

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
September 25, 2017 - 6:00 P.M.
City Commission Chambers, Room 330

Time & Place

A regular City Commission meeting was held on Monday, September 25, 2017 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 Ellison, Farris-Olsen, Haladay, and Noonan were present. City Manager Ron Alles, City Attorney Thomas Jodoin and City Clerk Debbie Havens were present.

HCC Representative Gary Spaeth was also 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 September 11, 2017, will be submitted and approved upon completion.

Proclamation

PROCLAMATION:

Fire Prevention Week

Mayor Smith read the Fire Prevention Week Proclamation and presented it to the Fire Chief Emert.

Chief Emert recognized retired Fire Marshall Craig Trapp for his service to the Helena Fire Department. The week of October 9th all 2nd graders in the Helena schools will visit the fire station and receive educational information on fire safety and prevention.

Board Appointments

BOARD APPOINTMENTS:

Citizen Conservation Board

The Citizen Conservation Board is hereby established and shall be comprised of the following individuals, each of whom must be citizens of the City of Helena:

One (1) representative from the Helena Citizen's Council

Denise Barber

Two (2) representatives from the Watershed or Water Conservation sector

Ken Knudson

Dianna Hammer

Two (2) representatives from environmental organizations

Brian Fadie

Greg Ross

Two (2) representatives from the business or building industries

Sarah Norcott

Two (2) citizens at large

Hanna Cail

Ann Brodsky

One (1) representative from the Health Care Community

Lisa Fairman

One (1) Professional Engineer

Richard Sloan

One (1) Educator from the Earth Science Field

Patrick Judge

Terms will begin upon appointment.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion **Commissioner Farris-Olsen moved approval of the board appointment to the Citizen Conservation Board as outlined above.**
Commissioner Haladay seconded the motion. All voted aye, motion carried.

Consent Agenda CONSENT AGENDA:

- A. Claims
- B. Final passage of Ordinance No. 3232 amending the rezoning, prior to annexation, from R-2 (Residential) District to R-U (Residential Urban) District and upon annexation, amending the official zoning map for the city of Helena for portions of the Crossroads at Mountain View Meadows preliminary plat approved May 7, 2012, generally located south and west of Alice Street and south of Jeanette Rankin Drive.
- C. Final passage of Ordinance No. 3233 amending the official zoning map for the City of Helena, for a zone change from R-2 (Residential) District and R-4 (Residential-Office) District to R-U (Residential Urban) District for portions of the Crossroads at Mountain View Meadows preliminary plat approved May 7, 2012, generally located south and west of Alice Street and south of Jeanette Rankin Drive.
- D. Construction Contract Award to Golden Eagle Construction.
- E. Resolution establishing compliance with reimbursement bonds regulations under the Internal Revenue Code in advance of the proposed issuance by the City to provide funds to pay for the costs of the construction and equipping of a new Golf Course pro shop and clubhouse and related improvements.

Resolution 20405

City Manager Alles recommended approval of the claims.

Discussion Commissioner Haladay asked that Item E be discussed. He asked Administrative Services Director Jorgenson to explain the procedural and mechanics of issuing the bonds. He has received a lot of questions regarding the financing of the golf course.

Director Jorgenson stated the resolution is a recommendation from the Bond Counsel to notify the IRS the intent of the city of Helena to issue bonds to finance the construction of the golf pro shop.

Commissioner Haladay asked what type of bonds are being issued, are we using the INTERCAP Loan Program. Director Jorgenson stated it will be a bank loan or public financing of bonds. The INTERCAP Loan Program has a fifteen year pay-back; it is staff's recommendation to go with a 20-year bond to keep the annual costs lower.

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

Motion **Commissioner Ellison moved approval of Items A - E on the consent agenda.** Commissioner Noonan seconded the motion. All voted aye, motion carried.

Bid Award BID AWARD:
Bid Award for New Wastewater Treatment Plant Influent Channel Project #16-25.

Staff Report City Engineer Ryan Leland reported at the present time there are two recently installed wastewater treatment machines, a step screen and a screenings filter press situated in the Headworks building that require

temporary plant shutdown to perform routine maintenance. To do the required maintenance, the influent channel flow has to be isolated, and all plant influent re-routed to a manual bar screen. This requires plant staff to dewater the normal influent channel and perform extensive cleaning and manual labor dealing with raw wastewater.

The City received one bid for the New Wastewater Treatment Plant Influent Channel Project 16-25 on September 12, 2017. The lowest responsible bidder for the project was Diamond Construction Inc. of Helena MT with a bid price of \$284,000.00.

