING A NEW OFF-STREET PARKING CHAPTER.

Staff Report

City Planner Kathy Macefield reported on February 13, 2012 the City Commission held a public hearing to consider first passage of an ordinance amending Helena City Code by repealing Chapter 22 and establishing a new Parking chapter. The Commission tabled action on the proposed ordinance until the call of the City Manager which requires a legal advertisement and holding a new public hearing. The City Commission initially held a public hearing on December 19, 2011 to consider first passage of this Ordinance. The Commission approved a series of amendments to the proposed ordinance and the amended ordinance was included in the Commission packet. At that time, the Commission tabled action until the call of the City Manager. The Zoning Commission previously recommended APPROVAL (4:0 vote) for the new Parking Ordinance on November 8, 2011.

A table containing the Commission's proposals for Section 11-22-3, Minimum Number of Off-Street Parking Spaces, was included in the proposed ordinance. This table is based upon the Land Use Table of Chapter 2 of the Zoning Ordinance and identifies the current and proposed requirements in addition to the Commission's proposals. The process to develop the proposed off-street parking requirements included reviewing and evaluating other communities' requirements, ITE standards, and Helena's experience. Consideration was made to reducing requirements for residential uses. Parking space reductions would also be clarified and would be an option for residential dwelling units.

The existing requirements for bicycle parking would continue with the current proposal. ADA accessible parking requirements would be clarified. As proposed, off-street loading requirements (which no longer appear to be pertinent) have been deleted as was the limit on maximum parking spaces. The landscaping and screening requirements were deleted from the parking chapter and incorporated into the recently adopted landscaping chapter.

Ms. Macefield recommended approval of the proposed ordinance and noted it should be easier for the public to understand, and

for staff to interpret and administer. The proposed off-street parking requirements correspond better to the land use table of Chapter 2 of the Zoning Ordinance. It also puts those requirements in an easier-to-read table format. The off-street parking numbers have been revised to better reflect the current trends in the community.

Commissioner Thweatt asked how many public comments were received during Zoning Commission hearings on the ordinance. Ms. Macefield stated very few.

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 first passage of an ordinance amending Title 11 of the Helena City Code, repealing Chapter 22, Off-street Loading and Parking and establishing a new off-street parking chapter, as amended per the memo by Planner Kathy Macefield dated March 22, 2012. Commissioner Elsaesser seconded the motion.

Note: The above listed amendments are included in the Commission packet as part of the official record.

Amendments

Commissioner Elsaesser moved to amend the ordinance per the document titled "Elsaesser draft dated March 20, 2012 with Haque-Hausrath suggestions dated March 24, 2012- VERSION 2", striking the wording in parenthesis at the end of #7.(5). Commissioner Haque-Hausrath seconded the motion.

Note: The above listed amendments are included in the Commission packet as part of the official record.

Commissioner Elsaesser gave the rationale for his amendments and urged the Commission members to support them. Commissioner Haque-Hausrath noted the reductions are intended to encourage and incentivize alternatives to single-vehicle driving and spoke in support of the amendments.

Commissioner Ellison asked Attorney Jodoin for his comments on the amendments. Attorney Jodoin gave an overview of a memo he had provided the Commission outlining his concerns with the amendments. This memo is included in the Commission packet as part of the official record.

Friendly Amendment

Commissioner Ellison offered a friendly amendment to strike paragraph #5 from the Elsaesser amendments due to Attorney Jodoin's concerns with city staff monitoring a transportation program. Commissioner Elsaesser resisted the amendment.

Commissioner Haque-Hausrath urged support for paragraph #5 and explained it would work the in the same way the city's other complaint-driven ordinances work.

Commissioner Ellison moved to amend the Elsaesser package of amendments to withdraw paragraph #5. Commissioner Thweatt seconded the motion. Motion carried 3-2 with Commissioners Elsaesser and Haque-Hausrath voting no.

Commissioner Elsaesser moved to amend the ordinance per the document titled "Elsaesser draft dated March 20, 2012 with Haque-Hausrath suggestions dated March 24, 2012- VERSION 2", striking the wording in parenthesis at the end of #7.(5) and with the removal of paragraph 5. Commissioner Haque-Hausrath seconded the motion.

