

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
December 9, 2019 - 6:00 P.M.
City Commission Chambers, Room 330

Time & Place A regular City Commission meeting was held on Monday, December 9, 2019 at 6:00 p.m., in the City Commission Chambers, 316 N. Park Avenue, Helena, Montana.

Members Present Mayor Collins requested Interim City Clerk Clayborn call roll call: City Attorney Jodoin, City Manager Cortez, Commissioner Haladay, Commissioner Wicks, Commissioner Noonan, all responded present. Commissioner O'Loughlin was excused.

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 November 27, 2019 Regular City Commission meeting and the November 13, 2019 Administrative Meeting Summary were approved as submitted.

Consent Agenda CONSENT AGENDA:
A. Claims
City Manager Cortez recommended approval of the Consent agenda, item A. Claims

Public Comment Mayor Collins asked for public comment on the Consent Agenda. None was received.

Motion **Commissioner Haladay moved to approve the consent agenda, item A.** Commissioner Wicks seconded the motion. Interim City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Wicks voted aye, Commissioner Noonan voted aye and Mayor Collins voted aye. **The motion carried, 4-0.**

Communications from City Commissioners COMMUNICATIONS/PROPOSALS FROM CITY COMMISSIONERS
No communications.

Report of the City Attorney REPORT OF THE CITY ATTORNEY
City Attorney Jodoin stated there was nothing to report.

Litigation Strategy LITIGATION STRATEGY
City Attorney Jodoin stated there was nothing to report.

Report of the City Manager REPORT OF THE CITY MANAGER
Manager Cortez introduced Patrick Judge, City of Helena Sustainability Coordinator, who reported on his attendance of the NorthWestern Energy Discussion Conference in Big Sky Montana. Mr. Judge stated due to the number of topics and scope of the discussion with NorthWestern Energy, it was determined a Steering Committee would be formed with staff representatives and one elected official from each City, and a meeting would be scheduled for January to continue discussion.

Manager Cortez reported on the items which would appear on the upcoming December 16th Commission Meeting agenda, including the Bus Depot Buy-Sell agreement, presentation for the CAFR, a Resolution for dissolving the Civic Center Advisory Board, and forming a new advisory body at a later date, CUP amendments, and a CCIP presentation.

The Manager provided materials to the Commission regarding changes to the City of Helena Personnel Policy. The Manager also presented a matrix to the Commission regarding the “under-utilized” properties owned by the City, and recommendations from staff regarding possibilities for renewed use of the properties, and how quickly the properties would be available for RFP. City Staff is proposing RFP’s for each of the items deemed ready (3 lots) and due to previous direction from the City Commission, would be pursuing non-profit partnerships for these properties. In addition to non-profit partnership for the properties, the Manager recommended the RFP’s have a price floor, community benefit component. The manager stated the properties which were determined to need additional work to become eligible for an RFP, City Staff would continue to work to make those properties viable for an RFP in the future. City Manager Cortez asked for direction from the Commission to release the properties deemed ready for RFP to be released and what other properties the Commission would like to see Staff pursue for a possible RFP in the future and bring back to the Commission for review.

Commissioner Wicks asked for clarification of a statement in which a disposal plan existed for the lots listed as 1 and 2 within the matrix. City Manager Cortez stated this was related to the Commission’s previous goal of developing Cruse Ave. Mayor Collins asked Manager Cortez to explain why Performance Square was deemed “under-utilized.” Manager Cortez stated due to the location of Performance Square, it was a prime location for “mixed use” and the property was not being used for programming as often as it could be.

City Attorney cautioned the Commission on proceeding with any direction on any of the items this evening specifically, and the Commission should move to bring the item to an Administrative Meeting in the new year for further discussion. Mayor Collins stated he would prefer to have the items moved forward for additional discussion at a later meeting. Commissioner Wicks asked for clarification on the process and what direction should be given to staff when considering the items brought forward this evening. Commissioner Wicks stated she thought it would be wise to push the agenda item until the Administrative Meeting in January. Commissioner Noonan stated given the new makeup of the Commission, it would be best to move this item for further discussion in January. Commissioner Haladay stated he was also in agreement with the rest of the Commission, and the item should be pushed forward to January.

Manager Cortez provided the Commission with a City of Billings RFP which was utilized to bring forward as part of an application of BUILD Grant.

Report from the HCC

REPORT FROM THE HELENA CITIZENS COUNCIL
No report given.

Regular Items

REGULAR ITEMS

- A. CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING THE HELENA CITY CODE TO ALLOW FOR THE

DISCRETIONARY WAIVER OF CITY FEES ON AFFORDABLE HOUSING PROJECTS TO BE CONSTRUCTED IN THE CITY OF HELENA AND SET A PUBLIC HEARING DATE OF JANUARY 13, 2020.

