

CITY OF HELENA
City Commission Meeting
June 7, 2021 - 6:00 PM
Zoom Online Meeting: <https://zoom.us/j/91569561985>

Time & Place

A regular City Commission meeting was held on Monday, June 7, 2021 at 6:00 p.m. via Zoom Online Meeting ID: <https://zoom.us/j/91569561985>, as well as, the City Commission Chambers at 316 N. Park Ave, Helena 59623.

Call to Order and Roll Call

(01:24) Mayor Collins requested City Clerk Clayborn call roll call: City Attorney Jodoin, City Manager Harlow-Schalk, Commissioner Haladay, Commissioner Dean, Commissioner Logan, Commissioner O'Loughlin and Mayor Collins all responded present. All participated in-person.

Pledge of Allegiance

(01:40) Mayor Collins asked those persons present to please stand and join him in the pledge of allegiance.

Minutes

(02:15) Minutes for the following were approved as submitted:

- A. Regular Commission Meeting - March 8, 2021
- B. Regular Commission Meeting - March 22, 2021

Consent Agenda

(02:33) Review of Consent Agenda Items

- A. Claims
- B. ROI to approve the workplan and budget for the Business Improvement District, and to levy an assessment up all property within the district for the Fiscal Year 2022 and to set a public hearing for June 28, 2021.
- C. ROI to approve workplan and budget for the Tourism Business Improvement District and to levy an assessment upon all property within the district for the Fiscal Year 2022.
- D. A Resolution of Intention to specify the assessment option for the Street Maintenance and Improvements District NO. 1 for Fiscal Year 2022 and levy and assess all property within the district.
- E. A Resolution of Intention to specify the assessment option for the Open Space Maintenance District No. 1 for Fiscal Year 2022 and levy and assess all property within the district.
- F. A Resolution of Intention to specify the assessment option for the Special Street Lighting Districts for Fiscal Year 2022 and levy and assess all property within in the districts.
- G. A Resolution of Intention to specify the assessment option for the Stormwater Utility Service Area for Fiscal Year 2022 and levy and assess all property within the service.
- H. A Resolution of Intention to specify the assessment option for the collection and disposal of residential garbage and refuse for Fiscal Year 2022 and levy and assess all properties receiving residential solid waste collection.
- I. A Resolution of Intention to specify the assessment option for the Special Urban Forest Management District for Fiscal Year 2022 and levy and assess all property within the district.
- J. A Resolution of Intention to specify the assessment option for the Landfill Monitoring and Maintenance District for Fiscal Year 2022 and levy and assess all property within the district.
- K. A Resolution of Intention to set rates for all customers of the City of Helena water system for Fiscal Year 2022.

- L. A Resolution of Intention to set residential and commercial wastewater base and usage rates for Fiscal Year 2022.
- M. A Resolution granting a one-year extension of Resolution No. 20606, the Vacation of 6th Avenue between North Roberts and Sanders.
- N. A Resolution of Intention to levy and assess properties to recover the cost of removal of snow and ice from sidewalks on the adjacent public rights-of-way.
- O. A Resolution levying an assessment on properties to recover the cost reimbursement for water and wastewater infrastructure installed by the City for tax year 2021.
- P. A Resolution of intention to levy and assess properties to recover the amortized loans issued under the residential energy efficiency and renewable energy loan program for Tax Year 2021.
- Q. A Resolution of Intention to levy assessments for improvements of sidewalks, curbs, gutters and alley approaches in the City of Helena, Montana for Tax Year 2021.

(06:38) Discussion was had among the Commission and city staff surrounding the benefits of waiting until after the final budget adoption public hearing on June 28th, 2021 to pass Consent Agenda Item D.

(20:28) Commissioner Haladay indicated he would be interested in Tabling Consent Agenda Item D, until after the rates are officially adopted on June 28th, 2021, but approving all other Consent items, A-C and E-Q.

(21:57) Commissioner O'Loughlin moved to approve Consent Items A through C and items E through Q, with the amended language provided for Consent item B. Commissioner Dean seconded the motion. The motion passed 5:0.

(22:34) Commissioner O'Loughlin moved to table Consent Item D until after the Public Hearing on June 28th, 2021. Commissioner Haladay seconded the motion. The motion passed 5:0.

Bid Award

A. Lawrence & Warren Intersection Reconstruction Bid Award

(24:57) Transportation Systems Director, David Knoepke presented a summary of the Bid Award for Lawrence & Warren Intersection Reconstruction.

(27:23) Commissioner O'Loughlin asked Director Knoepke when the crosswalk was removed at 9th Avenue, if pedestrians were observed to cross in a different location. Director Knoepke acknowledged pedestrians were continuing to cross 9th Avenue after the crosswalk markings were removed. Director Knoepke added that this activity was observed during the height of the Covid-19 pandemic which may or may not contributed to it.

