

SUMMARY OF ADMINISTRATIVE MEETING
January 4, 2012 - 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, Haque-Hausrath and Thweatt were present. Staff present was: City Manager Ron Alles; Executive Assistant Clinda Feucht; City Attorney Thomas Jodoin; Community Development Director Sharon Haugen; Police Chief Troy McGee; Fire Chief JR Feucht; Human Resource Director Rae Lynn Nielsen; Parks & Recreation Director Amy Teegarden; Administrative Services Director Tim Magee; Budget Manager Robert Ricker; City Engineer Ryan Leland and City Clerk Debbie Havens.

Others attending all or a portion of the meeting included: HCC Representative Ellen Bell, Niki Zupanich with ACLU of Montana and Kim Abbott and Jamee Greer with the Human Rights Network.

2. **December 14, 2011 Administrative Meeting Summary** – The December 14, 2011 administrative summary was approved as submitted.

3. **Commission comments, questions** – Mayor Smith on behalf of the city commission welcomed Commissioner Haque-Hausrath. Mayor Smith gave an overview on how the administrative meetings are run and noted no formal action is taken at them. It is an opportunity for the commission and staff to have informal discussions.

Commissioner Ellison welcomed Fire Chief J.R. Feucht and Acting City Attorney Thomas Jodoin. Commissioner Elsaesser noted there was a PSA about the two new recycling locations and the newly created e-waste program. He then gave Commissioner Haque-Hausrath a copy of his previous correspondence regarding recycling.

Commissioner Haque-Hausrath stated one of her top priorities is to move forward an ordinance to protect against discrimination against sexual orientation and gender identity. Mayor Smith suggested the commission cover the items on the agenda and then reserve time to discuss the proposed ordinance.

Upcoming Appointments – There are no appointments on the January 9, 2012 city commission meeting agenda. The 2012 city commission appointments will be on the January 30th city commission meeting agenda.

4. **City Manager's Report**

City Manager Alles introduced Fire Chief J.R. Feucht. Manager Alles stated he and Chief Feucht are reviewing the job duties of the Operational Assistant Chief and will make a recommendation on how to fill the position in the near future. Chief Feucht thanked Manager Alles for the opportunity and looks forward to working with the commission and other directors.

City Manager Alles stated with the recent retirement of David Nielsen, the city attorney's office will be short staffed. He asked the commission for their patience during this transition. There were six applications received for the position and the process that will be used will be two sets of interviews and the final decision will be made by the city manager.

Commissioner Elsaesser asked if there are any funding issues regarding filling the position right away. Manager Alles stated he will not delay the hiring of the City Attorney due to the buy-out. Commissioner Elsaesser asked for an update on how the existing cases will be handled. Manager Alles stated as needed, he hopes to hire David Nielsen on a contract basis to handle some of the existing cases, including the water rights case and the wastewater permit.

Commissioner Haque-Hausrath asked if David Nielsen was moving to Kalispell. Manager Alles stated the timing of the pending cases will allow him to work on them. The position in Kalispell is short-term.

City Manager Alles noted the HOME Grant has been added to the joint work session. City and county staff met today and will provide a recommendation tomorrow. In addition, Health Director Reynolds will give a short presentation on the community health report.

Mayor Smith asked City Manager Alles to review the matrix the commission receives with the administrative meeting packet and explain how it works. City Manager Alles referred to the matrix and explained it helps track projects/policies. The matrix shows the item and what date it is tentatively scheduled for an administrative meeting.

Commissioner Elsaesser asked for an update on the parking chapter. City Manager Alles noted the City Commission tabled first passage of an ordinance amending Title 11 of the Helena City Code, Repealing Chapter 22, Off-Street Loading and Parking and Establishing a new Parking Chapter at the December 19, 2011 commission meeting.

Staff has posted the ordinance on the web site with the proposed changes. There is interest with the commission to have further discussion regarding the parking requirements table. Commissioner

Thweatt has done further research and would like additional time to complete it.

Manager Alles gave an overview of how an ordinance is brought forward for first passage at a public hearing and then final passage.

Manager Alles noted the commission's work load is substantial with the subdivision regulations moving forward, the budget process is beginning and the CCIP discussion.