Community Development Director Sharon Haugen reported cities in Montana do not have many alternatives for assisting developers who wish to construct or rehabilitate housing units for citizens who are making 60% of the area median income. One of the mechanisms that would be available to consider the waiver or partial waiver of permit fees for affordable housing. The Helena City Commission has established as a priority the creation and/or rehabilitation of workforce housing into the Helena community. To address this issue, they have developed a housing strategy. The consideration of the waiver of fees is part of that affordable housing strategy, which also includes reviewing and amending land use regulations to eliminate barriers to housing; identifying barriers in our development review process and developing funding mechanisms to assist the construction and/or rehabilitation of workforce housing. The waiver of the fees falls within the funding mechanisms.

No other city currently waives building permit fees for affordable housing. Other Montana cities offer other incentives. For example, the City of Bozeman will waive the payment of Impact Fees for those units that are built under their Affordable Housing ordinance. They also offer assistance for down payment and closing costs. Other cities offer assistance for down payments and closing costs through their entitlement portions of CDBG and HOME funds.

The purpose of this resolution is to establish a mechanism by which the City of Helena can provide an incentive for developers who want to provide affordable housing units within the City. The mechanism being proposed is the waiver of building related fees. Cost reductions in any form (fee waivers being one of them) can often help projects more than additional capital. Many developers are running into a problem with the per-unit cost limit. When the developer and related parties exceed the per-unit cost limit on a project, the developer and Related Parties will get penalized with the next competitive 9% tax credit project. It will not only have an impact on the developer and Related Parties, but it could, perhaps, have a chilling effect with the new development of tax credit properties in that community.

The waiver or partial waiver of building related fees will cause a decrease in revenue for those projects that qualify for the waiver. The loss to the Building Division and possible other Departments will be offset by the community benefit associated with the projects providing the housing.

Director Haugen recommended approval of first passage of an ordinance amending the Helena City Code to allow for the discretionary waiver of City fees on affordable housing projects to be constructed in the City of Helena and set a public hearing date for January 13, 2020.

Public Comment

Mayor Collins asked for public comment.

Andrew Chanania, AC Solutions, spoke in favor of the ordinance.

Jake Kuntz, Executive Director Habitat for Humanity, spoke in favor of the ordinance, citing the rising costs of land and housing in both the rental and purchasing markets as a reason for his support to assist in providing affordable housing in the Helena area.

Greg Wirth, Habitat for Humanity Board Member, spoke in favor of the ordinance.

Discussion

Commissioner Haladay asked Director Haugen for clarification on how the process would work for developers to bring large projects forward for consideration and to take advantage of the waiver of fees. Director Haugen stated the staff could always estimate costs given the previous projects the City Staff has worked on. Director Haugen stated this would be a difficulty but could work with the City Attorney for assistance in overcoming this difficulty. Commissioner Haladay asked if the fees could be simply refunded if they had previously paid. Director Haugen stated these fees could be refunded, and it was currently the City's process to not collect fees until the application process was nearly complete.

Motion

Commissioner Noonan moved to approve first passage of an ordinance amending the Helena City Code to allow for the discretionary waiver of City fees on affordable housing projects to be constructed in the City of Helena and set a public hearing date for January 13, 2020. Commissioner Wicks seconded the motion. Interim City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Wicks voted aye, Commissioner Noonan voted aye and Mayor Collins voted aye. **The motion carried, 4-0.**

- B. CONSIDER APPROVING A BUY SELL AGREEMENT BETWEEN THE CITY OF HELENA AND MERITE LLC FOR REAL PROPERTY OWNED BY THE CITY, KNOWN AS KCAP PARK, LOCATED AT THE NORTH-WEST CORNER OF BROADWAY STREET AND CRUSE AVENUE, FOR \$5,000.

Staff Report

Parks, Recreation & Open Lands Director Kristi Ponzoso 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.

The Commission previously approved the disposal of KCAP Park by authorizing auction sale to the highest bidder on January 29, 2019. At auction on February 28, 2019, Firetower, LLC submitted the high bid of \$30,500. However, the buyer was unable to timely complete closing and on June 25, 2019 the City notified the buyer's agent that the City would not complete the sale.

In August of this year, the Commission approved a resolution declaring KCAP Park as surplus real property and authorizing disposal by soliciting requests for proposals (RFP) for its redevelopment.

The City Received one proposal (attached) in response to the RFP, from Merite LLC, Patrick Cassidy Managing Member. The proposal is for purchase of the former KCAP Park which would become a patio for the new bar On Broadway is currently building at 110 E Broadway (the old radio station). The proposed purchase price for the proposal is \$5,000. The City solicited feedback on the proposal from a committee consisting of a Helena BID representative, an MBAC representative, a design professional and representative from the Heritage Preservation

and Tourism Council, a member of the Helena City Commission, and City staff.

The feedback we received was supportive of the proposal noting:

- this proposed use would be significantly beneficial to the aesthetic and the desirability of the downtown;
- increasing a main floor business is in line with Downtown zoning outcomes...
On Broadway regularly has benefit nights for Helena non-profits where they donate the evening proceeds;
- good and appropriate use as it is a mere sliver of land. An outdoor eating area for On Broadway seems like a conceivable, realistic, and practical use for the property.

One question from the review committee was that of community benefit. One of the criteria in the request for proposals was: Community benefit. The process will also evaluate creative offers of community benefits package and activities.

The City is discussing with the respondent more possibilities for community benefit related to this agreement. Another question from the review committee was that of ADA accessibility. The proposed patio will be required to be ADA accessible.

Advantages include the beneficial impacts to the aesthetics and desirability of downtown. Additionally, the City will see an annual costs savings on maintenance and management of around \$800 per year. The city also lost the water source for irrigating the property when the KCAP radio building was demolished. If the city retained the park, we would need to reconnect the water system which would require excavating into Broadway Avenue and tapping into the main line at an estimated cost of \$10,000. If the city retained the park we would also need to repair the sidewalk, estimated at \$5,000. The sale price proposed is significantly lower than the property valuation (prepared for the initial bid process) of \$27,118.32, or \$9.65 per square feet.

Director Ponzoso recommended approval of a Buy Sell agreement between the City of Helena and Merite LLC for real property owned by the City, known as KCAP Park, located at the north-west corner of Broadway Street and Cruse Avenue, for \$5,000.

Director Ponzoso offered a staff amendment which would include to Direct City Manager to bring parameters and definition of the Community Renewal Fund no later than 90 days after closing escrow, and the Buy-Sell agreement will include earnest money of fifty percent of sale price.

Public Comment

Mayor Collins asked for public comment. None was received.

Motion

Commissioner Noonan moved to approve a Buy Sell agreement between the City of Helena and Merite LLC for real property owned by the City, known as KCAP Park, located at the north-west corner of Broadway Street and Cruse Avenue, for \$5,000 and to Direct City Manager to bring parameters and definition of the Community Renewal Fund no later than 90 days after closing escrow.

Commissioner Haladay seconded the motion. Interim City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Wicks voted aye, Commissioner Noonan voted aye and Mayor Collins voted aye. **The motion carried, 4-0.**

Commissioner Noonan moved to approve a motion the Buy-

Sell agreement to include earnest money of fifty percent of the sale price. Commissioner Haladay seconded the motion. Interim City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Wicks voted aye, Commissioner Noonan voted aye and Mayor Collins voted aye. **The motion carried, 4-0.**

Public Hearings

PUBLIC HEARINGS

A. CONSIDER FINAL PASSAGE OF AN ORDINANCE ALLOWING CERTAIN ENCROACHMENTS BY RIGHT BY AMENDING CHAPTER 13 OF TITLE 7 OF THE HELENA CITY CODE.

City Attorney Jodoin reported currently, when a property owner wants to have a retaining wall, fence, awning or overhang extend into the right-of-way, the property owner must apply for and obtain an agreement with the city for that encroachment. The agreement is also recorded with the Clerk and Recorder. Preparation of these agreements requires staff time, mainly from engineering and legal staff, as well as an added inconvenience for the property owner. In reviewing whether or not these types of encroachments create an issue for the city justifying the expenditure of resources, city staff has found that vast majority of these encroachment;

do not present issues for the city's use of the right-of-way and as such are approved with minimal review or investigation have been in existence for a long period of time especially in the older parts of the city; and no additional rights are gained by the city by having an agreement in place.

The city commission provided consent to proceed with this item at its November 13, 2019 administrative meeting. First passage was November 18, 2019.

Staff proposes that the following encroachments be allowed in the right-of-way by right:

- Retaining walls;
- Fences;
- Awnings and overhangs;
- and Any portion of a structure, such as foundation, roof eaves, stoops, and stairs in existence as of the date of passage of the ordinance.

The last category is included to allow old buildings to continue to remain without the need for new agreements with every change in ownership but not allow any new permanent construction in the right-of-way.

The proposed amendments to the ordinance also eliminate the requirements for an application, approval, and agreement process. Rather, the conditions to which all encroachments are subject to are listed directly in the ordinance. This change will free up staff time but will assure the city can remove any encroachment if needed.

Furthermore, including these conditions in the ordinance itself should help raise public awareness of the conditions. Finally, food trucks were addressed in both the Encroachments section and the Nonexclusive Right-of-Way Use section of the code. Staff recommends that food trucks be permitted as a "Nonexclusive Right-of-Way Use" and be stricken from the Encroachment section. If, however, the Commission wishes to do the opposite, staff recommends that section 7-13-4B1 be revised accordingly.

This ordinance change will create efficiencies by making common encroachments into the city's right-of-way permitted by right without the need for staff review but the city retains all the power to remove any encroachments as necessary.

When properties change ownership there might be questions as to why some encroachments were permitted by agreement while others were just permitted to exist without an agreement. However, any such questions can be easily answered by staff if necessary

City Attorney Jodoin recommended approval of the final passage of an Ordinance allowing certain encroachments by right by amending Chapter 13 of Title 7 of the Helena City Code.

Public Testimony

Mayor Collins declared the public portion of the hearing open and asked if there was anyone wishing to address the Commission.

Motion

Commissioner Wicks moved to approve the final passage of an Ordinance allowing certain encroachments by right by amending Chapter 13 of Title 7 of the Helena City Code.

Commissioner Haladay seconded the motion. Interim City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Wicks voted aye, Commissioner Noonan voted aye and Mayor Collins voted aye. **The motion carried, 4-0.**

Ordinance 3276

B. CONSIDER A RESOLUTION ESTABLISHING AN UPDATED FEE SCHEDULE FOR THE 2020 GOLF SEASON AT BILL ROBERTS GOLF COURSE.

Parks, Recreation and Open Lands Director Ponozzo reported golf fees must be updated regularly to maintain revenue and remain competitive with similar courses. The Parks Department brings Bill Roberts Golf Course fee schedule updates to this December 9th Commission Meeting for public hearing. The Parks Department proposes updated fees as outlined in the attached Resolution of Intention. Proposed golf fee increases range from a 7-12% raise. As a point of clarification, the proposed fee structure for cart storage now includes the \$185 "trail" or cart user fee for gas and electric cart storage.

Golf fee increases have the potential to increase revenue by more than \$500,000 per year. This moves us closer to balancing the Golf Fund. One new fee option is the Tower Club - this aims to attract and retain more infrequent use golfers. It provides a potential diversified revenue source while also providing an affordable option for golf. If passed, the resolution would increase fees, that although modest, could discourage some use of the golf course.

Director Ponozzo recommended approval of the Resolution establishing fees to be charged for the Bill Roberts Golf Course for the 2020 Season

Public Testimony

Mayor Collins declared the public portion of the hearing open and asked if there was anyone wishing to address the Commission.

Discussion

Commissioner Noonan thanked the Golf Advisory Board for their assistance in giving input for the fees and their support of the Golf Course as a property.

Motion

Commissioner Haladay moved to approve the Resolution establishing fees to be charged for the Bill Roberts Golf Course for the 2020 Season. Commissioner Noonan seconded the motion. Interim City Clerk Clayborn called a roll call vote, as follows: Commissioner Haladay voted aye, Commissioner Wicks voted aye, Commissioner Noonan voted aye and Mayor Collins voted aye. **The motion carried, 4-0. Resolution 20583**

Public Communications

PUBLIC COMMUNICATIONS

Linda Kindrick, 71 Ruby Mountain Rd, Clancy, spoke regarding item listed on the Civic Center Board resolution for the 16th agenda, and asked the Commission to consider all public commentary carefully before making a decision.

Charlie Miller, 3445 Snow Goose Street, asked the Commission to allow the Golf Advisory Board to continue as it currently exists.

Janet Campana, 2918 Big Timber Loop, spoke on the advisory boards and asked the Commission to consider the value of the volunteer boards provide to the City.

Ron Ginich, 355 Old York Road, asked for additional assistance for the hearing impaired to have access to the meetings in the Commission Chambers.

Dave Campana, 2918 Big Timber Loop, stated he would also like better accommodations for the hearing impaired at the meetings

Adjournment

There being no further business to come before the City Commission, the meeting adjourned at 7:04 p.m.

Meetings of Interest MEETINGS OF INTEREST

Regular City Commission Meeting – December 16, 2019 - 5:15 p.m. - Commission Chambers, City-County Building

/S/ WILMOT COLLINS
MAYOR

ATTEST:

/S/ DANNAI CLAYBORN
CLERK OF THE CITY COMMISSION