

## SUMMARY OF ADMINISTRATIVE MEETING

June 19, 2019– 4:00 p.m.  
Room 326, City-County Building  
316 N. Park Avenue

1. **Call to order, introductions, opening comments** – Mayor Collins called the meeting to order. Commissioners Haladay, Noonan and Wicks were present. Commissioner O’Loughlin was excused.

Staff present: City Manager Cortez; Assistant to City Manager Amanda Opitz; City Attorney Thomas Jodoin; Deputy City Attorney Iryna O’Conner; Interim Police Chief Steve Hagen; Police Corporal Noal Petty; Interim Fire Chief Ken Wood; Community Development Director Sharon Haugen; Planners Mike O’Connell and Lucy Morell-Gengler; Assistant Public Works Director Libbi Lovshin; Interim Director Transportation Systems Department David Knoepke; Finance Director Glenn Jorgenson; Parks & Recreation Director Kristi Ponozzo and City Clerk Debbie Havens.

Others in attendance IR Reporter Thomas Plank, Civic Center Board members, Stuart Davidson, Jerry Hamlin, Herb Kulow, Sarah Magee, Sandy Schull and Emily.

2. **June 5, 2019 Summary** – The June 5, 2019 administrative meeting summary was approved as submitted.

3. **Commission comments, questions**

**Upcoming Appointments** – Mayor Collins recommended the following board appointments:

**Helena Housing Authority**

Reappointment of David Regghanti to a first full term on the Helena Housing Authority. Term will begin upon appointment and expire August 1, 2021. Clerk Havens spoke with Executive Director Michael O’Neal, who recommended the reappointment.

Reappointment of Judy Nielsen to a two-year term, per the attached request of the Helena Housing Authority Board members and Executive Director Michael O’Neil. Term will begin upon appointment and expire August 1, 2021.

**Railroad Tax Increment Financing Advisory Board**

Appointment of Donna Brietbart, Marketing & Development Director, as representative from Helena College, to the Railroad Tax Increment Financing Advisory Board, per the attached recommendation from Helena College. There is not a specific term for members of the Railroad Tax Increment Financing Advisory Board.

**Civic Center Board Correspondence** – Civic Center Board Chair Judy Kline addressed the commission and referenced the letter the Civic Center Board sent to the Mayor and Commissioners on May 23, 2019.

Mike DaSilva, Bonnie Lorang, Riley Johnson and Gery Carpenter addressed the commission regarding the Civic Center correspondence and the proposed changes to the operation of the building and staff.

**4. City Manager’s Report** – Manager Cortez confirmed the July 2, 2019 joint work session has been cancelled. Commissioner Noonan asked that Custer Avenue discussion be on the August 6 joint work session agenda.

**5. Department Requests –**

**Finance Department – FY20&21 Budget – Final Discussion before Adoption –**

Director Jorgenson stated the commission will consider final adoption of the FY20&21 budgets at the June 24, 2019 city commission meeting. If there are any questions or proposed amendments this is the time for discussion. There were no questions or discussion from the commission.

**City Attorney – Process for Administrative Meeting Agenda – Executive Sessions –**

Attorney Jodoin stated generally past practice for placing agenda items on a future commission administrative meeting has typically been by consent of three commissioners expressed during commission comments at prior administration meetings. This has not always been the practice for every subject or topic. As well, the city manager retains the authority to set the commission meeting agendas.

Commissioner Haladay stated it is a courtesy, if a commission member requests an item be on an agenda, it is added. Two commission members can call for a special meeting, per the bi-laws.

Executive Sessions- Litigation Strategy. Recent experience with litigation strategy executive sessions warrants commission discussion regarding (1) the process for deciding when and how a meeting should be closed for litigation strategy and (2) how the public can provide meaningful public comment prior to commission decision with respect to litigation. Past practice has been a request from the city attorney via the city manager to set an executive session to discuss litigation strategy. The city clerk would then set up and notice a commission meeting for such purposes. Since the commission may want to take specific public comment on the subject of the executive session before entering into litigation strategy, discussion it may be necessary to reconsider the steps that should be taken to call for an executive session to discuss litigation strategy.

Commissioner Noonan referred to the May 20 Executive Session; it was noticed as a closed meeting and then people showed up; he then asked if it was improper to take public comment. Attorney Jodoin Thomas stated any time the commission meets, they have to take general public comment on any subject; it is not a closed meeting until the Mayor makes the findings to close the meeting to discuss litigation strategy. After the closed portion, the meeting is then opened to the public. In this particular case, not everyone felt there was going to be public comment taken and there was the perception that it is was secret meeting and only one side offered public comment.

Commissioner Noonan asked when the meeting is noticed, it should state the commission would accept public comment. Attorney Jodoin stated that is the decision the commission needs to make, do you want to take public comment even before a decision is made to close the meeting.

