

**CITY OF HELENA**  
**REGULAR CITY COMMISSION MEETING**  
**December 17, 2018 - 6:00 P.M.**  
**City Commission Chambers, Room 330**

**Time & Place** A regular City Commission meeting was held on Monday, December 17, 2018 at 6:00 p.m., in the City Commission Chambers, 316 N. Park Avenue, Helena, Montana.

**Members Present** Mayor Pro-Tem Haladay, announced he would be acting on behalf of Mayor Collins, who was excused. For the record Mayor Pro Tem indicated City Commissioners Noonan, Farris-Olsen and O'Loughlin were present. City Attorney Thomas Jodoin; Interim City Manager Dennis Taylor; City Clerk Debbie Havens and Deputy City Clerk Dannai Clayborn were in attendance.

**Pledge of Allegiance** Mayor Pro-Tem Haladay 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 December 3, 2018 were approved as submitted.

**Presentations** Tri-County Urban Wildland Interface Ordinance

Mayor Pro Tem Haladay introduced Ray Prill from Tri-County Fire Safe Working Group. Mr. Prill gave a presentation regarding fire prevention and safety in wildland environments, and their impact on urban zones, coining the term Urban Ember Zones (UEZ).

**Discussion** City Commissioner Noonan thanked the group for their work on this project and offered his support to the program and their efforts. Mayor Pro Tem Haladay extended Mr. Prill an invitation to tell the commission how they could be of assistance in the future.

**Consent Agenda** CONSENT AGENDA:  
A. Claims  
B. Acceptance of the 2018 comprehensive Annual Financial Report (CAFR)  
C. Acceptance of pledged collateral for City deposits at financial institutions.  
D. Second amendment to the Resurrection Cemetery Association Agreement for Satisfaction of Annexation Conditions deferring the installation and construction of a westbound right-hand turn lane until June 15, 2019.  
E. Approval to award a contract to SCJ Alliance to complete the 2019 Growth Policy update in the amount of \$79,650.  
F. Acceptance of dedication of parcel of real property from Tim and Patricia Baretz.

City Manager Taylor recommended approval of the claims and consent agenda items B-F.

**Motion** City Commissioner O'Loughlin moved approval of the consent agenda, Items A-F. City Commissioner Noonan seconded the motion.

**Public Comment** Mayor Pro Tem Haladay asked for public comment, none was received.

**Vote** All voted aye, motion carried.

**Communications**      COMMUNICATIONS/PROPOSALS FROM CITY COMMISSIONERS  
**From City Commissioners**

City Commissioner O'Loughlin wished to thank and congratulate city staff for their work on the comprehensive audit completed for the city. She further stated, she had an opportunity to speak with the auditors, who gave a very positive report on the audit and the overall financial health of the city.

Mayor Pro Tem Haladay recognized this meeting as the last for City Commissioner Farris-Olsen, and asked for a round of applause, thanking City Commissioner Farris-Olsen for his three years of service.

**Report of the City  
Attorney**

**REPORT OF THE CITY ATTORNEY**

**A.      Process for appointment of the Helena Municipal Court Judge**

City Attorney Jodoin presented the process for appointment of the Helena Municipal Court Judge, as follows: Honorable Bob Wood has stated his intention to retire from his position as the Helena Municipal Court Judge effective March 1, 2019. Judge Wood was elected to a four (4) year term in November of 2015, which would expire December 31, 2019.

Pursuant to Mont. Code Annotated §7-4-4112, when a vacancy occurs in an elective office, the position is considered open and subject to nomination and election at the next general municipal election. The next municipal election will take place in November 2019. Since Judge Wood's term was set to expire in 2019, whoever is elected as the Municipal Court Judge at the November 2019 election will serve a new four (4) year term.

The statute further provides that pending an election, the City Commission shall, by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until a successor is elected and qualified. Thus, the City Commission must appoint an Interim Municipal Court Judge by March 31, 2019.

To meet the March 31, 2019, appointment deadline, city staff has outlined the following schedule for the appointment process. The appointment process and application materials have been modeled on the process used by the Judicial Nomination Commission in the appointment of district court judges.

**January 11, 2019**      Application submission period closes.

**January 14, 2019**      Submitted applications are posted on City website; public comment period opens.

**January 27, 2019**      Public comment period closes.

**January 30, 2019**      City Commission meets to discuss the applications and to select which candidates to interview.

**February 4, 2019**      City Commission conducts interviews.

**February 11, 2019**      City Commission formally appoints the new municipal court judge at a regularly scheduled City Commission meeting.

**March 1, 2019**      Municipal Court Judge takes office.

**Discussion**

Mayor Pro Tem Haladay asked City Attorney Jodoin to relay the minimum qualifications for the applicants.

City Attorney Jodoin stated pursuant to the Constitution of the State of Montana and provisions of state law, an applicant for municipal court judge must have the following minimum qualifications:

- Be admitted to the practice of law in Montana for at least three (3) years prior to the date of appointment or election. See Mont. Code Ann. § 3-6-202(1).
- Be a citizen of the United States who has resided in the state at least two (2) years immediately before taking office. See Art. VII, section 9.
- Be a resident of Lewis and Clark County for at least one (1) year preceding election or appointment. See Mont. Code Ann. § 3-10-204.