5. Department Discussions
Administrative Services

CCIP – Administrative Services Director Tim Magee handed out information on the City of Helena – Rate/Fee Supported Operations and Summary of Rate Assumptions and Supported CCIP. He gave one specific example of the Reserves and Projections for the Fire Facilities.

Director Magee also reviewed the process staff and the commission currently uses to anticipate future capital needs and possible funding. The information packet also included Average Residential Impact; Rate Change History; General Capital Improvement expenditures/revenues. City Manager Alles spoke on his recommendation on increasing the capital reserve funds over the next few years.

Commissioner Elsaesser referred to the estimated rates and asked if they match the estimated funding. Director Magee stated the rate does reflect the inflation factors and ultimately the funding. Commissioner Elsaesser asked for clarification on Manager Alles' goal of saving up to three-million in reserves. Manager Alles explained the three-million would be a savings and would be used for some of the projects that have been identified. This proposal helps with the cash flow and operating reserves. Commissioner Elsaesser noted the commission has added substantial off-sets with the adoption of various assessments.

Commissioner Ellison referred to the CCIP example for the Fire Department and the third fire station. He asked the manager when timing might be right to pass a mill levy for public safety. Manager Alles stated he does not see a public safety mill levy in the near future; however, the commission would make the ultimate decision.

Administrative Services Director Magee noted the commission will be asked to accept the CCIP report and not adopt it as many factors will change during the budget process.

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, Mental Health Advisory Board – No report given.

f) Helena Citizens Council – HCC representative Ellen Bell reported the HCC election was held and five of the seven districts are full. An orientation potluck will be held on Wednesday, January 11th. The work on the integration of three city boards is moving forward.

7. Review of agenda for January 9, 2012 City Commission meeting –

Commissioner Haque-Hausrath stated one of her top priorities is to move forward an ordinance to protect against discrimination against sexual orientation and gender identity. She would like to see an anti-discrimination ordinance move forward as soon as possible.

Commissioner Thweatt stated there is a state law that bans discrimination against women based on the Civil Rights Act; however, it does not protect against sexual orientation or gender identity. He referenced the ordinance the city of Missoula passed and noted the intent of the ordinance is to protect people against discrimination that the state and federal laws do not cover. Commissioner Haque-

Hausrath concurred with Commission Thweatt's comments and stated there is significant interest in Helena to pass this ordinance. Commissioner Thweatt asked if the Human Rights Commission has received complaints claiming discrimination regarding gender identity and sexual orientation. Commissioner Haque-Hausrath noted she believes there have been cases filed with the Human Rights Commission; however, she is not sure how the complaints are tallied.

Kim Abbott, Human Rights Network, reported they do keep a record of complaints; however, a final number hasn't been established. Commissioner Thweatt noted this information would be helpful for him.

City Manager Alles reported on a meeting that he and David Nielsen had with representatives from the Montana Human Rights Network. He noted there are some legal questions on how to prepare an ordinance that would address the issue at hand. Retired City Attorney Nielsen has pointed out some concerns with the Missoula ordinance. Staff is not convinced an ordinance written like Missoula's would work well. Commissioner Haque-Hausrath stated she is strongly supporting and requesting an ordinance and not a resolution.

Manager Alles stated he will provide the commission with a summary of the meeting he referenced. Commissioner Haque-Hausrath suggested the city of Helena develop language for an ordinance and not use the language from Missoula.

Mayor Smith stated he wants to hear from the city attorney and asked if there is any re-course on the state and federal level. City Attorney Thomas Jodoin noted there is a complete blank spot in state law that does not cover discrimination of sexual orientation or gender identity. He is not aware of any cases being brought forward. Mayor Smith noted if this isn't covered at the state or federal level, then he would support looking at it.

Commissioner Ellison asked what the protective categories under the 1964 Civil Rights Act are. The categories identified include: race, color, religious beliefs, creed, national origin, sex, age, physical or mental handicap, marital status, political beliefs.

