

SUMMARY OF ADMINISTRATIVE MEETING

October 25, 2017– 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, Farris-Olsen, Haladay and Noonan were present. Staff present was: City Manager Ron Alles; Executive Assistant Sarah Elkins; City Attorney Thomas Jodoin; Deputy City Attorney Iryna O'Connor; Assistant Police Chief Steve Hagen; Fire Chief Mark Emerit; Community Development Director Sharon Haugen; Parks and Recreation Director Amy Teegarden; Parks Superintendent Craig Marr; Public Works Director Randall Camp; Assistant Public Works Director Phil Hauck; City Engineer Ryan Leland; Engineer David Knoepke; Administrative Services Director Glenn Jorgenson and City Clerk Debbie Havens.

Others in attendance included: HCC Representatives Gary Spaeth, Sean Logan, Mark Burzynski, BID Board members Mark Roylance and Rex Seeley; Pam Attardo, Jay Reardon, Bill Lewis, Kate Hampton, DHI representative Kevin Skaalure; ACLU Representative SK Rossi, John Barrows, Mike Shields, Alan Cormany, John Palmquist and Dennis McCahon

2. October 11, 2017 Meeting Summary – The October 11, 2017 administrative meeting summary was approved as submitted.

3. Commission comments, questions –

Upcoming Appointment – Mayor Smith is recommending the following appointments:

Bill Roberts Golf Advisory Board Appointment of Bill Crivello to the Bill Roberts Golf Advisory Board. Term will begin upon appointment and expire on October 30, 2020.

Citizen Conservation Board Appointment of Elizabeth Fuller as a student leader to the Citizen Conservation Board. Term will begin upon appointment.

Restore America's Parks Campaign, Resolution - Commissioner Ellison referred the commission to the draft resolution of support for the National Park System and asked for consensus to place it on a city commission meeting agenda. He spoke of his hesitation in supporting resolutions outside of city business; however, this resolution deals with two national parks in Montana.

Mayor Smith stated he talked with Marshall Gingery, who worked for the National Park System, and he supports the commission considering the resolution.

There was commission consensus to place the resolution on the November 20th city commission meeting agenda.

Helena Fire Tower – Commissioner Noonan stated with the recent discussion of the fire tower there is a concern in the community with the lighting of the fire tower and the lack of enthusiasm that occurred last December. The topic was brought up at the BID board meeting and there have been ongoing discussions on what could be done to improve the ceremony this year. The Parade of Lights is a long standing event in the city. Commissioner Noonan suggested there may be some funding available to assist with the lighting, if necessary.

Parks & Recreation Director Teegarden reported she and Craig Marr met with representatives from the DHI to discuss their vision for the Parade of Lights. Several ideas were discussed, including having the arch at Women's Park and a Christmas tree on each block lite up and then a large tree in Pioneer Park. Director Teegarden noted the residents in the area of the fire tower, have in the past, expressed concern with the lights shining in their windows.

Director Teegarden stated the Parade of Lights is not a city of Helena event; staff is available to assist with the plans. BID board member Mark Roylance stated the BID was not aware conversations were going on. He concurred this is a DHI event and the BID does not have any funds to help fund it. It was the DHI events coordinator who suggested the trees on each block. Mr. Roylance stated the BID is available to assist. BID board member Rex Seeley stated he is in support of lighting the arch in Women's Park and having trees on each block. He spoke to several business owners and they too are in support

of the recommendation. The planning is still in the works with more discussions to follow.

DHI representative Kevin Skaalure noted the DHI is advocating the idea of having the arch in Women's Park lite; however, it is important to have the symbolic ceremony of lighting of the fire tower. Discussion was held on what type of lighting could be used at the fire tower and the timeframe it would stay lite.

Pam Attardo suggested another option is using a projector for lighting the fire tower.

Manager Alles recommended staff continue to work with DHI and bring a plan together to present to the commission. If needed, the city is willing to kick in some funding.

Commissioner Farris-Olsen concurred the city could provide some funding if necessary.

