

SUMMARY OF ADMINISTRATIVE MEETING

August 21, 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, O’Loughlin and Wicks were present.

Staff present: City Manager Ana Cortez; Assistant to the City Manager Amanda Opitz; City Attorney Thomas Jodoin; Interim Police Chief Hagen; Interim Fire Chief Ken Wood; Interim Public Works Director Ryan Leland; Transportation Systems Director David Knoepke; Public Information Officer Rebecca Connors; Parks & Recreation Director Kristi Ponzozzo; Community Development Director Sharon Haugen; Planners Michael McConnell and Lucy Morell-Gengler; Interim HR Director Sheri Hall; Interim Finance Director Liz Hirst; Community Facilities Superintendent Troy Sampson; Intern Mauricio Morfin and City Clerk Debbie Havens.

Others in attendance: HCC Representative Sumner Sharpe, IR Reporter Thomas Plank, NorthWestern Energy Representative Howard Skjervem, Montana League of Cities and Towns Executive Director Tim Burton; BID Board members; Downtown Helena Board members; Tim Meldrum, Pat McCutcheon and Ben Kennedy.

2. July 24, 2019 Summary – The July 24, 2019 summary was approved as submitted.

3. Commission comments, questions

A. Request to Join Challenge to LR-130 Ballot Language – Commissioner Haladay reported he received a request from some of the Petitioners in the challenge to the ballot language to LR-130, that Helena consider being a petitioner.

LR-130 is a ballot initiative that preempts local governments' authority to enact any form of gun ordinance. This would nullify Helena's ordinance, 5-1-3. It would also potentially preempt the Helena School District from any form of regulation regarding firearms on school campuses. The current challenge is to the sufficiency to the Attorney General's ballot statement. The current petition contains arguments why the ballot language is deficient and proposes ballot language that is not deficient.

However, the deadline was August 20 and the City missed the deadline. Commissioner Haladay asked for thoughts on how to move forward and coordinate with other partners for updates on this challenge.

Montana League of Cities and Towns Executive Director, Tim Burton, stated the League Board voted 18-0 to petition the Supreme Court with our partners. When you appeal the language in a referendum, it automatically goes to the Supreme Court, where it sits today. It is very clear the language does not adequately represent what the impact of the referendum would be, specifically regarding firearms on school property. Director Burton stated prior to becoming a petitioner, the Montana League of Cities and Towns was informed by the National League of Cities that there was grant funding available to fight preemption efforts within this part of the United States. The League will be submitting a grant application for \$125,000.

Commissioner O’Loughlin stated it makes sense to track this asked Manager Cortez and Attorney Jodoin to track the challenge to LR-130 and keep the commission updated. Commissioner Noonan concurred.

4. **City Manager's Report** - Manager Cortez reported on the following items:
- A. A public meeting on the Beattie Street Trailhead project is scheduled for Thursday, August 22.
 - B. The Open Lands Work Plan and the sale of the KCAP Park are on the agenda for the August 26 city commission meeting.
 - C. Parks, Recreation and Open Lands Director Kristi Ponozzo updated the commission on the Beattie Street Trailhead open house at Jefferson School on August 22; there will be two follow-up meetings on Beattie Street at the trailhead to discuss specifics and bring back a recommendation to the commission.
 - D. Director Ponozzo reported on the city of Helena being recognized as a Continental Divide Gateway Community. There currently is a planning committee that has met once and being designated provides acknowledgement that Helena is close to the continental divide trail. Director Ponozzo stated she would expand the work on the application this fall, expand the committee in the winter, and be prepared for the citywide roll out event in spring of 2020. Manager Cortez noted this would be a joint effort between city and a number of organizations.
 - E. Public Information Officer Rebecca Connors gave a presentation on the new parking application that is now available. The app can be modified after it has been used and depending on comments received.

Commissioner Wicks noted there have been questions in the community if the city would look at 30 to 60 minute free parking and if the commission were to decide to do that, could it be built into the app. Transportation Systems Director Knoepke stated he believes that it could be built in; however, it will take time. Free parking is available in three lots and the parking garages, people do need to enter their license plates so the vehicle can be tracked. Full enforcement will occur after Labor Day.

Manager Cortez stated there would be no changes to program unless directed by the commission. She asked the commission to allow staff four to six weeks to adjust once enforcement begins. Commissioner O'Loughlin stated she would also like to track the revenue of the new system.

