SENATE LOCAL GOVERNMENT
EXHIBIT NO. 3
DATE 1.23.09
BILL NO. SB172

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
July 7, 2008
6:00 P.M.

Time & Place A regular City Commission meeting was held on Monday, July 7, 2008 at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.

Members Present Mayor Smith indicated for the record that Commissioners Cartwright, Oitzinger, Peura, and Elsaesser were present. City Manager Tim Burton, City Attorney David Nielsen and Deputy City Clerk Robyn Brown were present. Others present were Brian Olsen representing the Helena Citizens Council.

Pledge of Allegiance Mayor Smith 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 June 16, 2008 were approved as submitted.

Consent Agenda CONSENT AGENDA:

A. Claims
B. Utility bill insert – Water/Wastewater Rate Hearing
C. Banking services contract
D. Wastewater Collection System Master Plan for the City of Helena
E. Release of Interest in the Storm Water Easement located on Lots 8A and 17 of the Willows Townhouses Subdivision in the City of Helena
F. Release of Interest in the 60 foot Public Utility and Access Easement adjacent to Custer Avenue located within Lots 1, 2 and 3 of the Custer Landing Major Subdivision in the City of Helena
G. Release of Interest in the Sewer Easement located on Tract A of COS #374211 and Tract C of COS # 3311760 of Lewis & Clark County
H. Memorandum of Understanding with Lewis & Clark County for a solid waste advertising campaign

City Manager Tim Burton recommended approval of the claims and the consent agenda.

Public Comment Mayor Smith asked for public comment, none was received.

Commission comment Commissioner Cartwright asked item D be removed for discussion.

Motion **Commissioner Cartwright moved approval of items A through C and E through H on the consent agenda.** Commissioner Peura seconded the motion. All voted aye, motion carried.

Item D D. Wastewater Collection System Master Plan for the City of Helena

Commission comment

Commissioner Cartwright spoke in support of the Wastewater Collection System Master Plan. He referred to impact fees and noted one of the things you have to do to levy impact fees is show an impact, this plan will allow the city to assess the impact of new subdivisions and give a fair and equitable allocation of future costs to them.

Commissioner Peura commented citizens of the city and county ask government to plan for the future; this document is exactly the kind of document that represents the opportunity for planning. He thanked city staff and the consultants for their work on the plan.

Motion

Commissioner Cartwright moved approval of item D on the consent agenda. Commissioner Peura seconded the motion. All voted aye, motion carried.

Bid Award

BID AWARD:

A. CTEP Helena Middle School and Bryant School sidewalks, Project No. 08-09

Staff Report

City Engineer Ryan Leland reported this project is jointly funded by Safe Routes to Schools, CTEP and the local school district. On October 29, 2008, the City Commission allocated $142,290 of CTEP funding for the project, which is located at Bryant School on Harris and Sanders Street between Boulder and Livingston. The second phase is located at Helena Middle School on 15th Street between Idaho and Davis. The base bid of the project will replace approximately 7500 square feet of sidewalk, which includes 10 ADA ramps, and 700 linear feet of curb and gutter. The base bid for this project includes, but is not limited to traffic control, landscaping and other associated work.

On June 17, 2008, the City received five bids to perform the work. North Side Welding of Helena submitted the low bid of $79,036.91 for the base bid.

Mr. Leland recommended award of the bid to the lowest responsible bidder, North Side Welding, in the amount of $79,036.91.

Commission comment

Commissioner Cartwright spoke in support of the project.

Public comment

Mayor Smith asked for public comment.

Teresa Paklay-Brown, thanked the city for performing the project.

Motion

Commissioner Cartwright moved to award the bid for City Project No. 06-03 to the lowest, responsible bidder, North Side Welding, for $79,036.91. Commissioner Elsaesser seconded the motion. All voted aye, motion carried.

Communications

COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Mayor Smith and Commissioners Oitzinger, Cartwright and Elsaesser congratulated Commissioner Peura on his new position as Deputy Director of the Department of Revenue.

Commissioner Peura encouraged Helena citizens to attend the Brewer's baseball games.

Commissioner Elsaesser noted the July plastics drive in the YMCA parking lot will continue until July 8, 2008 at 7:00p.m.

Discussion was held regarding Yellowstone Pipeline cutting down trees in various areas of Helena.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

No report was given.

Report of the City Manager

REPORT OF THE CITY MANAGER

A. Introduction of Amy Teegarden, Director of Parks, Recreation and Open Lands

Manager Burton introduced new Parks & Recreation Director Amy Teegarden and gave her education and work history. Ms. Teegarden expressed her excitement for her new position with the city. The Commission welcomed Director Teegarden to the City of Helena.

Manager Burton asked City Engineer Leland to report on the status of the Benton Avenue extension project. Mr. Leland gave an overview of the first phase of the project.

Report from the Helena Citizens Council

REPORT FROM THE HELENA CITIZENS COUNCIL

HCC member Brian Olsen reported a steering committee has been formed to identify interests and amenities for Reber Park in HCC District 3. Also, the HCC recently hired Julie Haehnel to replace Martha Eberle as the VISTA/HCC Coordinator.

Mayor Smith and the Commission members recognized and thanked Ms. Eberle for her service to the HCC and City of Helena.