(30:20) Commissioner Dean commented that the reasoning behind the removal of the crosswalk and redirecting pedestrian traffic to 8th Avenue was because the previous location was found to be unsafe, however some of the public comments received by the commission seemed to indicate the previous location has become more unsafe without the crosswalk. Commissioner Dean asked Director Knoepke if he could address those concerns and how both the City and school district could mitigate those risks if a cross walk was put back in. Director Knoepke would not speak for the school district but reiterated the City's intent was to redirect pedestrian traffic away from 9th and funnel them to an enhanced crosswalk located near the main entrance of the school. Director Knoepke also explained that due to school bus activity at the previous location, by putting a crosswalk back in, the bulb-outs would result in a more difficult turn for the buses. Director Knoepke also described some alternatives such as turning Ewing into a south bound one-way to help eliminate some of the safety issues.

(34:32) Commissioner Logan asked Director Knoepke if the acceptance of the Bid award would prevent the commission from moving forward with any of the suggestions from staff or the public in the future. City Manager Harlow-Schalk confirmed they were not mutually exclusive and would not be affected by the Bid award.

(35:19) Commissioner Haladay asked Director Knoepke if the school had contacted him to say they were having similar issues with buses turning at the crosswalk with bulb-outs on 8th Ave and Director Knoepke confirmed they had not. Commissioner Haladay followed up by asking Director Knoepke if he had seen a video that was sent to the Commission that morning that seemed to show a city firetruck parked in the emergency lane, which resulted in kids walking around it on both sides in the street. Commissioner Haladay explained that during a portion of the video, two school buses could be seen driving past the firetruck. The Commissioner asked if the proposed bulb-out on 9th Ave would be wider than a city firetruck. Director Knoepke explained the size of the bulb-out is typically the same width as the parking lane between six (6') and eight (8') feet. Commissioner Haladay stated the width of the bulb-out was similar to that of the width of a city firetruck and the video demonstrated how a bus could navigate the driving lane while a firetruck was parked alongside it. Director Knoepke stated that he could not confirm or deny having not seen the video himself but based on the Commissioner's explanation, it sounded to be correct.

Public Comment

(39:09) Greg Wirth, resident at 501 State Street and member of the City Non-Motorized Travel Advisory Council, addressed the Commission and spoke in support of the Warren and Lawrence intersection improvements to shorten the crossing distance.

(43:40) City Engineer, Mark Young addressed Commissioner Haladay's earlier statements regarding the size of the bulb-outs. Mr. Young directed their attention to the plan included in their packets that indicated the bulb-outs would be approximately four (4') feet on both sides for a total of eight (8') feet.

(44:42) Kalli Kind, Director of the Helena School District Facilities Department, addressed the Commission and spoke in opposition to adding a crosswalk with bulb-outs back to the 9th Ave intersection citing it would result in buses sticking out beyond the bus lane and kids crossing in a blind spot. However, Ms. Kind spoke in favor of a crosswalk being constructed at the Warren and Lawrence intersection.

(48:02) Mayor Collins acknowledged Ms. Kind's concerns and asked how she thought they could solve the problem. Ms. Kind stated there have been administrative talks with solutions such as bringing kids through the building to the playground or breaking up grade levels and having kids come in at different designated entrances in an effort to alleviate that congestion. Kalli Kind stated they felt comfortable with a family including adults crossing at the 9th Ave intersection, but by putting in a crosswalk it would imply the intersection was safe and invite more pedestrian traffic.

(50:40) Commissioner Haladay asked city staff if the proposed Bid for the Warren and Lawrence intersection would help decrease the distance a bus could accelerate before reaching the 9th Ave intersection and staff acknowledged it would. Commissioner Haladay concluded by asking staff once a bus was heading south on Warren Street, if they were likely to turn left on 9th Ave or continue going straight. Staff confirmed buses would likely continue to drive straight.

(53:40) Commissioner Dean asked Kalli Kind if the school district had been in contact with parents to explain why they viewed the 9th Avenue intersection was unsafe. Ms. Kind began by addressing Commissioner Haladay's statement by explaining that the buses don't come up Lawrence Avenue, rather it was the acceleration of regular traffic that was her concern. Ms. Kind explained the buses needed to be able to come in traveling south on Warren Street and swing into a bus loop beyond 9th Avenue. Buses are tail to tail and should the 9th Ave crosswalk be re-installed, it would result in students crossing directly behind a bus.

(55:22) Kalli Kind addressed Commissioner Dean's earlier question by stating during the course of building the new Central School, they had a number of community meetings as well as a lot of personal communication with parents. Ms. Kind went on to say that both the design team of experts that were used in developing the new school as well as the City of Helena, all unanimously agreed that this intersection was not safe.

(57:00) Mayor Collins reiterated Commissioner Dean's question by asking Ms. Kind that since the school's development and the reemergence of the problems with that intersection, has the school communicated to the parents and stakeholders why they view the intersection as unsafe. Ms. Kind confirmed she had personally responded to emails and the principal of the school had similar communications as well as directly with parents. Ms. Kind acknowledged it was an ongoing conversation.

(58:16) Mayor Collins asked Ms. Kind what exactly the school district has done to address the problem and Ms. Kind explained they have changed where certain grade levels can be picked up on the campus to help alleviate that congestion. As a result of these changes, Ms. Kind has received feedback this has made some improvement. Mayor Collins stated he felt very strongly about the safety of the kids and though it was an ongoing conversation it was not addressing the situation and as a group, they need to find a solution.

(01:00:59) Commissioner Haladay asked Ms. Kind if she knew what date the internal processes were changed to have all students enter the campus at the playground entrance across from 9th Avenue which deviated from the original concept of having the students enter at the 8th Avenue entrance which was designed to be a safe crossing. Ms. Kind confirmed she did not know what date that changed, however she pointed out students can enter the playground on all four sides of the property through various gates. Ms. Kind stated she could not say for certain if there was formal communication that instructed kids to only go through the gate located at 9th Ave.

(01:02:22) Commissioner Haladay informed the group that the policy changed about five minutes after Central School opened its doors and this conversation was elevated to him as a commissioner and Principal John Stilson after him. The Commissioner asked Ms. Kind if she understood the frustration parents have when they hear after two years the conversation is still an evolving one and why isn't the school district trying to work toward a solution. Ms. Kind stated as a parent of elementary students herself, she could appreciate the concern of parents and stated that at this point all she could do was apologize. She stated her door and office were always open. Ms. Kind offered her phone number for the record should anyone want to contact her, (406) 431-2797. In conclusion, Ms. Kind stated she was committed to working with that community to find a solution.

(01:04:36) Commissioner Haladay asked Ms. Kind if a kid were to cross at 9th Avenue today, would the same problem be in existence and Ms. Kind concurred it would be. Ms. Kind stated she believed if the crosswalk was re-installed at 9th Ave, then it would be inviting more pedestrian traffic because it insinuates the crosswalk as being safe. Commissioner Haladay suggested it would be hard to invite more people to cross at 9th Ave because there already seems to be a heavy amount of traffic crossing at that location as it exists today. The Commissioner stated it was okay to say a plan failed and it's okay to look for better solutions in the future.

(01:07:07) Cort Harrington residing at 522 N. Davis Street addressed the Commission and spoke in favor of re-installing a marked crosswalk at 9th Ave citing it was not safer for pedestrians to cross at an unmarked crosswalk.

(01:13:17) Chelsea Segrest residing at 611 9th Avenue and Student Council President for the parents at Central School addressed the Commission and submitted a petition with over sixty (60) parent signatures in favor of re-installing a marked crosswalk and bulb-outs at 9th Ave.

(01:17:43) Kelli McLean residing at 711 N. Rodney Street and parent to Central School students addressed the Commission and spoke in favor of re-installing a marked crosswalk at 9th Avenue.

(01:21:01) Megan Harrington residing at 522 N. Davis and parent to a Central School student addressed the Commission and spoke in favor of re-installing a marked crosswalk at 9th Ave.

(01:23:42) Amy Barret, owner of Lasso the Moon located in Downtown Helena and resident at the corner of N. Davis Street and 9th Ave, addressed the Commission and spoke in favor of re-installing a marked crosswalk at 9th Ave. Ms. Barret stated she was a pedestrian who frequently walks to work and utilizes the un-marked crosswalk at 9th Ave.

(01:25:27) City Clerk Clayborn entered written comment into the record from Jerin Borrego residing at 416 N. Beattie Street who wrote in favor of re-installing a marked crosswalk at 9th Ave citing she utilized the un-marked crosswalk four times a day via bicycle and acknowledged it's heavy use by parents and children.

(01:26:40) Director Knoepke addressed the Commission and listed the following alternatives for pedestrian improvements to the intersection at 9th Ave and Warren:

1. The first alternative would include the bulb-outs and a crosswalk across Warren on the north side of 9th Avenue.
2. The second alternative would include bulb-outs and crosswalks across Warren on both the north and south sides of 9th Avenue.
3. The third alternative is a lump sum amount for the installation of irrigation into the new expanded landscaped boulevard areas at the Lawrence intersection.

(01:28:35) Commissioner O'Loughlin asked Director Knoepke if there had been discussions about the potential for creating a crosswalk that was slightly diagonal veering north from the south side of 9th and if so, what were the drawbacks if any for that alternative. Director Knoepke stated he did not know if that option was contemplated but said it was not human nature to cross north to go south and stay in the marked crosswalk. Director Knoepke acknowledged this option could be looked at further but typically they try to avoid diagonal crosswalks because it increases the length of time it takes a pedestrian to cross the street.

(01:31:58) Commissioner Dean asked Director Knoepke what the Commission could do to address some of the safety concerns in terms of the buses and if they were to adopt alternate number 2, what would happen to the fire lane and Director Knoepke stated the fire lane would stay the same. As far as what the Commission could do to help mitigate some of the safety concerns, Director Knoepke suggested allowing city staff to look at making N. Warren Street a one-way. This option would mitigate not only the congestion in that area but also address the snow berming in the bus and parent drop off area.

(01:34:50) Mayor Collins stated that creating a one-way would take a lot of time and spoke in favor of a more immediate solution. As such, the Mayor asked Director Knoepke if they could do both – look at creating a one-way on Warren and re-installing a marked crosswalk at 9th Avenue. Director Knoepke confirmed they could.

(01:35:23) Commissioner Logan asked city staff if the Commission were to approve alternatives 2 and 3, at what point did she think the city could look at converting Warren into a one-way. Director Knoepke confirmed they could begin looking at this option immediately such as reaching out to the community in the area. Director Knoepke informed the Commission a project like this could carry over into the next school year however, it would be ideal to implement the change prior to the start of school.

(01:36:38) Commissioner O'Loughlin stated she would be hesitant to move quickly on a directional change of the street. She was in favor of allowing staff to evaluate the option further and consider the potential impacts but cautioned not to let today's decision to be considered a consensus by the City Commission to move forward with converting the street to a one-way.

(01:37:56) Manager Harlow-Schalk asked Director Knoepke how long a study would take and how much research he had already done that would suggest a one-way could improve this area. Director Knoepke explained the option of converting Warren into a one-way was always discussed as well as during the original planning stages for the new Central School. He could not recall if the option was ever put out to the public for comment but suggested they could reach out to the parents over the summer. Director Knoepke also pointed out that 7th Ave between Warren and Cruse is a westbound one-way which would create a circular motion around the school as not to conflict with the existing one-way or traffic flow. In conclusion, Director Knoepke stated the option for converting Warren to a one-way was not as widely discussed as the bulb-outs and he recommended staff take the time and necessary steps to consider it before making a final decision.

(01:42:15) City Clerk Clayborn read written comment into the record on behalf of Stewart Segrest residing at 611 9th Avenue in support of re-installing a marked crosswalk at 9th Avenue.

(01:42:47) Commissioner O’Loughlin made a motion to award the base bid and added alternatives 2 and 3 for the Lawrence & Warren Intersection Reconstruction Project, City Project #19-08, to Helena Sand & Gravel in the amount of Two hundred thirty-eight thousand seven hundred sixty-nine dollars (\$238,769). Commissioner Haladay seconded the motion. The motion carried 5:0.

B. 6th Ward Sidewalk Repair Services Award

(01:44:21) Transportation Systems Director, David Knoepke presented a summary of the Bid Award for the 6th Ward sidewalk repair services.

(01:45:22) Commissioner Dean asked what the timeline was for getting this completed this summer. Director Knoepke stated it was their hope to expend as much if not all of the money this summer.

There was no public comment for this item.

(01:46:15) Commissioner Dean made a motion to award the 6th Ward Sidewalk Repair Services contract, Project TSD-36, to White Resources Group, Inc. for an amount not to exceed Two Hundred Thousand Dollars (\$200,000). Commissioner O’Loughlin seconded the motion. The motion carried 5:0.

Communication/Proposals from Commissioners

(01:46:43) There were no communication/proposals from the Commissioners.

Report of the City Attorney

(01:46:51) City Attorney offered a brief update on the Beattie Street Trailhead case where the city was being sued by individuals to stop the project. Last week however, the plaintiffs voluntarily dismissed with prejudice. So, the case is formally done.

City Attorney Jodoin had nothing to report for litigation strategy.

Report of the City Manager

A. City of Helena Preliminary Budget for Fiscal Year 2022

(01:48:17) City Manager, Rachel Harlow-Schalk introduced the official submittal of the City Manager’s budget. A copy of the summary was also handed out to the Commission.

(02:03:31) Commissioner O’Loughlin asked Manager Harlow-Schalk if General Fund line reflects all of the proposed transfers from the General Fund to other funds and Manager Harlow-Schalk confirmed it did cover all the transfers. Commissioner O’Loughlin asked where that transfer was reflected in the General Fund line and Manager Harlow-Schalk explained they did not put the total transfers on this chart. Commissioner O’Loughlin questioned if it was the City’s plan to use the remaining \$766,677 funding from the CARES money as amendments to the FY21 budget for additional expenditures, primarily golf and health insurance. City Manager Harlow-Schalk explained this was confused after she submitted the suggestion, but the reason this item was coming tonight was to increase the spending authority within the budget. Manager Harlow-Schalk continued, “The total revenue received by the City to date is sufficient enough to cover this. My suggestion was around not needing to do it because we already had spending authority within the \$1.4 Million (total CARES money received). So, there is no need to change this item up because we have the revenue. We are just asking for the spending authority. So, if you think of the \$10 Million dollar ending balance that we projected, it’s within that \$10 Million dollar ending balance.”

(02:08:14) Commissioner Haladay asked if the \$1.18 Million under the 440 – General Capital fund was the remaining balance and Manager Harlow-Schalk confirmed it was. Commissioner Haladay spoke in support of having an itemized report to help the Commission look out potentially ten years into the future for the Capital

fund, similar to that of the CCIP used under previous City Managers. The Commissioner stated that the remaining \$1.18 Million indicated to him that the City has fiscal obligations for FY23 and so on. For that reason, Commissioner Haladay concluded they could not run that fund to \$0. The Commissioner asked if there was anything that could reference those City expenditures in future fiscal years so they could know how much of the \$1.18 Million was already spoken for. City Manager Harlow-Schalk stated she did not at this time but stated she and Director Danielson have been looking at the vehicles such as the tandem and fire trucks, which are the largest charges to the Capital fund. The City was already under a loan for these vehicles through InterCap Lending.

(02:14:19) Commissioner Haladay asked Finance Director, Sheila Danielson if she had a chance to look at the CCIP last used in FY18 which would've just listed FY22 and FY23 fiscal obligations. Director Danielson confirmed she has reviewed it and Budget Analyst Chris Couey also sat down with each department and reviewed their capital assets for the next few years. Director Danielson questioned the integrity of the CCIP document. She confirmed Commissioner Haladay's earlier assessment that should they deplete the remaining \$1.18 Million in the Capital fund, it would leave no funding for future equipment. Director Danielson also reminded the Commission that almost \$2 Million is proposed to be transferred from the General fund to the Capital fund in FY22 in order to pay for ongoing maintenance and operation costs. Commissioner Haladay expressed his concern for not having a clear picture of the Capital fund and stated that transfers from the general fund have traditionally kept the capital fund steady but not necessarily "healthy."

(02:18:26) Director Danielson stated that in her experience she did not think the Capital fund had been run in a fiscally sound way for managing ongoing fleet and equipment costs. Rather, she suggested an equipment rental and replacement fund where each vehicle or piece of equipment is listed out as well as its lifespan. These include a funding mechanism that charges users of that particular vehicles each year so when the time comes to replace it, the City can. Director Danielson stated she was currently working with Finance staff to develop a new method for this fund, however informed the Commission it would not solve the cash balance in just one year. "I can clearly tell you right now that that fund does not have enough money in it to fund the ongoing replacement of vehicles over the next five to ten years." Director Danielson agreed that presenting a long-term capital program plan in a budget document was normal procedure. However, there is currently no real mechanism to do that at this point for this fiscal year. "But it has also been my experience to propose a long-term capital project plan that goes five to ten years and also identifies funding sources so that the Commission can have that at their disposal to look at and analyze for future need."

(02:21:28) Manager Harlow-Schalk added the City also lowered their debt in the general capital fund this year. She stated they were not only trying to think creatively around replacement, but also what type of debt the city is taking on. Manager Harlow-Schalk expressed her desire to see a dedicated look on how much annual funding the city needs to be setting aside to be proactive against vehicle replacements, especially for the larger and more expensive trucks when the time comes for those to be replaced.

(02:24:30) Commissioner Haladay expressed his concern about the fund citing he did not believe the Commission's previous practice of transferring \$450,000 annually from the general fund will get them back to solvent in the coming years. The Commissioner cautioned that the fund should have a recurring dollar amount attached to it and if it was not thought of as a recurring fund, then the budget will only be looked at incorrectly as one-time money. In conclusion, Commissioner Haladay warned that if this practice did not change, the fund would continue to slip behind year by year.

There was no public comment.

(02:26:24) Commissioner Dean made a motion to accept the City Manager's budget submittal as the Preliminary Budget beginning the process of public hearing which will take place on June 28, 2021. Commissioner Logan seconded the motion. The motion carried 5:0.

Communications from the Helena Citizens Council

A. Helena Citizens' Council Budget Recommendation FY 2022

(02:27:12) HCC representative, Nancy Perry gave a report.

There were no public comments.

Regular Items

(02:31:02) Review of Regular Items

- A. Consider a Resolution expanding the boundaries of the Street Maintenance and Improvements District No. 1 for Fiscal Year 2022.

(02:31:15) City Manager Harlow-Schalk presented a summary of the Resolution expanding the boundaries of the Street Maintenance and Improvements District No. 1 for Fiscal Year 2022.

(02:32:15) Commissioner O'Loughlin asked city staff if it made sense to table Regular Item A given the Commission decided to table the hearing for the Street Maintenance and Improvements until after June 28th, 2021. City Attorney Jodoin stated it made sense to pair the items together and the delay would provide an opportunity for the city to include any additional annexed property over the next month or two so as not to delay them another year.

There were no public comments.

(02:33:11) Commissioner O'Loughlin moved to table the resolution expanding the boundaries of the Street Maintenance and Improvements District No. 1 for Fiscal Year 2022 and place it on a future agenda item following the public hearing on June 28th, 2021. Commissioner Logan seconded the motion. The motion carried 5:0.

- B. Consider a Resolution expanding the boundaries of the Open Space Maintenance District #1 for Fiscal Year 2022.

(02:33:54) City Manager Harlow-Schalk presented a summary of the Resolution expanding the boundaries of the Open Space Maintenance District #1 for Fiscal Year 2022.

There were no public comments.

(02:34:28) Commissioner Haladay made a motion to approve a Resolution expanding the boundaries of the Open Space Maintenance District #1 for Fiscal Year 2022. Commissioner Dean seconded the motion. The motion carried 5:0.

- C. Consider a Resolution of Intention to amend the Revised Final Budgets, Budget Authorities, and Appropriations for the Fiscal Year Beginning July 1, 2020 and Ending June 30, 2021 for the City of Helena, Montana by amending Resolution No. 20609 to increase appropriations by \$760,000 and set a public hearing for June 28, 2021.

(02:35:16) City Manager Harlow-Schalk presented a summary of the Resolution of Intention to amend the Revised Final Budgets, Budget Authorities, and Appropriations for the Fiscal Year Beginning July 1, 2020 and Ending June 30, 2021 for the City of Helena, Montana by amending Resolution No. 20609 to increase appropriations by \$760,000 and set a public hearing for June 28, 2021.

(02:35:58) Commissioner O'Loughlin asked city staff how this item would impact the preliminary budget they were working from for June 28th, 2021. Director Danielson explained these changes had already been incorporated into the projected column for the Fiscal Year 2022 budget and no further impact to the funds would be necessary.

(02:36:55) Commissioner O'Loughlin asked Director Danielson if it was still the city's intention to bring an item for approval that would address the golf general fund transfer reflected in FY21 of approximately \$200,000. Director Danielson stated that transfer was reflected in the projected column for the FY22 budget and with its approval, it would also signify the Commissions approval of that transfer. City Attorney Jodoin agreed with Director Danielson. Director Danielson clarified that it was a proposed transfer that was in the previous fiscal year. City Manager Harlow-Schalk added that it was the loan payment that the city does not have the accounting established for yet.

There were no public comments.

(02:37:08) Commissioner Haladay made a motion to approve a Resolution of Intention to amend the Revised Final Budgets, Budget Authorities, and Appropriations for the Fiscal Year Beginning July 1, 2020 and Ending June 30, 2021 for the City of Helena, Montana by amending Resolution No. 20609 to increase appropriations by \$760,000 and set a public hearing for June 28, 2021. Commissioner Dean seconded the motion. The motion carried 5:0.

- D. Consider a Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program) approving the Form and Terms of the Loan Agreement and authorizing the execution and delivery of documents related thereto.

(02:40:16) City Manager Harlow-Schalk presented a summary of the Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program) approving the Form and Terms of the Loan Agreement and authorizing the execution and delivery of documents related thereto.

There were no public comments.

(02:40:44) Commissioner Logan made a motion to approve a Resolution authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program), approving the Form and Terms of the Loan. Commissioner Dean seconded the motion. The motion carried 5:0.

- E. Consider a Resolution vacating the full width of the alley adjacent to Lots 11,12,13 in Block 36 of the Flower Garden Addition to the City of Helena, Montana.

(02:41:29) City Manager Harlow-Schalk presented a summary of the Resolution vacating the full width of the alley adjacent to Lots 11,12,13 in Block 36 of the Flower Garden Addition to the City of Helena, Montana.

There were no public comments.

(02:42:21) Commissioner Dean made a motion to approve a Resolution vacating the full width of the alley adjacent to Lots 11,12,13 in Block 36 of the Flower Garden Addition to the City of Helena, Montana. Commissioner Logan seconded the motion. The motion carried 5:0.

- F. Consider City Project #18-15 Westside Water and Sewer Project Phase II Additive Alternative Change Order.

(02:43:06) City Manager Harlow-Schalk presented a summary of the City Project #18-15 Westside Water and Sewer Project Phase II Additive Alternative Change Order.

There were no public comments.

(02:44:37) Commissioner O'Loughlin made a motion to approve City Project #18-15 Westside Water and Sewer Project Phase II Change Order #7. Commissioner Dean seconded the motion. The motion carried 5:0.

- G. Consider a Resolution suspending the prohibition of consumption of alcoholic beverages and possession of open containers of intoxicating beverage on city property.

(02:45:46) City Manager Harlow-Schalk presented a summary of the Resolution suspending the prohibition of consumption of alcoholic beverages and possession of open containers of intoxicating beverage on city property. The staff report proposed the following two (2) options to be considered by the Commission.

Option 1: A Resolution suspending the prohibition of consumption of alcoholic beverages and possession of open containers of intoxicating beverages on city property citywide.

Option 2: A Resolution suspending the prohibition of consumption of alcoholic beverages and possession of open containers of intoxicating beverages on city property within the Downtown Urban Renewal District.

(02:50:17) Mayor Collins asked Manager Harlow-Schalk what the Commission directed city staff to do the last time the city had this issue. Manager Harlow-Schalk stated staff was directed to come back with a resolution, however they learned that the city does not have the latitude to only do events and they needed to consider the bigger picture.

(02:51:06) Mayor Collins expressed his support to move forward unless there were other Commissioners who wished to change it.

(02:51:12) Recalling the discussion had at the previous City Commission Administrative meeting, Commissioner O'Loughlin asked City Attorney Jodoin if the Commission were to approve Option 2 outlined in the staff report, could they also revise the highlighted language on Page 2 to include at the end "for events taking place on July 16th and July 17th, 2021" and then strike Section 3. City Attorney Jodoin stated it was possible, but expressed his concerns citing by only permitting a specific event, it would create an equal protection issue. "Those individuals consuming intoxicating and alcoholic beverages or possessing them in the Downtown or right outside the URD would be subject to the ordinance. I think there is a question there of equal protection. Secondly, my concern is that we would essentially be giving a permit for this one event without compliance to the City Code requirement that they provide liability insurance." City Attorney Jodoin stated for this reason, the City drafted two options that are broadly non-specific to a single event and fit it more as a legislative action which would be immune from action for damages and prevent it from being misconstrued as permission to one event.

(02:54:10) Commissioner Dean stated she did not have a problem with expanding this to events in general and not one specific event.

(02:54:28) Commissioner Logan stated he was uncomfortable with either of the two options, specifically the suspension of the ordinance as well as the short notice the Commission had to consider this action. Commissioner Logan stated there may be a public safety factor that the public largely wasn't yet aware of.

(02:55:45) Commissioner Haladay noted several open-air drinking districts across the country, including Butte Montana who scaled theirs back to restrict open container between the hours of 2:00 AM to 6:00 AM. In regard to the City's liability, Commissioner Haladay stated, "If the city is saying, if you choose to walk out of this bar with a plastic cup, we're not going to charge you with something. Nobody has to buy liability insurance for that because the city has just said drink them if you got them there." The Commissioner asked city staff what specifically was the liability concern. Manager Harlow-Schalk stated it was her obligation to bring the concern of just one event verses nine others to the Commission. In addition, Manager Harlow-Schalk stated they did not have the layers of good policy setting within those other jurisdictions that have already implemented theirs.

(03:00:05) Attorney Jodoin stated he was not concerned with liability to the City if as a legislative decision decided to allow open containers on its property or streets. Rather, his concern was with the regime they have now is that City Code requires a permit from the City, essentially an exception to its prohibition. Therefore, by granting the permit to do so, the argument would be if someone was hurt then the City has liability as well as defense costs. The risk would be if someone did decide to challenge the City, then the City and MMIA would be on the hook for it's own defense. For this reason, the city transfers the risk to the event holder and they assure the City by providing the insurance to cover those indemnification obligations. "If we are permitting a specific event when our code requires they get a permit and they provide insurance, then my concern is we are giving them special treatment, we are not complying with our ordinance, and a clever defense attorney would argue the City is somehow responsible for that."

(03:01:55) Commissioner Haladay asked city staff if there was a difference between event insurance and event insurance with alcohol and City Attorney Jodoin confirmed the City does not require insurance for special events, it is only the alcohol component permit that requires the insurance. However, there are

special events in city parks where the city does require the event organizer to provide insurance in general but it is unique to parks and the operations the Parks Department is running there.

(03:04:51) Commissioner Dean asked if there was a recommendation from staff regarding the other nine events and Manager Harlow-Schalk explained they all had already received the insurance and as a result were through the process.

(03:05:15) Commissioner O'Loughlin argued the event in question was slightly different in that the other events were likely using one alcohol vendor and are able to get insurance thru them.

(03:05:34) Mayor Collins asked city staff what examples of events they were referring to. Manager Harlow-Schalk stated they included public races and other outdoor events in parks. In regard to the insurance, Manager Harlow-Schalk stated, "Just because it is a larger event, doesn't mean they couldn't get the insurance. It is absolutely available to them. It's just a choice." Commissioner O'Loughlin stated the difference in location played a factor. City Manager Harlow-Schalk explained the reason the city required the open container permit was to transfer that liability away from the City and to the event organizer. But regardless of the location or size of the event, the insurance was still required. Whenever there was open consumption, insurance was required for the event.

Public Comments

(03:08:18) David Nielsen residing at 1170 Mendocino Drive addressed the Commission and spoke in opposition to suspending the prohibition of consumption of alcoholic beverages and possession of open containers of intoxicating beverage on city property.

(03:12:27) Kev Hamm representing Big Sky Pride addressed the Commission and spoke in favor for suspending the prohibition of consumption of alcoholic beverages and possession of open containers of intoxicating beverage on city property. Mr. Hamm stated he was having difficulty finding event insurance including from the one's the City had directed him to, due to Big Sky Pride not taking a portion of the proceeds nor serving the alcohol as a vendor. For this reason, all the insurance companies he spoke to stated they could not insure him since he was not the vendor. Because by the laws of Montana, only the people who vend are liable.

(03:15:36) Manager Harlow-Schalk stated she would personally reach out to MMIA again because she was told they did offer to events that did not have the vendor relationship.

(03:16:16) Mayor Collins asked Mr. Hamm if he had contacted MMIA. Mr. Hamm explained the information he got from city staff sent him to MMIA which then sent him to Payne West where a man told him they no longer offer that type of insurance. Manager Harlow-Schalk suggested there may be a need to change the conversation with local vendors and organizations that are offering the alcohol because the insurance covers multiple blocks, restaurants, and bars.

(03:18:27) Commissioner O'Loughlin commented that the way in which this item was brought to the Commission is unfortunate because it is well beyond the conversation they had. She was under the impression that the Commission had a general consensus to support this citing it was a unique event in the community. Commissioner O'Loughlin noted the number of emails they'd received in opposition to repealing the ordinance completely and she did not think that was the initial intent of the Commission after their discussion at the previous Administrative meeting. The Commissioner offered a temporary suspension of the open container ordinance for the purpose of those specific dates so the public understands that the intent of the Commission was not to fully repeal it. The Commissioner stated she recalled their discussion at the previous Administrative meeting indicated they could figure out how to move forward with this event as well as establish a process for other events moving forward. Commissioner O'Loughlin spoke in support of Commissioner Dean's earlier comment to allow this for other events as well.

(03:20:50) Mayor Collins agreed with Commissioner O'Loughlin and stated he felt blindsided because the agenda was not moving in the same direction as previously discussed in the Administrative meeting. Commissioner Dean suggested a Plan A where they don't change anything within City Code if they are able to establish event insurance through MMIA, and then Plan B would be to temporarily repeal the ordinance

with the intent to continue the overall policy discussion long-term. Commissioner O'Loughlin suggested the Commission take a motion, amend it and potentially table it until a specific date like June 21st, 2021. Then, come back to the Commission with something more in line with their previous discussions. Commissioner Haladay spoke in favor of Commissioner O'Loughlin's suggestion.

(03:24:31) Manager Harlow-Schalk expressed her concern with the amount of time before the event to establish good policy moving forward.

(03:25:35) Commissioner Logan stated he was comfortable following the code as it exists as it relates to events like this. The Commissioner stated he felt this was the first time they had brought this issue up as an agenda item for public hearing and that the subject and the conversation that occurred at the previous Administrative meeting amounted to a failure to notice for public hearing.

(03:27:08) Commissioner Haladay disagreed with Commissioner Logan's statements and explained the public hearing as well as the item's discussion was taking place at the current regular City Commission meeting. The Commissioner stated that the way the agenda was constructed was to have the Commission make the final decision at tonight's meeting and the Commission collectively did not seem to think the two options put forward were appropriate at this time. In conclusion, Commissioner Haladay spoke in favor of Commissioner O'Loughlin's suggestion to push the item out to a later due date so the Commission had more time to decide.

(03:29:42) City Attorney Jodoin asked for clarification from the Commission stating it seemed to be the general consensus of the Commission to waive the insurance requirement. The City would still require the permit and make sure the review of the streets are completed. However, it was the insurance that seemed to be the major factor with this particular event. In addition, no one vendor was comfortable covering another during the event.

(03:30:51) Commissioner O'Loughlin added that she recalled the discussion from the Administrative meeting began when the Commission was told in order to get past the insurance issue was to suspend the ordinance. The Commissioner spoke in favor of the City Attorney's suggestion of waiving the insurance requirement if that was also an option.

(03:32:54) Commissioner O'Loughlin made a motion to amend the Resolution suspending the prohibition of consumption of alcoholic beverages and possession of open containers of intoxicating beverage on city property within the Downtown Urban Renewal District as follows:

- 1. On Page 2 to include at the end “, for events taking place on July 16th and July 17th, 2021” and strike Section 3. Commissioner Haladay seconded the motion. The motion passed 4:1.**

(03:34:03) Commissioner O'Loughlin made a motion to table the Resolution suspending the prohibition of consumption of alcoholic beverages and possession of open containers of intoxicating beverage on city property within the Downtown Urban Renewal District as amended and to be placed on the agenda for the regular City Commission meeting on June 21, 2021. Commissioner Haladay seconded the motion. The motion carried 4:1.

There were no public comments.

- H. Consider first passage of an ordinance repealing or amending Chapter 14, Consumption of Alcoholic Beverages on City Property of Title 7, Public Ways and Property, and Chapter 1, Part 1, Possession of Intoxicating Beverages of Title 5, Police Regulations, of the Helena City Code.

(03:35:19) Commissioner O'Loughlin made a motion to table an ordinance repealing or amending Chapter 14, Consumption of Alcoholic Beverages on City Property of Title 7, Public Ways and Property, and Chapter 1, Part 1, Possession of Intoxicating Beverages of Title 5, Police Regulations, of the Helena City Code. Commissioner Haladay seconded the motion. The motion carried 5:0.

Public Communications

There were no public comments.

Meetings of Interest

There were none.

Adjournment

There being no further business to come before the City Commission, the meeting adjourned at 9:36 PM.

MAYOR /S/ WILMOT COLLINS

ATTEST:

/S/ DANNAI CLAYBORN
CLERK OF THE CITY COMMISSION