

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**June 18, 2012**  
**6:00 P.M.**

- Time & Place** A regular City Commission meeting was held on Monday, June 18, 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, City Attorney Jeff Hindoien and City Clerk Debbie Havens were present. Others present were Diane Papineu 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 June 4, 2012 were approved as submitted.
- Consent Agenda** CONSENT AGENDA:  
A. Claims  
B. A resolution declaring certain personal property to be abandoned and unclaimed (bicycles) **Resolution #19920**  
C. Memorandum of Understanding (MOU) between Montana Department of Transportation (MDT) and the City of Helena regarding storm drainage maintenance and capital improvement work  
D. Removal of parking on the North Side of 11th Avenue from North Montana to Fee Street  
E. Purchase of vehicles for Public Works Department
- City Manager Ron Alles recommended approval of the claims and the consent agenda.  
Commissioner Ellison requested Item D 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 E on the consent agenda.** Commissioner Thweatt seconded the motion. All voted aye, motion carried.
- Item D D. Removal of parking on the North Side of 11th Avenue from North Montana to Fee Street
- Commissioner Ellison asked if any businesses have objected to the proposal. City Manager Alles stated no.
- Public comment Mayor Smith asked for public comment, none was received.
- Motion** **Commissioner Ellison moved approval of Item D of the consent agenda.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

- Communications** COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS  
Commissioner Elsaesser wished the Helena Brewers well on their 2012 season. He announced the monthly electronics recycling event is Wednesday, June 20<sup>th</sup>.
- Report of the City Attorney** REPORT OF THE CITY ATTORNEY  
No report was given.
- Report of the City Manager** REPORT OF THE CITY MANAGER  
City Manager Alles reported there are nine AmeriCorp volunteers helping clean up the city's open spaces.  
He also explained any temporary street closure that occurs in the city limits does go through staff review, in coordination with Permit Coordinator Mark Lerum of the Police Department.
- Report from the Helena Citizens Council** REPORT FROM THE HELENA CITIZENS COUNCIL  
HCC member Diane Papineu handed out a newly created brochure on the Helena Citizens Council. She noted the HCC will also have magnets available for the public in the near future.
- Regular Items** REGULAR ITEMS:  
A. CONSIDER THE FINAL PLAT FOR THE TWO-LOT MINOR SUBDIVISION OF LOT 1 BLOCK 2 OF THE SLEEPING GIANT ADDITION FOR PROPERTY WITH A STREET ADDRESS OF 800 LOLA STREET.
- Staff Report  
City Planner Lucy Morell-Gengler reported on February 27, 2012 the Helena City Commission gave preliminary plat approval for a two-lot minor subdivision of Lot 1, Block 2 of the Sleeping Giant Addition. The 1.19 acres will be divided into Lot 1-A and Lot 1-B with the existing Subway Restaurant located on Lot 1-B. The property is zoned B-2 (General Commercial) District and is located on the southwest corner of Tricia (frontage road) and Lola streets. There were no conditions associated with the preliminary plat approval; the applicant is now requesting final plat approval.  
Ms. Morell-Gengler recommended approval of the plat and noted it would provide areas for development within the city utilizing water and wastewater and promote urban development close to major transportation routes. She noted it has the potential to lower some of the pressure to develop property in the county and, as a result, reduce sprawl and vehicle miles traveled.
- Public comment Mayor Smith called for public comment; none was received.
- Motion** Commissioner Ellison moved approval of the final plat for the two lot minor subdivision of Lot 1, Block 2 of the Sleeping Giant Addition. Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried.  
B. CONSIDER FIRST PASSAGE OF AN ORDINANCE PROHIBITING NUISANCE VEGETATION BY AMENDING CHAPTER 7 OF TITLE 7 OF THE HELENA CITY CODE.
- Staff Report  
Parks & Recreation Director Amy Teegarden reported state law directs a county weed district to provide weed control on all lands and

rights-of-way owned or controlled by a county or municipality. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in §7-22-4101. It has been 17 years since revisions were made to the current weed ordinance. The need to revise the current City Code comes from issues raised by the county weed district, complaints and concerns expressed by city residents and the city code enforcement officer.

City staff review of the current ordinance found that the existing definition of a weed is subjective and open for interpretation. Follow-up on complaints identified that the current ordinance definition for a weed does not support "alternative" landscaping practices that are encouraged in water conservation practices and defensible space landscaping. Further, the current code requires a cumbersome complaint-driven process.

Director Teegarden gave an overview of the intent, definition, action, enforcement process and miscellaneous changes of the proposed ordinance.

