

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**December 17, 2012**  
**6:00 P.M.**

***Time & Place***

A regular City Commission meeting was held on Monday, December 17, 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 Deputy City Clerk Robyn Brown were present.

***Pledge of Allegiance***

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

***Minutes***

The minutes of the regular City Commission meeting of December 3, 2012 were approved as submitted.

***Board Appointments***

**BOARD APPOINTMENTS:**

- A. Building Board of Appeals, Lewis & Clark City-County Library Board, City-County Parks Board and Public Art Committee

Mayor Smith asked for Commission concurrence on the following board appointments:

Building Board of Appeals - Re-appointment of Jim Whaley to the Building Board of Appeals; term will begin upon appointment and expire December 31, 2017.

Lewis & Clark City/County Library Board - Reappointment of Sandi Conrady to a second term on the Lewis & Clark City/County Library Board; term will begin upon appointment and expire January 1, 2018.

City/County Parks Board - Appointment of Adam Kaupisch to a first term on the City/County Parks Board; term will begin upon appointment and expire September 30, 2015.

Public Art Committee - Reappointment of Jim Gilman and Bobi Harris to the Public Art Committee; terms will begin upon appointment and expire December 31, 2015.

**Public comment**

Mayor Smith asked for public comment, none was received.

**Motion**

**Commissioner Ellison moved approval of the appointments to the Building Board of Appeals, Lewis & Clark County Library Board, City-County Parks Board and Public Art Committee as outlined above.** Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried.

***Consent Agenda***

**CONSENT AGENDA:**

- A. Claims  
B. Acceptance of the 2012 Comprehensive Annual Financial Report (CAFR)  
C. Consider entering into a Project Agreement with the State of Montana, Montana State Parks to purchase a tract of land included within the Mount Ascension Natural Park Expansion

- D. Consider entering into a Project Agreement with the State of Montana, Montana Fish Wildlife and Conservation Trust to purchase a tract of land included within the Mount Ascension Natural Park Expansion project
- E. Acceptance of the November pledged collateral report
- F. Consider professional services agreement with Hydrometrics, Inc. to perform landfill monitoring at the old City landfill and area(s) around the Transfer Station
- G. Consider a Right-of-Way Use Agreement and easement on City property to Lewis and Clark County to facilitate reconstruction of Rimini Road

City Manager Ron Alles recommended approval of the claims and the consent agenda. Commissioner Elsaesser asked item F be removed for further discussion.

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

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

**Item F** F. CONSIDER PROFESSIONAL SERVICES AGREEMENT WITH HYDROMETRICS, INC. TO PERFORM LANDFILL MONITORING AT THE OLD CITY LANDFILL AND AREA(S) AROUND THE TRANSFER STATION

Commissioner Elsaesser asked if a Request for Proposals (RFP) was requested for the agreement. City Manager Alles and Public Works Director John Rundquist stated yes.

**Motion** Commissioner Elsaesser moved approval of item F on the consent agenda. Commissioner Ellison seconded the motion. All voted aye, motion carried.

**Communications** COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS  
Mayor Smith and the Commission members wished the citizens of Helena a happy holiday season.

**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. Recognition of retiring Fire Chief J.R. Feucht

City Manager Alles announced Fire Chief Feucht would be retiring on December 21<sup>st</sup> after 32 years with the Fire Department. Manager Alles thanked Chief Feucht for his service and dedication to the safety of the citizens of Helena.

Assistant Fire Chief Sean Logan gave Chief Feucht's history with the HFD and commended his performance throughout his tenure. He thanked him for his exemplary and caring service to the citizens of Helena and for showing the same care and respect to Fire Department staff.

Chief Feucht spoke of his service with the Department and what he learned over his 32 years in the profession. He noted that it is hard to

leave his position and thanked everyone he has worked with throughout his career for all they have taught him.

Mayor Smith and the Commission members commended Chief Feucht for his professionalism, dedication and courage throughout his career and thanked him for his service to the citizens of Helena.

**Report from the  
Helena Citizens  
Council**

REPORT FROM THE HELENA CITIZENS COUNCIL

No report was given.

**Regular Items**

REGULAR ITEMS:

- A. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING CHAPTERS OF THE HELENA CITY CODE TO INCREASE FINES FOR ON- AND OFFSTREET PARKING VIOLATIONS INCLUDING, BUT NOT LIMITED TO, THOSE UNDER THE JURISDICTION OF THE HELENA PARKING COMMISSION (HPC).

Staff Report

HPC Director Dave Hewitt reported the HPC has not increased parking fines since approximately 1993, and is experiencing a financial shortfall. The HPC is proposing to increase the five-dollar ( \$5.00) fine for parking violations in on- and off-street public parking spaces to ten dollars (\$10.00), and increase twenty-dollar (\$20.00) fines to twenty-five dollars (\$25.00).

Such increases may discourage more parking violations in the Helena Parking District, and would provide funding for the operation and maintenance of public parking spaces and facilities administered by the HPC. Director Hewitt noted any creation of new revenue will clearly impact the HPC budget in a positive fashion and recommended approval of first passage of the ordinance.

Public comment

Mayor Smith called for public comment.

Eric Goldberg, Helena; asked for the reasoning behind the proposal to increase fines.

Discussion

Commissioner Elsaesser explained the fine increases are needed to maintain parking infrastructure. Commissioner Haque-Hausrath stated the increase in the metered parking spots is to encourage turnover and help the downtown businesses. Mayor Smith noted a full discussion on the fine increases will be held in January at the public hearing.

**Motion**

**Commissioner Ellison moved approval for first passage of an ordinance amending Chapters 11, 12, 13 and 14 of Title 8 of the Helena City Code to increase minimum parking fines, and set a public hearing date of January 14, 2013.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried. **Ord #3163**

**Public Hearings**

PUBLIC HEARINGS:

- A. CONSIDER GRANTING A TAX ABATEMENT REQUEST FROM THE BOEING COMPANY FOR NEW AND EXPANDING BUSINESS.

Staff Report

Community Development Director Sharon Haugen reported in October 2012, The Boeing Company submitted an application for tax abatement as provided in MCA 15-24-1401. This section of the law allows local governments to grant tax abatements for qualifying

improvements or modernized processes for new or expanding industry. The Boeing Company is requesting that Lewis and Clark County and the City of Helena grant the abatement for the purchase of new equipment at their plant. The abatement, if granted, would run from tax year 2013 through tax year 2022. The estimated cost of the equipment to be purchased will be \$11,265,000. On November 19, 2012 the City Commission held a public hearing to consider the tax abatement and a motion was made to grant the abatement, with only three members of the City Commission present. The Commission voted 2-1 to approve the abatement. According to the Helena City Commission bylaws, three members of the Commission have to vote in the affirmative to pass any motion, so the motion that night did not prevail. The hearing was rescheduled for consideration on December 17th for consideration by all five of the City Commission members. On November 20, 2012, the Lewis and Clark County Commission held a public hearing to consider granting the tax abatement and they passed a motion 2-0 to grant it. The Boeing Company, doing business as Summit Aeronautics, has received previous tax abatements and has complied with all requirements associated with the abatements.

Director Haugen recommended approval of the abatement as it would help implement the following two objectives of the City's Growth Policy, "Promote the maintenance and expansion of existing Helena area businesses and recognize the importance of government employment to the Helena economy" and "Direct community incentive programs and other financial resources to job development, both to retain and expand existing industries and attract new ones." The granting of the tax abatement would provide some financial incentive in the further expansion for the Boeing Company in this community. The Boeing Company purchased the former Summit Aeronautics Group in 2010. The Helena office serves as one of Boeing's fabrication centers for complex machining and end-line aircraft parts manufacturing and employ over 150 people. The Boeing Company, as well as its predecessor Summit Aeronautics, also works closely with the Helena College University of Montana in providing training and employment opportunities for students.

It was noted although the purchase of the equipment will result in an overall net increase in tax revenue for the taxing jurisdiction, there will be loss of some property tax revenue as outlined in the attached. The total amount of property tax revenue abated during this period is \$811,860 of which \$171,891 is the City's share. The total taxes paid during the tax abatement period would be \$1,507,740, of which \$322,228 is the City's share.

#### Discussion

Commissioner Haque-Hausrath asked how many jobs would be created by the abatement. Director Haugen stated she was told up to 10 jobs may be generated.

#### Public Testimony

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

Eric Smith, The Boeing Company; urged the Commission to support the tax abatement. He noted since Boeing bought Summit Aeronautics in 2010, 20 positions have been added at the Helena facility and they expect to increase the workforce by another 5-7% if the proposed abatement is approved.

Rick Hayes, Helena; urged the Commission to support the abatement.

Linda Kindrick, Executive Director for Montana Community Finance Corporation; spoke in support of the abatement.

Carol Bridges, Family Practice Physician – Missoula; spoke in support of the abatement and the message it sends that “Helena is open for business”.

Dean Daniel Bingham, Helena College of Technology; spoke in support of the tax abatement.

Robert Fillipovich, Helena; spoke against the tax abatement.

Joe McClure, Montana Business Assistance Connection; urged the Commission to support the abatement.

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

**Motion**

**Commissioner Elsaesser moved approval of a resolution granting a tax abatement in accordance with MCA 15-24-1401 to the Boeing Company for qualifying improvements or modernized processes for new or expanding industry.** Commissioner Thweatt seconded the motion.

**Discussion**

Commissioner Haque-Hausrath stated she would not vote in support of the abatement as she has not seen evidence the amount that would be abated would have any impact on the decisions of a multi-million dollar company. She has seen many studies that show there is no evidence connecting these tax abatements and jobs created that help people stay in the city; they can capriciously leave at any time for any reason. Even if it does create jobs, 7-10 jobs is basically statistical noise in Helena. Also, as she understands, Boeing has already installed the infrastructure to be abated so they appear at least as invested in Helena as we are in them. Finally, this abatement does not seem fiscally responsible in relation to the city’s budget and priorities.

Commissioner Ellison referred to concerns heard at the Administrative meeting and in emails to the Commission that the abatement should be denied because Boeing is a big company and made a profit last year. He stated according to state statute you cannot exclude a tax abatement application just because of the applicants size or because you do not necessarily like the company. You also cannot approve an abatement because you do like the company or because it is small. State statute provides for this program and it should be applied fairly whenever an application is submitted. Commissioner Ellison discussed the workforce of Boeing Helena and noted he would support the abatement request and it is a wonderful opportunity for Helena.

Commissioner Elsaesser stated he would vote in support of the abatement as The Boeing Company has been a great addition to Helena and the company has made an important partnership with the College of Technology.

Commissioner Thweatt indicated he would not support the abatement as he is skeptical that the abatement amount will provide incentive. The advantage is supposed to be that the granting of the abatement would provide some financial incentive for expansion of The Boeing Company in the community; there is no way to determine whether that is true or not. The abatement amount just does not seem like much for this size of company.

Mayor Smith stated the proposed 7-10 jobs created by this abatement are important to the city of Helena and he would vote in support of the abatement.

**Vote**

Motion carried 3-2, with Commissioners Thweatt and Haque-Hausrath voting no. **Res #19979**

B. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW GENERAL AND PROFESSIONAL SERVICES TO BE LOCATED IN A R-3 RESIDENTIAL DISTRICT AT 1101 11<sup>TH</sup> AVENUE

Staff Report

City Planner Kathy Macefield reported on Tuesday, November 20, 2012 the Helena Zoning Commission unanimously (5:0 vote) recommended APPROVAL for a Resolution granting a Conditional Use Permit (CUP) to allow a 1,129 square foot office for general and professional services in a R-3 (Residential) District for property legally described as the west 28 feet of Lot 73 and all of Lot 74, Block 9, Beattie Addition, (COS # 471401/T), Helena, Montana; with a property address of 1101 11th Avenue.

As proposed by the applicant, the proposed office would occupy the upper level of the existing residential structure (1,129 square feet) while the basement level would be used as an apartment. The applicant is aware if the office use is expanded to include the basement level, the CUP would need to be amended to allow that expansion and opted to have the CUP just for the 1,129-square foot main level.

The proposal is consistent with the CUP criteria of the Zoning Ordinance which determined the use would not significantly increase risk to the public health, safety, or general welfare, and would not significantly reduce or impair the peaceful use of existing property or improvements in the vicinity and the R-3 zoning district. Boulevard sidewalks are located on the west and north sides of the property to accommodate pedestrians.

Ms. Macefield recommended approval of the CUP as the amount of increased traffic is projected to be minimal due to the small office size. The property is located in "Mixed Use Area H" as identified on the 2011 Growth Policy land use map, which recognizes a mix of residential and commercial uses in the vicinity so this proposal is consistent with the mixed use designation. The applicant has stated the existing residential structure would be retained, representing conservation of resources. Located in a mixed use area, non-motorized traffic can be encouraged and reduce the amount of vehicle miles travelled (vmt).

Discussion

Commissioner Elsaesser asked if the CUP were granted, would it allow for future expansion of the office space on the property? Ms. Macefield stated any expansion of the use would need to be re-evaluated and come before the Commission for consideration.

Public Testimony

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

Jeff Tiberi, Montana Association of Conservation Districts; spoke in support of the CUP and submitted written comments 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 granting a CUP to allow a 1, 129 square foot office for general and professional services in a R-3 (Residential) District for property legally described in the resolution.** Commissioner Haque-Hausrath seconded the motion. All voted aye, motion carried. **Res #19980**

C. CONSIDER FINAL PASSAGE OF ORDINANCE #3162, A NON-DISCRIMINATION ORDINANCE.

Staff Report

City Attorney Hindoien reported per the Commission's actions at the December 3, 2012 Commission meeting, the amended non-discrimination ordinance was included for review in the Commission packet. The ordinance text incorporates the three (3) amendments that were made prior to first passage of the ordinance, as shown below:

1. An amendment to Section 1-8-4 to clarify the application of the ordinance to the use of facilities in certain places of public accommodation;
2. An amendment to Section 1-8-7 and deletion of original Section 1-8-8 to require exhaustion of any remedies with the Montana Human Rights Bureau prior to filing any petition in Helena Municipal Court; and
3. An amendment to Section 1-8-7 to remove the availability of attorney fees as a form of relief to either a plaintiff or a defendant.

Discussion

Commissioner Thweatt asked the following questions of City Attorney Hindoien:

Is the type of discrimination addressed by the ordinance already prohibited under state or federal law? *Attorney Hindoien explained the ordinance is not intended or structured to reach forms of discrimination that are already prohibited by state or federal law. He noted that was the intent of amendment #2 listed above.*

Would the ordinance be in violation of state law? *Attorney Hindoien stated in his opinion, at this point no. There are arguments to be made that portions of the ordinance are contrary to Title 7 – Restrictions on the Authority of Municipalities. The city may be pre-empted from doing this because of the existence of the Montana Human Rights Act and Montana Code of Unfair Practices. He summarized he does not believe the ordinance violates Montana law.*

Would the ordinance interfere with the constitutional right to the free exercise of religion by forcing persons to act contrary to their religious beliefs? *Attorney Hindoien explained in the intended application of the ordinance to religious associations, in most instances no. The stated intention and language in the ordinance itself states it's not intended to cross any first amendment lines or infringe on anyone's already existing rights.*

Would the ordinance apply to churches as employers and require churches to employ LGBT people contrary to their religious beliefs? *Attorney Hindoien stated it's difficult to interpret the ordinance as applying to religious associations, whether as employers or public accommodations. He has not found that the ordinance is intended to reach very far into the world of religious associations, if at all.*

Even if churches are not public accommodations, would bathrooms within church facilities be considered public accommodations? *Attorney Hindoien explained churches are not mentioned in the definition of public accommodation and the religious association structure is excluded from the definition of employer.*

What is the potential cost of this ordinance to the city? *Attorney Hindoien stated as structured, at this point the only cost to the city is the*

*marginal cost to make the judicial branch of municipal court available to the litigant advancing this type of claim. Municipal Court is already operating and entertaining civil and extensive criminal litigation, so the structure is already in place. There isn't anything in the proposed ordinance that asks the City of Helena, at the staff level, to do anything other than make its judicial branch available under the terms set forth in the ordinance.*

Commissioner Haque-Hausrath noted she would be proposing the following amendments:

- 1) Amendment 1: propose adding "punitive damages" as a potential remedy in Section 1-8-7.
- 2) Amendment 2: propose changing the time to file in Municipal Court from 30 days to 90 days in Section 1-8-7.
- 3) Amendment 3: propose deleting the following language from Section 1-8-4: "However, in any place of public accommodation where users ordinarily appear in the nude, users may be required to use the facilities designated for their anatomical sex, regardless of their gender identity. Such requirement does not constitute unlawful discrimination for purposes of this Section 1-8-4."
- 4) Amendment 4: If Amendment 3 does not pass, propose removing the preceding language and replacing it with the following language: "Nothing in this title shall be construed to establish a claim of unlawful public accommodation discrimination based on gender identity or expression due to the denial of access to shared shower or dressing or other facilities in which being seen entirely unclothed is unavoidable, provided that the public accommodation provides reasonable access to adequate facilities that are not inconsistent with the person's gender identity or expression. Nothing in this title shall be construed to require the construction of new or additional facilities."

Commissioner Thweatt noted he would be proposing to amend section 1-8-7 to restore the original language regarding attorney fees as without the original language the remedy provided by this ordinance will not be effective.

Public Testimony

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

<b>PROponents</b>	<b>OPponents</b>
Roberta Zenker	Nick Lancette
Amy Ofice	Sharon Turner
Sarah Rossi	BG Stumberg
Pastor Mary Ann Niesen, St Paul's United Methodist Church	Barb Hamlin
Eric Olberg	Mark Cramer
Mike O'Neil	Roger Lindquist
Tyler Amundson, St Paul's United Methodist Church	John Cathguard



Ron Waterman	Bill Gallagher
Robin Morrison	Leann Taylor
Dr. Mary Ann Guggenheim	Jackie Garcia
Jan Donaldson	Herb Walberg
Judy Fiell	Jerry Hamlin
Chelsea Rice	Paul Grevis
Kim Leighton	Matthew White
Bill Hellanan	Dave Ullery
Tess Clearman	Robyn Mohs
Cassidy Medicine Horse	Richard Mohs
James Ellis	LynnKarr
Erin Brida	Eleanor Joe
Lilly Soper	Sharon Nason
Jake Foreichourich	Brittany Renshaw
Mr. Wyatt	David Shaw
Tess Douvershow	Tim Kern
Amanda Armstrong	Jon Bowser
Ryan Morton	John Fenlason
Colleen McCarthy	Gloria Cathcart
Mary Ann Dunwell	Becky Berg
Shawn Reagor	Jonathan Berg
Jennifer Hillheart	Gary Bye
Shawn McCarthy	Josh Wisler
Mary Decker	Joseph Cathcart
Rebecca Leaphart	Daniel O'Brien
Jessica Rhoades	Latoya Sheehan
Melissa Barcroft	K'Sandra O'Brien
Heather Margolis	Charlotte Gallapno
Carla Potter	Ralph Gallapno
Lynne Burkhard	Doug Carpenter
Stacey Anderson	Dean Carpenter
Michele Herrington	Claudia Sheehy
Suni O'Connell	Meg Blom
Demitria Martin	Kjersten Klass
Ginny Furshong	Natalie Boey
Laurie Volesky Kops	Steve Boey
Tara Veazey	Susan Sheehy
Karen Kueffler	Gabrielle Walker
LaVonne Walker	John Barbagello
Marsha Breen	Rebecca Burchell
Joseph Rangitsch	Carolyn Truscott
Claudette Morton	Becky Stockton
Jessica Peterson	James H. Hill
D. Renee Boundy	Joan Halverson

