

SUMMARY OF ADMINISTRATIVE MEETING
September 5, 2012 – 4:00 p.m.
Room 326, City-County Building

1. Call to order, introductions, opening comments – Mayor Smith called the meeting to order. Commissioners Elsaesser, Ellison, Thweatt and Haque-Hausrath were present. Staff present was: City Manager Alles; Executive Assistant Clinda Feucht; City Attorney Jeff Hindoien; Parks and Recreation Director Amy Teegarden; Police Chief Troy McGee and City Clerk Debbie Havens.

Other in attendance included: HCC Representative Carol Montgomery, Niki Zupanic, Shane Castle, Jamie Greer, Tom Rasmussen, Jerry Hamlin, Kim Milburn, Sandy Oitzinger, Mike Kecskes, Paul Goodman, Liane Taylor, Sharon Nason, IR Reporter Sanjay Talwani and Becky Stockman.

2. **August 15, 2012 Administrative Meeting Summary** – The August 15, 2012 administrative summary was approved as submitted.

3. **Commission comments, questions** – Commissioner Elsaesser asked when the Transportation Plan Update would be brought forward. City Manager Alles noted the Transportation Plan would be updated in 2014. Staff has begun the process of identifying funding and community partners. The Transit Plan consultant contract is on the September 10th city commission agenda.

Commissioner Thweatt stated he is working on comments for the subdivision regulations and will email them to the commission prior to the September 12th work session.

A.) Upcoming Appointments – Mayor Smith recommended the following appointments:
City-County Planning Board - Appointment of Steve Baiamonte to a first term as a city appointment to the City-County Planning Board. Term will begin upon appointment and expire August 31, 2015.

Helena Regional Airport Authority Commission - Reappointment of Mark Eichler as the joint appointment to the Helena Regional Airport Authority Commission. Appointment will be contingent upon the approval of the Board of County Commission. Term will begin upon appointment and expire August 31, 2015.

Helena Open Lands Management Advisory Committee (HOLMAC) - Appointment of Dan Wirak to a first term on HOLMAC. Term will begin upon appointment and expired June 30, 2015.

Public Art Committee - Appointment of Cienna Cullen as an artist representative to a first term on the Public Art Committee. Term will begin upon appointment and expire December 31, 2015.

Tourism Business Improvement District - Appointment of Jeff Leverdiere to a first term on the TBID. Term will begin upon appointment and expire April 20, 2016.

Zoning Commission - Appointment of Tyler Emmert to a first term on the Helena Zoning Commission. Term will begin October 1, 2012 and expire September 30, 2015.

Commissioner Ellison stated he had reviewed the applications and would support the recommendation of Mayor Smith. He also commented it would be nice to have more citizens apply for the board vacancies.

Mayor Smith reported the Volunteer Picnic was successful and well attended.

4. **City Manager's Report** – Manager Alles reported the city of Helena has been selected to participate in the Greening America's Capitals program. A number of staff will be involved in working with EPA on the conditions of receiving the grant. Manager Alles stated representatives from the Denver

EPA will be in Helena for a press conference announcing the city receiving the grant. Once the date/time has been confirmed, he will let the commission know.

Commissioner Thweatt asked if two-way traffic on Last Chance Gulch will be looked at. City Manager Alles stated that is a component of the grant.

City Manager Alles reported the city will take over Centennial Park from the contractors in the near future and asked Parks & Recreation Director Teegarden to speak on a grand opening ceremony that would be held in 2013.

Parks & Recreation Director Teegarden concurred staff will take over the management of Centennial Park on September 10th; there are a number of small projects at the park that need to be done before Phase I would be completed. The park is open and being used; it is important that the public is informed on the plans and process of Phase II and she would recommend holding off on a grand opening ceremony until 2013. A suggestion has been made to have a combined dedication on June 14th, Flag Day.

There was commission concurrence to postpone the grand opening until 2013; which will also allow time to prepare a tobacco free policy for Centennial Park. Mayor Smith asked if the commission will be asked to consider a resolution or what will be staff's recommendation. Director Teegarden noted she has not received direction from City Manager Alles on staff's recommendation and will be meeting with him in the next couple of weeks to discuss this.

Commissioner Ellison stated if the city is taking over the park next week and the park is open for public use, he is concerned if the use of tobacco is allowed in the beginning and then in six months it is prohibited, it will be difficult to get the message out to the public.

Commissioner Thweatt asked if temporary signs could be put up informing the public that it is a tobacco free park. Manager Alles noted the grand opening does not preclude the commission moving forward with the resolution making Centennial Park tobacco free.

Mayor Smith stated Commissioner Ellison makes a good point and asked that a resolution be prepared for commission consideration.

Commissioner Elsaesser asked if the grass at Centennial Park is okay to use. Director Teegarden stated approximately 90% is okay for use; there are some problem areas that are being addressed.

5. Department Discussions

City Attorney

Non-Discrimination Ordinance Draft –City Manager Alles introduced the ordinance and noted it was the number one priority for commission discussion.

City Attorney Jeff Hindoién referred the commission to the draft ordinance and noted it is intended to be used as a discussion document. After today's meeting, he has the intention to make final changes and bring an ordinance forward at the September 24th city commission meeting.

Attorney Hindoién stated the commission may receive public comment that they do not have the authority to adopt the ordinance that is being proposed. However, he has researched the question and has not seen anything that would prohibit the commission from considering the ordinance. The ordinance language has not changed since the July 18th administrative meeting.

Commissioner Ellison referred to Chapter One and noted familial status is mentioned on pages one and three; he asked City Attorney Hindoién to define the term of familial status. Attorney Hindoién stated familial status is defined as having a child/children living with a person. Familial status is a protected classification under Title 49 for purposes of housing discrimination; this historically was a classification that was discriminated against. As the ordinance is drafted, the intention was to carry the definition into the ordinance regarding employment and education. Attorney Hindoién stated he cannot explain why it is not included in Title 49.

Commissioner Ellison gave the example of a married couple who may not have a child or may be expecting a child would not be protected under familial status. Attorney Hindoién stated any person would be protected under familial status regarding employment and education; it would not matter if a person is single, married, female or male. Attorney Hindoién noted most employers in Montana do not inquire of marital status or if a person has children.

Commissioner Ellison referred to page two, Paragraph B – “The city finds that discrimination in the areas of employment, public accommodations, housing and education is a serious threat to the

health, safety, and general welfare of the community. Discrimination creates strife and unrest and deprives the City of its full capacity for economic development by decreasing productivity and increasing demand for City services.” and then asked where the data is he could look at to substantiate the language. Attorney Hindoiien stated the draft ordinance was modeled from the ordinance adopted by the city of Missoula and that commission by its’ own measure made this type of legislative findings in Missoula. This commission will ultimately make the decision on what language to include in the ordinance.

Commissioner Ellison referred to **Chapter 2 – Definitions for Educational Institution** and asked why only private educational institutions are regulated by this ordinance. Attorney Hindoiien stated there is a specific provision in Chapter 7 that prohibits both chartered and statutory municipal governments from exercising any power that affects the public school system. Again this language was drafted on what city of Missoula adopted and the approach is to recognize the limitation local government has on public school systems.

Commissioner Ellison referred to **Chapter 2 – Definitions for Employer** and asked why non profits and religious organizations would be exempted from this ordinance. City Attorney Hindoiien stated almost all these definitions mirror the definitions that are included in the Montana Human Rights Act; the idea was not to reach any further than what is already addressed in state law. There may be some organizations both religious and charitable where they already have independent constitutional rights and they make a decision and stake out the position that the city or state cannot make a decision based on their constitutional rights.

Commissioner Ellison referred to **Chapter 2 – Definition for Perceived** and stated he is struggling with the definition of perceived. Attorney Hindoiien stated in the Montana Human Rights Act, Section 504, there is a structure that prohibits any type of discrimination because a person is disabled; it also includes language that a person cannot be discriminated against because someone perceives them to be in a protected class. Attorney Hindoiien gave the example of sexual orientation and having someone perceive they are in a protected class. An individual would bear the burden of proof when filing a complaint.

Commissioner Ellison referred to **Chapter 6 – Discrimination in Educational Institutions Prohibited** where the language states “any educational institution” and suggested the language would include private and public educational institutions. Attorney Hindoiien explained the defined term of Educational Institution in Chapter 2, this language would be for private educational institutions.

Commissioner Haque-Hausrath complimented Attorney Hindoiien for his answers to Commissioner Ellison’s questions and for the draft ordinance. Commissioner Ellison stated he appreciated the hard work by Commissioner Haque-Hausrath and Attorney Hindoiien on the draft ordinance and acknowledged Attorney Hindoiien’s outstanding job of answering his questions.

Commissioner Elsaesser referred to Chapter 2 – Definitions for Person and asked if this definition would include legal entities that are not necessarily a person. Attorney Hindoiien concurred.

Commissioner Elsaesser referenced Familial Status and asked does the child have to be a dependent? Attorney Hindoiien noted the language is intended for anyone that has a child/children living with them.

Mayor Smith noted the ordinance being considered is what the commission has been asking for. He then asked for public comment. The following persons addressed the commission:

Jerry Hamlin spoke against the proposed ordinance and submitted written testimony.

Tom Rasmussen stated if the commission is going to consider an ordinance then all classes need to be considered; objectivity needs to be looked at.

Liann Taylor spoke against the proposed ordinance and submitted written testimony.

Kim Milburn spoke against the proposed ordinance and submitted written testimony.

Sandy Oitzinger spoke in favor of the proposed ordinance and complemented the commission for considering it. She also stated the city commission has considered many human service issues and she believes this commission needs to be proactive.

Paul Goodman, Minister of the First Assembly of God Church, spoke against the proposed ordinance. He stated he appreciates the comments and questions the commission members have given and asked on the language. He asked what impact this ordinance would have on a church; there has been much debate on the protected classes.

Sharon Nason spoke against the proposed ordinance and submitted written testimony.

Niki Zupanic thanked city staff and the commission for the work that has been done to bring the ordinance forward.

Commissioner Elsaesser stated he sent two questions to City Attorney Hindoien regarding two areas, one was the resolution adopted by Sand Point, Idaho where there is some type of mediation process prior to filing a claim. He noted he would be interested in this type of language since this is a sensitive issue and privacy is important. Attorney Hindoien stated Sand Point, Idaho structure involved the submission of a complaint to the city and a complaint mediation process is used prior to going through the courts; at some point a city staff person is responsible for conducting an investigation and if there was a cause finding, city staff would file the claim. Attorney Hindoien noted this policy currently does not fit into the city of Helena's structure to take on that role. The original intent was to have an individual to keep the right of action to seek a remedy. Commissioner Elsaesser noted the classifications being discussed are the categories that are not covered under the Montana Human Rights Act. Attorney Hindoien concurred.

Mayor Smith asked why Municipal Court versus Montana Human Rights Act. Attorney Hindoien stated the city does not have the ability to enforce discrimination on classifications covered under the Montana Human Rights Act. The reason the city would adopt an ordinance like this is because these classifications are not covered under the Montana Human Rights Act.

Commissioner Thweatt asked how the burden of proof works and follows up on damage perimeters. An individual could allege that they have been discriminated against and would they have to prove the claim. Attorney Hindoien stated the legal framework to prove a claim puts the burden of proof on the claimant. They have to prove they were the subject of an adverse act and show evidence the reason was because they were in the protected class.

Commissioner Thweatt asked how a court of law would determine the damages to be awarded if a person was found guilty of discrimination. Attorney Hindoien stated the remedy is creating the private right of action that would have to be proven and then Municipal Court has limits on the amount of damages. City Attorney Hindoien stated there is a statute that precludes Municipal Court from having jurisdiction over any money judgment against the state of Montana, which is a large employer within the city of Helena. Commissioner Thweatt asked what is the maximum damage that could be awarded and how is it measured. Attorney Hindoien stated the monetary limit is \$7,500, and the measure would be identical to other forms of discrimination litigation.

Commissioner Thweatt asked is there a limit on employment discrimination. Attorney Hindoien stated there can be significant settlements in employment discrimination; most cases would involve lost wages.

Commissioner Thweatt asked in a housing case, could they ask the court as part of the judgment that the landlord be required to rent to them. Attorney Hindoien stated he could not answer the question at this time.

Commissioner Haque-Hausrath again thanked Attorney Hindoien for the draft ordinance and stated she would be happy to move the ordinance forward. Commissioner Haque-Hausrath noted if an employer is already in compliance and not discriminating, there would not be a cost to the employer. She then spoke on the many classifications that are already protected; these three classifications in the ordinance are the ones that are not already protected. The burden of proof is always on the plaintiff in the beginning. Commissioner Hauque-Hausrath stated there is not a current law that dictates which public restroom someone uses; it is more of a custom. She would support leaving the "perception of perceived conduct" language in the ordinance. Commissioner Hauque-Hausrath stated it is her understanding that churches are excluded from the ordinance unless they are providing services to non- members.

Mayor Smith stated he is not ready to move forward with the draft as proposed today; he has been involved in discussion of this ordinance for a long time. He noted he is not married to the Missoula ordinance and continues to be concerned with the "perceived discrimination" language. Mayor Smith referenced Chapter 1B and noted there is no evidence that substantiates the language, which is taken directly from the Missoula ordinance.

In addition, Mayor Smith stated he does not support the inclusion of familial status classification and would be comfortable if the language of familial status were removed. Mayor Smith noted the familial status classification had not been discussed prior to it being inserted into the ordinance. He then referenced the other classifications Commissioner Ellison has brought up and would support discussion of all classifications prior to consideration of the ordinance.

Commissioner Haque-Hausrath noted the commission had not discussed the familial status and she had hoped to discuss it today. She also noted she was not aware that familial status was not a protected classification until June and would support leaving the language in the ordinance. Commissioner Haque-Hausrath noted she is willing to discuss other unprotected classes; however, she has concerns with making people with felonies a protected class due to the other laws that address this. Commissioner Haque-Hausrath stated she would not want the non-discrimination ordinance to fail if familial status classification is included.

Commissioner Ellison stated both Commissioner Haque-Hausrath and Attorney Hindoien have worked hard on the draft ordinance. He has not made a decision on the ordinance and wants to continue to hear from the public; he has met with several citizens; both in support and in opposition. He asked and will continue to ask "do we have a problem in Helena" and when he met with a representative from the Montana Human Rights Network, was told there is a problem and specific examples would be provided. However, at this time, he has not received any specific examples or answers to his questions.

Commissioner Ellison stated he has done some research and has been told over 3,000 people have signed the petition, which has been circulated around town. He has read the petition and the mission statement of the Montana Human Rights Network and one of the statements in it states "The Montana Human Rights Network confronts injustice and challenges intolerance." Commissioner Ellison stated after the last administrative meeting there were blog comments regarding him raising concerns and there was intolerance shown for his views.

Commissioner Ellison noted the petition says a number of things that are not consistent with the ordinance; language in the ordinance states "The City deems it necessary, consistent with Montana's illegal discrimination law, to identify, protect and safeguard the right and opportunity of all persons to be free from discrimination as identified in Montana's illegal discrimination laws..." He emphasized "all" and stated there are many categories not included in the ordinance. This ordinance may be a small step; however, it represents a special interest group. If the ordinance is brought forward other classifications are being left out who also have experienced discrimination. If the city commission adopts an ordinance against discrimination for these three classifications, is the message that there is tolerance for discrimination against other classifications.

Commissioner Haque-Hausrath asked if there is consensus to delete paragraph 1B – The City finds that...and increasing demand for City services. With the deletion of this paragraph it would not impact the remainder of the draft ordinance. Attorney Hindoien concurred that the removal of 1B would not impact the remainder of the draft ordinance.

Commissioner Haque-Hausrath noted physical disabilities are already covered; obesity is also a covered classification; if the commission were to talk through other classifications, there may be consensus that many other classifications are already covered.

Mayor Smith stated his interest from the beginning has been to keep the focus very narrow, specifically to gender identity and sexual orientation.

Commissioner Elsaesser concurred to remove paragraph 1B. He has concerns on the draft ordinance and believes the commission should have another opportunity to discuss it before moving it forward. Commissioner Ellison stated he also would strongly support removing paragraph 1B.

Mayor Smith stated the ordinance should be brought back to an administrative meeting for further discussion and noted there is consensus to remove 1B. There was not consensus to remove the familial status until further discussion.

City Attorney Hindoien stated there have been questions asked that he would like to have the opportunity to research and report back to the commission. Commissioner Haque-Hausrath asked that the ordinance move forward in a timely manner and she would consider removing familial status if it meant adoption of the ordinance.

Mayor Smith commented the City Manager will schedule the non-discrimination ordinance at a future administrative meeting. He then stated at the July 18th meeting he expressed concerns with including the "perceived" language in the ordinance and continues to have those concerns. He then asked City Attorney Hindoien to research the concerns expressed regarding churches and providing services to non-members.

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 – Commissioner Elsaesser reported MBAC is in the process of selecting a new Executive Director.
- d) BID/HPC, City-County Parks Board, TCC, L&C County Mental Health Advisory Committee – No report given.
- e) Audit Committee, City-County Administration Building (CCAB), Public Art Committee, Intergovernmental Transit Committee – No report given.
- f) Helena Citizens Council – HCC Representative Carol Montgomery stated the HCC has not discussed the non-discrimination ordinance and had no other items to report on.

7. Review of agenda for September 10, 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 6:05 p.m.