Some of the proposed changes in the amended ordinance include:

1. Change the title and intent of the ordinance to "Nuisance Vegetation".
2. Change "Public Works" to "Parks and Recreation" Department to reflect current supervision of the code enforcement position.
3. Define "Nuisance Vegetation".
4. Revise the notification and enforcement process to require one 15-day notice to clear and/or remove if necessary the nuisance vegetation.
5. Reorganize the ordinance so that information is explained in an order that clearly outlines definitions, public notice requirements and the complaint and notification process followed by enforcement procedures.

Director Teegarden recommended approval of first passage of the proposed ordinance as it will result in improved clarification of the intent, definition and enforcement of nuisance vegetation and requested the Commission set a public hearing date of July 9, 2012.

Discussion Commissioner Elsaesser thanked staff for the work that has been done to bring this ordinance forward.

Public comment Mayor Smith called for public comment; none was received.

**Motion** **Commissioner Elsaesser moved approval of first passage of an ordinance defining and prohibiting nuisance vegetation by amending Chapter 7 of Title 7 of Helena City Code and set a public hearing date for July 9, 2012.** Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried. **Ord #3158**

**Public Hearings** PUBLIC HEARINGS:  
A. CONSIDER A RESOLUTION ESTABLISHING RATES AND CHARGES FOR COMMERCIAL COLLECTION AND DISPOSAL OF GARBAGE AND REFUSE IN THE CITY OF HELENA.

Staff Report Administrative Services Director Tim Magee reported the City's Financial Planning Policy Resolution calls for funding of essential

services, including providing timely 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; considering the impact of inflation; and making incremental rate changes that are regular and predictable for citizens.

At this time, no increase in rates and charges for commercial sanitation is recommended. Director Magee recommended approval of the proposed resolution.

Discussion

Commissioner Elsaesser asked if there is a time limit regarding the \$5.00/per day charge for roll-off containers held over ten days. Director Magee explained there is no time limit on how long a container can be kept.

Commissioner Elsaesser asked for more information on locating a roll-off container on public right-of-way. Solid Waste Superintendent Pete Anderson explained when a container is placed on the street, the Engineering Department reviews and approves the application.

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 a resolution establishing rates and charges for commercial collection and disposal of garbage and refuse in the City of Helena, Montana.**

Commissioner Thweatt seconded the motion. All voted aye, motion carried. **Res #19921**

B. CONSIDER A RESOLUTION SETTING FEES CHARGED FOR DISPOSAL OF GARBAGE AND REFUSE AT THE CITY OF HELENA TRANSFER STATION.

Staff Report

Director Magee reported The City and Lewis & Clark County jointly analyze and agree each year on a recommended tipping fee for the operation of the City Transfer Station and the Lewis & Clark County landfill. The tipping fee also supports the community's recycling program. The Public Works Department is not recommending a tipping fee increase. A minor change is proposed for tires that would allow the City to accept larger tires than in past years. The proposed resolution would create a fee for tires up to a 48" outside diameter.

Director Magee recommended approval of the resolution to allow the city to cover the costs of operation at the Transfer Station enterprise.

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.

Discussion

Commissioner Ellison recognized and thanked staff for finding a way to accept larger tires. Commissioner Elsaesser commended the city retiring transfer station debt early.

**Motion**

**Commissioner Thweatt moved approval of a resolution setting fees charged for disposal of garbage and refuse at the City of Helena Transfer Station.** Commissioner Ellison seconded the motion. All voted aye, motion carried. **Res #19922**

C. CONSIDER A RESOLUTION TO BUDGET ADDITIONAL PROPERTY TAX FOR FISCAL YEAR 2013 (FY2013).

**Staff Report**

Director Magee reported state statute allows the City to budget additional property tax revenues over the prior year level as specified in 15-10-420, MCA. In accordance with 15-10-203, MCA, the city is required to hold a public hearing before budgeting any increase in total property tax revenues. The City intends to budget tax revenue increases as allowed by state law for a total increase of \$156,540 or a 1.69% increase over last year's level. He then reviewed the increased property tax revenue to include the general obligation debt for 1997 and 2008 for a grand total of \$187,490 or 2.02% of the prior year's total levy.

Director Magee recommended approval of the proposed resolution in order to preserve the present level of services to the community.

**Discussion**

Commissioner Ellison asked what the 1997 and 2008 general obligation bonds were for. Director Magee explained the 1997 bonds were for the purchase of open lands and the 2008 bonds were for Centennial Park.

Commissioner Elsaesser asked if the levy for increased health insurance costs covers just city employees or includes family coverage. Director Magee explained the levy relates to employees only; family health insurance coverage is paid for by employees.

