

SUMMARY OF ADMINISTRATIVE MEETING
October 24, 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, Haque-Hausrath and Thweatt were present. Staff present was: City Manager Ron Alles; Executive Assistant Clinda Feucht; City Attorney Jeffrey Hindoien; Fire Chief J.R. Feucht; Parks & Recreation Director Amy Teegarden; Administrative Services Director Tim Magee; Community Development Director Sharon Haugen; Human Resource Director James Fehr; Public Works Director Phil Hauck; Police Chief Troy McGee and City Clerk Debbie Havens.

Others in attendance included: IR Reporter Sanjay Talwani, Sarah Sadowski and Melinda Barnes. NOTE: There were many citizens in attendance who submitted written testimony and offered public comment under the non-discrimination ordinance agenda item.

2. **October 10, 2012 Administrative Meeting Summary** – The October 10, 2012 administrative summary was approved as submitted.

3. **Commission comments, questions –**

A.) **Upcoming Appointments** – Mayor Smith is recommending the following reappointments:
Business Improvement District/Helena Parking Commission – Reappointment of Bill Crane and Tim Meldrum to second terms on the BID/HPC. Terms will begin upon appointment and expire October 31, 2016.

Bill Roberts Golf Advisory Board – Reappointment of Jonathan Pallister to a second term on the Golf Advisory Board. Term will begin upon appointment and expire October 30, 2015.

4. **City Manager's Report**– Manager Alles had no items to report on.

5. **Department Discussions**
Administrative Services

2013 Utility Bill Inserts – City Manager Alles reported staff has compiled a list of all Utility Bill insert requests that have been received for calendar year 2013 and would like direction from the commission which requests they would like to consider for final approval on November 6th

On October 15th the following items were provided to the city commission in order to give extra review time before the administrative meeting.

1. PDF File -- City Commission Resolution establishing the Utility Bill Insert Policy
2. Excel File -- 2013 Calendar - Listing all insert requests to date
3. Word File -- Guidelines for Utility Bill Inserts - (Administrative Services Guidelines)
4. Excel File -- Insert Request form (Admin Services internal checklist)

Annual Action Item:

City Policy requires all inserts to be included in the monthly Utility Bill mailings be approved by the city commission. Due to postage costs, mailing weights are restricted, and only 1 or 2 inserts can be sent with each monthly utility bill. Insert requests exceed the available mailing capacity.

The city commission will be asked to approve an annual list of Utility Bill Inserts for 2013 at a regular city commission meeting.

Timing:

Having the annual list of utility bill inserts approved in November before each calendar year allows staff adequate time to work with the entities which will be doing inserts, and our vendor who actually prints, stuffs and mails the bills. Note that for the December bills mailed in the first week of January, the insert processing actually starts approximately 4 weeks before the actual mailing.

Manager Alles asked the commission to review the list and submit their prioritized list; keeping in mind that city business should be a top priority. Manager Alles asked that the lists be submitted to him by Tuesday, October 30th; he will report on the list at the October 31st administrative meeting.

Commissioner Haque-Hausrath asked if staff has an estimate on how many of the inserts need to be taken off the list. Administrative Services Director Magee noted there are only a couple of months that are not city or county business. As the list indicates, the non-profits would rank third in the priority list.

Commissioner Elsaesser noted on the matrix alternative building fees is listed; he asked for further clarification on what this is. City Manager Alles stated there was discussion on fees for energy options and building permits. Recycling will be discussed at an administrative meeting in November.

Public Works

NMTAC Update – City Manager Alles introduced Sarah Sadowski, Chair of NMTAC. NMTAC members Sarah Sadowski and Melinda Barnes gave a PowerPoint presentation on NMTAC's priorities.

Commissioner Ellison thanked Ms. Sadowski and Ms. Barnes for presenting the information on NMTAC. Mayor Smith referred to the two survey results included in the presentation and noted it doesn't show an increase in service for non-motorized transportation; however, there have been a lot of improvements done by the city. Ms. Barnes reviewed both survey results and noted the weather was dramatically different on those two days, which had an impact on the numbers.

Commissioner Elsaesser referenced the map and noted many areas in Helena have bike/ped trails and when Centennial Trail is built, that will increase dramatically.

6. Commission Discussion

Non-Discrimination Ordinance – Mayor Smith stated he will conduct the meeting beginning with commission discussion; accept public comment and then conclude with commission discussion with input from staff.

Commissioner Haque-Hausrath referenced the Human Rights Bureau (HRB) statement the commission received last week and spoke of the classifications that would remain unprotected. The reason this process was started is that the city of Helena should adopt an ordinance that is clear that people who are LGBT cannot be discriminated against and need to be protected. This commission needs to provide a remedy of protection. Commissioner Haque-Hausrath encouraged the commission to move the ordinance forward to a public hearing. She asked that City Attorney Hindoien have an opportunity to speak.

Commissioner Elsaesser asked if City Attorney Hindoien could follow-up with the HRB statement on what protection they would provide regarding sexual orientation and gender identity. Commissioner Elsaesser noted the HRB has many more resources to address a discrimination case than the city of Helena would.

Commissioner Thweatt stated he would support moving forward with the ordinance, the legal information the commission has received does not make it certain that the HRB would offer the protection to the LGBT classifications. The commission has put a lot of work into this and he would like to move it forward to a public hearing.

Attorney Hindoien stated the only new information he has received is the statement from the Human Rights Bureau Chief. The commission received a copy of the statement and he believes there has been a fair amount of confusion with the information provided from the HRB and the Missoula City Attorney. Attorney Hindoien stated the information he gave to the commission at the October 10th administrative meeting is what the Human Rights Bureau provided with respect to the Macy decision and their intention to apply it to cases based on sex discrimination. There is no way to know how this will play itself out over time.

Attorney Hindoien explained the difference in how the HRB is handling cases at the current time versus when Missoula adopted their ordinance. The point of uncertainty is 100% accurate; however, at this time if the HRB receives a call regarding sex discrimination, they are going to take the call.

The questions the commission needs to ask is do you want to amend the ordinance to accommodate the new information; which he believes can be done. In fairness, there is some unreliability in the remedy the city would be creating by adopting this ordinance.

Mayor Smith noted Commissioner Haque-Hausrath submitted some amendments; he then asked Commissioner Haque-Hausrath if they were designed to address the uncertainty that Attorney Hindoien spoke of. Commissioner Haque-Hausrath stated her amendments were designed to address Mayor Smith's concerns if a defendant would not be subject to two remedy actions through the HRB and city court. It would also delete the requirement of posting of notices.

Commissioner Ellison thanked Attorney Hindoien for his comments. He noted Missoula has a lot of issues going on including consideration of a cell phone ordinance, traffic on Reserve Street, and public safety on the university campus; he is somewhat offended on the comments the commission has received from the Missoula City Attorney and one of their council members. He wants to stay focused on

what the citizens of Helena want, not what Missoula has. Commissioner Ellison stated Attorney Hindoién has given a good opinion and he is comfortable in what he has been told today. If amendments are going to be offered, he would like to see the amendments before committing to moving the ordinance forward. A solution needs to be reached, either move it forward to a public hearing or not.

Commissioner Elsaesser stated he would not support moving the ordinance forward to a public hearing without seeing a final draft.

Commissioner Haque-Hausrath stated the decision needed today would be for three commission members to move the ordinance to a public hearing.

Commissioner Thweatt noted the last draft he saw from Commissioner Haque-Hausrath included many of the amendments offered by Mayor Smith. Commissioner Haque-Hausrath gave an overview of her amendments, which included some amendment language submitted by Mayor Smith.

Commissioner Elsaesser stated he continues to be concerned with familial status being left in. Commissioner Haque-Hausrath explained the intent of leaving familial status in the ordinance. She continues to support leaving it in; however, if there are three commission members who want to remove it she would support removing it. Commissioner Thweatt suggested removing the familial status and Commissioner Haque-Hausrath could offer an amendment to add it back in.

Commissioner Elsaesser commented he appreciates the comments offered by Commissioner Haque-Hausrath and he is much more comfortable moving the ordinance forward to a public hearing.

Mayor Smith asked for public comment and the following persons addressed the commission:

Nicki Zupanic - ACLU of Montana – spoke in support to move the ordinance forward; she all submitted written testimony from citizens who could not be at the meeting and additional signed petitions in support of the ordinance

Michael Hand - spoke in support to move the ordinance forward

Sarah Rossi – spoke in support of moving the ordinance forward

Charlotte Crawford – spoke in support moving ordinance forward

Kim Milburn – spoke in opposition to moving ordinance forward

Lyle Hamilton –support moving the ordinance forward

Kellie McBride – spoke in support moving the ordinance forward

Katie Knight – spoke in support moving the ordinance forward

Lainey Taylor – spoke in support moving the ordinance forward

Melissa Pozzani – spoke in support moving the ordinance forward

Kelsen Young – spoken in support moving the ordinance forward

Tarra Vizzie - spoke in support moving the ordinance forward

Mary Ann Guggenheim – spoke in support moving the ordinance forward

Pat Kemp – spoke in support moving the ordinance forward

Halley Throll – spoke in support moving the ordinance forward

Sandy Shull – spoke in support moving the ordinance forward

Duran Caferro – spoke in support moving the ordinance forward

Claudette Mortin – spoke in support moving the ordinance forward

Jennifer Philheart – spoke in support moving the ordinance forward

Sharon Nason – spoke in opposition moving the ordinance forward

Commission discussion - Mayor Smith thanked everyone who addressed the commission. The question now is there support to move the ordinance forward to a public hearing.

Commissioner Ellison noted in the spring there were three commission members that wanted to move the ordinance forward. With Commissioners Thweatt and Haque-Hausrath stating they would support moving it to a public hearing, he asked Mayor Smith for his comments. If there is support to move the ordinance forward, he would have amendments to offer.

Commissioner Elsaesser stated he is still wrestling with the two legal processes; can the city regulate private contracts and if there are exemptions for schools and non-profits. He still is waiting to know if there is anything in the city of Helena's policy that we would be violating by adopting the ordinance.

Commissioner Elsaesser also stated he is very interested in affirming the HRB's process. The city wants to assure non-discrimination in all classifications. He asked if the commission might want to look at a resolution affirming the HRB authority.

Mayor Smith commented should the city depend entirely on HRB authority or adopt this ordinance; either path has uncertainty. Mayor Smith referenced Commissioner Haque-Hausrath amendments and asked is there any legal problems with a two layer approach. Attorney Hindoién stated it is all a relative calculus of uncertainty; however, he can prepare a draft ordinance that includes Commissioner Haque-Hausrath's amendments.

Attorney Hindoién explained if the ordinance is adopted, a person filing a discrimination complaint would have to make a decision to file either with the HRB or with Municipal Court. He reiterated this ordinance will not reach federal, state or school district employers.

Mayor Smith asked if the language in Commissioner Haque-Hausrath's amendments would protect a landlord/employer from having to defend themselves in two hearings. Attorney Hindoién concurred the language would prevent that happening.

Commissioner Elsaesser noted the commission had received a memo from an attorney that raised concerns that the commission needs to make sure what protections the city would be providing. He asked if non-profits would be covered under the ordinance. Attorney Hindoién stated the definitions that are in the ordinance have come out of the Human Rights Act.

Mayor Smith asked if non-profits would be covered under the ordinance. City Attorney Hindoién stated yes. Commissioner Ellison asked for clarification as when the commission discussed the ordinance back in June/July and he asked the question why non-profits would be exempt in the ordinance. Attorney Hindoién clarified the language in the ordinance that would cover the non-profits is the definition of employer having one or more employees. This language is the same as what is in the Montana Human Rights Act.

Commissioner Elsaesser stated he did send an email asking for clarification on two concepts; right to privacy and mediation options. He then asked if the litigation cap is \$12,000, no matter what legal fees are. Attorney Hindoién clarified the litigation cap is \$12,000 exclusive of attorney fees and a plaintiff would be entitled to file one claim, either with the HRB or through Municipal Court.

Commissioner Haque-Hausrath stated after all this time; she would like to hear from Commissioners Elsaesser and Ellison on whether they would support moving the ordinance forward to a public hearing.

Mayor Smith stated he would support moving the ordinance forward to a public hearing. However, at this time he is not in support of the draft ordinance. He will be very eager to see the amendments the commission may offer. This draft ordinance looks like the Missoula ordinance. Mayor Smith stated the heart of his concerns is the issue of perceived discrimination.

Commissioner Haque-Hausrath asked Mayor Smith if he is comfortable in mimicking the Human Rights Act as for as having it apply to employers with one or more employees. Mayor Smith concurred. Commissioner Haque-Hausrath stated the one issue continues to be "perceived". She noted that she had proposed alternate language on "perceived" which clarified it. Commissioner Haque-Hausrath spoke on the importance of leaving "perceived" in the ordinance.

Commissioner Elsaesser stated the commission needs to see a final draft before he can consider it. He stated he plans on supporting the ordinance, but it needs to be the best document with all the commission questions answered. Commissioner Elsaesser continues to be interested in the mediation process that is used in Sand Point Idaho.

Commissioner Ellison stated there are three commission members who want to move forward; if there is going to be an ordinance his role is to help the commission make it the best document possible. There is language that needs to be cleared up, including the definition of "perceived" and he continues to be concerned that non-profits may not be covered under this ordinance. At this time, he will begin working on amendments he may want to offer.

Commissioner Thweatt referenced the comments on "perceived" and stated at this time he would be in favor of removing the language. Commissioner Thweatt asked a hypothetical question regarding "perceived". Attorney Hindoién stated there is not a clear answer on whether to leave "perceived" in the ordinance.

Commissioner Haque-Hausrath spoke on the "perceived" language.

Commissioner Elsaesser asked how the commission proceeds with this, do we hold work sessions to establish goals and resolve the language before ever moving to a public hearing. He would be interested in a work session to work out the final language.

Mayor Smith stated there are a few loose ends and all the questions have not been answered. If a work session is scheduled, he asked Commissioner Elsaesser if he would provide his specific amendments in writing.

Commissioners Thweatt and Haque-Hausrath stated they would like to move forward, not sure a work session is warranted; the process needs to be completed. There is a basic disagreement on the perception language.

Mayor Smith stated he would like to have a final decision by December 31, 2012. Commissioner Thweatt asked if the public hearing would be scheduled when all five members are present. City Manager Alles stated first reading of the ordinance could be put on the December 3rd commission meeting agenda. Commissioner Elsaesser stated he will work with Attorney Hindoien on specific language and will offer amendments at the public hearing.

Mayor Smith asked that the draft ordinance be put on October 31 administrative meeting for final discussion and he then asked that any further amendments be provided in writing.

Attorney Hindoien will draft an ordinance on what he has heard today and if there is commission concurrence to move forward, it would be scheduled for first reading at the December 3rd city commission meeting.

Commission Ellison stated he withdraws his concern with the non-profit question. Commissioner Elsaesser stated he is comfortable waiting for Attorney Hindoien to draft the ordinance; it needs to be available to the public prior to the first reading.

Attorney Hindoien committed to bringing forward a draft ordinance to the October 31st administrative meeting.

7. 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 (NMTAC), 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 – No report given.
- e) Audit Committee, City-County Administration Building (CCAB), Public Art Committee, Intergovernmental Transit Committee – No report given.
- f) Helena Citizens Council – No report given

8. Review of agenda for October 29, 2012 City Commission meeting –No discussion held.

9. Public Comment –No public comment was given.

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

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