Bethany Flint	Polly Brown
Carissa Spurzem	Terry Rowe
Andrea Martin Salizar	Wes Rowe
Allison James	Brian Schlauch
Ilene Baumgardner	Joanne Kauzlaurich
Jessica Melvin	Bonnie Stevens
Madeline Aagenes Boehm	Mark Stevens
Casey Gilder	Robert Werle
Timothy Melvin	Larry Chambers
Shahid Haque-Hausrath	Anne Merrill
Rachel Carroll-Rivas	James Merrill
Michael Synness-Hand	Mike Kauzlaurich
Annie Glover	Cheryl Bloom
Judy Hart	Brian Bhristensen
Kyle Leach	Robert M. Dellwo
Allyson Hagen	David Klass
Amy Cannata	Michael J. Fasbender
Jilliam Eacock	Leo Zanner
Kyle Whelan	Betty Riley
Pat Kemp	Larry Holman
Tim Mielke	Sheryl Maziarz
Wade Zolynski	Paul McElroy
Mike Wessler	Elijah Welkev
Lynda Gryczan	Patty Metrolea
Dany Pettigrew	Joellen Barbagllo
Niki Whearty	Dick Crosby
Jordan Brown	Robert Brown
Kelsen Young	Marissa Stockton
Niki Zupanic	Sheri Harlow
Jamee Greer	Brad Harlow
Lilliam Michalsky	Jodi White
Fran Effertz	John Richardson
Scott Blum	Patrick McCain
Steven Cornish	Polly Brown
Susan E. Duncan	Allison Bell
Emily Stueven	Wendy Sebastian
Caitlin Carroll	Jim Sheehy
Bryher Heralc	Andrew Metroka
Robin Layton	Randy Chambers
Melissa Kwasny	Melinda Albers
Olivia Bauer	Glenna McClure
Ann Bauer	Linda Chambers
Nicole Gratch	J.J. Liddy
Dawn Lockwood	Cyndi Forbes

Scott Lockwooc	Kristi Freeman
Andres Haladay	Jonathan Barbagello
Marilyn Bennett Alexander	Robert Leach
John Weida	Roylene Olson
Caitlin Cople	Marianne Jittu
Ruth Luke	Jezer Garcia
Brady Smith	Tammi Espenlaub
Amanda Harrow	Greg Guthrie
Meghan Burns	Dianne Hoffman
Lowell Luke	Belinda Christensen
Sue Bennett	Arlene Dellwo
Layna George	Roxie Nistler
Senator Mary Caferro	Jill Guthrie
Anita Roessman	Judy Rosenbaum
Senator Christine Kaufmann	Cathy Klass
Betsy Riggs	Cyndy Munson
Sean McCarthy	Tobe Johnson
Jeremy Ewing	Kandra Snut
Tom Gocksich	Susan M. Getz
Jonathan Orndoff	Clarence O. Getz
Laura Arvidson	
Karen Nelson	

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

**Motion**

**Commissioner Haque-Hausrath moved approval of final passage of Ordinance #3162 prohibiting certain forms of discrimination in the City of Helena.** Commissioner Thweatt seconded the motion.

**Amendment**

**Commissioner Thweatt move to amend section 1-8-7 to restore the original language regarding attorney fees.** Commissioner Haque-Hausrath seconded the motion. Motion carried 3-2 with Commissioners Ellison and Elsaesser voting no.

**Amendment**

**Commissioner Haque-Hausrath moved approval of “Haque-Hausrath Amendment #1” related to punitive damages.** Commissioner Thweatt seconded the motion. Motion failed 2-3, with Mayor Smith and Commissioners Elsaesser and Ellison voting no.