The cost for this project is planned to be paid for by the City of Helena out of the Wastewater Utility capital funds and are planned upgrades to the City's wastewater treatment system to allow for improved operation and maintenance of the step screen and screening washer/press units.

Installing the influent channel structure and building addition will allow for greatly improved maintenance for the step screen and filter press units, reducing overall treatment costs, utility costs and manpower requirements. The new structure and building addition will also allow treatment plant staff to re-route influent wastewater and work on the step screen and filter press inside the Headworks building and without direct contact with raw wastewater.

Installation of the new building addition and influent channel will reduce treatment plant power consumption by allowing maintenance activities to be performed indoors without needing to open the overhead door.

City Engineer Leland recommended approval to award the New Wastewater Treatment Plant Influent Channel Project #16-25 to the lowest responsible bidder Diamond Construction Inc. in the amount of \$284,000.00.

Discussion

Commissioner Ellison asked what the engineer's estimate was for the project. Engineer Leland stated the estimate was \$210,000.

Commissioner Farris-Olsen noted there are three items (by-bass pumping, the demolition and the roof) that make up the difference between the engineer's estimate and the bid. He asked how the estimate is off by this much on these three items. Engineer Leland noted the consultant took a look at the project and how to best by-pass the pumps and provided the engineer's estimate. However, the contractor bids the project and it is a wide range of items to estimate.

Commissioner Farris-Olsen stated he is concerned when the bids come in way over or under the engineer's estimated costs.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Noonan moved approval to award the New Wastewater Treatment Plant Influent Channel Project #16-25 to the lowest responsible bidder Diamond Construction Inc. in the amount of \$284,000.00. Commissioner Haladay seconded the motion. All voted eye, motion carried.

**Communications
From Commissioners**

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Commissioner Ellison reported the Smokejumper Station restaurant recently opened at the Helena Airport.

Mayor Smith reported he and some city staff will be attending the Montana League of Cities and Towns Conference in Great Falls, September 27-29.

**Report of the City
Attorney**

REPORT OF THE CITY ATTORNEY
No items to report on.

**Report of the City
Manager**

REPORT OF THE CITY MANAGER
Manager Alles announced 11th Avenue from Rodney to Raleigh Street will be closed September 27th and 28th to replace some asphalt. In the past week the Helena Police Department issued 171 new traffic violations.

Commissioner Farris-Olsen asked when the waterline project will be completed on Prospect Avenue. Engineer Leland reported the project is essentially completed; however, the contractor is waiting to install the asphalt within the next couple of days.

**Report from the
Helena Citizens
Council**

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC Chair Spaeth reported the next HCC meeting will take place on Wednesday, September 23rd at 7 p.m. in Room 326. A presentation on the jail bond will be given at the meeting.

Mr. Spaeth reported he heard on the radio the Helena Regional Airport has increased their passengers over the past year. He noted next week is the deadline to submit the HCC survey that is currently on the HCC website.

Regular Items

REGULAR ITEMS:

- A. CONSIDER A RESOLUTION ANNEXING A PORTION OF TRACT A-1-A-1-A-1-A OF COS # 3265465 KNOWN AS CRAFTSMAN VILLAGE PHASE 3 OF CROSSROADS AT MOUNTAIN VIEW MEADOWS, GENERALLY LOCATED EAST OF SWIFT CURRENT STREET AND NORTH OF TWILIGHT AVENUE IN LEWIS AND CLARK COUNTY INTO THE CITY OF HELENA, MONTANA.
- B. CONSIDER THE FINAL PLAT FOR CRAFTSMAN VILLAGE PHASE 3 OF CROSSROADS AT MOUNTAIN VIEW MEADOWS CREATING 26 LOTS AND RIGHT-OF-WAY (ROW), GENERALLY LOCATED EAST OF SWIFT CURRENT STREET AND NORTH OF TWILIGHT AVENUE, IN THE CITY OF HELENA, MONTANA

**Staff Report
Annexation**

City Planner Lucy Morell-Gengler reported the owner of this property, Mark Runkle representing R and D Partners LLC, has requested annexation for approximately 3.59 acres described as Lots 9-21, Block 45, and Lots 7-19, Block 44 including portions of adjacent alleys, Stacia Avenue, and non-motorized rights-of-way as shown on the final plat of Craftsman Village Phase 3. The R-4 (Residential-Office) District rezoning for this property was approved by the City Commission on February 23, 2009, Ordinance No. 3109. On May 7, 2012, the Helena City Commission approved the Resolution of Intention to Annex (Resolution No. 19911) and approved the revised preliminary plat for Crossroads at Mountain View Meadows Subdivision which includes the subject property. Conditions for annexation and final plat were established at that time. The annexation condition related to the fire station lot was amended by Resolution No. 20341. A request for final plat approval has been submitted and the conditions for subdivision and annexation of this phase have been met.

Annexation of this property is subject to the conditions stated in the Resolution of Intention to Annex Resolution No.19911 as amended by Resolution No. 20341; the applicant has completed the annexation conditions associated with this phase of the development. For reference, a list of the annexation conditions and their status is attached to this memo.

The applicant is requesting annexation of approximately 3.59 acres to the city of Helena. This proposal is accompanied by a request for final plat

approval for proposed Craftsman Village Phase 3 of Crossroads at Mountain View Meadows Subdivision creating 26 lots internal rights-of-way. No public hearing is required for these actions.

The proposed annexation is adjacent to the city; water and sewer mains, stormwater, and streets will be installed to city standards. Therefore, annexing this property is a logical expansion of the City, an opportunity to promote compatible urban growth, and would be consistent with the efficient use of land, infrastructure, energy and resources, and the 2011 Helena Growth Policy.

Annexation into the city and development to city densities has the potential to reduce vehicle miles traveled in the Helena area.

City Planner Morell-Gengler recommended approval of a resolution annexing Craftsman Village Phase 3 of Crossroads at Mountain View Meadows Subdivision, as legally described in the attached resolution of annexation, into the city of Helena, Montana.

Final Plat

City Planner Morell-Gengler reported on May 7, 2012, the Helena City Commission gave conditional preliminary plat approval for the Crossroads Amendment at Mountain View Meadows Subdivision and an extension to that preliminary plat approval was granted in 2015. The applicant is now requesting approval of the final plat for Craftsman Village Phase 3 of Crossroads at Mountain View Meadows. This subdivision final plat creates 26 lots zoned R-4 (Residential - Office) District and dedicates ROW for the extension of Stacia Avenue, alleys, and non-motorized access to the city. The proposal includes simultaneous annexation of approximately 3.59 acres. Platting and annexing these 26 lots will result in an approximate 154 acre tract that will continue to be located in the county.

The proposed final plat includes the following changes from the approved preliminary plat. These changes were evaluated based on Section 12-2-14, Material Changes, of the city subdivision regulations in effect when the preliminary plat was approved per 76-3-603(9)(a), MCA.

Blocks 44 and 45 - The lots widths on the final plat in Blocks 44 and 45 are not the same as shown on the preliminary plat. The applicant has submitted an exhibit showing how this change would impact the surrounding preliminary plat. This indicates there will be minimal impacts to the area and this change does not meet the criteria for a material change and can be approved with the final plat.

The applicant is proposing to deduct the amount of parkland required with this final plat, .25 acres, from the excess parkland, currently 1.91 acres, that has been dedicated to the city with previous phases of the Mountain View Meadows development. If this final plat is approved, an excess of 1.66 acres will remain banked for future final plats. This plat includes the dedication of the Stacia Avenue extension, alleys, and non-motorized rights-of-way. A temporary emergency turnaround is proposed at the east end of Stacia Avenue which will be eliminated when the street network is installed with the adjacent phases.

Water and wastewater mains have been installed in street ROW and an easement to the city for the off-site storm water has been provided. The applicant is proposing a financial guarantee for the outstanding improvements. A lighting district can be established after the final plat is filed to accommodate street lights for the subdivision. The parameters of that lighting district will be established at that time.

The approval of the preliminary plat was subject to the conditions stated in the Findings of Fact which have been completed for this phase. For reference, a list of the original subdivision conditions and their status is attached to this transmittal memo.

Approving the final plat would allow the sale of the lots, and would encourage the development of property in this area with city services including municipal water and wastewater.

Approving the final plat allows development to city densities in accordance with the City Growth Policy which has the potential to reduce vehicle miles traveled in the Helena area.

City Planner Morell-Gengler recommended approval of the final plat for the Craftsman Village Phase 3 of Crossroads at Mountain View Meadows Subdivision creating 26 lots and to accept the dedication to the City of the property for public improvements designated thereon.

Public Comment

Mayor Smith asked for public comment, none was received.

Motion

Commissioner Noonan moved approval of a resolution annexing Craftsman Village Phase 3 of Crossroads at Mountain View Meadows Subdivision, as legally described in the attached resolution of annexation, into the city of Helena, Montana. Commissioner Ellison seconded the motion. All voted aye, motion carried. **Resolution 20406**

Motion

Commissioner Ellison moved approval the preliminary plat was subject to the conditions stated in the Findings of Fact which have been completed for this phase. For reference, a list of the original subdivision conditions and their status is attached to this transmittal memo. Commissioner Haladay seconded the motion. All voted aye, motion carried.

- C. CONSIDER A RESOLUTION OF INTENTION TO VACATE THREE (3) ALLEYS AND PORTIONS OF TOWNSEND AVENUE LOCATED ADJACENT TO D&D RV PROPERTY.

Staff Report

City Engineer Ryan Leland reported Doyle Davis, the primary applicant, is requesting the City of Helena to vacate the following alleys and portions of Townsend Avenue adjacent to D&D RV's property located east of Interstate 15 between the Capital and Cedar Street interchanges:

1. The alley located within Block 118 of the Northern Pacific Second Addition. Total area to be vacated is **1400 square feet**, more or less.
2. The alley located within Block 115 of the Northern Pacific Second Addition. Total area to be vacated is **2000 square feet**, more or less.
3. The alley located within Block 110 of the Northern Pacific Second Addition. Total area to be vacated is **1400 square feet**, more or less.
4. The portion of Townsend Avenue located in the Northern Pacific Second Addition between Lots 3-4 in Block 120 and Lots 1-2 in Block 115. Total area to be vacated is **4900 square feet**, more or less.
5. The south half of Townsend Avenue located adjacent to Lots 7-8 in Block 110, in the Northern Pacific Second Addition. Total area to be vacated is **3500 square feet**, more or less.

By vacating the rights-of-way shown above will allow D&D RV to store and showcase various recreational vehicles that are for sale. The total area the applicant is proposing to be vacated is 13,200 square feet at \$3.87 per square foot. The total market value for the subject properties is approximately \$51,084.00. The final amount will be determined by the survey to amend the plat.

City Engineer Leland recommended approval of a resolution of intention to vacate three (e) alleys and portions of Townsend Avenue, located in the Northern Pacific Second Addition adjacent to D&D RV, and set a public hearing for October 16th, 2017.

- D. CONSIDER A RESOLUTION OF INTENTION TO VACATE PORTIONS OF TOWNSEND AVENUE, LIVINGSTON AVENUE AND TWO (2) ALLEYS LOCATED ADJACENT TO R&K LAND, LLC, PROPERTY.

Staff Report

City Engineer Leland reported R&K Land, LLC, has submitted an application at the City of Helena's request to vacate the following streets and alleys adjacent to the property located east of Interstate 15 between the Capitol and Cedar Street interchanges. The applicant fenced in the subject properties prior to the application to provide a secure, fenced area to park its equipment near its office on Billings Avenue. As shown on the attached preliminary amended plat, the descriptions of the area of the proposed vacations are as follows:

Proposed vacation of the northern half of the 70-foot Townsend Avenue right-of-way located south of and adjacent to Block 109 of the Amended Northern Pacific Second Addition. The total area to be vacated is **7520.8 square feet**, more or less. The remaining half of Townsend Avenue will be vacated pursuant to a separate application from D&D RV.

Proposed vacation of Livingston Avenue right-of-way located between Blocks 108 and 109 of the Amended Northern Pacific Second Addition. The total area to be vacated is **17,500 square feet**, more or less.

Proposed vacation, a 20-foot alley located within Block 108 within the Amended Northern Pacific Second Addition, bounded by California Street to the east and Interstate 15 to the west. The total area to be vacated is **5500 square feet**, more or less.

Proposed vacation, a 20-foot alley, located within Block 109 within the Amended Northern Pacific Second Addition, bounded by California Street to the east and Interstate 15 to the west. The total area to be vacated is **5000 square feet**, more or less.

The applicant desires to vacate the rights-of-way described above to provide a secure, fenced parking lot for its equipment. The total area of the requested vacation is **35,520.8 square feet**, more or less, at \$3.87 per square foot, for a total market value of \$135,530.40. The final amount will be determined with the survey to amend the plat.

City Engineer Leland recommended approval of a resolution of intention to vacate portions of Townsend Avenue, Livingston Avenue and two (2) alleys located in the Northern Pacific Second Addition adjacent to R&K Land, LLC property and set a public hearing for October 16, 2017.

Discussion

Mayor Smith asked if the Federal Express new building is in the same area. Engineer Leland concurred. Mayor Smith asked if Boulder Avenue is accessible and open to traffic. Engineer Leland concurred.

Public Comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Ellison moved approval of a Resolution of Intention to vacate three (e) alleys and portions of Townsend Avenue, located in the Northern Pacific Second Addition adjacent to D&D RV, and set a public hearing for October 16th, 2017. Commissioner Noonan seconded the motion. All voted aye, motion carried. **Resolution 20407**

Motion

Commissioner Haladay moved approval of a resolution of intention to vacate portions of Townsend Avenue, Livingston Avenue and two (2) alleys located in the Northern Pacific Second Addition adjacent to R&K Land, LLC property and set a public hearing for October 16, 2017. Commissioner Ellison seconded the motion. All voted aye, motion carried. **Resolution 20408**

- E. CONSIDER A RESOLUTION OF INTENTION TO CREATE SPECIAL IMPROVEMENT LIGHTING DISTRICT NO. 225 IN THE CITY OF HELENA, MONTANA AND SET A PUBLIC HEARING DATE FOR OCTOBER 30, 2017.

Staff Report

Administrative Services Director Glenn Jorgenson reported the City has received a petition to create a lighting district (SILD 225) along Elouise Cobell Street and Upland Avenue in the Uplands Phase I of the Crossroads at Mountain View Meadows Subdivision.

The district will also contain a portion of a piece of property that is not part of Phase I as it receives benefit from the lights. It is a large piece of property that would receive an unequal benefit from the district if it paid according to its total square feet. The developer hired a surveyor to provide the meets and bounds description for a portion as equally wide as other lots in the district, see Exhibit A(1).

The district will contain twelve (12) lighting units with underground wiring, fiberglass or metal poles for 16-foot mounting heights, and glass-enclosed, Lexington Colonial luminaries with 100-watt, high-pressure, sodium vapor lamps. These are the type of light throughout the currently developed portion of the subdivision and comply with our dark skies ordinances.

The City will need to assess \$8,583 in tax year 2018 to cover the cost of the system for this year and establish a cash balance to cover the energy bills for the next year. After tax year 2018, the cost will be approximately one-half this amount depending on electrical rates approved by the Public Service Commission.

Lights that are already installed can be paid for by assessments on the property owner's tax bill. The lights will use additional energy.

Administrative Services Director Jorgenson recommended approval of a resolution of intention to create Special Improvement Lighting District No. 225 in the City of Helena, Montana and set a public hearing date on October 30, 2017.

Public Comment

Mayor Smith called for public comment, none was received.

Motion

Commissioner Ellison moved approval of a resolution of intention to create Special Improvement Lighting District No. 225 in the City of Helena, Montana and set a public hearing date on October 30, 2017. Commissioner Haladay seconded the motion. All voted aye, motion carried. **Resolution 20409**

Public Hearings

PUBLIC HEARINGS

- A. CONSIDER FINAL PASSAGE OF ORDINANCE 3230 GRANTING A NON-EXCLUSIVE FRANCHISE TO BRESNAN COMMUNICATIONS, LLC.

Staff Report

City Manager Alles reported the city manages rights-of-way for the public use. The City retains the authority to control the use of the public rights-of-way for utilities that are not permitted to use such rights-of-way as a matter of law.

Bresnan Communications, LLC, known locally as Charter Communications, provides cable television services within the city of Helena. Under 69-4-101, MCA, cable video services is not one of the utilities permitted to place infrastructure in public rights-of-way as a matter of right. Accordingly, pursuant to 7-3-4223, MCA, the City may grant a franchise for cable video infrastructure to use the public rights-of-way within the City of Helena.

The City Commission previously held a public hearing on August 21, 2017. The matter was tabled to the call of the City Manager in order for Charter Communications to provide percentage of high definition channels to total activated video channels information requested by the commission. Subsequently, Charter Communications has agreed to

remove the requirement that the percent of high definition channels to total activated video channels be 80% before Charter Communications would be required to provide the PEG access channel in high definition format.

In exchange for permission from the City for Bresnan Communications, LLC, to use public rights-of-way for the provision of cable television services, Bresnan Communications, LLC, will pay an annual franchise fee in an amount equal to 5% of their annual gross revenue. A single public education and government access channel will be provided.

Manager Alles recommended approval of the final passage of Ordinance 3230 granting a non-exclusive franchise to Bresnan Communications, LLC, to provide cable television services within the City of Helena pursuant to the Franchise Agreement attached hereto.

Manager Alles referred the commission to the following amendments and reviewed the changes from the original agreement. He then recommended the commission approve all amendments with one motion:

CHARTER Agreed Upon Amendment to Franchise Agreement

1.1 Terms.

F. “Gross Revenue” means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, including but not limited to, the following:

1. basic service;
2. any service tier other than basic service;
3. premium services;
4. optional, per-channel or per-program services;
5. any other cable services;
6. installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video or audio programming;
7. downgrading any level of cable service programming;
8. service calls;
9. leasing of channels;
10. rental of any and all subscriber equipment, including converters and remote-control devices;
11. any and all advertising revenues derived in the Service Area revenues or commissions from home shopping channels
12. interactive television services;
13. any and all music services;
14. video-on-demand;
15. Fees for payments made to Grantee’s customer service representatives directly; digital video recorder service;
16. late payment fees;
17. nonsufficient funds check charges; and
18. commercial bulk.

Gross revenues shall not include: (1) any taxes, additional fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law and (5) any PEG.

10.5 Bundling. In accordance with generally accepted accounting principles (GAAP), if Cable Services subject to the franchise fee required under this Section are provided to Subscribers in conjunction with non-Cable Services and the total cost of the bundle reflects a discount from the aggregate retail prices of the services contained therein, the franchise fee shall be applied to the retail price of the Cable Services in the bundle reduced by no more than a proportionate share of the overall discount.

By way of illustrative example of the formula described in the foregoing Section 10.5, if Cable Service A is sold separately at a price of \$40 a month, Non-Cable Service B is sold separately at a price of \$40 a month and Non-Cable Service C is sold separately at a price of \$40 a month, but the three services when purchased together are sold for a single aggregate price of \$100 a month, the amount of the \$100 per month collected by Franchisee from each Subscriber purchasing the bundle which is to be included under Gross Revenues under this Franchise (i.e., the amount attributable to Cable Service) shall be \$33.33 per month. As a second example, if Cable Service A is sold separately at a price of \$50 a month, Non-Cable Service B is sold separately at a price of \$63 a month, Non-Cable Service C is sold separately at a price of \$74 a month, but the three services when purchased together are sold for a single aggregate price of \$150 a month, the amount of the \$150 per month collected by Franchisee from each, Subscriber purchasing the bundle which is to be included under Gross Revenues under this Franchise (i.e., the amount attributable to Cable Service) shall be \$40.11 per month.

The foregoing examples are based upon generally application of GAAP in effect as of the Effective Date of this Franchise. In the event these principles change such that it creates a conflict between GAAP and the foregoing examples in the future, Grantee shall continue to treat its bundled cable and non-cable service offerings in accordance with GAAP.

13.5 PEG Channel Format. Upon written request by the Grantor, the Grantor and Grantee shall meet to discuss converting the PEG Access Channel(s) into high definition format ("HD"). If all of the following conditions are satisfied, Grantee will provide in the PEG Access Channel in HD format upon no less than one (1) year's written notice from the City following such meeting:

A. Grantee utilizes switched digital video to provide Cable Service in the City;

B. Grantor has the ability to produce substantially all of its PEG programming in HD, commits to produce, and upon the availability of a PEG channel does produce, at least five (5) hours per day of PEG programming in HD for such PEG channel. All equipment necessary to produce and transmit to any PEG channel programming in HD to Subscribers shall be at Grantor's cost.

C. If these conditions are met, Grantee shall carry the HD PEG Access Channel signals provided by the Grantor. The Grantor shall be responsible for providing the PEG Access Channel Signal in an HD format. The Grantee shall distribute the PEG Access Programming over the Cable System. Consistent with this requirement, the Grantor shall cooperate with Grantee to procure and provide, at the Grantor's cost, all necessary transmission equipment from the PEG Access Channel origination point to the Grantee's headend. Grantee agrees to work cooperatively with the Grantor to ensure the necessary PEG transport equipment complies with Grantee network requirements. The Grantor shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Grantee to receive and distribute the Grantor's HD PEG Access Channel signal, or for the cost of any resulting upgrades to the video return line. The HD PEG Access Channel provided under this section will replace the existing PEG Access Channels described in Section 13.1, and will not constitute an additional PEG Access Channel.

Discussion

Commissioner Noonan commented at the August 21st public hearing, the commission was concerned with the access to HCTV and that issue has been resolved. Manager Alles concurred and noted the only thing that needs to happen is to purchase the equipment required to operate an HD channel. There are funds available to purchase the necessary equipment. That requirement has been removed from the franchise agreement.

Commissioner Haladay stated if we have satisfied A, B, and C at this point, the agreement assuming it is passed, provides for no less than one-year from this date, so how soon do we intend to get written notice out. Manager Alles stated his intent is to get written notice out quickly. He does want to meet with HCTV representatives and identify specifically those items that need to be improved to accommodate HD projection. Assuming the agreement is approved tonight, he will contact HCTV this week and when the details are outlined, he will write a letter to Charter requesting the access be granted.

Commissioner Haladay referenced the last sentence of Section 13.1, "The PEG channel will be made available to all Subscribers within the Service Area and may be placed by Grantee on any tier of service available to Subscribers" and asked if all subscribers will have access or just certain tiers. Manager Alles stated Charter has assured the basic service will have the HCTV available to them. Charter representative Mary Roehr concurred the language is intended to make the HCTV channel available to all subscribers.

Mayor Smith noted the ordinance before the commission is from the first reading; which needs to get a motion and 2nd and then the packet of amendments could be offered and voted on and then a final vote on the ordinance as amended. The amendments can be moved by one motion.

Public Testimony

Mayor Smith opened the public hearing and called for anyone wishing to address the commission. There being no persons wishing to address the commission, the public hearing was closed.

Motion

Commissioner Noonan moved approval of the final passage of Ordinance 3230, granting a non-exclusive franchise to Bresnan Communications, LLC, to provide cable television services within

the City of Helena pursuant to the Franchise Agreement attached hereto. Commissioner Ellison seconded the motion.

Amendments Commissioner Haladay moved approval of the following amendments:

CHARTER Agreed Upon Amendment to Franchise Agreement

1.2 Terms.

F. “Gross Revenue” means any revenue, as determined in accordance with generally accepted accounting principles, received by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area, including but not limited to, the following:

19. basic service;
20. any service tier other than basic service;
21. premium services;
22. optional, per-channel or per-program services;
23. any other cable services;
24. installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video or audio programming;
25. downgrading any level of cable service programming;
26. service calls;
27. leasing of channels;
28. rental of any and all subscriber equipment, including converters and remote-control devices;
29. any and all advertising revenues derived in the Service Area revenues or commissions from home shopping channels
30. interactive television services;
31. any and all music services;
32. video-on-demand;
33. Fees for payments made to Grantee’s customer service representatives directly; digital video recorder service;
34. late payment fees;
35. nonsufficient funds check charges; and
36. commercial bulk.

Gross revenues shall not include: (1) any taxes, additional fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, the FCC user fee, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law and (5) any PEG.

10.5 Bundling. In accordance with generally accepted accounting principles (GAAP), if Cable Services subject to the franchise fee required under this Section are provided to Subscribers in conjunction with non-Cable Services and the total cost of the bundle reflects a discount from the aggregate retail prices of the services contained therein, the franchise fee shall be applied to the retail price of the Cable Services in the bundle reduced by no more than a proportionate share of the overall discount.

By way of illustrative example of the formula described in the foregoing Section 10.5, if Cable Service A is sold separately at a price of \$40 a month, Non-Cable Service B is sold separately at a price of \$40 a month and Non-Cable Service C is sold separately at a price of \$40 a month, but the three services when purchased together are sold for a single aggregate price of \$100 a month, the amount of the \$100 per month collected by Franchisee from each Subscriber purchasing the bundle which is to be included under Gross Revenues under this Franchise (i.e.,

the amount attributable to Cable Service) shall be \$33.33 per month. As a second example, if Cable Service A is sold separately at a price of \$50 a month, Non-Cable Service B is sold separately at a price of \$63 a month, Non-Cable Service C is sold separately at a price of \$74 a month, but the three services when purchased together are sold for a single aggregate price of \$150 a month, the amount of the \$150 per month collected by Franchisee from each, Subscriber purchasing the bundle which is to be included under Gross Revenues under this Franchise (i.e., the amount attributable to Cable Service) shall be \$40.11 per month. The foregoing examples are based upon generally application of GAAP in effect as of the Effective Date of this Franchise. In the event these principles change such that it creates a conflict between GAAP and the foregoing examples in the future, Grantee shall continue to treat its bundled cable and non-cable service offerings in accordance with GAAP.

13.5 PEG Channel Format. Upon written request by the Grantor, the Grantor and Grantee shall meet to discuss converting the PEG Access Channel(s) into high definition format ("HD"). If all of the following conditions are satisfied, Grantee will provide in the PEG Access Channel in HD format upon no less than one (1) year's written notice from the City following such meeting:

- A. Grantee utilizes switched digital video to provide Cable Service in the City;
- B. Grantor has the ability to produce substantially all of its PEG programming in HD, commits to produce, and upon the availability of a PEG channel does produce, at least five (5) hours per day of PEG programming in HD for such PEG channel. All equipment necessary to produce and transmit to any PEG channel programming in HD to Subscribers shall be at Grantor's cost.
- C. If these conditions are met, Grantee shall carry the HD PEG Access Channel signals provided by the Grantor. The Grantor shall be responsible for providing the PEG Access Channel Signal in an HD format. The Grantee shall distribute the PEG Access Programming over the Cable System. Consistent with this requirement, the Grantor shall cooperate with Grantee to procure and provide, at the Grantor's cost, all necessary transmission equipment from the PEG Access Channel origination point to the Grantee's headend. Grantee agrees to work cooperatively with the Grantor to ensure the necessary PEG transport equipment complies with Grantee network requirements. The Grantor shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Grantee to receive and distribute the Grantor's HD PEG Access Channel signal, or for the cost of any resulting upgrades to the video return line. The HD PEG Access Channel provided under this section will replace the existing PEG Access Channels described in Section 13.1, and will not constitute an additional PEG Access Channel. Commissioner Ellison seconded the motion. All voted aye, motion carried.

Amendment

Commissioner Farris Olsen moved to amend 12.1 – Reports Required; to eliminate the portion of the sentence that reads “upon request” and replace it with “annually”. Commissioner Haladay seconded the motion.

Discussion

Commissioner Ellison asked Manager Alles for comments regarding the amendment and if he has discussed this language with Charter. Manager Alles stated he does not recall talking specifically to Charter on this language. He believes the current language works and it

is an agreement between two parties and he is comfortable with the current language.

Commissioner Ellison asked if the amendment is approved with “annually” would that prohibit the city from requesting information more than annually. Manager Alles stated without reviewing the change, he is not sure what impact there may be.

Mayor Smith asked with the current language, could the city request the information at any time. Manager Alles stated yes within proper notification. There is some confidential information that city could not make public.

Commissioner Farris-Olsen withdrew his amendment.

Amendment

Commissioner Farris-Olsen moved to amend 12.1 – Reports Required ; adding to the end of the sentence after the word request “but in no event shall it be filed less than once per year”.

Commissioner Haladay seconded the amendment.

Mayor Smith stated he appreciates the amendment; however he will not support it. He believes the agreement has been negotiated in good faith.

Vote

Motion failed 2-3 with Commissioners Ellison, Noonan and Mayor Smith voting not.

Comments

Commissioner Farris-Olsen stated he has concerns with the whole process and it has taken over a year to negotiate an agreement. It was questions asked by Commissioner Haladay that initiated the amendments that were approved tonight. What is in the best interest of the community, is not what was originally negotiated. Why did he and Commissioner Haladay have to come up with amendments and why did it take so long to get answers to their questions. He will support the agreement; but is not happy on how it has played out.

Commissioner Haladay reminded the commission that the majority of the commission felt it was a good and ready contract; however, he and Commissioner Farris-Olsen asked specific questions that resulted in the significant amendments. This is not a good way to negotiate a 15-year contract. Commissioner Haladay commented that an outside consultant should have been hired to negotiate the contract and the commission should have recognized that eight months ago.

Commissioner Ellison disagreed with Commissioner Farris-Olsen and Haladay’s comments regarding the process this agreement was negotiated. The amendments approved tonight, improved the language somewhat. It isn’t the fact that commission members haven’t received answers to their questions; it is that they haven’t liked the answers. He has never had an issue with getting any of his questions answered by either the City Manager or Charter. He believes both parties negotiated in good faith to bring forward the agreement.

Commissioner Noonan stated the fact that we can get HCTV an HD channel is important and will be a benefit to the community.

Mayor Smith stated he appreciates the work the commission has done on the agreement; however, he appreciates the agreement and believes the two parties have negotiated in good faith.

**Vote on Final
Passage of Ord.**

**Motion carried 4-1 with Commissioner Haladay voting no.
Ordinance 3230**

**Public
Communications**

PUBLIC COMMUNICATIONS
No comments received.

**Meetings of
Interest**

MEETINGS OF INTEREST
The next City-County Joint Work Session is October 5, 2017; the next Administrative Meeting is October 11, 2017; and the next Commission Meeting is October 16, 2017.

Commissioner Ellison stated he will be out of town the week of October 16th.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 7:10 p.m.

/S/ JAMES E. SMITH
MAYOR

ATTEST:

/S/ DEBBIE HAVENS
CLERK OF THE COMMISSION