**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 Haque-Hausrath moved approval of a resolution to budget additional property tax revenue of 2.02% for FY2013.** Commissioner Ellison seconded the motion. All voted aye, motion carried. **Res #19923**

D. CONSIDER A RESOLUTION TO ADOPT FINAL BUDGETS, BUDGET AUTHORITIES AND ANNUAL APPROPRIATIONS FOR FY2013.

**Staff Report**

Director Magee reported the Local Government Budget Act, MCA, Title 7, Chapter 6, Part 4, requires the city to develop and adopt an annual budget. The annual budget development process has encouraged public participation and included the City Manager's presentation of the Preliminary Budget to the City Commission on April 23, 2012; a series of work sessions during which the entire Preliminary Budget was reviewed; public hearing notices published in accordance with MCA 7-1-4127; and a list of amendments to the Preliminary Budget.

Director Magee recommended the Commission conclude the budget development process by conducting the public hearing on the Preliminary Budget to receive public input; determine if there are any

additional changes to be added to the list of amendments to the budget; and adopt the resolution related to the final budget as amended. He noted state law requires the Commission's approval of the annual budget. Approval of the resolution enhances the city's ability to conduct business in a timely and efficient manner, while maintaining effective budgetary controls.

#### Discussion

Commissioner Thweatt referred to the motion and asked for clarification on the following language: "and setting the salary for Municipal Judge". Director Magee explained the Municipal Judge salary is required to be set by statute.

Commissioner Haque-Hausrath asked if the list of amendments handed out tonight is the same as the list included in the Commission packet. Director Magee explained the lists of amendments on the Commissioner's desks are the most up-to-date and would be the list of amendments to the budget resolution.

Commissioner Haque-Hausrath asked where the designated \$5,000 for LED lights would be located on the amendment list. Director Magee noted the \$5,000 is included in the capital improvement fund and has been reserved for LED lights; it will be shown in the final budget document.

Commissioner Haque-Hausrath asked Director Magee to explain "Appendix A". Director Magee stated "Appendix A" is the legal authority for adopting the budget at the fund level. Director Magee reviewed the information on the *Annual Budget Resolution – Appendix A – Balances and Changes by Fund for the Fiscal Year Ending June 30, 2013*.

#### Public Testimony

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

Gary Carnavich, representing Occupy Helena; spoke on the Helena Police Department/Lewis and Clark County Sheriff's Office policies and training regarding use of force. He spoke against the city's purchase of an armored vehicle and related accessories. Written testimony requesting information on the city's policies was submitted to the Commission for the record.

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

#### Motion

**Commissioner Ellison moved approval of a resolution adopting final budgets, budget authorities and annual appropriations for the fiscal year beginning July 1, 2012 and ending June 30, 2013 and setting the salary for the Municipal Judge.**

Commissioner Thweatt seconded the motion.

#### Discussion

Commissioner Thweatt asked if the Commission were to hold off on including the accessories for the armored vehicle in the budget tonight, would it impair or eliminate the chance of receiving the vehicle. Police Chief McGee stated he would have to check with the Department of Emergency Services; the purchase was approved by the Commission several months ago and is ready to move forward. There may be legal ramifications if the Commission were to postpone the purchase.

Commissioner Haque-Hausrath stated she made an error earlier in the process by not requesting that this purchase being discussed more. She noted there is a lot of concern in the community over the vehicle.

**Amendment**

**Commissioner Haque-Hausrath moved approval not to fund \$36,000 for accessories to the armored vehicle.** Commissioner

Thweatt seconded the motion.

Commissioner Elsaesser stated he appreciates the comments offered tonight; however, he has visited with both Chief McGee and Sheriff Dutton regarding this vehicle and accessories, and he is comfortable moving forward with purchasing the additional items.

Mayor Smith indicated he would oppose the amendment.

**Vote**

Motion failed 2-3 with Mayor Smith and Commissioners Elsaesser and Ellison voting no.

Commissioner Elsaesser spoke to the \$240,000 budget deficit and expressed concern for affording to implement the market-based pay plan and the COLA. He believes the city needs to strive for the median wage of the seven largest cities in Montana for all city employees. He stated he would be interested in putting a stay on the market adjustment increases for six months to allow for further discussion and/or further reduction of the COLA. Commissioner Elsaesser noted if the COLA was reduced from 2% to 1% that would save approximately \$100,000. He commented that the ongoing pension shortfall will also have to be addressed.

Mayor Smith stated he does not share Commissioner Elsaesser's concerns.

Commissioner Ellison asked for the fiscal impact of the two proposals offered by Commissioner Elsaesser. Commissioner Elsaesser explained the COLA reduction would save the general fund approximately \$100,000 and delaying the market-based increases would save approximately \$150,000 for a total of \$250,000.

Commissioner Ellison asked City Manager Alles for his comments. City Manager Alles concurred with the numbers given by Commissioner Elsaesser. He noted these increases would be for non-bargaining unit employees. Manager Alles spoke on the guidelines for comparing city employee pay with the other seven larger cities and noted it was the direction of the Commission. Union employees have already received market increases through their contracts. The city has taken care of approximately 100 employees; however, the non-bargaining unit employees have not been addressed. Manager Alles noted the City of Helena ranks fourth in the seven largest cities salaries and spoke to the importance of hiring and retaining employees.