***Report of the City  
Manager***

REPORT OF THE CITY MANAGER

A. Downtown Zoning Revisions Update

City Manager Taylor reported earlier this year, the City of Helena Zoning Commission held a hearing and recommended amending City Code to establish regulations for a Downtown District. Manager Taylor asked Community Development Director Sharon Haugen to give an update to the commission for the current plan.

Director Haugen stated the Downtown District's intent is to serve as a unified zoning district that will promote mixed-use development, and by extension, bring renewed vitality to the City's historic downtown core, in a manner that is sustainable and inclusive to current and prospective residents, businesses, and developers alike. However, Director Haugen stated the structures which are currently non-compliant with the new zoning requirements would not be effected by the new codes, alleviating concerns expressed by current business owners in the downtown district. If adopted by the City Commission, the code will serve as a stand-alone chapter within City Code Title 11. Presently, the City Attorney's office is reviewing the draft code to reconcile differences between it, and the existing city code to ensure there is no incongruity between the two and to determine what changes may have to be made to other sections of the code to ensure consistency throughout the zoning ordinance. When this effort is complete, the code will be ready for its first passage hearing, which is planned to happen in January, followed by final passage in February 2019. A copy of the draft code that is currently under review is included in the packet.

A second, separate set of hearings with the Zoning Commission and City Commission are required to establish the district boundary, amend the zoning map, remove the B-3 (Central Business) District from City Code, and make other minor alterations to code in separate sections of Title 11. This second set of hearings will require notice to property owners within—and 150 feet from—the proposed district boundary, per MCA 76-2-305. The downtown district boundary will encompass two new zoning districts: the Downtown District and the Transitional Residential District. These two districts will ultimately replace the nine zoning districts that currently comprise the downtown.

Due to the scope of this rezoning effort, it will be necessary to hold several informal meetings with the public to present information about the proposed zoning changes and allow the public to comment. Staff proposes to hold two meetings at the Civic Center, which are tentatively planned for January and February 2019. These informal, informational meetings will allow the public to learn about the new code, the boundary adoption process, and what the proposed rezone changes mean for them as property owners, residents, and business owners.

The aforementioned meetings will be followed by a Zoning Commission hearing and first/final passage hearings before the City Commission to adopt an ordinance for the new district boundary. A key

task that will be required ahead of hearings on the district boundary will be contracting with a surveyor to create the legal description for the 200+ acre downtown district. Staff's intent is to have the legal description work be completed as soon as possible to be ready for the rezoning hearing before the Zoning Commission, with a target for final action by the City Commission by May 2019.

#### B. Sidewalk Snow Removal Update

Manager Taylor requested City Engineer Ryan Leland present the commission an update on the current plan for sidewalk snow removal.

Engineer Leland presented a brief update on the process and challenges of the implementation of Ordinance No. 3210, passed on June 15, 2015, also known as the Sidewalk Snow Removal Ordinance. The enforcement of the ordinance is a complaint driven process that requires residents to notify City staff of specific addresses that are not in compliance. During an Administrative Meeting on August 19, 2015 staff brought forward implementation/enforcement options to the Commission (see attached memo dated August 13, 2015). Following commission feedback from that meeting, staff created the Sidewalk Snow/Ice Removal Process for implementation. Commission direction was that it should be a complaint driven process requiring the complainant to give their name and the address of the noncompliant property. Last winter the process was modified in answer to a Commission request to give a courtesy notice with the addition of placing door hangers on non-compliant properties that had been reported in an effort to get them to remedy. The door hangers improved compliance significantly. At the May 3, 2017 Administrative Meeting staff was given direction to allow anonymous complaints to be taken as long as a specific address was given on the non-compliant property. Contractors and, occasionally Parks' staff were/are used to perform snow removal on non-compliant properties.

**Purpose:**

To ensure that sidewalks within the right-of-way, across the City, are clear for safe pedestrian traffic within 24 hours of cessation of a snow event for residential properties, or 4 hours for Commercial properties.

**Process:**

1. Complaint driven process that can be initiated 24 hours after cessation of snowfall in residential areas, or, 4 hours after cessation in Commercial Districts (B2-B3 zoning). A follow on snowstorm will reset the clock.
2. Complaints are directed to Greta Dige, Code Enforcement. Complaints are taken by phone, email, mail, or in person.
3. Once it is verified that the sidewalk is within the right-of-way and is subject to the ordinance the inspection process begins.
4. Door hangers are placed upon the non-compliant property and additional time given allowing remedy.
5. Upon failure to remedy, the complaint is further documented; the property ownership and sidewalk measurements are confirmed using GIS.
6. Contractor is dispatched and must take before and after photo documentation as part of the removal process and as a condition for payment.
7. Non-compliant properties are then billed at a rate of 18 cents per square foot and a civil penalty of \$50 or 30%, whichever is greater.

8. Property owners may appeal within 15 days of notification using the Sidewalk Snow/Ice appeal form which will then be sent to the City Manager's office for further action.

**Inspections:**

Inspections will take place Monday through Friday during business hours. Inspections begin when:

- It has stopped snowing in the B2-B3 zones by 9 am/12 pm, or, 4 hours after. Residential zones will not be inspected until 24 hours after cessation.
- In the case of follow on storms, the inspection time period will be triggered by the cessation of the last storm.
- When a specific address is inspected, the inspector evaluates nearby/adjacent properties for compliance. If non-compliance is found nearby, notifications are made and the process is initiated.

**Challenges:**

- Limited pool of contractors that can meet the City's insurance requirements.
- Some resistance to report neighbors for non-compliance, or, follow the reporting procedures.

City Commissioner Noonan inquired about the ADA ramps along the Chamber Building, asking Engineer Leland to verify the ramps are included in the current plan. Engineer Leland confirmed the Chamber Building ramps are part of the current contract with snow removal companies, and would be attended to, according to the contract.

Mayor Pro Tem Haladay asked if the city employees or contractors would proactively flag non-compliant properties as part of their regular duties. Engineer Leland stated the city had not had such discussions to have city staff also assist in enforcement of the ordinance, however such discussions could take place to better address issues/complaints in a more proactive way.

Mayor Pro Tem Haladay inquired as to the timeline of enforcement in the case of repeat offenders. Asking if the contractor was to be dispatched, irrelevant to an additional door hanger, or would additional time be given to those offenders as a matter of process. Engineer Leland stated, in the case of repeat offenders, the door hangar was placed as a matter of process, but no further delay would occur in the dispatching of contractors to deal with the property.

City Commissioner Noonan noted the efforts to educate the staff and students at Carroll College had made a significant impact on the state of parking along Benton Avenue, and would alleviate possible issues for plowing along Benton should the need arise.

City Commissioner O'Loughlin stated she recognized the work of the staff and the comprehensiveness of the memo. She asked for an additional update early in 2019, as to how the plan implementation progressed, to better inform the budgetary decisions for the year.

***Report from the  
Helena Citizens***

**REPORT FROM THE HELENA CITIZENS COUNCIL**

No member present. No report was given.

***Regular Items***

- A. CONSIDER A RESOLUTION ESTABLISHING TIME LIMITS FOR ON STREET PARKING OF MOTOR VEHICLES IN THE 1300 BLOCK OF LOCKEY AVENUE ADJACENT TO THE CAPITOL BUILDING.

**Staff Report**

City Engineer Leland stated last summer the Montana General Services Division reconstructed the south parking area at the Capitol

Building adjacent to Lockey Avenue. The work included making two new drive approaches where there was none before and in doing so the state created a standard boulevard area with a sidewalk, boulevard and curb and gutter. As a result with the redesign it created three additional on-street parking spaces for the public to access the Capitol building.

Currently, the enforcement of the Capitol Complex's on-street parking is patrolled by the Helena Parking Commission and the Capitol's security company Securitas and would not change with the proposed restrictions.

The Montana General Services Division has amended their original on-street parking requests based on City Commission recommendations of October 31, 2018 to only restrict the 3 newly created spaces between the new entrances of the south parking lot of the Capitol Building along Lockey Avenue to "1 Hour Parking."

Engineer Leland recommended the commission approve, table or deny a resolution establishing time limits for on street parking of motor vehicles in the 1300 Block of Lockey Avenue adjacent to the Capitol Building.

Public Comment

Mayor Pro Tem Haladay called for public comment.

General Services Administrator for the State of Montana, Steve Baiamonte, spoke asking for the commission to support the proposal. Mr. Baiamonte stated the additional parking spots would allow the general public to have better access to the Capitol Building.

Motion

**City Commissioner Farris-Olsen moved to approve a resolution establishing time limits for on street parking of motor vehicles in the 1300 Block of Lockey Avenue adjacent to the Capitol Building.** Commissioner Noonan seconded the motion.

Discussion

City Commissioner Noonan stated his support for the proposal and added the additional ADA spots provided were a wonderful benefit to the community.

City Commissioner O'Loughlin also stated her support and thanked the state for the productive discussions on the project.

Vote

All voted aye, motion carried. **Resolution 20504**

B. CONSIDER A RESOLUTION OF INTENTION TO DECLARE REAL PROPERTY OWNED BY THE CITY, KNOWN AS KCAP PARK, AND LOCATED AT THE NORTH-WEST CORNER OF BROADWAY STREET AND CRUSE AVENUE, AS SURPLUS REAL PROPERTY AND AUTHORIZE THE SALE OF THE PROPERTY TO THE HIGHEST BIDDER.

Staff Report

Deputy City Attorney O'Connor reported the City owns a 2,809 square foot parcel of property known as KCAP Park. The property was acquired by the City in June of 1975 from the Consistory Shrine Temple Association. The deed granting the property to the City did not contemplate any particular use for the property nor does it contain any deed restrictions associated with the property. Since that time the City's Parks and Recreation Department has maintained the property as open space.

The property was identified for surplus in 2014 because of its small size and limited current and future recreation potential. A memo

was circulated to all city departments inquiring if there were concerns disposing of the property and one response was received from solid waste expressing concern about losing that space to place a commercial solid waste container.

Section 1-4-17 of Helena City Code sets forth the process for sale, disposal or lease of real property owned by the city. An interested buyer has contacted the Parks and Recreation Department wanting to purchase the property.

City staff proposes to declare the above-mentioned property as surplus real property and to sell it to the highest bidder after proper public notice. The City will save general fund dollars by not maintaining, irrigating, and paying assessments on the parcel and selling the property could improve the economic viability of that area.

Deputy City Attorney O'Connor recommended approval of the resolution of intention to declare real property owned by the City, known as KCAP Park, and located at the north-west corner of Broadway Street and Cruse Avenue as surplus real property and authorize the sale of the property to the highest bidder and set a public hearing date for January 28, 2019.

Discussion

City Commissioner O'Loughlin addressed a concern the Solid Waste department had raised regarding a waste container on the site. City Commissioner O'Loughlin asked if an update or resolution had been provided, regarding this matter. Deputy City Attorney O'Connor stated she did not have an update at this time.

City Manager Taylor stated he would follow-up with the Solid Waste department and would email the commission to address the matter of concern.

Public Comment

Mayor Pro Tem Haladay called for public comment.

Patrick Cassidy, owner of the On Broadway restaurant, spoke in reference to his proposed purchase of the property. He stated he currently owned the building adjoining the property and had expansion plans of his business into the property, should the commission approve the sale. He stated the sale would bring further commerce to the downtown area and requested the commission's approval.

Motion

**Commissioner Farris-Olsen moved approval of the resolution of intention to declare real property owned by the City, known as KCAP Park, and located at the north-west corner of Broadway Street and Cruse Avenue as surplus real property and authorize the sale of the property to the highest bidder and set a public hearing date for January 28, 2019.** Commissioner Noonan seconded the motion.

Discussion

Commissioner O'Loughlin stated her support for the sale of the property, noting the abundance of existing parks in the downtown area, and how the sale would revitalize an otherwise neglected space.

Commissioner Noonan also stated his support of this proposal, and wished the owners of On Broadway restaurant good luck in this endeavor.

Vote

All voted aye, motion carried. **Resolution 20505**

C. CONSIDER THE REVOCATION OF THE NOVEMBER 2, 2016, EXCLUSIVE RIGHT-OF-WAY USE AGREEMENT FOR THE

USE OF THE GRAND STREET RIGHT-OF-WAY USE BY THE  
ADJACENT PROPERTY OWNER.

Staff Report

City Attorney Jodoin reported the Helena City Commission approved an Exclusive Right-of-Way Use Agreement ("Agreement") on November 2, 2015, that permitted The George and Bobbie Clemow Family Trust ("Trust" or "User") the right to use and occupy the open air patio seating area located on the Grand Street public right-of-way ("Property") adjacent to the property with a street address of 101 North Last Chance Gulch. The minutes of that meeting are attached to this memo. Presently, the Trust leases the lower level of 101 North Last Chance Gulch to the Sapphire Lodge. The Sapphire Lodge operates the space as a tavern and is the current user of the open-air patio. The permission to use Property was subject to several conditions, including the following:

- User agrees to maintain the Property and all User's personal property situated on the Property in a neat and attractive condition at all times. User will not permit debris, junk, or other unsightly matter to accumulate upon the Property.
- User may not use or occupy the Property for any unlawful purpose, and User shall conform to and obey all present and future laws, ordinances, rules, and regulations of all governmental authorities or agencies, respecting the use of and occupation of the Property.
- User must control waste generated by the use of the Property and not allow litter to accumulate.
- Use of the Property may not inhibit or interfere with the peaceable, safe use of, or access to adjacent properties.

The City of Helena has received numerous complaints from area residents regarding the Sapphire Lodge. Beer bottles, cups, cigarettes, and vomit in the public rights-of-way adjacent to the Sapphire Lodge are evident. Patrons of the Sapphire Lodge using the Property routinely engage in loud, disorderly conduct, and smoke to the detriment of adjacent property owners.

The ownership and management of the Sapphire Lodge has been unable to ameliorate these issues despite being informed of the issues by city staff on multiple occasions. City staff has had to undertake additional efforts to remove the litter from the Pedestrian Mall near the Sapphire Lodge and the open air patio area. The conduct of the Sapphire Lodge patrons results in a large volume of calls for law enforcement response.

Section 7-13-5(B)(9) of the Helena City Code allows the City Commission to revoke any exclusive right of way use permit upon sixty (60) days' notice to the permit holder of the City Commission's intention to revoke the permit. Staff sent a letter to the Trust informing them of the City Commission's contemplated action and has provided copies of that letter to the chairman of the Placer Condo Association and the owner of the Sapphire Knights of Pythias Sapphire Lodge No. 1 and his attorney. If the City Commission affirmatively states its intention to revoke the permit at the December 17, 2018, City Commission meeting, this item will be brought back to the City Commission for final action at the February 25, 2019, regularly scheduled meeting.

City Attorney Jodoin stated the intention to revoke the November 2, 2016, the Exclusive Right-of-Way Use Agreement for the use of the Grand Street Right-of-Way Use by the Clemow Family Trust. The City



Commission will take final action on this revocation at its regularly scheduled meeting on February 25, 2019.

Open containers of alcohol will no longer be permitted in the open air patio area. The area will not be exclusively used by the Trust or their tenants. Revocation of the right of way use permission will not prevent individuals from smoking, littering, or disorderly as the area is still public right-of-way.

City Attorney Jodoin recommended to affirmatively express the City Commission's intention to revoke the Exclusive Right-of-Way Use Agreement for the use of the Grand Street Right-of-Way Use by the Clemow Family Trust granted by the City Commission on November 2, 2015. The City Commission will take final action with respect to this revocation at its regularly scheduled meeting on February 25, 2019.

#### Discussion

Commissioner Noonan asked City Attorney Jodoin when the CUP was originally given to the establishment for gaming machines. City Attorney Jodoin did not remember when the CUP was given.

Commissioner O'Loughlin asked Police Chief McGee what steps were taken to address the issues raised in this matter. Chief McGee stated officers were sent to the area on regular patrols, especially when complaints were received, and the bar was asked to take mitigating actions to help with the noise levels. Chief McGee stated the area is busy, especially on weekend nights, and aside from the steps taken by law enforcement thus far, little more could be done to alleviate the complaints. Chief McGee also stated the Department of Revenue, sent Bureau Chief Dave Jeseritz to investigate complaints made by residents of the Placer Building. Chief McGee stated there is noise coming from the bar, but there are also other bars contributing, and most of the noise level was not over the legal limit for a commercial property. Sergeant Danny David was also in attendance, to offer any observations he had during his regular patrols of the bar and bar area.

City Commissioner Noonan asked to hear from Sergeant Danny David. City Commissioner O'Loughlin asked Sergeant David if he had specific numbers as to the complaints in the area. Sergeant David stated he did have some numbers specific to the Sapphire, but did not have comparisons to other bars in the downtown area. He stated a total of 60 hours were utilized as part of a special detail due to the complaints being received from the area. For the entire year of 2018, 149 calls for service (CFS) were made. 80 of the 149 were noise complaints. 18 of the 80 were complaints in which the complainant left their name. The remaining 62 of the noise complaints were anonymous. Sergeant David stated the remaining CFS were on par with other similar businesses in the downtown area. He stated the remaining numbers were as follows: 11 disorderly conduct, 8 alarms, 4 assaults, 2 Criminal Mischief, and 3 Minor in Possession (of alcohol) complaints, 2 of those were determined "of age." He stated, during initial details dispatched to the Sapphire bar enforcement actions were taken. Later, undercover officers (including David) were sent to the facility and it was observed to be normal bar activity. Body cam video was recorded and Sergeant David offered the commission the opportunity to view the video. No commission member asked to view the video.

Commissioner Noonan asked Officer David about the distance of the smoking perimeter outside of the establishment. Sergeant David stated the perimeter met reasonable standards given the area.

#### Public Comment

Mayor Pro Tem Haladay called for public comment.

Ed Stevenson, resident of the Placer building, and has lived in the building since 2010. Mr. Stevenson was asked to speak on behalf of the condo association. He read from prepared comments, stating the bar was offensive to the tenants. On behalf of the property owners, expressed concern regarding the property values of the condominiums. He and other residents declare the bar encourages loud, rude and offensive behavior. The residents claim to have no issues with other bars in the downtown, and claim to be regular consumers of similar businesses in the area. Mr. Stevenson referenced a 2014 study from Urban3 of Asheville, NC commissioned by the City, as a source for the value of the Placer property. He requested on behalf of the Placer residents the Exclusive Right-of-Way be revoked from the Sapphire.

Ruth McArdle, a resident of the Placer, spoke. She stated she lives on the 7<sup>th</sup> floor directly above the Sapphire bar open area. She expressed her concerns regarding the atmosphere at the Sapphire and requested the Right-of-Way be revoked.

Tim Weidlick, a resident of the Placer, requested the Exclusive Right-of-Way be revoked from the Sapphire.

Kate Bonahoom spoke in favor of the Sapphire maintaining the Exclusive Right-of-Way.

Heath Mason, manager of the Sapphire bar, spoke. Mr. Mason claimed to have never been approached by anyone representing the Placer. He stated to have taken measures to mitigate the issues brought forth by the city. He stated he would like to have further dialogue between the residents of the Placer, the city staff, and himself, and work cooperatively to develop solutions to the complaints. He requested the commission to not revoke the Right-of-Way.

#### Motion

**City Commissioner Farris-Olsen moved to affirmatively express the City Commission's intention to revoke the Exclusive Right-of-Way Use Agreement for the use of the Grand Street Right-of-Way Use by the Clemow Family Trust granted by the City Commission on November 2, 2015. The City Commission will take final action with respect to this revocation at its regularly scheduled meeting on February 25, 2019.** City Commissioner O'Loughlin seconded the motion.

#### Discussion

City Commissioner Farris-Olsen stated the original complaints in this matter were first brought to the commission two years ago. He stated it appeared the Sapphire had done nothing to address those original complaints.

City Commissioner O'Loughlin stated the walking mall is a city park. Due to the location of the Exclusive Right-of-Way Use, Commissioner O'Loughlin stated the agreement had specific standards which needed to be met; and in her observation, it appeared the Sapphire had not been meeting those standards for some time. City Commissioner O'Loughlin further stated the commission had received complaints from residents of the Placer, residents in surrounding buildings, and other businesses in the area. She indicated she has witnessed firsthand the issues the residents and others were complaining about. Commissioner O'Loughlin affirmed the intent to revoke the Exclusive Right-of-Way use agreement.

City Commissioner Noonan asked City Attorney Jodoin to confirm the revocation of the Exclusive Right-of-Way would only preclude the consumption of alcohol in the area below the building.

City Attorney Jodoin did confirm this detail. He also encouraged the city staff to develop a proposal to prevent the public from using the

area outside the Sapphire in a similar manner, should the commission choose to vote for final revocation in February.

City Commissioner Noonan stated he was supportive two years ago of the expansion of the gaming license, but even at that time there were objections over the noise, smoke, and other concerns. He specified ample time was provided to address the complaints, and was not satisfied enough had been done. Commissioner Noonan stated his support for the revocation.

Mayor Pro Tem Haladay stated this Exclusive Right-of-Way was a privilege and should be treated thusly. The Sapphire had not sufficiently addressed the complaints, despite repeated efforts by the surrounding residents and the city to reach out to the Sapphire. The lack of effort to remedy the situation by the bar and the amount of complaints from a variety of community members made the situation unsustainable; as a result, Mayor Pro Tem Haladay stated he would support the revocation.

**Vote** All voted aye, motion carried.

D. CONFIRMATION OF KALI WICKS AS CITY COMMISSIONER AND ADMINISTER THE OATH OF OFFICE.

**Staff Report** City Manager Taylor reported Commissioner Farris-Olsen has submitted his resignation from the Helena City Commission, effective December 17, 2018. Commissioners Haladay, Noonan and O'Loughlin interviewed six candidates to fill the vacancy on Tuesday, December 4, 2018. At the conclusion of the interviews, there was consensus to appoint Kali Wicks as City Commissioner to the Helena City Commission.

Manager Taylor recommended the commission approve the confirmation of Kali Wicks as City Commissioner on the Helena City Commission effective the close of the December 17, 2018 regular city commission meeting.

**Public Comment** Mayor Pro Tem Haladay called for public comment. No comment was received.

**Motion** **City Commissioner O'Loughlin moved to approve the confirmation of Kali Wicks as City Commissioner on the Helena City Commission, effective the close of the December 17, 2018 regular city commission meeting.** Commissioner Noonan seconded the motion.

**Discussion** City Commissioner O'Loughlin thanked City Clerk Havens for all of the work she had done on the matter. She was impressed with the quality of all of the candidates interviewed. She stated Ms. Wicks was an exceptional candidate.

City Commissioner Farris-Olsen thanked staff, especially City Clerk Havens and City Attorney Jodoin for all their assistance over the past three years. He expressed great confidence in Ms. Wicks.

City Commissioner Noonan also offered congratulations to Ms. Wicks and.

Mayor Pro Tem Haladay echoed all of the comments made by the Commission.

**Public Comment** Mayor Pro Tem asked for public comment on this matter. None was received.

- Vote** All voted aye, motion carried.
- Oath of Office** Mayor Pro Tem Haladay administered the Oath of Office to Kali Wicks. Ms. Wicks addressed the commission and those in attendance. She introduced her family and friends, and thanked those who supported her appointment.
- Public Hearings**
- A. CONSIDER A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO ALLOW A MINI-STORAGE FACILITY USE IN A B-2 (GENERAL COMMERCIAL) DISTRICT; FOR PROPERTY LEGALLY DESCRIBED AS FLOWER GARDEN ADDITION, BLOCK 26, LOT 1-12, & 20-28 BLOCK 35 LOTS 1-12 & 18-28 PART CLOSED ALLEYS & ELM STREET, GENERALLY LOCATED AT THE CORNER OF N. HARRIS STREET AND CEDAR AVENUE THE PROPERTY IS ADDRESSED AS 1700 CEDAR STREET.
- Staff Report**
- City Planner Hillary Taylor reported per City Code, the applicant/property owner is seeking to obtain a Conditional Use Permit (CUP) to allow for a mini-storage facility use to be located in an existing building located on a property that is zoned B-2 (General Commercial). The property is 8.33 acres. The applicant proposes to use the existing 82,901 square foot building for self-storage and retail, with 78,217 square feet used for self-storage and 4,700 used for retail. The applicant also proposes to place 15,200 square feet of exterior self-storage in the parking lot. This use will be accessory to the outright allowed use of truck rental. On November 13, 2018, the Helena Zoning Commission unanimously recommended approval of the applicant's conditional use permit request. According to the applicant, the proposed CUP is "a convenience business."
- The applicant is requesting a conditional use permit to allow mini-storage facilities to be located in the B-2 zoning district. This will allow for an adaptive reuse of an existing commercial property. This will encourage an adaptive reuse of an existing commercial property encouraging infill development.
- City Planner Taylor recommended approval of a resolution granting a conditional use permit to allow a ministorage facility use in a B-2 (General Commercial) District for property legally described as Flower Garden Addition, Block 26, Lot 1-12, & 20-28 Block 35 Lots 1-12 & 18-28 part closed alleys & Elm Street, the property is generally located at the corner of N. Harris Street and Cedar Street. The property is addressed as 1700 Cedar Street.
- Discussion**
- Mayor Pro Tem Haladay inquired if the requirement of sidewalks could be added as a condition of the CUP. Planner Taylor confirmed the requirement could be added to the CUP.
- City Commissioner O'Loughlin asked to review a slide in Planner Taylor's presentation, in reference to the lack of sidewalks around the existing property. Commissioner O'Loughlin questioned if there had been discussion with City staff and the applicant regarding the installation of sidewalks along this area.
- Mayor Pro Tem Haladay asked if the plans being presented, if approved, were final; or were these proposed plans, and could be amended at a later date as a requirement to approve the application. Planner Taylor stated the plans could be approved as proposed, or could be approved as an outright allowed use.

## Public Testimony

Mayor Pro Tem Haladay declared the public portion of the hearing opened and called for anyone wanting to address the commission to come forward.

Bruce Mihelish, Property Manager of Mihelish Family Trust, spoke in favor of the application. He stated the U-Haul proposal was a professional and competent one. He provided the commission with several photos to further illustrate the plan to renovate the property.

Terry Schaub, applicant for the CUP, introduced himself to the commission, and offered to answer any questions. Commissioner O'Loughlin asked if any discussions had taken place regarding the lack of sidewalks in the area. He addressed this matter, expressing concerns over the mature trees along the property. However, he stated if the City required sidewalks he would be open to it.

There being no further persons wishing to address the commission, the public portion of the hearing was closed.

## Discussion

Commissioner Noonan asked Mr. Schaub if the Lyndale business he currently operates would remain open. Mr. Schaub stated his intent was to move his marketing operation from Billings to the Lyndale property and would manage the new property, remotely.

City Attorney Jodoin stated the commission still has the right to require sidewalks, regardless of the CUP. Stating the need of sidewalks supersedes the application of the CUP or the business type that occupies the space.

## Motion

**City Commissioner Noonan moved to approve a resolution granting a conditional use permit to allow a ministorage facility use in a B-2 (General Commercial) District for property legally described as Flower Garden Addition, Block 26, Lot 1-12, & 20-28 Block 35 Lots 1-12 & 18-28 part closed alleys & Elm Street, the property is generally located at the corner of N. Harris Street and Cedar Street. The property is addressed as 1700 Cedar Street.** City Commissioner O'Loughlin seconded the motion. All voted aye, motion carried.  
**Resolution 20506**

- B. CONSIDER FINAL PASSAGE OF ORDINANCE 3248 PLACING A MORATORIUM ON THE ENFORCEMENT OF SECTION 4-1-11 OF THE HELENA CITY CODE INsofar AS IT PROHIBITS THE ISSUING OF A BUSINESS LICENSE TO A BUSINESS, OCCUPATION, VOCATION, PROFESSION OR ENTERTAINMENT WHICH IS PERMITTED BY STATE LAW BUT PROHIBITED UNDER ANY LAW OF THE UNITED STATES UNTIL JUNE 30, 2019.

## Staff Report

Deputy City Attorney O'Connor reported On September 24, 2018, following a public hearing, the City Commission passed Resolution No. 20490, annexing and incorporating within the boundaries of the City of Helena the wholly surrounded area east of Granite Street, South of Highway 12 West, and generally west of the existing city limits. The annexation of this wholly surrounded area will become effective December 1, 2018. A medical marijuana dispensary currently operates within the area effected by Resolution No. 20490.

Medical marijuana dispensaries and grow operations are permitted under the laws of the State of Montana. However, the City's business licensing ordinance, adopted in 1926 and codified in Section 4-1-11 of the Helena City Code, states "Prohibited Occupations Not to be Licensed: No provision herein contained shall be construed so as to

license any trade, business, occupation, vocation, pursuit, profession or entertainment prohibited by any law of the United States or this state or by any provision of this code.” As a result, because the sale and growing of medical marijuana remains illegal under federal law, the City’s ordinance prohibits the issuance of a business license to marijuana dispensaries or grow operations.

A business cannot legally operate within the City without a business license. See §4-1-9 HCC (“No person shall conduct, operate, transact, engage in, or carry on any of the industries, trades, pursuits, professions, vocations, or businesses within the city hereinafter specified and enumerated, without first applying for and obtaining a license as herein provided, and if such application for license is granted, shall pay the required fee.”); § 4-1-16-18(A) HCC (“No person shall conduct, operate, transact, engage in or carry on any business within the city without first applying for and obtaining a license therefor from the city, as herein provided, and if such application is granted, shall pay therefor as hereinafter provided. Except that the requirements of this section shall not apply to persons or entities with no base of operations in Lewis and Clark County who exclusively deal with and contact licensed businesses only by salesmen, telephone or mail.”). As a result, at present, there are no medical marijuana dispensaries or grow operations located within the city of Helena city limits.

In addition, although pre-existing nonconforming land uses are permitted pursuant to the City’s zoning laws, See Title 11 Chapter 6, no such allowance is made under the City’s business licensing laws. Thus, a nonconforming business use may continue in a zoning district where it is now prohibited, but that business would still be required to obtain a business license to continue its operations. Thus, the medical marijuana dispensary that is located within the soon to be annexed wholly surrounded area, would not be permitted to legally continue operating the business and would be required to either discontinue operation or to relocate the business because city staff is prohibited from issuing such a city business license to this business by operation of § 4-1-11 HCC.

The City Commission has expressed interest in considering either repealing or amending section 4-1-11 of the Helena City Code to potentially allow medical marijuana dispensaries and grow operations within the city limits.

The City Commission would like to place a moratorium on the enforcement of section 4-1-11 of the Helena City Code insofar as it prohibits the issuing of a business license to a business, occupation, vocation, profession or entertainment which is permitted by state law but prohibited under any law of the United States. The purpose of the moratorium is to allow the medical marijuana dispensary to continue operation within the newly annexed area while the City Commission engages in the public process to consider whether or not to amend section 4-1-11 of the Helena City Code. The moratorium will be effective city wide and will become effective thirty (30) days after final passage.

During the time the moratorium is in place, if another medical marijuana dispensary or grow operation wants to operate within the city limits it will be permitted to do so in any zoning district in which such land use is permitted. Based on the City’s current land use definitions, a medical marijuana dispensary would best fit into the land use category of “General Retail.” Under the City’s current zoning laws, a “General Retail” use is permitted, by right, without the need for a conditional use permit in the following zoning districts: B-1: Neighborhood Business; B-2: General Commercial; B-3: Central Business; and CLM: Commercial Light Manufacturing.

The medical marijuana dispensary located within the newly annexed area will be permitted operate while the City Commission engages in a public process to consider amending section 4-1-11 of the Helena City Code. If any business begins operation within the city limits due to the effects of this moratorium any such business would be required to immediately cease operation if the City Commission does not take action with respect to section 4-1-11 of the Helena City Code prior to the expiration of this moratorium.

Deputy City Attorney O'Connor recommended the commission approve, table, or deny final passage of Ordinance 3248 placing a moratorium on the enforcement of section 4-1-11 of the Helena City Code insofar as it prohibits the issuing of a business license to a business, occupation, vocation, profession or entertainment which is permitted by state law but prohibited under any law of the United States, until June 30, 2019.

#### Discussion

Mayor Pro Tem Haladay inquired as to the timeline the city staff had developed to coordinate the ordinance with the zoning commission discussions. Deputy City Attorney O'Connor stated a public listening session scheduled for mid-January, which will help develop further action by the zoning commission. Mayor Pro Tem Haladay asked for clarification as to the validity of this type of license if no action was taken by the city commission in the 6 month period, or if limits were placed on the zoning allowances for this type of license. Deputy City Attorney O'Connor confirmed this statement, and those licenses would be determined invalid if no action was taken by the commission or if zoning restrictions were placed upon the licenses.

Community Development Director Haugen stated the zoning commission met regarding this matter and plans on having a broader discussion with the public at the Civic Center in January. It is understood by the zoning commission a recommendation is needed by April or May, to the city commission. This would facilitate a decision by the commission before the end of the 6 month period.

#### Public Testimony

Mayor Pro Tem Haladay declared the public portion of the hearing opened and called for anyone wanting to address the commission.

Kate Bonahoom spoke in favor of the general retail zoning requirements; but expressed concerns over the lack of regulation on grow operations. Ms. Bonahoom also inquired as to the time frame established for the moratorium, and its origin.

Doreen Bomar spoke in favor of the ordinance passage, stating there would be time to address the concerns of business owners.

There being no further persons wishing to address the commission, the public portion of the hearing was closed.

#### Discussion

City Manager Taylor stated the 6 month time frame was established to give the commission ample time to address the zoning issues, utilizing as a guideline, the experiences of other cities which had previously dealt with zoning disputes similar to this matter.

Mayor Pro Tem Haladay asked Manager Taylor if the ordinance was repealed outright, would it allow for new businesses to apply for business licenses' without set regulation of future licenses in the cannabis industry.

Manager Taylor stated this moratorium would allow the existing business impacted by the current ordinance to operate, while perhaps discouraging new businesses to apply, until certainty in the regulation

could be developed by the city. This allows for flexibility and gives the city time to develop a clear plan for any new businesses and the business impacted by the annexation.

**Motion**

**City Commissioner Farris-Olsen moved approval for final passage of Ordinance No. 3248 placing a moratorium on the enforcement of section 4-1-11 of the Helena City Code insofar as it prohibits the issuing of a business license to a business, occupation, vocation, profession or entertainment which is permitted by state law but prohibited under any law of the United States until June 30, 2019.** City Commissioner O'Loughlin seconded the motion. All voted aye, motion carried.  
**Ordinance 3248.**

- C. CONSIDER A RESOLUTION SETTING FEES TO BE CHARGED FOR DISPOSAL OF GARBAGE AND REFUSE AT THE CITY OF HELENA TRANSFER STATION AND REPEAL RESOLUTION NO. 20450.

Assistant Public Works Director Libbi Lovshin reported the City and Lewis & Clark County jointly analyze and agree each year on a recommended tipping fee for the operation of the City Transfer Station and the Lewis & Clark County landfill. The County Landfill tipping fee is one component of the total tipping fee at the City Transfer Station. On November 29, 2018 the Lewis and Clark County Commission voted to reduce the county landfill tipping fee by \$2.00 to \$26.00.

The Public Works Department recommends reducing the total tipping fee from \$58.75 to \$56.75 to account for the County Landfill reduction.

Approval of the resolution will establish rates for the City of Helena Transfer Station that include the most current County Landfill tipping fee.

Assistant Public Works Director Lovshin recommended approval of a resolution setting fees to be charged for disposal of garbage and refuse at the City of Helena Transfer Station and repeal Resolution No. 20450.

**Public Testimony**

Mayor Pro Tem Haladay declared the public portion of the hearing opened and called for anyone wanting to address the commission.

There being no persons wanting to address the commission, Mayor Pro Tem Haladay closed the public portion of the hearing.

**Motion**

**City Commissioner O'Loughlin moved to approve a resolution setting fees to be charged for disposal of garbage and refuse at the City of Helena Transfer Station and repeal Resolution No. 20450.** City Commissioner Noonan seconded the motion. All voted aye, motion carried. **Resolution 20507**

**Public Communications**

PUBLIC COMMUNICATIONS  
There were no public communications.



***Meetings of Interest***

MEETINGS OF INTEREST

Joint City-County Work Session - January 8, 2019 - 4:00 p.m. - Room 309, City-County Building

Administrative Meeting - January 9, 2019 - 4:00 p.m. - Room 326, City-County Building

Regular City Commission Meeting - January 14, 2019 - 6:00 p.m. - Commission Chambers, City-County Building

***Adjournment***

There being no further business to come before the City Commission, the meeting was adjourned at 8:34 p.m.

/S/ WILMOT COLLINS  
MAYOR

ATTEST:

/S/ DEBBIE HAVENS  
CLERK OF THE CITY COMMISSION