

SUMMARY OF ADMINISTRATIVE MEETING
July 18, 2012 – 4:00 p.m.
Room 426, City-County Building

1. Call to order, introductions, opening comments – Mayor Smith called the meeting to order. Commissioners Ellison, Haque-Hausrath and Thweatt were present. Commissioner Elsaesser was excused. Staff present was: City Manager Alles; City Attorney Hindoien; Executive Assistant Clinda Feucht; Deputy City Attorney Thomas Jodoin; Fire Chief J.R. Feucht; Community Development Director Sharon Haugen; Public Works Director Phil Hauck; City Engineer Ryan Leland; Water/Wastewater Superintendent Don Clark; Parks and Recreation Director Amy Teegarden; Human Resources Director Rae Lynn Nielsen; Assistant Police Chief Dave Jeseritz and City Clerk Debbie Havens.

Other in attendance included: HCC Representatives John and Cyndi Forbes, Kristi Kline with Montana Rural Water Systems, Kim Abbott, Niki Zupanic, Shane Castle with the Helena Vigilante Newspaper, Tom Rasmussen, and Lindsey with KXLH.

2. **June 20, 2012 Administrative Meeting Summary** – The June 20, 2012 administrative summary was approved as submitted.

3. **Commission comments, questions –**

Upcoming Appointments – Mayor Smith will be recommending the appointment of Tammy Fetty to the Civic Center Board. Term will begin upon appointment and expire March 1, 2015.

Commissioner Thweatt stated he was pleased to see the editorial in the paper regarding the mitigation of fire fuels on private property. He asked staff to follow-up by issuing a PSA. He also asked if the city could pick up the slash piles if private property owners took the slash to the street or to the solid waste containers. Public Works Director Hauck noted the tramp truck is available; however, there is a cost toward the tonnage credit if the tramp truck is used. Commissioner Thweatt stated he is suggesting that the slash from mitigation work would not be charged against the property owner's solid waste tonnage.

Manager Alles stated he will look at the proposal and report back to the commission. He is not sure how the cost would be distributed to the different funds.

Mayor Smith stated City Manager Alles will not be at the July 23rd city commission meeting and he will be gone for the August 6th city commission meeting.

4. **City Manager's Report**

City Manager Alles thanked Mayor Smith and Commissioner Ellison for attending a lunch sponsored by NorthWestern Energy where city employees who completed the Western Montana Strategic Energy Management Cohort received a certificate of recognition. The four employees were Community Facilities Directory Gery Carpenter, Water/Wastewater Don Clark, Water Treatment Supervisor Jason Fladland, and City-County Building Supervisor Troy Sampson. City Manager Alles stated he believes the city of Helena is years ahead in energy conservation, compared to other cities and municipalities in the state of Montana.

Mayor Smith and Commissioner Ellison congratulated staff for the work they have done regarding energy conservation.

Complete Streets Update – City Manager Alles highlighted some projects the city has accomplished regarding complete streets. City Engineer Ryan Leland showed a PowerPoint presentation on the ADA ramps that have been inventoried and installed; newly installed sidewalks; bike lane on Helena Avenue; and staff has worked with MDT to install bike lanes and sidewalks. NMTAC has recommended the location of key sidewalks and city staff is working in conjunction with the committee; and the 2012 chip and seal projects that will begin in July/August.

Commissioner Thweatt asked for an estimate on how much a sidewalk costs per lineal foot. City Engineer Leland stated the cost per lineal foot averages around \$15.00 and an ADA ramp costs \$2500. Manager Alles reported staff is continuing to work with property owners to get them to sign up for the city's sidewalk program.

Engineer Leland reported Centennial Trail has been approved through the CTEP process and staff is working to complete the consultant's contract.

5. Department Discussions

Public Works

Update of Source Water Protection Plan – City Manager Alles introduced the subject and complimented city staff for the work on the source water protection plan. Water/Wastewater Superintendent Don Clark spoke on what the source water protection plan does for the city of Helena. He then introduced Kristi Kline, Source Water Protection Specialist for the Montana Rural Water Systems.

Ms. Kline recognized both Don Clark and Jason Fladland for the work they do on behalf of the city. She then reviewed the Executive Summary and the Helena Tenmile WTP LT2 Watershed Control Plan.

Ms. Kline thanked the commission and city manager for their support on this project and encouraged them to continue the work in protecting the watershed.

Commissioner Ellison noted some of the goals and objectives address livestock grazing and asked how the level of livestock grazing is characterized for the Tenmile watershed. Ms. Kline noted the group met with the property owners and livestock managers in the area and spoke on what conservation measures they are currently doing to protect the watershed. There is not a large amount of livestock grazing in the area. However, there is a lot of overview happening between the partners.

Commissioner Haque-Hausrath stated the report is very well written and asked if this report could be coordinated with controlled or protection from other contaminants such as metals. Ms. Kline noted this group has spoke on the addition of other contaminants and will be addressing it in the future.

Water Conservation Ordinance – City Manager Alles reminded the commission there is a water conservation ordinance that outlines mandatory water reduction measures that will be in effect for various water supply statuses.

Public Works Director Hauck noted there is sometimes confusion between city and county water restrictions.

Community Development

Flood Plain Ordinance Draft – Community Development Director Sharon Haugen outlined the need for the ordinance and noted first passage is on the July 23rd city commission meeting agenda. This ordinance is a requirement of FEMA and staff has been working with representatives from DNRC and FEMA.

Commissioner Thweatt noted the city has very little authority on what is included in this ordinance. Staff concurred.

City Attorney

Non-discrimination Ordinance/Legal Assessment and Options – City Manager Alles referred the commission to the memo from City Attorney Hindoien that addressed the following:

- A. Options, Re: Form of Regulation
- B. Scope of Regulation
- C. Enforcement Mechanisms

City Attorney Hindoien summarized his memo and stated what he is looking for today is direction from the commission on what they want; either a resolution or ordinance and the enforcement mechanism. Attorney Hindoien explained the enforcement sections of the Missoula ordinance and expressed concern with using the civil municipal infraction. The city of Missoula does not use the civil municipal infraction. His preference would be to use the “private right of action”. Police Chief McGee has expressed concerns with the Police Department needing to issue citations. Attorney Hindoien reviewed each of the enforcement mechanisms listed in his memo. He then stated if the commission is inclined to adopt an ordinance he would suggest using the draft ordinance as presented by Commissioner Haque-Hausrath. In addition he suggested the ordinance be focused and less broad.

Mayor Smith and Commissioner Haque-Hausrath thanked Attorney Hindoien for his memo. Commissioner Thweatt asked for clarification on discriminatory conduct; his understanding was to focus on gender identity and sexual orientation as they are not covered by the state law. Attorney Hindoien stated Option A would include all types of discrimination already covered and those that are not, including sexual orientation and gender identity. Commissioner Thweatt asked what discrimination is and what

type of discrimination is the city outlawing. Commissioner Thweatt stated he does not want the ordinance to be broader than the sexual orientation and gender identity.

Attorney Hindoiien stated the definition of discrimination would remain the same, no matter what type of classification. The city would limit the protected class to sexual orientation and gender identity. Commissioner Thweatt asked how someone would prove there was discrimination. Attorney Hindoiien noted if the city were to adopt the private right of action, the burden of proof would be on the citizen claiming discrimination. Commissioner Thweatt asked for further clarification on the burden of proof of any type of discrimination.

Commissioner Ellison asked for clarification on a comment of City Attorney Hindoiien, if the commission adopts an ordinance; the city would be creating protected classes, but many other behaviors and classes would not be included with that protection. He stated he is interpreting that comment that the city would be tolerant of other types of discrimination based on other characteristics such as being left-handed, someone who stutters, weight and hair color and they would not be protected. Attorney Hindoiien concurred the city of Helena would be treating familial status, sexual orientation and gender identity as protected classes and other traits as identified by Commissioner Ellison that would not be protected. However, many classes are already protected under state and federal laws.