Commissioner Farris-Olsen asked about a complaint regarding patch on 9th Avenue that the commission received from Mike Dennison. Engineer Leland explained the street division tried to fix the pothole and the asphalt was not hot enough and therefore it did not hold. Staff will continue to sweep the area.

Commissioner Noonan noted there is also a lot of loose asphalt at the corner of Ewing and 11th Avenue. Staff will look at the area and will sweep if necessary.

3. City Manager's Report

West Main Project – Manager Alles reported staff is getting ready to re-bid the West Main project and traffic control was a large expense when the project was bid out. Staff has discussed closing West Main versus allowing controlled traffic during construction. It will be staff's recommendation to close West Main for specific periods of time. Engineer Leland has driven the alternate route and it is approximately six miles. If West Main is closed, the project will take less time to complete and hopefully will get better bids.

Engineer Leland showed the commission the detour route the residents would have to use. The longest route is six miles. He noted if traffic control is used, there will be periods of time when traffic would be stopped. Staff will work with the residents to keep them updated.

Commissioner Farris-Olsen confirmed construction will occur in the spring/summer of 2018. Engineer Leland concurred. Manager Alles noted staff is recommending a time constraint for the contract to be completed.

Commissioner Haladay asked where the residents will park their vehicles. Manager Alles noted there will be temporary parking areas for residents. Staff will be in contact with the residents and the public during construction keeping them updated on what section of the road will be closed. The entire road will not be closed during the project; it will be closed by sections. Commissioner Haladay asked could the city look at penalties if the road is closed longer than what is in the contract. Manager Alles stated yes.

Best Value Contracting – Manager Alles stated this is the same type of contract the city used for the new clubhouse at the golf course. However, the process that has been used is once the bid specifications are complete, they are sent out and the contractors submit bids. Per MCA, the lowest responsible bidder is selected.

The difference between the process being used and the best value contracting is a Request for Qualifications (FRQ) is prepared and contractors submit their qualifications. Following the RFQ process a Request for Proposals (RFP) would follow and a contractor is then selected. Staff would set specific criteria and select a contractor and then work directly with the contractor to negotiate a contract to include a price or a not to exceed amount. The best value contracting allows the city to screen the contractors up front. The city of Butte approved an ordinance adopting the best value contracting. Manager Alles stated he believes there is some value to the city to use the best value contracting, as we essentially are already using the process. Additional discussion needs to occur on what type of projects and dollar amounts the process would be used for.

Jay Reardon with the Montana State AFL-CIO concurred with Manager Alles' comments and he believes this process is a benefit to the city. It gives the city a better picture of what the contractor has to offer. Mr. Reardon offered his assistance to implement specific criteria.

Commissioner Farris-Olsen asked if staff is thinking about incorporating best value contracting and the contracting accountability act. Manager Alles stated staff can use this process; specifically when a RFQ is prepared, it would include specific criteria. However, he does not believe an ordinance is necessary; a resolution would provide clarification on what we are already doing. He would like to have

some fluidity during implementation.

Commissioner Farris-Olsen stated the RFQ process would include specific criteria where it would disqualify some contractors. Commissioner Farris-Olsen stated he would like to see the Best Value Contracting adopted by a resolution or ordinance. Manager Alles stated the MCA allows the city to use this process.

Commissioner Noonan asked will the city have a legal responsibility to let contractors know when they are eliminated and why. Manager stated yes, the criteria will be set prior to issuing a RFQ which would include criteria that would move certain contractors forward.

Attorney Jodoin referred to the city of Butte and noted the language in their ordinance adds criteria to the state statute on alternative project delivery. Every project may not qualify for this process, staff will have to do a case by case analysis on the criteria and the commission will have to adopt a resolution making those findings. Even if the city were to adopt an ordinance, he is not sure every contract would qualify.

Commissioner Haladay stated he supports the formalization of setting up criteria and adopting either a resolution or ordinance. Attorney Jodoin stated unless an ordinance is codified, they serve the same as a resolution. Commissioner Farris-Olsen again stated he would like to adopt an ordinance to make it more formal and a formal appeals process for those contractors who were disqualified.

Mayor Smith thanked Jay Reardon for offering his assistance to finalize a recommendation to bring forward to the commission.