Commissioner Elsaesser asked if Missoula has separate human rights statutes. Commissioner Haque-Hausrath stated the city of Missoula had ordinances that protected against discrimination in various provisions/services, prior to the enactment of the non-discrimination ordinance. She was not sure if there is staff that enforces the ordinances. Niki Zupanic, ACLU of Montana stated the Missoula did have a couple of code revisions prior to the adoption of the anti-discrimination ordinance; in areas of housing, cable television and certain contract language. Those discrimination categories only related to those classifications that are in state and federal laws. They did not include sexual orientation or gender identity. Ms. Zupanic stated Missoula does not have an enforcement agency; however, there is a provision that a person can use Municipal Court to file a complaint; a procedure similar to small claims court.

Commissioner Elsaesser asked if Missoula has had any claims filed in Municipal Court. Ms. Zupanic noted as of September 2011, there have been no claims filed in Missoula Municipal Court, alleging a violation of the ordinance. Commissioner Ellison asked if the Missoula ordinance is a civil or criminal offense. Ms. Zupanic stated the in Missoula, it is strictly a civil offense, there is a provision if someone has violated it more than three times, it would become criminal.

Mayor Smith asked Commissioner Haque-Hausrath if it should be civil or criminal. Commissioner Haque-Hausrath stated it should be civil; she likes the idea of having a private right of action. One idea she would like to look at is a fee shifting provision. Mayor Smith spoke of the social host ordinance and having to amend it to make it a criminal violation. Mayor Smith stated he would rather not go down that same path and make it a criminal offence to begin with. City Attorney Thomas Jodoin concurred with Mayor Smith's comments regarding the social host ordinance; he explained Helena Municipal Court has interpreted a municipal infraction would be treated like a small claims and the city would be restricted to ten claims per year. Attorney Jodoin stated the Missoula ordinance is a private civil remedy. The enforcement portion of the Missoula ordinance is a great concern. Mayor Smith stated if an ordinance is adopted, he would support it being a criminal penalty.

Commissioner Thweatt stated he would like to review the Missoula ordinance and get a copy of David Nielsen's concerns. Commissioner Elsaesser asked if the social host ordinance has been used since it became criminal. City Attorney Thomas Jodoin stated there have been a few citations issued

regarding the social host ordinance. Chief of Police Troy McGee noted the social host cases have been stuck in court with appeals and he is not aware of anyone being convicted.

City Manager Alles noted the city of Helena does not discriminate and it has never been a topic. Human Resources Director Rae Lynn Nielsen stated the city follows state and federal law regarding discrimination. In addition, domestic partners were added to the city's health insurance. The HR department has not received any type of complaint on discrimination.

Commissioner Ellison asked if a potential applicant is asked what their marital status or gender identity is. Director Nielsen stated an applicant would not be asked for their marital status or gender identity. Commissioner Elsaesser asked if this ordinance is something the commission wants to address at regular administrative meeting due to the current work flow or schedule additional meetings.

Commissioner Haque-Hausrath stated she would be happy to meet with legal to answer any specific questions. She asked if there are three commissioners who would support moving forward. Commissioner Elsaesser stated there are many items on the matrix and he would like to address this ordinance during a meeting or two.

Commissioner Thweatt stated he would like to proceed with the ordinance and leave the timing of bringing it forward up to the city manager. Mayor Smith stated he too is inclined to ask staff to proceed and answer some of the questions. City Manager stated he believes it will take time to bring this forward and asked direction from the commission. Mayor Smith stated he would support getting a copy of the Missoula ordinance and notes from the meeting between city staff and others.

Commissioner Haque-Hausrath asked if Attorney Jodoin could provide information on his concerns with the enforcement. Manager Alles stated this would be part of the research that City Attorney Jodoin would do.

Commissioner Elsaesser stated he has concerns with the CUP for a four-plex in an R-2 district that is scheduled for a public hearing on the January 9th. A question he will be asking is what affect this will have on the property values. City Attorney Jodoin stated staff does not have the capability to determine the affects of this building would have on property values.

Commissioner Haque-Hausrath commented she had visited with Paul Cartwright and believes the amendments that were approved for the parking ordinance, prior to it being tabled, is not consistent with what is in the ordinance. Staff will review both the ordinance and minutes and let the commission know of any discrepancies.

8. **Public Comment** – No discussion held.
9. **Commission discussion and direction to City Manager** – No discussion or direction given.
10. **Adjourn** – Meeting adjourned at 6:00 p.m.