Mayor Smith stated Attorney Hindoiien's memo references Title 49 and Title 7 and asked him to refresh the commission on these two titles. Attorney Hindoiien stated Title 49 is the Montana Human Rights Act of the Montana Code Annotated (MCA). Title 49 also contains the component called the government code of fair practices; it also regulates local government's conduct. Title 49 is broader than the federal regulations. There is a whole array of federal laws on regulating discrimination.

Mayor Smith stated he believes City Attorney Hindoiien's recommendation is the private right of action; however, during his comments he referred to Title VII. Mayor Smith asked for clarification on how Title VII would be used. Attorney Hindoiien clarified he is referring to federal law when referencing Title VII. He then stated the enforcement of an ordinance would be difficult and that is why the recommendation is to keep it to the sexual orientation and gender identity and use the private right of action for enforcement.

Mayor Smith stated he would lean toward a focused ordinance and he is not sure on the enforcement. Commissioner Haque-Hausrath stated she too would support the focused ordinance and use of the private right of action; however, she would discuss other options.

Mayor Smith asked for public comment.

Kim Abbott, Montana Human Right Network thanked City Attorney Hindoiien for the memo and noted the network supports an ordinance with the private right of action; however, would oppose any reference to jail time.

Niki Zupanic., ACLU Montana, also thanked Attorney Hindoiien for his memo and noted it is very clear and will move the discussion forward. Ms. Zupanic stated Missoula's approach to include all classifications was the preference of the commission wanting to make a policy statement. She then stated ACLU Montana would support a focused ordinance with the use of the private right of action.

Commissioner Ellison stated his preference would be a resolution. He continues to be concerned if a special right is created for one interest group based on sexual identification while many other groups, behaviors and personal characteristics are not similarly covered. By passing an ordinance the commission would essentially be saying it is not okay to discriminate based on sexual orientation, but other forms of discrimination may be acceptable. That appears to be a mixed message. Commissioner Ellison stated he has heard from many people who support a non-discrimination ordinance along with many others who do not. And he has read all of the postcards and petitions received, he noted while there were hundreds of signatures in support there were also duplicates and signatures from 15-communities across Montana. While it is good that people from other communities are interested in this issue, his focus is on those who live in, pay rates and vote in the Helena community. He has a good deal of concern with passing an ordinance that protects on the basis of this new classification without protecting other characteristics as well.

Commissioner Thweatt stated he supports a focused ordinance. He stated he believes he could differentiate between people who may have a physical condition who is already protected and creating a new classification for sexual orientation and gender identity. Commissioner Thweatt stated there is not a history of discrimination against the examples provided by Commissioner Ellison. However, there is a pattern of discrimination against sexual orientation and gender identity. Commissioner Ellison asked about obese people who have been discriminated against. Commissioner Thweatt stated there has been

a case on where an obese person was not hired. He also stated there may be discrimination against persons with tattoos. However, he does not see a pattern of discrimination for those classes.

Commissioner Ellison asked about discrimination against convicted felons. Commissioner Thweatt concurred there is the possibility. Commissioner Ellison elaborated there are other types of categories that are discriminated against and would not be protected with the adoption of an ordinance.

Commissioner Haque-Hausrath noted obesity is already a protected classification. She stated she believes if the commission does not pass the ordinance, we are saying discrimination against sexual orientation and gender identity is okay. There is data there is discrimination against these two classifications.

Mayor Smith stated he too has had questions about other classifications; he asked Commissioner Ellison if he believes a resolution would leave the same classes unprotected. Commissioner Ellison again stated he would prefer a resolution; however, if an ordinance is considered he would be offering amendments to expand the classifications.

Commissioner Ellison noted this ordinance will create a mixed message, by creating these two new classifications. What the city is doing is extending the classifications to include sexual orientation and gender identity but not other classifications.