Apprenticeship Program – Manager Alles noted he attended a presentation regarding apprenticeship programs. A lot of the trades no longer use apprenticeships. The idea of this apprenticeship program is on projects over a certain dollar amount, the city would require the contractors to use an apprenticeship program or document a certain number of hours of work was done with apprentices. The idea is to train skilled craftsmen to work in the trades. The city would set a certain amount of hours in a contract where an apprentice would be used. Manager Alles again recommended working with the contractors to get apprentices working on certain projects. This policy could also be adopted by a resolution. Manager Alles will continue to work with Jay Reardon on a proposal for commission consideration.

Jay Reardon spoke on the need of apprenticeship programs and the crisis we are facing for skilled craftsmen. An apprenticeship is a great opportunity for people to work in specific fields. The average wage for an apprentice when they graduate is \$56,000.

Commissioner Farris-Olsen stated there are good reasons to move forward with the proposal. Mayor Smith stated the city employs skilled craftsman and asked if there is opportunity to add this into our own departments. If we make it a requirement for contractors, we need to inform them of the proposal.

Manager Alles stated the city does not employ craftsman that would go through an apprenticeship program. Mayor Smith asked Manager Alles to look at the possibility.

Commissioner Farris-Olsen stated he would support adopting an ordinance that requires the use of apprenticeship programs. Manager Alles will work with Mr. Reardon to formulate language and will contact the local contractors.

5. Department Discussions

City Attorney

Initiative No. 183 “Montana Locker Room Privacy Act” – City Attorney Jodoin stated the purpose of this discussion is to provide insight and analysis that will assist the commission in deciding whether to join as a plaintiff in the ACLU of Montana’s lawsuit challenging Initiative No. 183 Montana Locker Room Privacy Act (“I-183”).

At the October 11, 2017 administration meeting, the City Commission was briefed on I-183. The Commission expressed interest in hearing more about I-183 and what role the City of Helena may have in challenging I-183 with respect to the ACLU of Montana’s recently filed lawsuit.

To date the City of Missoula and the City of Bozeman have chosen to participate as named plaintiffs in the ACLU of Montana’s lawsuit. Those cities have also chosen to have the ACLU of Montana serve as special appointed counsel for the purposes of the lawsuit. The ACLU of Montana has informally inquired of my office as to whether the City of Helena would also join the lawsuit as a named plaintiff.

ACLU of Montana brought suit on October 17, 2017 in Cascade County. The ACLU of Montana seeks declaratory judgment that I-183 is facially unconstitutional for denying Plaintiffs, several transgendered individuals, equal protection, violation of right to privacy, dignity, the pursuit of life's basic necessities, and due process under the Montana Constitution. As to the City of Missoula¹ the complaint alleges that I-183 violates the City of Missoula's due process because I-183 is arbitrary, ambiguous, and voids its non-discrimination ordinance.

Attorney Jodoin stated his memo focuses on two questions: what role can the City of Helena play in a challenge to I-183 (i.e., standing) and whether ACLU of Montana would be the appropriate entity to represent the City in that regard.

With respect to standing one issue raised in the complaint is whether I-183 precludes the City of Missoula's non-discrimination ordinance. Specifically, section 6 of I-183 denies the City the ability to "exercise any power that applies to or affects provisions in the Montana Locker Room Privacy Act..." Nothing in I-183 speaks to state exclusion of local governments' with self-government power with respect to prohibition of illegal discrimination in employment, public accommodations, or housing. I-183 precludes the City from following its own illegal discrimination ordinances with respect to its own buildings and facilities. However, in my opinion, the City may continue to prohibit illegal discrimination in other public accommodations that are not owned or controlled by the City. Thus, I would recommend not pursuing that claim in a lawsuit. To do so would be to implicitly admit that I-183 precludes the City's illegal discrimination ordinance. I would not recommend the City of Helena take such a position. In my opinion, the City's illegal discrimination ordinance would not be invalidated or otherwise affected by I-183.

The other complaint the City of Missoula raises is that it is unsure how to comply with I-183 given the vague requirements the City must take to protect its facilities from use by a member of the non-designated sex and is thus deprived of due process. I believe this issue, approached from an additional angle that the ambiguities and impossibilities of compliance with I-183 and are thus void for vagueness and over-broad, may have some traction and provides the City with a judiciable issue that provides standing independent of the ACLU of Montana.

For that reason, it is fair to expect that the ACLU of Montana may not be the best entity to represent the City of Helena's interest. It may be advantageous for the cities and towns of Montana to explore the possibility of an intervenor challenge to I-183 on the basis that I-183 is void for vagueness and unconstitutionally overly broad. At the same time the ACLU of Montana would be able to focus their representation on the named individual plaintiffs and their uniquely distinct claims.

At this juncture, from the narrow and limited perspective of City compliance with I-183, I do not believe there is any reason to rush into the present lawsuit. I recommend working in coordination with the Montana League of Cities and Towns, Montana Association of Counties, and individual cities, towns, and counties in Montana to explore the possibility of an intervenor challenge to I-183 on the basis that I-183 is void for vagueness and unconstitutionally overly broad. I expect the League and individually cities and towns can agree to work together to hire counsel that can represent the exclusive local government issues.

Attorney Jodoin asked does the city want to join the ACLU lawsuit as a plaintiff or do we want to step back and explore the city's unique issues with the lawsuit, specifically with compliance and vagueness of the statute making it almost an impossibility to comply with it along with some other ideas that there may be some prohibitions that may apply that would preclude legislative acts that are not funded and preclusions on local laws.

Attorney Jodoin recommended the city work with the Montana League of Cities and Towns and Montana Association of Counties to explore those claims independently of the ACLU's complaint and look at joining the lawsuit as an intervenor rather than a plaintiff represented by the ACLU. The city can work with ACLU with the goal is to preclude I-183 from going on the ballot. Attorney Jodoin noted he previously stated the city's non-discrimination ordinance would be affected with the passage of I-183; however, after additional research he does not believe it would be affected if I-183 were to pass. However, the city would continue to enforce the non-discrimination ordinance.

ACLU Representative SK Rossi offered to answer questions and noted both Missoula and Bozeman's city commissions had the same concerns being expressed by Attorney Jodoin. SK Rossi noted if the city of Helena wants to intervene in the lawsuit that is fine; however, the concern is the longer

this drags on, the harder it is on the transgender community. Many of the legal issues brought up by Attorney Jodoin are expressed in the ACLU complaint. SK Rossi stated by the city intervening in the lawsuit and not joining it would cause further delays.

Commissioner Farris-Olsen asked does the city joining as a client create a conflict down the road. SK Rossi stated the Bozeman city attorney researched the question and Bozeman voted to join the lawsuit. SK Rossi stated she does not see how a conflict could arise as there is one remedy, which is removing any possible way of I-183 getting onto the ballot. Commissioner Farris-Olsen stated he wasn't thinking of this specific lawsuit, but as a former client of the ACLU the city does something down the road that the two parties do not agree on, which he doesn't believe will happen. SK Rossi noted a conflict would only occur during the time this lawsuit is ongoing.

Commissioner Haladay stated in regards to the questions of conflict, it seems like even if there is a potential conflict it would be on ACLU's part as. Attorney Jodoin concurred. Commissioner Haladay then asked other than the unfunded mandate provision, do we have other arguments we have discussed with the Montana League of Cities and Towns or with other cities. Attorney Jodoin noted Kelly Lynch with the Montana League of Cities and Towns is digging into the legal issues. He has talked with Ms. Lynch who has been working with MACO. Attorney Jodoin agreed it is the local governments that are directly affected by I-183; it would be the cities that would have the best standing argument.

Commissioner Haladay stated he wants to keep the dialog open with the ACLU as we come up with legal theories as they are already representing Missoula and Bozeman. Commissioner Farris-Olsen he agrees with SK Rossi's point that the longer this drags out, the harder it is on the transgender community.

Commissioner Farris-Olsen stated as we explore these other avenues, it makes sense to have the ACLU represent the city and that allows time for Attorney Jodoin to have a discussion with the Montana League of Cities and Towns and MACO. This shows the city's support of the transgender community by joining the ACLU lawsuit. He noted the ACLU is comfortable if there is a conflict is.

Mayor Smith stated he is not at a decision point yet. Commissioner Noonan stated he feels we should resist in the most effective way possible; however, he would be open to what would be the most effective.

Commissioner Haladay stated he is comfortable using the ACLU of Montana to represent the city to expedite the process.

Commissioner Ellison stated he is not comfortable having the ACLU represent the city, he would be more comfortable with the ACLU being separate and apart. He gave an example of when the ACLU and the city have had conflicts of opinions when they did not agree on having cameras on public art. He believes the ACLU has taken a great lead on this issue; however, he would continue to support the city working with the Montana League of Cities and Towns.

Mayor Smith asked if Attorney Jodoin has talked with Bozeman's city attorney. Attorney Jodoin stated he could draft a resolution appointing the ACLU of Montana as special counsel for the city of Helena. Commissioners Farris-Olsen, Haladay and Noonan concurred to have the resolution drafted and put on a city commission meeting agenda. In the meantime, Attorney Jodoin will talk with Bozeman's city attorney.

Consensus Direction to Manager – Prepare a resolution for commission consideration at a regular city commission meeting. Attorney Jodoin will contact the Bozeman's city attorney.

Public Works

Clarke Street Proposal – Manager Alles introduced the agenda item.

Engineer Leland reported the commission approved the FY18 budget for Clarke Street/Hamilton Street in Street Maintenance Capital Projects. City staff has been working on the design of the project and new local streets reconstruction policies with the commission. The design is currently at 30% complete, so the cost estimates and specific plans are very preliminary. Engineer Leland presented the design, costs, impact to the trees, and sidewalks. He referred the commission to the following estimates for three different options for the project:

- Option #1 - Complete street reconstruction including the sidewalk with replacing of all the brick sidewalks with brick. The cost estimate is \$1.56 Million.
- Option #2 - Complete reconstruction, including the sidewalks with replacing brick sidewalks with concrete. The cost estimate is \$ 1.53 Million

- Option #3 - Reconstruct the street from curb to curb. This option included replacement of all ADA ramps as required to meet federal ADA requirements. The cost estimate is \$1.03 Million

The existing budget for the project is \$985,560. With the initial design of the project, staff has determined that, if the sidewalks are to be replaced with the project, 95% of the sidewalk will need to be reconstructed because of trip hazards and compliance with ADA requirements. Also the City Arborist has evaluated all 81 trees on Clarke Street.

Staff is still evaluating the need for replacing the underground infrastructure (Water, Wastewater and Stormwater). If needed, the costs for each of these replacements should be added to the Capital project list and included in the rate discussions for each of the respective funds.

Staff is looking for direction from the commission on the preferred over-all design option and if staff should continue to invest time on this project.

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

Bill Hallinan asked if the boulevard trees are removed; is there money in the budget to replace them. Engineer Leland stated the trees would be replaced; however, with a different species.

Kate Hampton, 423 Clarke Street, stated there has been discussion on bringing the corners up to ADA standards and asked if the sidewalks are replaced, would all sidewalks have to meet ADA standards. Engineer Leland stated if the project is curb-to-curb, the city would install ADA ramps and work with the property owners if they want to replace their sidewalks. However, if there are trip hazard then the adjacent property owner would have to replace the sidewalk. Ms. Hampton spoke of the brick sidewalks being a historic part of the neighborhood. Everything is a contributing factor to the neighborhood and the city has a responsibility to keep the features that make it unique.

Mayor Smith noted the big decision that will have to be made is to reconstruct the street curb to curb or start looking at the sidewalks and boulevards.

Resident of the neighborhood stated brick sidewalks have been used for 100 years; people love to walk the neighborhood. She asked when the trees are removed and they pull up the sidewalk, will the property owner be responsible for the sidewalks. Manager Alles noted the commission has had discussions on the city paying for the sidewalks; however, a decision has not been made. He clarified it is a requirement to bring all corners up to ADA standards with the reconstruction of Clarke Street.

Mayor Smith noted if the decision is to go curb to curb, the city will work with the property owners regarding sidewalks and trees. If the city does the entire project, the city would be responsible for the costs.

Steve Nelson, 338 Clarke, stated the priorities for Clarke Street should be the pavement curb to curb, trees and then sidewalks. It is important to retain as many trees as possible. He stated he recently replaced his sidewalk and had to take out one tree. He then asked if there is discretion on how big a tree has to be and has to be removed. Engineer Leland stated as the project moves forward, the arborist will work with the homeowners.

John Barrows, 1009 Maple, spoke of the historical nature of the neighborhood which includes the brick sidewalks and trees.

Walter L., Howie/Clarke resident spoke of the importance of keeping the brick sidewalks and the boulevard trees. He then asked what the motivation for choosing Clarke Street was and is there going to be massive utility work done.

Mayor Smith noted there are failed streets throughout the city; however, staff settled in on Clarke Street to get the commission to make some policy decisions. Assistant Public Works Director Hauck stated Clarke Street presented many examples of what staff has to consider when reconstructing an entire street. Staff is still working on what priorities there are in the street network.

Bill Hallinan, 438 Clarke, stated drainage is also an issue and asked what is being proposed. He stated Clarke Street has been on the city's short list since 1990 for reconstruction. Engineer Leland stated drainage will be part of the design.

Resident of the neighborhood stated the map does not take into account the very steep hill that is not paved. Engineer Leland stated the commission made the decision the dirt portion of Clarke Street is not part of the project. Assistant Public Works Director Hauck stated with any undeveloped street, the initial construction of the street is the property owner's responsibility and that can be accomplished with the creation of an SID. That is how all the streets in Helena were built.

Bill Loomis stated some of the rights-of-way are incorrect and asked if the city will be re-establishing the rights-of-way as the streets are not built per the surveys. Engineer Leland noted the rights of way have shifted; however, staff is not looking at re-establishing rights of way; the center of the road will stay as is.

Dennis McCahon spoke on the importance of keeping the brick sidewalks and as many trees as possible.

Engineer Leland stated there will be public meetings scheduled with the stakeholders. This is just an update to the commission.

Commissioner Noonan spoke of the cost difference between going curb to curb and replacing sidewalks; the cost to replace the sidewalks would cost approximately ½ million dollars.

Mayor Smith stated he believes going curb to curb is the way to proceed.

Commissioner Haladay asked if the city rebuilds the street are we going to trigger ADA issues on every homeowner. He thought anytime work was done on a street that is non-compliant, it has to be brought up to ADA standards. Assistant City Attorney O'Connor stated when the city does a mill and overlay project, it is required to meet ADA standards at the corners. The corners on Clarke Street would be built to ADA standards. Right now it only triggers the corners when reconstructing a street. She also referenced Highland Street and noted there was a change in the traffic pattern that triggered those corners having to be built to meet ADA standards.

Commissioner Haladay addressed the estimated costs of the sidewalks and asked what makes them so expensive. Engineer Leland stated the sidewalks for this project are being estimated the same quantity as all sidewalks in the city and are not being elevated for this project.

Due to the time, the commission will continue this discussion at an upcoming administrative meeting.

6. Committee discussions

- a) Audit Committee, City-County Board of Health, L&C County Mental Health Advisory Committee, Montana League of Cities & Towns – No report given.
- b) Mayor Pro-Tem, Audit Committee, Helena Chamber of Commerce Liaison, Information Technology Committee, Transportation Coordinating Committee – No report given.
- c) ADA Compliance Committee, Audit Committee, City-County Parks Board, Civic Center Board – No report given.
- d) Board of Adjustment, City-County Administration Building (CCAB), Non-Motorized Travel Advisory Board, Transportation Coordinating Committee – No report given.
- e) Business Improvement District/Helena Parking Commission, Montana Business Assistance Connection, Public Art Committee – No report given.
- f) Helena Citizens Council – HCC Chair Spaeth reported the HCC meets at 7:00 this evening.

7. Review of agenda for October 30, 2017- No discussion held.

8. Public Comment – No public comment received.

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

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