A. **Summer Internship 2019 Presentation – Downtown** - Manager Cortez introduced Intern Mauricio Morfin who gave a presentation on the Downtown, specifically Last Chance Gulch businesses. Topics included Downtown Merchant's Vision; What's Working; What is not Working; Downtown Need/Desires; Accessibility and Transit (to Downtown); Beautification; Business Development; Downtown Organization; Next Steps; and Process.

Commissioner Noonan thanked Mr. Morfin for the presentation and the good work. Mayor Collins also thanked him for the work he did on behalf of the city. Commissioner Wicks thanked Mr. Morfin for his work and that he included a Downtown Visitor Center in his outline. People who are visiting are asking for information. Commissioner Haladay and O'Loughlin also thanked Mr. Morfin for the work he did this summer. Commissioner Haladay stated he likes the idea of a Downtown Coordinator and put more effort into the downtown.

B. **Montana League of Cities and Towns** – Manager Cortez introduced Executive Director Tim Burton who gave the history and an overview of what the Montana League of

Cities and Towns and the National League of Cities offers to cities. Mr. Burton also referenced the partnership with the Montana Municipal Interlocal Authority.

Director Burton spoke of the League Conference scheduled for October 2-4 in Billings and noted the conference will be in Kalispell in 2020 and Helena in 2021. He suggested a delegation might want to prepare a presentation to present to the Site Selection Committee at conference.

Director Burton spoke on the work the League and the seven large cities in Montana has done regarding nutrient variance on the water quality standards. There was a legal challenge to the nutrient variance and there has been national attention on this issue. There is a scheduled meeting on September 5 to receive a briefing from DEQ and the attorney who represented the League in this case. Director Burton also spoke on issues the League followed during the 2019 Legislative Session and continue to work on. He specifically spoke on the importance of the Local Government Interim Committee.

Director Burton again addressed the support the National League of Cities gives to the state organizations.

Commissioner O'Loughlin referenced infrastructure projects and noted one thing we continue to struggle with is working with MDT, requirements of the US Department of Transportation and thinking strategically and collaboratively amongst the cities. How can we move things forward where cities can best address their own infrastructure needs, specifically if they are on a MDT route but important streets and infrastructure in the municipality. There was some discussion on forming some working groups to work with MDT to discuss a variety of issues. She asked Mr. Burton to update the commission on where things stand with MDT and where does he think there is opportunity.

Director Burton stated it was helpful to raise the State gas tax to fund the infrastructure projects. The question is how we get MDT out of the way so we can build our communities the best way we know how and do it more efficiently with less risk. Director Burton stated MDT Director Tooley recognizes there are five districts in Montana that are not uniformly managed; their contracts need to be reviewed and one uniform contract needs to be developed that would apply to all five districts. Over a year ago, a group started meeting with Director Tooley and his staff to develop a uniformed contract that would apply to all five districts. A lot of process has been made and the results of those meetings will be given at the League Conference in Billings.

5. Department Requests –

Community Facilities – Staff and Northwestern Energy employees will be present to discuss issue related to LED street light replacement. Manager Cortez reported this item was on the July 24 administrative meeting agenda; however, public comment was not accepted and staff received no direction. We have received a request from NorthWestern Energy to postpone discussion on this item.

Howard Skjervem, NorthWestern Energy (NWE) stated after the last administrative meeting and discussions with city staff, NWE made the decision to put a temporary hold on the LED lighting project in the community due to comments and concerns of the commission. The city and the Independent Record were notified of the decision.

NorthWestern Energy has hired HDR Engineering to do the studies on the LED lights and should have them by the first week of September. The study is on the fixtures and costs associated with the replacement.

Commissioner Wicks referenced the temporary hold on the project and asked if it is only the replacement of fixtures or does it include new subdivisions. Mr. Skjervem stated the study includes any new fixtures including Front Street.

Commissioner Haladay asked what HDR's investigation is going to include. Mr. Skjervem stated HDR has been hired to investigate the LED lights; however, he does not have the details. Commissioner Haladay asked that NorthWestern Energy keep the citizens and city informed on what they are looking at. Mr. Skjervem stated the intent is to bring the information forward and the city would be first to hear the results. Manager Cortez stated the city needs to hear what can be used and the associated costs that will be consistent with the current ordinances.

Public Comment – Sumner Sharpe noted the HCC submitted a recommendation on the LED lights and should be part of the discussion.

McKenna Sellers with Sleeping Giant Citizens Council noted they are following the LED lighting conversion and one of issues they are concerned with is the temperature with all fixtures.