Mayor Smith asked City Attorney Hindoien for clarification if the commission were to adopt the ordinance, it would be extending the classes of people protected under the Civil Rights Act of 1964 to include sexual orientation and gender identify. Attorney Hindoien concurred; he then reminded the commission that Commissioner Haque-Hausrath is also recommending familial status for employment purposes only be included in the classifications. Commissioner Haque-Hausrath stated she included familial status in the draft ordinance she sent out and noted she would support it for employment purposes only.

Commissioner Ellison asked if someone is single how this person would be protected. City Attorney Hindoien stated marital status is a protected classification.

Cynde Forbes asked about the discrimination shown to felons who have served their time. Mayor Smith asked if there are other protected classes that should be included in this ordinance.

Commissioner Ellison stated yes and noted he could put a list together and noted one classification would be for those who have served in the military. Commissioner Haque-Hausrath stated she believes the military classification would conflict with the veterans' preference in hiring and would be problematic.

Commissioner Thweatt stated he would support a focused ordinance and use the private right of action. At this time, he would not support including the familial status for employment. Commissioner Hauque-Hausrath stated she too would support a focused ordinance and use the private right of action; in addition she would support including the familial status for employment only.

Commissioner Thweatt and Mayor Smith stated they would not support including the familial status for employment only. Commissioner Haque-Hausrath stated there is a huge problem with discrimination on mothers regarding employment.

Mayor Smith stated he would support a focused ordinance; however had concerns with the private right of action. Attorney Hindoien explained the process on how discrimination cases are currently handled versus the private right of action being proposed.

Mayor Smith commented he understands that the Police Department does not want to enforce the ordinance; however, listening to people who have suffered discrimination based on sexual orientation and gender identity, could be equated to assault. He asked if discrimination was proven, could it be considered criminal in nature.

City Attorney Hindoien stated if the commission were to criminalize the discrimination, then it is being treated differently than other classes of discrimination classifications under state and federal laws. Mayor Smith stated the private right of action puts no burden on the city for enforcement. City Attorney Hindoien concurred; the city would not be engaged in processing or investigating any complaint. He then gave an overview of the process on how someone who felt they have been discriminated against would file a complaint.

John Forbes commented he believes if the commission were to adopt an ordinance, it would create work for the legal system. He then asked how this ordinance would affect the Catholic Church and Boy Scouts.

Commissioner Ellison stated he would like to see more information on the familiar status question. He again stated he would prefer a resolution but he recognizes that three commission

members favor an ordinance and he will respect their approach and he will work hard to make it as good of an ordinance as possible as the discussion continues. He also supports the private right of action for the enforcement mechanism.

Commissioner Haque-Hausrath stated she will provide the definition of familial status to the commission and noted it is already a protected classification except for employment. Commissioner Hindoien stated he will move forward in drafting an ordinance from the direction and comments he has heard today. City Manager Alles stated he will bring the draft ordinance back to an administrative meeting prior to placing it on a city commission meeting agenda.

Commissioner Thweatt asked if there is a way to define discrimination without including specific classifications. Attorney Hindoien stated he does not believe that would be a feasible framework.

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) IT&S, Non-Motorized Travel Advisory Committee, Board of Adjustment, Pre-Release Screening Committee – No report given.
- c) Audit Committee, City-County Weed Board, Montana Business Assistance Connection (MBAC), TCC – No report given.
- d) BID/HPC, City-County Parks Board, TCC, L&C County Mental Health Advisory Committee – Commissioner Thweatt reported the local Mental Health Advisory Committee has applied for a grant and should hear if they received it in August. The Parks Board voted to move ahead with the recommendation to make Centennial Park tobacco free.
- e) Audit Committee, City-County Administration Building (CCAB), Public Art Committee, Intergovernmental Transit Committee – Commissioner Haque-Hausrath reported the chalk up event is on Saturday July 21st and she will be judging the art.
- f) Helena Citizens Council – Cyndi Forbes handed out the HCC brochure and magnet. The July HCC meeting has been canceled.

7. Review of agenda for July 23, 2012 City Commission meeting – No discussion held.

8. Public Comment – None received.

9. Commission discussion and direction to City Manager – No discussion held.

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