**Amendment**

**Commissioner Haque-Hausrath moved approval of “Haque-Hausrath Amendment #2” expanding the time to file in Municipal Court from 30 to 90 days.** Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

**Amendment**

**Commissioner Haque-Hausrath moved approval of “Haque-Hausrath Amendment #3” deleting language from Section 1-8-4 related to public accommodations where users ordinarily appear nude.** Commissioner Thweatt seconded the motion.

**Discussion** Commissioner Elsaesser stated he would vote in opposition to "Haque-Hausrath Amendment #3" as there has been a lot of concern over this particular issue that hasn't been able to be resolved. Commissioner Ellison concurred with Commissioner Elsaesser's comments.

**Vote** Motion failed 1-4, with Mayor Smith and Commissioners Thweatt, Ellison and Elsaesser voting no.

**Amendment** **Commissioner Haque-Hausrath moved approval of "Haque-Hausrath Amendment #4" related to unlawful public accommodation discrimination based on gender identity or expression due to the denial of access to shared shower or dressing or other facilities.** Commissioner Thweatt seconded the motion.

**Discussion** Commissioner Thweatt stated he does not believe "Haque-Hausrath Amendment #4" addresses the concerns that were the reason for the original amendment approved at the December 3<sup>rd</sup> hearing. He indicated he would not support "Amendment #4" as it does not protect the owner of a facility in being able to address a situation without being subject to liability under the ordinance. He reiterated it does not protect the facility owner unless there are unisex changing rooms and does not meet the intent of the original amendment.

Mayor Smith noted he would not support the amendment. Commissioner Ellison concurred he too would not support the amendment as he is more comfortable with the language approved at the December 3<sup>rd</sup> hearing.

**Vote** Motion failed 1-4, with Mayor Smith and Commissioners Elsaesser, Thweatt and Ellison voting no.

**Amendment** **Commissioner Elsaesser moved approval of "Elsaesser amendment #1".** Commissioner Ellison seconded the motion.

**Motion withdrawn** *Following discussion, Commissioner Elsaesser withdrew his amendment.*

**Comment** Commissioner Elsaesser thanked members of the community for participating in the process of vetting this issue and noted he believes it is a model ordinance.

Commissioner Ellison commented he has kept an open mind throughout the year-long deliberation on this ordinance and it has been a subject that has closely divided the community. He expressed disappointment in bullying and intolerance that has occurred over the issue and admonished those who used web-based services to rant anonymously. He stated during the past month and from the two public hearings it has become clear that while most of the proponents live, work, and vote in Helena, many of the opponents come from surrounding areas and communities. While it is good to have their input, his first loyalty is to the voters and ratepayers of Helena, and it is his belief that passage of this ordinance is supported by the majority in Helena. Therefore, he indicated he would support its passage.

Commissioner Haque-Hausrath voiced disappointment in amendments to the ordinance related to locker rooms and gender

identity/expression; however, she expressed happiness overall that the ordinance has been approved and will be in place.

Commissioner Thweatt commented on his struggles with the ordinance and thanked everyone that participated in its adoption with civility. He urged the community to “agree to disagree” and go about being good neighbors in the Helena community we all love.

Mayor Smith noted he felt the Commission owed Commissioner Haque-Hausrath a good faith attempt to craft an ordinance that would work for Helena; she announced her intention to propose this ordinance from the beginning of her campaign for office. He explained what was important to him to be included in the ordinance and thanked the Commission, city staff and the community for working together to achieve its adoption.

**Motion** Commissioner Haque-Hausrath moved approval for final passage of Ordinance #3162 prohibiting certain forms of discrimination in the city of Helena, as amended. Commissioner Thweatt seconded the motion. All voted aye, motion carried. **Ord #3162**

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

**Meetings of Interest** MEETINGS OF INTEREST  
The next Administrative Meeting is January 9, 2013 and the next Commission Meeting is January 14, 2013.

**Adjournment** There being no further business to come before the Commission, the meeting was adjourned at 10:02 p.m.

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Mayor James E. Smith

ATTEST:

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Clerk of the Commission