City Attorney – Animal Control Ordinance Rewrite – City Attorney Jodoin reported Chapter 2 of Title 5 of the Helena City Code currently contains the various duties and responsibilities for dog (animal) owners in the City. That chapter also includes various prohibitions such as keeping a nuisance dog. Further, the chapter contains a process for declaring dogs potentially dangerous or dangerous, depending on the severity of the actions of the dog.

The existing ordinance is, in many instances, redundant, conflicting, and creates an inefficient mix of civil and criminal enforcement processes. Generally, the proposed rewrite cleans up the redundant and conflicting sections. More substantively, the ordinance effects three major changes:

1. Creates an offense for an animal that bites or attacks another animal or human. Presently no prohibition exists.
2. Outlines a timely process for the civil adjudication as to ownership of a dangerous dog.
3. Clarification of “nuisance animal” to incorporate the existing prosecution policy for barking dog complaints.

In terms of the first change, presently if a dog bites or attacks another animal or human the only offense that can be cited is “nuisance animal” under Section 5-2-15, HCC, ostensibly because the dog has caused an “annoyance” to the person by biting or attacking the person. “Nuisance animal” is primarily oriented towards the prohibition of prolonged barking. Because there is no specific violation for a dog that bites or attacks another animal or human, we have to rely on the “nuisance animal” provision for criminal enforcement and restitution.

There is also civil “designation” and impoundment process where a dog is designated “potentially dangerous” or “dangerous,” depending on the severity of the incident and prior history of the dog. When a dog acts in a manner that results in the dog being designated “dangerous,” the dog is seized by the animal control officer and impounded at the Lewis and Clark Humane Society shelter. The owner is cited for the applicable concomitant offenses of “nuisance animal,” failure to have the dog on a leash, failure to have proof of rabies vaccination, and no city dog license, if they apply. Before the dangerous dog is released to the owner the owner must (1) obtain a dangerous dog license from the City, (2) provide proof of liability insurance covering attacks by the dangerous dog, and (3) have a secure enclosure for the dangerous dog to be kept in or keep the dangerous dog muzzled and on a leash when not in a secure enclosure.

Because there is no authority for the municipal court to decide whether the owner should be allowed to keep the dangerous dog under the civil dangerous dog designation we have had to wait until conviction of the underlying criminal “nuisance animal” citation. This process is incredibly inefficient, and the shelter incurs significant costs and other risks in boarding the dangerous dog often for several months until the dog owner is convicted. This proposed ordinance would create a process whereby the City can petition the Helena Municipal Court to order the relinquishment of a dog independent of any criminal prosecution. Thus, the city would not need to wait several months for a conviction in order to adjudicate the ownership of the dog while the shelter incurs costs that can reach the thousands of dollars.

Finally, in terms of the “nuisance animal” portion of the City Code for barking dogs, the language is amended to incorporate the policy of the City Attorney’s office with regard to prosecution of owners that keep a nuisance barking dog. A copy of that policy and barking dog log was included in the packet.

Staff is asking for Commission consensus to proceed with obtaining input from community stakeholders and finalize a draft for first passage. Identified stakeholders are HCC, public health officials, veterinarians, law enforcement, and human society. First passage of an ordinance in November.

There was commission consensus to move forward with the ordinance.

Long-Term Easement or Lease of City Property – 15th Street Parking Structure Property – Attorney Jodoin reported the City owns Lot 4A of the Chessman and Davis Central Addition as shown on Certificate of Survey No. 3155028. The City property is developed with the 15th Street parking structure and is subject to conditions of the bond that provided revenue that constructed the structure. The lease-purchase agreement for the property does not permit transfer of fee title to any portion of the property while the indebtedness is outstanding.

CP Investments, LLC owns the vacant property adjacent to the City’s property at the southwestern corner of Last Chance Gulch and 15th Street. They are developing their property with office space and/or residential condominiums. Their property is approximately 10,402 square feet.

CP Investments, LLC desires to acquire a long-term easement or lease to use a 3,381 square foot portion in the northeastern corner of the City’s property. This portion of the City’s property is grass/dirt east of the parking structure. CP Investments, LLC would like to use the property for parking and/or open space attendant to their development of their property.

Staff is asking for commission direction on whether to proceed with the provisions of Section 1-4-17, Helena City Code to consider the granting of a long-term easement or sub-lease of real property.