Commissioner Wicks stated she is comfortable with accepting public comment at the beginning of the meeting; that way if the executive session goes long, the public is not forced to sit and wait; it is important to hear the public comments before the commission goes into executive session. Commissioner Wicks stated concerning calling for executive session, she is comfortable with the city manager/city attorney designating when an executive session needs to be scheduled.

Commissioner Haladay concurred to accept public comment at the beginning of the meeting; it makes sense to do it upfront. He then referenced the litigation strategy piece with the Helena Hunters v. Marten and noted the Forest Service requested the city become involved in the lawsuit. Commissioner Haladay suggested the commission might want to place specific items on an administrative meeting agenda for discussion prior to making a decision to hold an executive session. He stated there are other situations when the city manager/city attorney should determine if an executive session is necessary.

Attorney Jodoin again emphasized the commission will take public comment prior to closing a meeting.

Commissioner Noonan stated no decision was made at that meeting and asked if another meeting should be held to accept public comment. Attorney Jodoin stated he and Manager Cortez has discussed holding a general public comment meeting, here the commission would accept public comment. There are some community members who feel a “no” decision is still a decision. Attorney Jodoin stated the commission could schedule a listening session.

Commissioner Wicks suggested she would like to separate the open meeting discussion from the lawsuit issue because the two groups weighing in are having some friction in the community. She wants to provide the opportunity for public comment on issues they are facing; she does not necessarily want to tie it to a litigation strategy the commission has yet to decide on. She would like to approach it head-on and work with the contractor to bring these two groups together so we hopefully can have some positive dialog and start making some headway with some of the issues. She concurred with Commissioner Haladay, if the city is already involved with the litigation, she does not have any problem with the city manager/city attorney determining if an executive session should be scheduled. However, if the ask is do we want to be involved; the commission should discuss and make the recommendation.

Attorney Jodoin summarized there is a distinct difference between the city of Helena already being involved in litigation and asking to become involved with litigation. Jumping into litigation is much different as there are political concerns. If the city is already involved, staff will keep better track of thinking about public involvement; staff will change the agendas so we get make the findings if the meeting should be closed.

Commissioner Haladay stated in regards to the notices, for example we decide to have a listening session, would we be noticing there may be a closed session at the close of the listening session or does the agenda have to notice there may be a closed session. Attorney Jodoin stated the easy answer is if you think there is going to be a closed session, it should be advertised; however, he will think about it some more.

**6. Department Presentations**

**Police Department – Active Shooter Response Presentation** – Chief Hagen introduced Corporal Petty who provided a presentation on the Run, Lock, and Fight principal for active shooter situations.

Commissioner Noonan reiterated active shootings do happen in Helena.

**Community Development** – Director Haugen introduced Planners Michael McConnell and Lucy Morell-Gengler who presented an update on the Growth Policy. The city hired SCJ Alliance, the consultant commissioned to update the City's Growth Policy, has drafted goals and objectives based on previous community outreach activities; the draft goals and objectives plus comments from those outreach activities are attached. The community will have an opportunity to comment on these draft goals and objectives at the events scheduled for July 16 -18th. Informational flyer attached. Information about the update will be available online as well as an online comment form and survey.

**Future Events:**

May and June - Outreach activities with various community groups

Groups met with or scheduled so far. Hike Helena, HCC, Railroad TIF Advisory Board, HBIA Board, East Helena Planning Board/City Commission, Downtown Helena Inc., Tourism BID, Helena Young Professionals

July 16-18 - Consultants will be back in Helena for three days. During this time, staff and the consultants will conduct “pop up” events, two community meetings, and provide updates to the Consolidated Planning Board, Growth Policy Working Group, and City Commission.

August - Planning Board and City Commission start work sessions

September - Final review of draft document

October - Planning Board public hearing

November - City Commission public hearing

**Growth Policy out-reach activities to date:**

January -Consultant in Helena and conducted 9 stakeholders’ meetings and met with staff, Consolidated Planning Board, Helena Citizens Council, and the City Commission

March- Home Builders Show & Lifestyle Expo booth -over 200 comments received

April – Four-day Storefront Studio on the Walking Mall; drop-in discussions, additional stakeholder meetings, and two community workshops

Continual – providing for on line comments and survey; website and

Facebook updates; and staff “open-door” to anyone wishing to comment.

Mayor Collins thanked staff for what has been done and encouraged further public involvement.

**City Attorney – Robert Maffit and MILP, Inc., v. City of Helena** – Attorney Jodoin and Deputy City Attorney O’Connor reported on February 2015, Mr. Maffit and Montana Independent Living Project, Inc., (“MILP”) filed a discrimination complaint against the City with the Montana Human Rights Bureau (“HRB”). The complaint alleged that the City’s public transportation system was operated in a discriminatory manner. Ultimately, Mr. Maffit and MILP withdrew their discrimination complaint prior to the HRB issuing its findings, in August 2015.

On the same date that Mr. Maffit and MILP withdrew their discrimination complaint, they filed a retaliation complaint with the HRB. Originally, this complaint named a number of city employees and elected officials as respondents. However, later the complaint was amended to name the City as the sole respondent. The complaint alleged that several city employees and elected officials engaged in retaliatory behavior towards Mr. Maffit and MILP during the pendency of their discrimination complaint. The city and the complainants engaged in mediation over several months, which was ultimately unsuccessful. On March 11, 2016, the HRB issued a “no reasonable cause” finding on the retaliation complaint and issued a right to sue letter to the complainants.

Pursuant to the right to sue letter, the complainants could either file objections to the dismissal to the Human Rights Commission within 14 days or file a civil action for appropriate relief on the merits of the case in district court within 90 days. The complainants did not file any objections with the Human Rights Commission. However, the complainants did file a complaint in district court on June 8, 2016.

The district court complaint was served on the City on June 4, 2019. The complaint contains two counts. The first count realleges the allegedly retaliatory behavior engaged in by city employees and elected officials in the complainants’ HRB retaliation complaint. The second count alleges that the HRB misinterpreted a point of law when it issued its “no reasonable cause” finding. Specifically, the issue is whether or not an entity other than a natural human individual, such as a corporation, can avail itself of Montana’s laws prohibiting retaliation.

An extension has been granted until July 25, 2019.

The City Attorney’s office has had initial contact with the plaintiffs’ counsel and is evaluating response options.

## **7. Committee discussions**

Helena Citizens Council – No report given.

**8. Review of agenda for June 24, 2019 Commission meeting** – Commissioner Wicks referred to agenda item 11A - acquisition of property from Prickly Pear Land Trust and asked for clarification on what is being requested. Attorney Jodoin stated the property is on the westside of the city and adjacent to Mount Helena. PPLT purchased the property and the city will acquire it for a nominal price of \$10.00 and specific conditions.

Commissioner Wicks referred to final passage of ordinances for the Downtown and Transitional Districts and asked if the commission will see these one more time. Attorney Jodoin stated this is final passage and asked if the commission has any amendments, they forward them to his office prior to the meeting. This will allow the amendments to be in writing, available for the commission and public to view.

**9. Public comment** – Sandy Schull, Birds & Beasley, representing Downtown Helena and the Parking Commission, asked the commission to consider allowing some streets to have angle parking on one-side and suggested Broadway and Cruse Avenues as streets to consider. Ms. Schull also addressed the emergency snow routes and recognized the great job the street division this past winter. She requested the no parking for the downtown emergency snow routes be changed from the current 8:00 a.m.-5:00 p.m. to no parking from 5:00 p.m. to 5:00 a.m., the same as the capital complex.

Herb Kulow, Lutheran Worship Facility, read a prepared letter regarding the street maintenance fees for the property they own on Benton Avenue.

Jerry Hamlin stated he has been working with the Lutheran Church and represents the Assembly of God Church who has the same concerns. Mr. Hamlin handed out a map of the Luther Worship Facility's property and information on the current assessment, proposed alternative methods and previous year's assessments. He asked if a separate category could be added for worship facilities and noted churches are allowed in residential and commercial zones.

Commissioner Noonan thanked Mr. Kulow and Mr. Hamlin for bringing this issue to the attention of the commission.

Gery Carpenter stated it is his understanding the city departments are outlined in the city code and need to be changed by ordinance approved by the commission. Attorney Jodoin stated the city departments are outlined in city code and noted he has drafted ordinances; however, they have not been put on a meeting agenda and there is no set time to bring them forward.

Commissioner Wicks asked when the parking app would be installed on the meters. Sandy Schull stated the app cannot be used until all of "bugs" are worked out; hopefully by the first part of July. Interim Director Transportation Systems Department Knoepke concurred the first part of July is the target date to release the app. There will be a public event with the commission and the media will be invited.

Commissioner Wicks asked that staff post updates on social media on the timeline of when the app will be released and that we continue not to issue tickets until the app is available to the public.

Director Knoepke stated he would provide an update to the city manager and commission. Assistant to the Manager Opitz stated she has been working with the Parking Commission and a press release will be issued.

Commissioner Noonan asked that it be clear that ADA parking is not charged.

**10. Commission discussion and direction to City Manager** – Manager Cortez summarized the following:

- Custer Avenue will be on the August 6 joint City-County work session agenda.
- Street Assessment – commission will revisit the street assessment for churches
- Update social media on parking app, including information pertaining to ADA parking spaces and the postponement of ticketing.

Commissioner Wicks asked staff to schedule a facilitated discussion between the hiking community and the biking community to advocate a better partnership and communications between the two groups.

**11. Adjourn** – The meeting adjourned at 5:45 p.m.