Commissioner Ellison stated he would be hesitant to support any motion related to delaying market-based increases offered tonight; however, he would be willing to look at the Commission's past direction to bring the employees up to market. He noted he is comfortable with Manager Alles' assurances that he will bring the budget up to balanced during the course of the fiscal year.

Commissioner Haque-Hausrath stated she would oppose any motion related to a reduction in the COLA. She would be willing to discuss the market-based increases and suggested that the criteria of the market be looked at. She recommended wages be compared with the State of Montana, the major employer in Helena, or regional cities with a similar population. She stated she feels city employees should be fairly paid.

Mayor Smith stated the city has a market-based pay plan and he is very hesitant to abandon it at this stage of budget adoption and after four months of budget review. He commented he would be willing to discuss this issue during next years' budget process.

Commissioner Thweatt concurred with Mayor Smith's comments and stated he too is not comfortable changing the proposed increases at this late stage of the budget process.

Commissioner Elsaesser spoke to the timing of his proposal and the general fund deficit.

**Amendment**

**Commissioner Elsaesser moved to delay the implementation of the market-based pay plan for employees not affected by contracts to the median point of the coming fiscal year.**

Commissioner Ellison seconded the motion.

Mayor Smith spoke on the importance of non-bargaining unit employees receiving similar pay as organized employees.

Commissioner Elsaesser commented he wants to make sure the city budget is balanced.

**Vote**

Motion failed 2-3 with Mayor Smith and Commissioners Ellison and Thweatt voting no.

**Amendment**

**Commissioner Elsaesser moved to set the COLA at 1% instead of 2% for FY2013.** Commissioner Haque-Hausrath seconded the motion.

Commissioner Haque-Hausrath stated she would not support the motion.

Commissioner Ellison noted city employees have been told to expect a 2% COLA and stated he is not comfortable decreasing that amount at this time. He again spoke of City Manager Alles' need to balance the budget through vacancy savings or other means.

Mayor Smith stated he too would vote in opposition to the motion and expressed support for Manager Alles' assurances that the city will have a balanced budget by the end of FY2013.

Commissioner Thweatt stated the deficit is a small percentage of the total budget and he believes it can be made up through savings or cash reserves. The salary issue is more of a long-term issue and he would welcome a review of it during next years' budget process.

Commissioner Elsaesser stated he does not like proposing this type of motion; however, fiscal responsibility is what the Commission is charged with. He then expressed support for Manager Alles' ability to balance the budget by various means.

**Vote**

Motion failed 1-4 with Mayor Smith and Commissioners Ellison, Haque-Hausrath and Thweatt voting no.

**Motion**

**Commissioner Ellison moved approval of a resolution adopting final budgets, budget authorities and annual appropriations for the fiscal year beginning July 1, 2012 and ending June 30, 2013, as amended, and setting the salary for Municipal Judge.** Commissioner Thweatt seconded the motion. Motion carried 4-1 with Commissioner Elsaesser voting no. **Res #19924**

Mayor Smith recognized and thanked Administrative Services Director Tim Magee, Budget Manager Bob Ricker and Administrative Assistant Carrie Hahn for their work on the budget.

**Public  
Communications**

**PUBLIC COMMUNICATIONS**

No public communications were given.

**Meetings of  
Interest**

**MEETINGS OF INTEREST**

The next Commission Meeting is July 9, 2012.

**Other Business**

Commissioner Thweatt asked that a staff response be prepared regarding the concerns expressed this evening by Occupy Helena.

Commissioner Thweatt asked Police Chief McGee how the Police Department (PD) would handle a sit-down protest. Chief McGee noted there is a highly trained Civil Obedience Team to assist in protests when needed. There is a policy on what force can be used by police officers and sheriff's deputies; they do not use force unless absolutely necessary and each incident is treated on an individual basis. The PD seldom uses pepper spray and would only use it if the protest was getting violent.

Commissioner Thweatt referenced the armored vehicle and asked if it is designed to penetrate a building and release pepper spray or tear gas, or if it is designed to spray the chemicals over a large area. Chief McGee explained it is not designed to and cannot spray over a large area.

Mayor Smith stated he would be happy to discuss the content of the written testimony from Occupy Helena at an upcoming Administrative Meeting. Chief McGee indicated he would attend and invite Sheriff Dutton.

Mayor Smith stated the event that occurred at the State Capitol last July 11, 2011 can be viewed on You-Tube and encouraged interested parties to do so. He noted his son-in-law, a sheriff's deputy, has been involved in some of the incidents referenced in the written testimony.

Manager Alles stated he will work with Chief McGee and Sheriff Dutton on a response.

**Adjournment**

There being no further business to come before the Commission, the meeting was adjourned at 7:40 p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission