

SUMMARY OF ADMINISTRATIVE MEETING
July 20, 2011, 4:00 p.m.
Room 326, City County Building – 316 N. Park Avenue, Helena

1. Call to order, introductions, opening comments – Mayor Smith called the meeting to order. Commissioners Ellison, Elsaesser and Thweatt were present. Commissioner Cartwright was excused. Staff present was: City Manager Ron Alles; Executive Assistant Clinda Feucht; Community Development Director Sharon Haugen; Community Facilities Director Gery Carpenter; Civic Center Manager Diane Stavnes; City Attorney David Nielsen; Deputy City Attorney Thomas Jodoin; Police Chief Troy McGee; Human Resources Director Rae Lynn Nielsen; and Deputy City Clerk Robyn Brown.

Others attending all or a portion of the meeting included: Senator Christine Kaufman, HCC Representatives Lora Behlmer and Kris Goss, Independent Record Reporter Piper Haugen and KXLH Reporter Marnee Banks.

2. **June 22, 2011 Administrative Meeting Summary** – The June 22, 2011 administrative summary was approved as submitted.

3. **Commission comments, questions –**

A. Upcoming Appointments – There are no appointments on the July 25th city commission meeting agenda. A public service announcement has been sent for vacancies on the City-County Historic Preservation Commission, Helena Housing Authority, Civil Service Commission, Urban Wildlife Advisory Council, Public Art Committee and the Planning Board. The deadline for applications to be submitted is July 28th.

Commissioner Elsaesser referred to a letter from Lewis & Clark County requesting the City of Helena gift them their portion of ownership of the trolley currently being refurbished. He indicated he is in support of the request. City Manager Alles commented he does not see major obstacles with the gift and indicated he is looking further into the request and will report back to the Commission on whether or not the trolley will be surplus and where it may be displayed in the future. The request will be placed on the August Joint Work Session agenda for discussion.

4. **City Manager's Report**

Manager Alles reported Sanders Street opened yesterday, July 19, 2011 at 9:00a.m.; LeGrande Cannon Boulevard paving will begin the week of July 25th.

He announced he would email the Commission a report from Howard Skjervem, Northwestern Energy (NWE), regarding NWE's findings and opinion on LED lighting. He noted Lewis & Clark County is also interested in using LED lighting. Manager Alles further reported NWE would provide a brief update to the Commission on the Smart Grid Project at a future Administrative Meeting. Mayor Smith asked the Commission also be updated on the Green Blocks Program.

5. **Department Discussions**

City Attorney

Cell Phone Restrictions – City Manager Alles gave the history of discussion on a distracted driving ordinance for the City of Helena and introduced Senator Christine Kaufman to speak to the issue. Senator Kaufman gave the history and an overview of failed SB 251 and urged the Commission to adopt an ordinance prohibiting the use of cell phones while driving, both talking and texting. She encouraged Commission members to speak with representatives from the City of Billings, which has implemented a law against "hands on" cell phone use while driving.

Commissioner Ellison indicated he too supports banning the use of cell phones while driving, both texting and talking. He asked Senator Kaufman what comments she heard from constituents on the issue. Senator Kaufman spoke of comments she heard from both sides of the issue; overall the ban is a strong case for public safety. Commissioner Ellison thanked Senator Kaufman for attending today's meeting and speaking on the issue.

Commissioner Thweatt asked how you would ban "hands free" devices and make it enforceable. Mayor Smith asked if issues related to probable cause or particularized suspicion were raised during legislative hearings on the issue. Senator Kaufman recommended local legal counsel review those issues and stated she was unsure as to how it would be enforced.

Commissioner Thweatt asked if the law could prohibit the wearing of any kind of device in the ear, besides a hearing aid. Senator Kaufman expressed concern that may be too prohibitive.

Mayor Smith commented after three failures at the legislature, it does seem it is appropriate for cities to take on these issues on their own. Senator Kaufman stated she would send City Manager Alles a list of contact persons in Billings that the Commission could discuss the issue with.

On April 27, 2011, City Attorney Nielsen and Police Chief McGee issued a memorandum that itemized the various alternative components from which the Commission could choose for a distracted driving ordinance. Staff has reviewed SB 251, which failed legislative approval, and ordinances on this subject from other Montana cities. The purpose of the Memorandum below was to list decision points on options that could be included in an ordinance proposed by the Commission.

City Attorney Nielsen and Police Chief McGee did not have a recommendation on any combination of components except for the punishment. They strongly recommended against using the municipal infraction penalty for this type of ordinance. It is procedurally time consuming, significantly more cumbersome administratively than a misdemeanor charge, and would require individual officers to try their own cases if defendants deny the charges. In this jurisdiction, attorneys are not allowed to prosecute municipal infractions unless the defendant has an attorney. Also, in this jurisdiction the city is limited to 10 claims per year and that would be for all municipal infractions, not just the ones under a distracted driving ordinance. Until the limitations on use of municipal infraction are removed, staff recommends, as in other Code provisions, that the municipal infraction and its civil penalty not be used.

Following detailed discussion, there was Commission concurrence to include the **bolded** language in a draft ordinance related to distracted driving.

The following points were considered:

1. **The type of devices that would be regulated:**
 - a. **Mobile telephones, which include cellular, analog, wireless, or digital telephones capable of sending or receiving telephone communications without an access line for service.**
 - b. **Mobile electronic devices, being any hand-held or other portable electronic equipment capable of providing data communication between two or more persons, text messaging devices, pagers, personal digital assistants, laptop or notebook computers, equipment that is capable of playing a video game or a digital video disk, equipment on which digital photographs are taken or transmitted, or any combination of those functions.**
 - c. Two-way radios, audio equipment, or any equipment installed in a motor vehicle for the purpose of providing navigation, emergency assistance to the operator of the motor vehicle, or video entertainment to the passengers in the rear seats of the motor vehicle.
 - d. Hands-free accessories, being an attachment, add-on, built-in feature, or addition to a mobile telephone, whether or not permanently installed in a motor vehicle, that when used allows the vehicle operator to maintain both hands on the steering wheel.
 - e. Hands-free mobile telephones, being a hand-held mobile telephone that has an internal feature or function or that is equipped with a hands-free accessory, whether or not permanently part of the hand-held mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of the telephone.
2. **The types of vehicles to which the restriction would apply:**
 - a. **Motor vehicles, which are vehicles propelled by their own power and designed or used to transport persons or property upon streets, alleys, and other public rights-of-way, except those moved by animal power or used exclusively upon stationary rails or tracks. This would be cars, trucks, motorhomes, motorcycles, quadricycles, and medium-speed electric vehicles. (A medium-speed electric vehicle is one which has a maximum speed of 45 mph, is propelled by an electric motor or other device that transforms electrical energy into motion, stores electricity in batteries, ultracapacitors, or other devices charged from a power grid or renewable electrical energy sources, is**

fully enclosed with at least one door for entry, and has a wheelbase of 40 inches or greater and a wheel diameter of 10 inches or greater.)

b. **Motorized nonstandard vehicles, which are vehicles propelled by their own power using an internal combustion engine or an electric motor and has a wheelbase of less than 40 inches and a wheel diameter of less than 10 inches. This includes motorized skateboards and pocket rockets.**

c. **Electric personal assistive mobility devices, which are devices that have two non-tandem wheels, are self-balancing, and are designed to transport only one person with an electric propulsion system that limits the maximum speed to 12 ½ mph.**

d. **Bicycles, which are: 1) vehicles propelled solely by human power, have two tandem wheels, and a seat height of more than 25 inches from the ground; and 2) vehicles equipped with two or three wheels, foot pedals to permit muscular propulsions, and an independent power source providing a maximum of 2 brake horsepower, with a piston or rotor displacement of not more than 3.05 cubic inches, 50 centimeters.**

3. **The type of mobile phone or mobile electronic device use:**

a. **Engaged in a call, which is talking into or listening on a hand-held mobile telephone that is held by the user and in immediate proximity to the user's ear, but not including holding the mobile telephone to activate, deactivate, or initiate a function of the telephone. (Immediate proximity is distance that permits the user to hear telecommunications and may, but does not require, physical contact with the ear.)**

b. **Data communication between two or more persons, including text messaging and paging.**

c. **Operating a mobile electronic device. (With language clarifying the definition of mobile electronic device.)**

d. **Operating navigation equipment, whether portable to or permanently installed in the vehicle.**

4. **Type of vehicle use to which restrictions apply:**

a. **Vehicle is actively moving.**

b. **Vehicle is temporarily stopped on street, alley, or public right of way, such as waiting for signals or train crossing. (With language clarifying that the vehicle is stopped in the driving lane.)**

c. **Vehicle is parked off driving lane on street, alley, or public right-of-way, but engine is running with transmission engaged.**

d. **Vehicle is parked off driving lane on street, alley, or public right-of-way, but engine is running with transmission disengaged.**

5. **Use exceptions:**

a. **Emergency calls to police, fire, or medical.**

b. **When on duty, law enforcement, fire fighters, and ambulance and medical responders.**

6. **Punishment:**

a. **Misdemeanor, maximum fine of \$500 and/or 6 months in jail.**

b. **Misdemeanor, fine only not to exceed \$100.**

c. **Municipal infraction (not recommended).**

7. **Signs on entrances to Helena warning of ordinance.**

Lora Behlmer, HCC, spoke in support of a distracted driving ordinance. She urged the Commission to also ban applications on cell phones and explained anything that could impair a person's

cognitive pattern could be considered under the ordinance.

Kris Goss, HCC, commented the proposed ordinance seems to be in the very early stages of development. He stated many of the city's residents utilize two-way radios in performing their professions and cautioned against banning the use of two-way radios.

Commissioner Ellison reiterated his support for banning items 1. A, B, D and E and stated he is not intimidated by crafting an ordinance that would make Helena's streets safer. He noted he is eager to move forward with a draft ordinance and receive public comment on this issue and thanked everyone for participating in today's discussion.

Mayor Smith asked Attorney Nielsen to give a brief description of distracted driving according to Montana law. Attorney Nielsen stated he believes distracted driving falls under careless, basic rule and/or safe and prudent driving laws. There is not a specific statute on distracted driving.

Commissioner Elsaesser asked if the ban would be enforceable on large private transportation networks, for example Carroll College. Attorney Nielsen stated no. Commissioner Elsaesser asked if it would be enforceable on the interstate. Attorney Nielsen stated yes, the portions of the interstate that have been annexed into the city. Chief McGee noted the Police Department does not patrol the interstate very often; however, the Highway Patrol would be able to cite drivers.

Police Chief McGee noted the way this ordinance is written it would be a primary offense, meaning a person could be pulled over for being seen using a cell phone and then charged with other offenses resulting from the stop.

Community Facilities

Civic Center Fees Resolution Amendment – City Manager Alles announced this agenda item is to clarify the fee structure related to rental of the Civic Center facility. Civic Center Manager Diane Stavnes reported the current Civic Center fee schedule was adopted in July 2010. This spring the City Attorney's Office suggested clarification of the fee schedule and inclusion of information used in actual practice, but not specified in the document. After review and discussion by Civic Center staff and Civic Center Board approval at their July 14, 2011 meeting, the proposed amendment is ready for Commission consideration.

The amendment will clarify the fee schedule for the Civic Center for the 2011-2012 event season. The proposed document includes a series rate charged to auditorium promoters who use the facility for four or more events from September through June. It also includes a proposed summer room rental rate for auditorium events at the Civic Center scheduled for July and August.

Manager Stavnes recommended approval of the amendment as the yearly review of the schedule allows for clarification to the fee schedule, while allowing the Civic Center to keep at market value with the other area facilities. Building rental fees will remain the same as last year. She noted increased use of the building will increase energy use, which will be reimbursed by auditorium event users.

Commissioner Elsaesser asked if coolers are available for rent in Helena and also if they come with power meters. Manager Stavnes explained coolers are not available in Helena but are available in the region. She confirmed the Civic Center has the ability to measure the specific power used.

Commissioner Ellison noted he would support the resolution of intention after receiving confirmation that these are minor changes from last year with the exception of the requirements for summer use. Commissioner Elsaesser expressed concern that the Civic Center may be booked at the reduced fee and may not be available to bigger events that could bring in more money. Manager Stavnes explained the Civic Center has always had a first come, first serve policy; it will not bump users for bigger shows.

Mayor Smith suggested the Commission approve the proposal and revisit the issue in a year to see how the amendment has worked.

6. Committee discussions

- a) ADA Compliance Committee, Audit Committee, Board of Health, Civic Center Board, Montana League of Cities and Towns – No report given
- b) Audit Committee, Board of Adjustment, Non-Motorized Travel Advisory Committee, Intergovernmental Transit Committee – No report given.
- c) Helena Chamber of Commerce, Information & Technology Services (IT&S), Montana Business Assistance Connection (MBAC), Pre-Release Screening Committee – No report given.
- d) Audit Committee, City-County Weed Board, Public Art Committee, TCC – No report given.
- e) BID/HPC, City-County Admin Building Board, City-County Parks Board, TCC – No report given.
- f) Helena Citizens Council – HCC representative Kris Goss reported the HCC would meet at 7:00 on July 27, 2011. The HCC will be conducting a survey on restricting cell phone usage while driving and will keep the Commission updated. The Council continues to work on the integration of the HCC with the PAC, UWAC and HIAC. HCC members Goss and Behlmer noted the HCC is also discussing the issue of “boom cars”. Commissioner Thweatt urged the HCC to look at the issue of excessively loud vehicles such as certain motorcycles.

7. Review of agenda for July 25th meeting – Commissioner Thweatt expressed concern for item 10 A (a sidewalk variance). Manager Alles noted if a street is not currently paved, sometimes a sidewalk will have to be torn out and reinstalled to meet grade once the street is paved. Commissioner Thweatt spoke in support of item 10 B (preliminary approval for a boundary line relocation) as it would provide easier access to the properties.

8. Public Comment – No public comment received.

9. Commission discussion and direction to City Manager – No discussion or direction given.

10. Adjourn – Meeting adjourned at 6:00 p.m.