Attorney Jodoin stated there would be restrictions regarding the bonds; however, we can do a long-term lease. Section 1-4-17 HCC governs long-term lease of real property and after talking with the developer, a long-term lease is the preferred option by the developer and the city.

Attorney Jodoin asked if the commission would like additional information on the property, do nothing or proceed with a long-term lease and what the term of the lease would be.

Public Comment – Pat McCutcheon, property owner, spoke on the proposal to build single level condominiums with parking underneath. With the development of this lot, it would create an attractive site and help with beautification of the area. The size of lot has accessibility

issues for parking for the commercial spaces. If granted, the long-term lease will allow parking in the area. No structure would be built on the property; however, asphalt may be installed for the parking and the city would retain a utility easement.

Ben Kennedy and Tim Meldrum were also present and spoke in favor of the project.

Commissioner Noonan stated he toured Central School and it is remarkable work and he appreciates the ADA approach and thanked SMA for their work.

Commissioner Wicks asked if the parking would serve both residential and commercial uses. Mr. McCutcheon stated the parking would be for both residential visitors and commercial; the parking for the residents would be underground.

Commissioner O'Loughlin stated with the new Downtown Zoning District, there is no minimum parking requirements and asked what the timeline for the project is and what if any affect would the new downtown zoning ordinance have on this property. Mr. Meldrum stated the project will be designed this winter and will break ground in the spring of 2020.

Community Development Director Haugen stated the commission is looking at adopting downtown zoning in September and finalized prior to this project being designed.

Commissioner O'Loughlin asked what the definition of a long-term lease is. Attorney Jodoin stated under city code the definition of a long-term lease is anything over 10-years. There is nothing that would limit how long the lease could be. Commissioner O'Loughlin asked what the term of the parking garage bonds are and at some point do they term out and the city could sell the property. Attorney Jodoin stated the property could be sold after bonds are paid. Staff would have to look at the terms of the bonds. After that time, the city could do a minor subdivision and divide this parcel from the parking garage property.

Commissioner Haladay asked if the city is precluded in the bonds from doing the minor subdivision earlier and paying off that indebtedness for this property and then selling the property. Attorney Jodoin stated he would look into this option and report back to the commission. Commissioner Wicks stated that would be a great idea and asked staff to research the option and report back to the commission.

Commissioner O'Loughlin stated she is comfortable moving forward with the lease and would look to staff and the applicant to work together. Attorney Jodoin stated he would look at all options; however, proceed with a long-term lease to allow the applicant to proceed. The other process could be followed up on.

Commissioner Haladay asked Mr. McCutcheon if he would prefer to get the property free and clear sooner, if there were possible. Mr. McCutcheon stated they do not want to delay the project; he is not sure there would be continued interest and he would like to have a lease in place. Commissioner Haladay stated he would support moving forward with the lease and explore the purchase of the property. If it were ownership, the property would still have an easement.

Commissioner O'Loughlin referred to the site plans, options one and two, and asked if staff is looking for commission direction. The commission has spent a lot of time on the downtown ordinances not to require minimum parking. She recognizes the covered parking for residents make sense; however, she is not sure if the on-site parking makes sense with it being adjacent to a parking garage. Commissioner O'Loughlin stated she would prefer option one. It was noted the city does retain authority to weigh in on the site plan options. Commissioner O'Loughlin asked the applicant to work with staff to adhere to the new downtown zoning, to assure it is consistent with the intent. Commissioner Haladay echoed Commissioner O'Loughlin's comments. Hopefully, the city can be of assistance to move this project forward.

**6. Department Presentations --
Community Development**

Preparation for formal meeting with Growth Policy Consultant – Director Haugen introduced Planners Morell-Gengler, McConnell who reported SCJ Alliance, the City’s consultants for the Growth Policy, has presented draft Goals, Objectives, and Action plan for the Growth Policy Update. These documents incorporate the stakeholder interviews and all of the community input gathered throughout the process. The consultants have requested a joint meeting between the City Commission and the Planning Board to ensure that the Goals and the Action Plan reflect the common vision for the City and its future growth. Before that meeting, the City Manager and staff wanted to meet with the City Commission to review the Goals, Objectives, and Action Plan and gain their input on these items.

The purpose of the presentation is to answer any questions concerning the Goals, Objectives and Action Plan and to discuss any concerns, proposed amendments or additional items that the City Commission may want to consider. These items will be included as part of the discussion with the Planning Board. The following items were included in the PowerPoint presentation: Major Changes; Schedule for upcoming meetings; Goals; and Objectives;

Planner McConnell asked what would be helpful for going forward and suggested city commission work sessions and/or other updates.

Manager Cortez recommended scheduling a meeting with Consultant SCJ Alliance and the commission. She noted there is a meeting with the consultant in two weeks and asked if the commission wants staff to set up a number of study sessions.

Commissioner Haladay stated he has been participating with working group and there has been good progress. He is generally comfortable with what is going on and asked if the plan is to meet with the consultant at admin meeting. Planner McConnell stated staff would recommend a stand-alone work session with staff, Planning Board and working group prior to meeting with consultant.

Commissioner O’Loughlin asked what are the items that have garnered more discussion than others have. Planner McConnell stated some of the key issues include open space and parks; pedestrian, bike and vehicle transportation; activity centers; incorporate housing and protect our watershed and how better to work with the private sector to identify infrastructure.

HCC Chair Sumner Sharpe stated staff has done a great job; the process will get clearer and more organized as we move forward. An item that has been discussed is building within the city and long-term growth.

There was commission consensus to schedule two meetings on the Growth Policy Update. The first meeting will include the commission, staff, Planning Board and working group; the second meeting will include the commission, staff and the consultant. The commission office will work with staff to schedule these two meetings.

Public Works

Service Line Replacement Loan Program Presentation –Public Information Officer Rebecca Connors and Utility Maintenance Supervisor Trent Scheuer gave a PowerPoint Presentation on the residential water and wastewater service line loan program to include the following: Purpose of the program; number of events: averages; eligibility; outreach; applications received to date; projected numbers to use the program for both water and

wastewater; rate change scenarios; life of new program with variables, evaluation, adjustments, and possible sunset of the assessment.

Manager Cortez stated the conversation here is not much different from the parking rollout. Staff is beginning to introduce the program to the public and to make sure citizens understand it is a resource available to them. Staff would like time to evaluate the program and determine the level of demand there is. Staff is not to the point of making a recommendation of sun setting the assessment.

Commissioner O'Loughlin stated she does not see a proposal to for any change in the rates for the service line replacement programs. Attorney Jodoin stated these charges are in the miscellaneous fee resolution and there is not proposed change at this time.

Commissioner O'Loughlin referred to the rate of participation and deferment and asked if that is referencing the prevision in the policy for those with lower income levels. Supervisor Scheuer stated when a person uses the deferment option; they choose to defer any repayment until the home is sold. Commissioner O'Loughlin asked how the city is looking at the income levels. Supervisor Scheuer explained how the homeowners sign up for the program and how staff verifies their income information that would qualify them for the deferral program.

Manager Cortez noted for housing purposes we use the federal definition for income and recommended that we use the same definition for this program. Commissioner O'Loughlin asked staff to look at the definition they are currently using as it was outlined when the program was adopted.

Commissioner O'Loughlin thanked staff for the information and the work that has been done. The community wants the program to work and it is important to educate and reevaluate it. Commissioner Wicks also thanked staff for their work.

7. Committee discussions

Helena Citizens Council – HCC Chair Sumner Sharpe asked for clarification on the wastewater service line loan program; is it one residential unit per lot. Supervisor Scheuer stated it is one residential unit per lot; he also noted if a resident is paying for the program on their water bill, they are qualified to participate.

Mr. Sumner thanked Chief Hagen for his input regarding abandoned vehicles. He asked the commission to look at both issues and move forward with the recommendations. He also urged the commission to use the HCC members as a resource to ideas and recommendations.

8. Review of agenda for August 26, 2019 Commission meeting – No discussion.

9. Public comment – Lee Shubert, Chair of the BID, stated the report given by Intern Morfin ignored the involvement of the BID and the report made no mention of their existence. Mr. Shubert stated the BID office is an integral part of the community and he believes the report was incomplete.

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

- a. Staff will monitor the legislative activity regarding LR130
- b. Will convene a committee to submit a proposal to host the 2021 Montana League of Cities and Towns Conference

- c. Will work with NorthWestern Energy and their consultant HDR on the LED project
- d. Will bring forward the animal control ordinance
- e. Will research ownership versus lease on property located at the southwestern corner of Last Chance gulch and 15th Street.
- f. Schedule two work sessions regarding the Growth Policy Update; the working group will be invited to the meeting.

Commissioner Wicks thanked the Police Department for the ride-along.

- 11. Adjourn** – The meeting adjourned at 6:20 p.m.