Commissioner Thweatt indicated he would not support the amendments due to concerns with the workability of the ordinance, concerns raised by City Attorney Jodoin, and the lack of sufficient connection to reducing the demand for parking to justify the proposed reductions. Commissioner Elsaesser again spoke in support of the amendments. Mayor Smith concurred with Commissioner Thweatt's arguments against the amendments.

Vote on Elsaesser Amendments

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

Commissioner Haque-Hausrath moved approval of Amendment #1 (1a through 1e) per the "Haque-Hausrath Amendments" document. Commissioner Thweatt seconded the motion.

Note: The above listed amendments are included in the Commission packet as part of the official record.

Commissioner Haque-Hausrath noted the above amendments were created by she and Commissioner Thweatt to reduce the minimum parking requirements so they reflect on-the-ground numbers for Helena, rather than being based on national amounts that are too high for Helena and based on suburbanized car-dependant areas that are not appropriate for Helena. Commissioner Thweatt gave an overview of how they arrived at the proposed figures and spoke in support of the amendments. He noted the Commission needs to be careful about how much parking they require; there is a risk to requiring too much parking because it takes land out of productive use and can unnecessarily cost developers money by calling for too much parking. Also, it reduces the walkability of the community by making the distances between destinations farther and parking lots are generally not the most attractive element of a community. He expressed concern there is no accurate way to determine what amount of parking is necessary to avoid congestion on the streets and urged business owners in the city to provide testimony on the proposed parking requirements at the hearing for final passage of the ordinance.

Mayor Smith noted he would support the amendments as they appear minimal. Commissioner Ellison indicated he would vote in favor of the motion because he is comfortable with a modest reduction in the requirements and the proposed amendments would create a modest reduction.

Commissioner Elsaesser stated he would vote against the amendments and explained his rationale. He noted he had yet to hear from any of the entities being discussed that the city's minimums are too high to be met.

**Vote on
Haque-Hausrath
Amendments #1**

Motion carried 4-1 with Commissioner Elsaesser voting no.

Commissioner Haque-Hausrath moved approval of Amendment #2 (2a through 2 j), noting #2g should read 14 instead of 10, per the "Haque-Hausrath Amendments" document.
Commissioner Thweatt seconded the motion.

Note: The above listed amendments are included in the Commission packet as part of the official record.

Commissioner Elsaesser expressed concern with Amendment #2 and commented reducing the parking requirements may adversely affect existing neighborhoods. He indicated he would not vote in favor of any of the amendments labeled #2 and reiterated he had not heard from any of the uses being considered that the city's minimum parking requirements are too high. Commissioner Haque-Hausrath spoke in support of the amendments and urged the Commission to support them.

Commissioner Thweatt moved to divide Amendment #2 to consider the amendments one at a time, beginning with 2a.
Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried.

Commissioner Thweatt moved approval of Amendment #2a.
Commissioner Haque-Hausrath seconded the motion. Motion carried 3-2 with Commissioners Elsaesser and Ellison voting no.

Commissioner Thweatt moved approval of Amendment #2b.
Commissioner Haque-Hausrath seconded the motion.

Commissioner Thweatt noted he had discussed Amendment #2b with the School District and the amended amount appears more appropriate.

Vote

Motion carried 4-1 with Commissioner Elsaesser voting no.

Commissioner Thweatt moved approval of Amendment #2c.
Commissioner Haque-Hausrath seconded the motion. Motion carried 4-1 with Commissioner Elsaesser voting no.

Commissioner Thweatt moved approval of Amendment #2d.
Commissioner Haque-Hausrath seconded the motion. Motion carried 4-1 with Commissioner Elsaesser voting no.

Commissioner Thweatt moved approval of Amendment #2e.
Commissioner Haque-Hausrath seconded the motion. Motion carried 4-1 with Commissioner Elsaesser voting no.

Commissioner Thweatt moved approval of Amendment #2f.

Commissioner Haque-Hausrath seconded the motion. Motion carried 4-1 with Commissioner Elsaesser voting no.

Commissioner Thweatt moved approval of Amendment #2g.

Commissioner Haque-Hausrath seconded the motion. Motion carried 4-1 with Commissioner Elsaesser voting no.

Commissioner Thweatt moved approval of Amendment #2h.

Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried.

Commissioner Thweatt moved approval of Amendment #2i.

Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried.

Commissioner Thweatt moved approval of Amendment #2j.

Commissioner Haque-Hausrath seconded the motion. Motion carried 4-1 with Commissioner Elsaesser voting no.

Commissioner Haque-Hausrath spoke to Amendment #3 (3a, 3b and 3g through 3n), and urged the Commission to support the amendments. City Attorney Jodoin referred to Amendment #3k and noted state law refers to home-based daycare as "family daycares" and the ordinance should use the same terminology.

Commissioner Ellison expressed concern with Amendment #3k. He has observed a home-based daycare in his neighborhood and it does not appear there is near enough parking at the facility which puts the parents at risk when they are trying to get their young children in and out of their vehicles.

Commissioner Haque-Hausrath moved approval of Amendment #3 (3a, 3b and 3g through 3n). Commissioner Thweatt seconded the motion.

Note: The above listed amendments are included in the Commission packet as part of the official record.

Commissioner Ellison moved to divide Amendment package #3 to vote on each amendment individually. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Commissioner Elsaesser noted he would not vote in support of Amendment package #3 and again noted he had not heard from any of the uses being considered that the city's minimum parking requirements are too high.

Commissioner Haque-Hausrath moved approval of Amendment #3a. Commissioner Thweatt seconded the motion. Motion failed 2-3 with Mayor Smith and Commissioners Ellison and Elsaesser voting no.

Commissioner Haque-Hausrath moved approval of Amendment #3b. Commissioner Thweatt seconded the motion. Motion carried 4-1 with Commissioner Elsaesser voting no.

Commissioner Haque-Hausrath moved approval of Amendment #3h. Commissioner Thweatt seconded the motion. Motion carried 4-1 with Commissioner Elsaesser voting no.

Commissioner Haque-Hausrath moved approval of Amendment #3i. Commissioner Thweatt seconded the motion. Motion carried 3-2 with Commissioners Ellison and Elsaesser voting no.

Commissioner Haque-Hausrath moved approval of Amendment #3j. Commissioner Thweatt seconded the motion. Motion carried 3-2 with Commissioners Ellison and Elsaesser voting no.

Commissioner Haque-Hausrath moved approval of Amendment #3k. Commissioner Thweatt seconded the motion. Motion carried 3-2 with Commissioners Ellison and Elsaesser voting no.

Commissioner Haque-Hausrath moved approval of Amendment #3l. Commissioner Thweatt seconded the motion. Motion carried 3-2 with Commissioners Ellison and Elsaesser voting no.

Commissioner Haque-Hausrath moved approval of Amendment #3m. Commissioner Thweatt seconded the motion. Motion carried 4-1 with Commissioner Elsaesser voting no.

Commissioner Haque-Hausrath moved approval of Amendment #3n. Commissioner Thweatt seconded the motion. Motion carried 4-1 with Commissioner Elsaesser voting no.

Motion

Commissioner Ellison moved approval of first passage of an ordinance amending Title 11 of the Helena City Code, repealing Chapter 22, Off-street Loading and Parking and establishing a new off-street parking chapter, as amended. Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Ord #3152**

Public Communications

PUBLIC COMMUNICATIONS

The following persons spoke in opposition to the consideration of a non-discrimination ordinance for the City of Helena: Mike Dellwo, Helena; Tim Ravndal, Townsend; Mark Seitz, 125 Valley Drive; and Breanna Roddewig, 5820 North Montana Avenue. Mr. Dellwo submitted his testimony in writing and twenty-one (21) petitions opposing the creation of an ordinance were submitted for the record. Persons attending the Commission Meeting stood to show opposition to the ordinance when asked by Mr. Dellwo.

Commissioner Thweatt thanked members of the public for standing to be counted to show their opposition to the ordinance and the efficiency used in providing comment. Commissioner Haque-Hausrath thanked citizens attending the meeting for participating in the public process. Mayor Smith thanked citizens for giving testimony and noted an ordinance for the city has not been drafted. Commissioner Ellison also thanked those who attended and testified at the meeting.

***Meetings of
Interest***

MEETINGS OF INTEREST

The next Administrative Meeting is April 4, 2012 and the next Commission Meeting is April 9, 2012. The next City/County Joint Work Session will be held on April 5, 2012.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:53 p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission