

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
October 15, 2018 - 6:00 P.M.
City Commission Chambers, Room 330

- Time & Place** A regular City Commission meeting was held on Monday, October 15, 2018 at 6:00 p.m., in the City Commission Chambers, 316 N. Park Avenue, Helena, Montana.
- Members Present** Mayor Collins indicated for the record that City Commissioners Farris-Olsen, Haladay, Noonan and O'Loughlin were present. City Attorney Thomas Jodoin, Interim City Manager Troy McGee and Assistant to the City Manager Alan Miller were present.
- Pledge of Allegiance** Mayor Collins asked those persons present to please stand and join him in the pledge of allegiance.
- Minutes** The minutes of the regular City Commission meeting of September 24, 2018 were approved as submitted.
- Board Appointments** BOARD APPOINTMENTS:
A. City-Count Consolidated Planning Board

Mayor Collins recommended the following appointments:
Appointment of Ann Schwend to the Planning Board. First term will begin upon appointment and expire September 1, 2021.
- Public Comment Mayor Collins asked for public comment, none was received.
- Motion** **Commissioner Haladay moved approval of the board appointment as outlined above.** Commissioner O'Loughlin seconded the motion. All voted aye, motion carried.
- Consent Agenda** CONSENT AGENDA:
A. Claims

Interim City Manager McGee recommended approval of the claims.
- Public Comment Mayor Collins asked for public comment, none was received.
- Motion** **Commissioner O'Loughlin moved approval of Item A on the consent agenda.** Commissioner Haladay seconded the motion. All voted aye, motion carried.
- Communications From City Commissioners** COMMUNICATIONS/PROPOSALS FROM CITY COMMISSIONERS
Mayor Collins called Mrs. Rose Casey forward, who paid tribute to MC Beeby for her dedication to the City of Helena and Mid-Towne 6th Ward Neighborhood Association. MC passed away on October 3, 2018.
Commissioner O'Loughlin extended her condolences to MC's family. Commissioner Noonan also acknowledged MC Beeby's dedication and hard work on behalf of the city. Commissioner Haladay echoed the previous comments and spoke of working with MC during his tenure on the HCC. Commissioner Farris-Olsen spoke of his interactions with MC and acknowledged and thanked Leroy Beeby. Mayor Collins spoke of MC's love of the 6th Ward.
Commissioner Farris-Olsen announced he will resign from the City Commission effective December 17, 2018.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

City Attorney Jodoin had no items to report on.

Report of the City Manager

REPORT OF THE CITY MANAGER

Interim Manager McGee reported the transfer station will be closed on October 22nd and 23rd for maintenance.

Interim McGee introduced Misty Edwards who will be taking the minutes. He also announced the hiring of Dannie Clayborn for the Deputy Clerk position, who will begin on October 29th.

Report from the Helena Citizens

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC Chair Sumner Sharpe had not items to report on.

Regular Items

- A. CONSIDER A RESOLUTION OF INTENTION TO ESTABLISH A MONTHLY CHARGE TO FUND THE RESIDENTIAL WATER AND WASTEWATER SERVICE LINE REPLACEMENT LOAN PROGRAM AND AMEND RESOLUTION 20488

Staff Report

Attorney Jodoin reported pursuant to the Helena City Code, property owners are responsible for maintenance and repairs, including emergency repairs, of water and wastewater service lines from the city main. On average, an emergency service line repair costs \$15,000 and thus presents a significant financial hardship. In order to help alleviate this hardship the City Commission proposes to establish the Residential Water and Wastewater Service Line Replacement Loan Program ("Program") which will provide zero percent interest loans to owners of single dwelling unit properties for the purpose of emergency water and wastewater service line repairs. The City Commission proposes to fund this Program through a monthly charge on the eligible property owners' water and wastewater bill.

The City Commission proposes the following additional monthly charges for owners of single dwelling unit properties to fund the Program: \$2.50 on the water bill, and a monthly charge of \$6.47 on the wastewater bill. These proposed charges were calculated based on the average number of emergency water and wastewater service line replacements over the last six years with an estimated average cost of replacement being \$15,000.

The collected charge will fund the Program which will provide financial assistance to eligible property owners facing emergency repairs due to a failed water or wastewater service line.

If passed, the resolution will increase the monthly water and wastewater charge for owners of single dwelling unit residential property.

Attorney Jodoin recommended approval of the resolution of intention to establish a monthly charge to fund the Residential Water and Wastewater Service Line Replacement Loan Program and Amend Resolution No. 20488 and to hold a public hearing on October 29, 2018.

Public Comment

Mayor Collins called for public comment, none was received.

Motion

Commissioner Noonan moved approval of the resolution of intention to establish a monthly charge to fund the Residential Water and Wastewater Service Line Replacement Loan Program and Amend Resolution No. 20488 and to hold a public hearing on October 29, 2018. Commissioner O'Loughlin seconded the motion.

Discussion

Commissioner Noonan stated several of the commissioners brought this up and he believes it is another way to create a safety net for our citizens.

Commissioner Haladay stated this is an affordability measure; there are several instances every winter where citizens are shocked when they have a failed water and/or sewer line and the costs to repair or replace. This program will assist those homeowners who need assistance.

Commissioner O'Loughlin thanked staff for the work on this and developing a recommendation for commission consideration. Other cities in Montana offer a form of this program; which will help those who need assistance, specifically for low to moderate income families.

Commissioner Farris-Olsen also thanked Attorney Jodoin for his work and specifically adding language for the 80% of poverty level language that basically doesn't require repayment until the property is sold.

Vote

All voted aye, motion carried. Resolution 20491

- B. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING REGULATIONS CONCERNING THE PARKING OF VEHICLES, TRAILERS, REVEATIONAL VEHICLES, AND BOATS ON CITY STREETS DURING WINTER BY AMENDING TITLE 7, CHPATER 8 OF THE HELENA CITY CODE.

Staff Report

Engineer Leland and Attorney Jodoin reported currently, the city has over 50 miles of snow routes. The ability to comply with the current snow policy and reach local streets is difficult during large snow events. Vehicles parked along snow routes makes clearing of the roadway troublesome. Towing of vehicles along these snow routes can only happen after a declaration of a snow emergency by the City Manager. Then notices and time allowance to remove vehicles has to occur. This ads time that allows for the snow on the ground to become packed down and more difficult to remove especially after it freezes.

The snow routes were revised in order to better manage snow plowing operations. The number of miles of snow routes was reduced from over 50 miles to just over 10 miles. This should allow the operators to clear the snow routes more quickly thus allowing them to reach the collector and local streets sooner. The towing portion of the ordinance should allow for quicker response to snow events and plowing of the snow along snow routes. The other portion of the towing revisions is to remove stored items from the public right-of-way. Plowing next to these stored items over time narrows the roadway causing a safety issue for all the travelling public. The revised ordinance would allow for these stored items to be towed from the right-of-way between specified dates.

The advantage to the ordinance change is it will provide a quicker response to snow events for the traveling public. Removal of vehicles allows for more thorough plowing.

Revised snow routes decrease the number of snow routes but those routes are captured in the priority of one and two routes. Increase in the number of vehicles/stored items being towed.

Engineer Leland and Attorney Jodoin recommended approval for first passage of an ordinance amending regulations concerning the parking of vehicles, trailers, recreational vehicles and boats on city streets during winter by amending Title 7, Chapter 8 of the Helena City Code and set a public hearing date of October 29, 2018.

Public Comment

Mayor Collins called for public comment.

Jess Rhoades stated she fully supports the ordinance and thanked the Commission for considering it.

Kim Abbott, 523 6th Avenue, stated this is a good solution and that an enforcement mechanism will help. Ms. Abbot expressed her concerns about the financial impact of being towed and encouraged the Commission to look at that.

Motion

Commissioner Haladay moved approval for first passage of an ordinance amending regulations concerning the parking of vehicles, trailers, recreational vehicles and boats on city streets during winter by amending Title 7, Chapter 8 of the Helena City Code and set a public hearing date of October 29, 2018.

Commissioner O'Loughlin seconded the motion.

Discussion

Commissioner O'Loughlin commented when the commission discussed this several months ago, there was a conversation to phase the proposal in and issue a warning for the first time. She is sensitive to the fact that this is a significant shift from the current practice. The commission needs to look at towing around the corner. She noted the language in 7-8-4 is being stricken and it makes sense to do so; it doesn't make sense to issue a notice once snow has fallen. However, there is a real need for an outreach effort this fall gearing into winter, so these neighbors understand the change. Commissioner O'Loughlin stated she fully supports the changes, but wants a little bit more follow-up.

Additional discussion was held on how to implement the new policy and reviewed how the City of Missoula's ordinance works. Interim Manager McGee noted staff will be prepared to address the issues at the public hearing on October 29th.

Commissioner Farris-Olsen suggested a fee waiver process could also be developed.

Commissioner Noonan clarified the reduction of emergency snow routes and how they created a situation where other streets never received adequate attention.

Vote

All voted aye, motion carried. Ordinance 3243

- C. CONSIDER A CURB CUT AND DRIVE APPROACH VARIANCE FOR THE PROPERTY LOCATED AT 720 AND 724 WEST CUSTER AVENUE.

Staff Report

City Engineer Leland reported Mountain View Co-Op has submitted building plans for a new gas station at 720 West Custer Avenue. The proposed preliminary plans reflect boulevard sidewalks and drive approaches adjacent to Custer Avenue, within MDT right-of-way. However, through MDT review, MDT is requiring the drive approach to be wider than City Standards. MDT is reviewing the plans because the drive approaches access MDT ROW. The applicant is requesting a variance from the standard width to comply with the request from MDT.

Granting this variance would defer all drive approach and curb cut requirements to MDT for work along West Custer Avenue at this location.

Engineer Leland stated the motion is approve, table, or deny a curb cut and drive approach variance for the property located at 720 and 724 West Custer Avenue. This variance would defer all drive approach

and curb cut requirements to MDT for work along West Custer Avenue at this location.

Discussion

Commissioner Haladay commented if the commission denies this variance, the property owner would not have access onto Custer Avenue. Engineer Leland stated there are a various jurisdictions involved; if denied, access would have to be off River Rock. This would create issues with trying to get the tankers in to fill the fuel tanks. The applicants have taken into consideration the future widening of Custer Avenue.

Commissioner Haladay stated Custer Avenue is dangerous and his concern is making this area safe for pedestrian traffic. It is frustrating when MDT worries about trucks rather than pedestrians.

Public Comment

Mayor Collins called for public comment.

Kevin McCormick, stated he works for a company that designed the store and has been working with MDT and the City of Helena. Mr. McCormick stated they are doing everything they can to provide a safe approach for vehicles and pedestrians.

Motion

Commissioner Noonan moved approval of a curb cut and drive approach variance for the property located a 720 and 724 West Custer Avenue. Commissioner O'Loughlin seconded the motion. Motion carried 4-1 with Commissioner Haladay voting no.

D. CONSIDER FIRST PASSAGE OF ORDINANCES AMENDING CHAPTERS 1, 2, AND 6 OF THE HEL ENA CITY CODE, TITLE 12, SUBDIVISION REGULATIONS.

Staff Report

Planner Morell-Gengler reported revisions to the City Subdivision Regulations have been prompted by legislative changes to the Montana Code Annotated (MCA) amending the Montana Subdivision and Platting Act (MSPA) which affect local subdivision regulations. Although most of the proposed revisions to the city regulations are to incorporate legislative amendments, additional changes are proposed to address the Legacy Ranch court ruling regarding public participation and extensions of preliminary plat approval. Comments from stakeholders meetings and staff-initiated proposals were also taken into consideration. A Consolidated Planning Board work session was held on October 19, 2017 to review proposed changes and to solicit comments on the planned amendments to the subdivision regulations. The Planning Board held a public hearing on November 21, 2017 and voted to recommend proposed changes to the city subdivision regulations.

The proposed changes to the City Subdivision Regulations were presented to the City Commission at an Administrative meeting on March 21, 2018. The Commission noted at that meeting that previous revision to the city subdivision regulations relating to installation of sidewalks generated considerable interest and discussion in the community. The Commission requested that staff meet with various groups, specifically the ADA Committee, Non-Motorized Travel Advisory Committee, Helena Citizens Council, and Montana Independent Living Project to discuss the proposed changes to the subdivision sidewalk installation proposal.

Staff held a stakeholders meeting on April 12, 2018 to discuss the proposed changes to the sidewalk installation timing for subdivision final plats. A summary of the meeting was sent to attendees and invitees with an invitation to provide further comments. Written comments from interested individuals and the minutes from the HCC April 25, 2018 meeting, which includes their recommendation, are included. The City Commission, at the September 5, 2018 Administrative meeting, reviewed the submitted comments and heard from interested individuals. Per discussions at those meetings, staff recommends the attached changes to the Planning Board recommendations to better clarify the final plat and infrastructure process. Staff will include the ADA Committee and the Non-Motorized Travel Advisory Committee on the "Request for Review and Comment" distribution list for subdivision review.

The ordinances amending the City Subdivision Regulations are being presented to the City Commission for approval of first passage and to set a public hearing date.

Approval of the amendments to the City Subdivision Regulations will update the regulations to better reflect the changes made to state law, recent court rulings, and community concerns.

Planner Morell-Gengler recommended the following: Approval of first passage of an ordinance adding a definition of phased development by amending Title 12, Subdivision Regulations, Chapter 1, Title, Purpose, and Definitions, of Helena City Code, and set a public hearing date of October 29, 2018.

Approval of first passage of an ordinance revising subdivision application requirements, extensions of preliminary plat approval, public improvement installation options, and final plat application requirements and review by amending Title 12, Subdivision Regulations, Chapter 2, Procedures, of Helena City Code, including recommended staff amendments, and set a public hearing date of October 29, 2018.

Approval of first passage of an ordinance amending revising subdivision application fee structure by amending Title 12, Subdivision Regulations, Chapter 6, Amendments, Fees, General Provisions, of Helena City Code, and set a public hearing date of October 29, 2018.

Discussion

Commissioner O'Loughlin thanked staff for the information regarding the process. She stated one issue is if 18-months is an adequate amount of time to install sidewalks; the other issue that was brought up was whether standard for an extension should be amended to include some type of weather hardship. Commissioner O'Loughlin asked Planner Morell-Gengler to comment on the two issues. Planner Morell-Gengler stated when a preliminary plat is approved, the city typically allows the developer three years to install the infrastructure; if a developer isn't able to complete the installation, staff is recommending a financial guarantee, so they would still have the 18-months with the financial guarantee. It would basically give the developer 4-years to complete the infrastructure. The developer could come back before the commission and ask for an extension. She explained the process if the financial guarantee was taken.

Commissioner Haladay asked why the recommendation is to use the internal process and to request comments from the ADA and Non-Motorized Committees and not include them in the more formal process where they would make a formal recommendation. Planner Morell-Gengler explained all comments received during the internal process are submitted to the commission with the packet. The review by the ADA and Non-Motorized Committees is not outlined in state law; unlike the role of the Planning and Parks Board. Ultimately, it is the commission who makes the final decision.

Commissioner Haladay noted his previous experience, when he served on the HCC, the requests for comments they seemed to be afterthought comments. Unless someone actually brought it up specifically at an HCC meeting there wasn't any formal discussion. However, when you elevate the process, the recommendations from the committees is also elevated. It seems more valuable to him to have a more formal recommendation from the ADA and Non-Motorized Committees.

Planner Morell-Gengler noted if that is the direction of the commission, staff will make the adjustments. Attorney Jodoin noted the ADA Committee meets once a quarter and often times, there is not a quorum. He will look at the resolutions creating the ADA and Non-Motorized committees to review their authority. Staff will work on draft language.

Commissioner Haladay stated if there is a timeframe when a recommendation is needed from the committees, those can be articulated.

Commissioner Noonan noted the ADA Committee has become more active in the last year. Commissioner Farris-Olsen concurred with Commissioner Haladay's comments.

Commissioner O'Loughlin asked Commissioner Haladay if he is comfortable moving forward and that his comments will be addressed internally through staff. Commissioner Haladay stated if there are three commission members who are interested in the language, he would be fine moving forward and have staff draft language prior to the public hearing. Attorney Jodoin noted he will draft the language; if it cannot be included for the October 29th meeting, that specific public hearing can be tabled.

Commissioner Noonan noted he supports Commissioner Haladay's language recommendation.

Public Comment

Mayor Collins called for public comment, none was received.

Motion

Commissioner O'Loughlin moved approval of first passage of an ordinance adding a definition of phased development by amending Title 12, Subdivision Regulations, Chapter 1, Title, Purpose, and Definitions, of Helena City Code, and set a public hearing date of October 29, 2018.
Commissioner Noonan seconded the motion. All voted aye, motion carried. **Ordinance 3244**

Motion

Commissioner Haladay moved approval of first passage of an ordinance revising subdivision application requirements, extensions of preliminary plat approval, public improvement installation options, and final plat application requirements and review by amending Title 12, Subdivision

Regulations, Chapter 2, Procedures, of Helena City Code, including recommended staff amendments, and set a public hearing date of October 29, 2018. Commissioner O’Loughlin seconded the motion. All voted aye, motion carried. **Ordinance 3245**

Motion

Commissioner Noonan moved approval of first passage of an ordinance amending revising subdivision application fee structure by amending Title 12, Subdivision Regulations, Chapter 6, Amendments, Fees, General Provisions, of Helena City Code, and set a public hearing date of October 29, 2018. Commissioner Farris-Olsen seconded the motion. All voted aye, motion carried. **Ordinance 3246**

- E. CONSIDER FIRST PASSAGE OF AN ORDINANCE PROHIBITING SELF-SERVICE DISPLAYS OF TOBACCO PRODUCTS AND THE SALE OF FLAVORED TOBACCO PRODUCTS IN STORES EXCEPT IN ADULT ONLY TOBACCO RETAILERS

Staff Report

Attorney Jodoin reported the state of Montana currently controls youth access to tobacco pursuant to the “Youth Access to Tobacco Products Control Act” (“Act”) found in Title 16, Chapter 11, Part 3 of Montana Code Annotated. The Act generally prohibits the sale and distribution of tobacco products, alternative nicotine products, or vapor products to anyone under 18 years of age. This includes the sale of tobacco products, alternative nicotine products or vapor products through vending machines, except in locations where alcoholic beverages are sold and consumed on premises. Section 16-11-311 of the Act permits local governments to adopt regulations on the same subject of the Act so long as such regulations are not more stringent.

The Act does not appear to directly regulate the sale of “self-service displays” which by definition are open displays of tobacco products wherein the products are accessible without assistance of the retailer. However, as explained above the Act does prohibit retailers from selling or distributing tobacco products, alternative nicotine products, or vapor products to individuals under 18 years of age. Further, §45-5-637, MCA, prohibits the possession of tobacco products, alternative nicotine products, or vapor products by persons under the age of 18. Thus, it would functionally be illegal under state law to have “self-service displays” which are accessible without assistance of the retailer since the minor would be able to possess the product in violation of state law and the retailer would be in violation of the Act.

The Act does not appear to regulate the sale of flavored tobacco products except to the degree that those products are tobacco products and may not be sold to minors.

Federal regulations (21 CFR 1140.14) already preclude the “self-service” displays of tobacco and smokeless tobacco by requiring the purchaser to produce identification during a face-to-face exchange. Similar to the Act, federal regulations do not appear to regulate the sale of flavored tobacco products except to the degree that those products are tobacco products and may not be sold to minors. The city of Helena presently has no substantive regulations on the sale of tobacco products. The prohibition of sale of flavored tobacco products except in adult only tobacco retailers would be a significant regulatory change in that any location that presently sells flavored tobacco, including menthol

cigarettes would not be permitted to allow anyone under 18 years of age in their establishment.

Staff does recommend an amendment to section 4-14-4 to clarify the phrase "adult only tobacco retailers" by stating "facilities where the tobacco retailer ensures that no person younger than 18 years of age is present, or permitted to enter, at any time."

This ordinance will provide an additional, local regulation of self-service displays of tobacco products which should not present substantively additional requirements of tobacco retailers.

Given the potential scope and impacts, the sale of flavored tobacco being limited to retail establishments where only adults are allowed may be challenged on the basis that the city does not have the authority to regulate flavored tobacco products or where such products may be sold. Functionally, the proposed ordinance would require retailers to remove flavored tobacco products from their establishment if they allow minors.

Attorney Jodoin recommended approval for first passage of an ordinance prohibiting self-service displays of tobacco products and the sale of flavored tobacco products in stores except in adult only tobacco retailers, and set a public hearing date of October 29, 2018.

Attorney Jodoin noted that first draft had exceptions for bars since applicable to vending machines. With the passage of this ordinance, it will regulate the sales except in adult-only retailers. He noted the argument can be made that because that Act references vaping and all tobacco products then it includes flavored tobacco. Attorney Jodoin would anticipate a challenge; this is already regulated by state law and the city may not have the authority. He would recommend that "adult only" is placed where no person under 18 is permitted. Bottom line is that all places in the city that sell flavored products would not be allowed to sell them, anywhere that 18 year olds are allowed. This would be a substantial change. Also, tonight is not the ordinance for regulation of 30-foot rule. The latter is for November 19.

Public Comment

Mayor Collins called for public comment and noted he will allow 25-minutes for both the proponents and opponents. The following persons addressed the commission in support of first passage of the ordinance: Jim Benish, 1302 Highland; Jody Medlar, American Cancer Society; Lois Fitzpatrick American Cancer Society; Deb Sargeant, School Nurse; Shannon Demee; Reg Hageman; Senator Mary Caferro; Dr. Greg Holzman; Representative Mary Ann Dunwell; Reverend Cathy Barkwell; Jean Branscum, CEO of Montana Medical Association; Lewis & Clark County Health Officer Drenda Neiman; and Robert Neiman.

The following persons spoke in opposition of first passage of the ordinance: Scott Leland, Friendly's Sinclair; Debra Monroe, High Country Travel Plaza; Mary Staigmiller, Town Pump; Marissa Harrington, District Manager for Town Pump; Brian Kelsey, Safeway; Jeff Toole, works for tobacco company; John Fleck, Cenex Zip; Shawn Hellums, local convenience store manager; Shirley Carson; Brenda Brewer, Man Store owner; Pat Roylance, Thriftway Super Stop; Patrick Brewer, employee of Man Store; Val Jeffries, Holiday Companies; Dax Cetraro, President of Montana Tavern Association; Eric Fore, Doyle Sheehan Wholesale Distribution; Tom Beers; Coremark International; Brad Longcake, Montana Petroleum and Convenience Store Association; Paula B., Friendly's Sinclair; Jeff, Friendly's Sinclair; and Marilyn Malyevac, Thriftway Super Stop Corporate Office.

Motion

Commissioner Noonan moved approval for first passage of an ordinance prohibiting self-service displays of tobacco products and set a public hearing date of October 29, 2018, excluding Section 4-14-4 - Sale of Flavored Tobacco Projects Prohibited. Commissioner O'Loughlin seconded the motion.

Discussion

Commissioner Noonan stated he is on board with idea of prohibiting self-service displays. He has reservations about prohibiting sales of flavored products. This is a distraction from initiative about cigarette taxes. Without buy-in from the county or state, we are in some ways picking winners and losers on who is going to succeed in their business.

Commissioner Farris-Olsen wanted to clarify he first proposed this ordinance in May and the public hearing will be held on October 29th. The commission has certainly heard from the public tonight. Commissioner Farris-Olsen stated he will vote for this, but does not think it goes far enough with the amendment to not prohibit flavored tobacco. If no one has self-service displays, that access does not exist now. The right thing to do would be to pass the full ordinance; however, that is not going to happen.

Commissioner O'Loughlin stated she supports moving forward as moved by Commissioner Noonan. She thanked Commissioner Farris-Olsen for bringing this forward and she believes it needs further conversation. She stated there is no question that products are designed to target children. Commissioner O'Loughlin stated the commission has not had enough opportunity to talk through various alternatives; we need to look at legal challenges. She supports moving forward with this, and continuing to look at what we should do. We need more time; this is a good first step and we continue these conversations.

Commissioner Haladay stated he will support the motion tonight with a certain amount of reluctance. He does not think we go far enough with this ordinance. He noted it is hard to listen to the assignment of monetary value as why we can't take public health steps. Commissioner Haladay noted Town Pump puts a \$1.2 million value on youth health, an incredible low value. It's a poison targeted toward children.

Commissioner Farris-Olsen stated he doesn't think he will be here to move this forward. However, he believes the commission has a responsibility to make sure kids are healthy.

Vote

All voted aye, motion carried. Ordinance 3247

Public Hearings**PUBLIC HEARINGS:**

- A. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW A 4236 GROSS SQUARE FOOT SPACE TO BE USED FOR A CSINO FOR A BUILDING ON LOT 2 REA MINOR SUBDIVISION LOCATED IN AN B-2 (GENERAL COMMERCIAL) ZONING DISTRICT, GENERALLY LOCATED NORTH OF REA AVENUE AND WEST OF WASHINGTON STREET, HELENA, MONTANA.

Staff Report

Community Development Director Haugen reported the applicant, Bridger Mountain LLC, is proposing to construct a casino on property located in the Rea Minor Subdivision. This subdivision is located west of Washington Street and north of Rea Avenue. This property is currently zoned B-2 and casinos are considered a Conditional Use in a B-2 zoning district. The site plan included in the proposal indicates approximately 20 gambling machines and a small bar is included in the

proposal and that is a use allowed by right. To the south of the property is a motel and a convenience store/casino. To the east of the property is the wastewater treatment plant.

Section 11-22-3 City Code requires casino uses to provide 14 parking spaces per 1000 sq. ft. The applicant's site plan indicates the required 56 spaces for parking and an additional 3 spaces meeting the requirements of ADA. There are no existing sidewalks adjacent to the subject property and in the immediate vicinity. Sidewalks would have to be installed as a requirement with the building permit. Bicycle racks will have to be installed as part of the parking requirements associated with that use.

Director Haugen reviewed the evaluation criteria required for the CUP

According to the traffic impact study completed for the project, the proposed casino will generate 301 vehicle trips per day. A supermarket of similar size would generate about 500 vehicle trips per day. The traffic impact plan further states "that the overall traffic impact of Heidi's Casino on Custer Avenue will be a 0.6% increase in peak-hour traffic volumes and that will result in an average increased driver delay of 0.1 seconds at the adjacent intersections."

On September 11, 2018, the Helena Zoning Commission held a public hearing to consider the CUP. A copy of these minutes are attached to this memo. No letters were received regarding the proposal and no one spoke in opposition or in favor of the proposal other than the applicant. The Zoning Commission voted to recommend approval of the CUP without any conditions.

The use allowed by this CUP is similar to other uses allowed by right in the B-2 District when considering the potential impacts on traffic, local services etc.

Director Haugen recommended approval of a resolution granting a Conditional Use Permit (CUP) to allow a 4,236 gross square foot space to be used for a Casino for a building on Lot 2 Rea Minor Subdivision located in a B-2 (General Commercial) Zoning District, generally located north of Rea Avenue and west of Washington Street in the City of Helena, Montana.

Public Testimony

Mayor Collins declared the public portion of the hearing open and called for any public testimony.

There being no public testimony, Mayor Collins closed the public portion of the hearing.

Motion

Commissioner O'Loughlin moved approval of a resolution granting a Conditional Use Permit (CUP) to allow a 4,236 gross square foot space to be used for a Casino for a building on Lot 2 Rea Minor Subdivision located in a B-2 (General Commercial) Zoning District, generally located north of Rea Avenue and west of Washington Street, Helena, Montana. Commissioner Noonan seconded the motion. All voted aye, motion carried. **Resolution 20492**

- B. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT (CUP) TO ALLOW A 634 GROSS SQUARE FOOT SPACE GENERAL OFFICE PURPOSES IN AN EXISTING BUILDING ON LOTS 11-13, BLOCK 1, MONTANA AVENUE ADDITION IN AN R-3 (RESIDENTIAL) DISTRICT, GENERALLY LOCATED SOUTH OF 5TH AVENUE AND WEST OF MONTANA AVENUE, HELENA, MONTANA.

Staff Report

Director Haugen reported John and Melissa Lewis have applied for a Conditional Use Permit to allow a 634 sq. ft. space on their property to be used for General Office purposes. The property is located at 1127 5th Avenue. If granted, this CUP could be used for any business that qualifies as a "General Office Use" under the current code. General Office use is defined as "professional and personal care services where customers come to the property for the service, including engineering, accounting, legal, architectural, real estate, insurance, photography, fitness, weight loss, postal, hairstyling, pet grooming, copying and printing, and laundry and dry cleaning services." Section 11- 22-3 City Code requires General Office uses to provide 3 parking spaces per 1000 sq. ft. Based on the applicant's information, the office use is 634 sq. feet which would require 2 spaces. In addition, the applicant must provide a parking space that complies with the standards set in the Federal American with Disabilities act. There are existing sidewalks adjacent to the subject property and vicinity and bicycle racks are located on site to help accommodate non-motorized travel. There are no modifications being proposed to the building in order to convert it to an office use. Any modifications that would be required to accommodate other general or professional uses such as a beauty salon will have to be done in accordance with all currently adopted building and fire codes. There will be some additional traffic than would occur if the building was used as just a two unit residential dwelling. If the applicant were living in the building, then the proposed office use could be considered a home occupation.

On September 11, the Helena Zoning Commission held a public hearing to consider this CUP request. A copy of the minutes from that hearing is attached to this memo. At the hearing the applicant offered to reduce the amount of square footage to be used as office space in order to address some of the concerns that were expressed by the neighbors. As of Tuesday, September 6, 2018, the Planning Division had received four letters regarding the proposal. Three of the letters were in favor and one opposed the project. All letters are attached to the staff report. Subsequent to the Zoning Commission hearing, the City has received one more letter of support and one petition with five signatures against the proposal. A separate petition with 15 additional signatures has also been received in the Community Development department. Objections to the proposal were primarily focused around concerns for allowing commercial uses to further encroach into the residential neighborhood, possible increase of traffic, and parking concerns in the neighborhood. After consideration of the evidence in the staff report and that information presented at the public hearing, the Zoning Commission recommended approval of the CUP without any conditions.

The use of this space is typical of a mixed use that would be found in this area. The proximity of this property to the Capitol complex and to a minor arterial would have a less intensive impact than would a similar use in other parts of the neighborhood.

Allowing a commercial use of any type may impact the residential character of the neighborhood and the historic uses associated with that neighborhood.

Director Haugen recommended approval of the resolution granting a Conditional Use Permit (CUP) to allow a 634 square foot office space located in an R-3 (Residential) District; for property legally described as: Lots 11-13 Block 1 of the Montana Avenue Addition, Helena Montana, generally located south of 5th Avenue and west of Montana Avenue.

Public Testimony

Mayor Collins declared the public portion of the hearing open and called for any public testimony.

Melissa Lewis noted she and her family lived in the home for over ten years and both she and her husband used it as home offices. However, at this time, it is no longer their primary residence.

Ms. Lewis stated she visited with neighbors and at that time, there were no concerns raised. However, once the notice was sent out, a petition in opposition was circulated to the neighbors and beyond the neighborhood. They are not seeking any changes to the egress of the property. Ms. Lewis noted they held two public meetings at their home and only one person attended. After hearing the concerns the CUP is forever and can never be dissolved; she recommended adding language the CUP would terminate on the sale of the home and limits the use to homeowners, which would prevent from subleasing. Ms. Lewis reviewed the language included in the petition in opposition and spoke on each of the bullet points.

John Lewis, applicant, stated they have tried to do the right thing. The petition cites increased parking and traffic; however, there is nothing different about the business today. Mr. Lewis noted after the petition was submitted, he went door-to-door to speak with the neighbors; two people asked to be retracted, and another by letter today.

Jeff Lane, lives near the owners and requested that the applicant be the only tenant. Mr. Lane stated he does not see any risk of increased traffic in the area. He noted the City does not have an Airbnb definition and believes the city should address that issue. If conditions can be added, he does not see a problem.

Christi Pinozzo spoke in support of the CUP and does not believe it would alter the neighborhood or community.

Dan McLane, 1109 Breckenridge, stated he signed the petition due to the idea of businesses in the neighborhood bothered him; however, he does not oppose the CUP after hearing what the applicant is proposing and has described.

Brad Kuhn, Engineer, stated he helped with the site plan for the applicants. There is up to 7 spaces vs. only the 3 required.

Pam Worthy, neighbor across the alley, spoke in opposition to the CUP. Mr. Worthy noted she was favorable towards the use at first. However, she spoke on the concerns outlined on the petition submitted to city staff which include lack of sufficient available parking for the proposed upstairs business accessed by residential alley; the decreased health & safety of children, pets and other residents particularly at the juncture of this alley and Dakota Street; the general erosion of the residential and historic nature and enjoyment of this neighborhood; and the reduction of some residential property values.

There being no further public testimony, Mayor Collins closed the public portion of the hearing

Discussion

Commissioner O'Loughlin noted the applicant has suggested putting two conditions on the approval of the CUP and asked if the city commission can consider certain types of conditions on the proposed CUP. Attorney Jodoin referenced the conditions suggested by the applicant and noted conditions are placed on the property itself and not the owners of the property. Staff would have no way of tracking the conditions suggested by the applicant.

Commissioner O'Loughlin stated the law states if the property is not used for 30-consecutive days, the CUP ceases to exist and asked

what happens in that scenario, would the owner have notify the city they are no longer using the CUP. Attorney Jodoin stated we have not had that situation; however, the city would have the burden of proof to show they had that gap in continuous usage.

Commissioner Haladay referenced the requirements for ADA parking spaces and asked why access to the upstairs is not part of this discussion. Director Haugen stated while there is a requirement for ADA parking, however, it would be allowable for the property owner or business to provide service to a person needing access. It is a standard to require ADA parking and up to the applicant to provide access. Commissioner Haladay commented someone could build a new commercial structure and not have access to the 2nd floor. Director Haugen stated for new structures, there are building code requirements that include ADA accommodations. However, for existing or historical buildings, you do not have to comply with ADA requirements for access to the second floor. If it was a different use than the existing one, ADA requirements would have to be met.

Commissioner Haladay stated since conditions cannot be placed on the CUP, it will run with the property until the use is changed; what do we do to insure compliance for persons with disabilities that may need to get up the stairs. Director Haugen stated if the use were to change, in order to get a business license they would need to meet all requirements or make alterations. Home businesses are intended for professional offices. Attorney Jodoin stated it is a structural change that would require the applicant to meet the building codes; the type of occupancy could result in meeting the ADA requirements. There is no structural change being proposed.

Commissioner Haladay mentioned Airbnb's and land use and noted many places in Helena have this and asked how we are making this determination of whether it is a single family residence or some type of lodging motel. Director Haugen said a lot of jurisdictions have adopted a strict definition for Airbnb's; however, we do not. The city has no regulations nor licensing category for these, but would like to.

Commissioner Haladay asked whether we have distinctions between renting a single room in a home vs. an entire location being rented or made into a business. Director Haugen stated the city has a definition of what dwelling unit is; a motel room does not meet that definition. We do know that people in the city rent their house or their apartments. The applicant's house has two residential dwelling units, which are permitted. The city does not have a definition on how a property owner can use their house, in terms of renting it out or not. The difference between renting the dwelling unit and operating certain businesses, you cannot get a permit to operate certain businesses as they are not allowed. The Airbnb's aspect of this is not associated with this use; it is one approach that some cities allow. The applicants tonight could choose to rent out both dwelling units; the city has not set a length of time you can rent a place. This is a definition that needs to be worked on.

Commissioner O'Loughlin asked Ms. Lewis for clarification on the proposed available parking; it there is a two car garage and two parking spaces available in the driveway. Ms. Lewis noted there are three spaces available in the driveway, the two-car garage and two dedicated parking spaces on 5th Avenue for a total of 7 parking spots.

Commissioner O'Loughlin asked if the 2nd unit is rented, will the occupants park in the garage and Ms. Lewis, as the business owner, would they park in the driveway and not on the street. Ms. Lewis stated

it would be nice to have both the driveway and on-street parking as options.

Commissioner O'Loughlin acknowledged the vast amount of information that was provided to the commission for their review. This is a reasonable request and is not significantly different from the current use. Commissioner Haladay echoed Commissioner O'Loughlin's comments and noted the most troublesome aspect for him is the loss of single family housing and there is no basis in the record to deny this CUP.

Motion

Commissioner O'Loughlin moved approval of a resolution granting a Conditional Use Permit (CUP) to allow a 634 square foot office space located in an R-3 (Residential) District; for property legally described as: Lots 11-13 Block 1 of the Montana Avenue Addition, Helena Montana, generally located south of 5th Avenue and west of Montana Avenue. Commissioner Farris-Olsen seconded the motion. All voted aye, motion carried. **Resolution 20493**

Public Communications

PUBLIC COMMUNICATIONS

Matt Vincent distributed a letter that addressed a letter signed by Mayor Collins urging readers to vote in favor of Initiative I-186. Mr. Vincent then spoke on the content of his letter and Executive Summary on The Economic Contribution of Montana's Hardrock Mining Industry.

Brian Copeland announced an opportunity to help with the homelessness crisis on Saturday, October 20th from 10:00 a.m. to 2:00 p.m.

Meetings of Interest

MEETINGS OF INTEREST

Commission meeting on the realignment of Cruse Avenue – October 17, 2018 – 3:00 p.m. – Room 326, City-County Building.

Administrative Meeting is scheduled for October 24, 2018, and the next City Commission Meeting is October 29, 2018.

Adjournment

There being no further business to come before the City Commission, the meeting was adjourned at 9:30 p.m.

/S/ WILMOT COLLINS
MAYOR

ATTEST:

/S/ DEBBIE HAVENS
CLERK OF THE CITY COMMISSION