Public Hearings

PUBLIC HEARINGS:

A. CONSIDER FINAL PASSAGE OF ORDINANCE NO. 3099 AMENDING TITLE 5 OF THE HELENA CITY CODE BY ADDING A NEW CHAPTER 14, TO BE KNOWN AS THE "SOCIAL HOST ORDINANCE," THAT REQUIRES NOTIFICATION OF LAW ENFORCEMENT OF UNDERAGE DRINKING.

Staff Report

City Attorney David Nielsen reported Youth Connections has identified a problem in the community with underage consumption of alcoholic beverages. The problems associated with underage drinking, as found by Youth Connections, were generally described on "Exhibit A" in the Commission packet. Studies show that underage drinkers are provided illegal access to alcohol in private homes particularly and this is leading to excessive and dangerous drinking. Property owners and landlords are allowing underage youth to gather on their property to illegally drink alcoholic beverages. These adults are not being held responsible for this illegal drinking on their property. Allowing use of property for illegal underage drinking is not fully covered by the criminal offenses of endangering the welfare of children under §45-5-622, MCA, or furnishing alcoholic beverages to underage persons under §16-6-305, MCA.

The proposal is to amend the Helena City Code by making it a municipal infraction for property owners and landlords who fail to notify law enforcement of underage drinking knowingly occurring on their property. This infraction would make an adult accountable for illegal underage drinking that occurs on the adult's premises with the adult's knowledge, even though the adult did not provide the alcoholic beverage or did not otherwise aid and abet the illegal drinking. This ordinance creates an affirmative duty to notify law enforcement when a person knows that a gathering is taking place on the person's premises and that

underage persons are either consuming or in possession of alcoholic beverages.

The objective is to make changes to the City Code to make property owners and landlords responsible when they knowingly allow the consumption of alcohol by underage minors on their property and fail to report the activity.

Attorney Nielsen recommended first passage of the Social Host Ordinance that requires a person who knows of illegal consumption or possession of alcoholic beverages by underage minors that is occurring on that person's premises to notify law enforcement of the illegal activity.

Commission comment

Commissioner Peura referred to Section 5-14-3, subsection B and asked for an explanation of the term "rebuttable presumption". City Attorney Nielsen stated in order for a person to be culpable under this law they have to know the activity is going on. There are instances where owners of property lease it out while they live in another community or state, they will say they did not know their property was being used for this purpose. The ordinance allows the city to put the property owner on notice, in writing or by phone call, and let them know their property was being used for this purpose. The second time there is a violation, they cannot plead ignorance about the use of the property. Commissioner Peura asked if a property owner were charged with a second violation of the ordinance how could they rebut this presumption; is there a way to show reasonable steps have been taken to address the issue? Attorney Nielsen stated in court the landlord or property owner would have the opportunity to explain the actions they have taken to mitigate or exonerate themselves from the second liability.

Commissioner Oitzinger noted the term "violation" is not defined and stated it would make sense that the violation is an event for purposes of the fine, rather than attaching a violation to every underage drinker. Attorney Nielsen stated the violation is the gathering and the gathering is three or more underage drinkers at an occasion.

Commissioner Cartwright asked if a landlord is given notice of a gathering at their property and then modified the lease to say a second notice would terminate the lease, would that be rebuttable evidence? Attorney Nielsen expressed concern for hypothetical questions because in criminal and civil law everything is very factually intensive. If a landlord said he tightened up the lease and put in a clause, probably by itself would not be sufficient to overcome a rebuttable presumption. Commissioner Cartwright asked what would an adequate defense constitute for a landlord that doesn't live in the same building? Attorney Nielsen stated he can't layout an ironclad defense but the landlord may show that he modified the lease or eviction in some cases. The landlord would need to show that he is doing something affirmative to curb the problem. Discussion was held on landlord liability.

Commissioner Elsaesser asked if the host could be the renter as well as the property owner under the ordinance? City Attorney Nielsen stated yes and explained the renter could be charged immediately and the property owner could be notified of the offense.

Mayor Smith asked if this is complaint driven ordinance? Attorney Nielsen stated in reality, yes.

Public Testimony

Mayor Smith declared the public portion of the hearing open and called for any persons wishing to address the Commission.

Tom Austin, 103 Jimmy Green Road; expressed concern for the ordinance.

Cort Harrington, 522 N. Davis; spoke against the proposed ordinance.

Brian Olsen, 115 N. California; expressed concern for the "gray" areas of the proposed ordinance.

Mike Hughes, 809 Harrison Avenue; spoke against the ordinance.

Kelsey Fanning, 1231 Stuart; spoke in support of the ordinance.

Dr. David Krainacker, 3330 Ptarmigan Lane, Chair of Lewis & Clark County/City of Helena Board of Health; spoke in support of the ordinance.

Alex Gersovitz, 532 N. Warren; submitted written testimony for record.

Teresa Paklay-Brown, 531 Tamarack; spoke in support of the ordinance.

Mike Franklin, 1209 Stuart Street; spoke in support of the proposed ordinance.

Gene Meegan, 616 Holter; urged the Commission to amend the ordinance to exempt landlords.

Judy Griffith; 5495 York Road; spoke in support of the ordinance.

There being no further persons wishing to address the Commission, Mayor Smith closed the public hearing.

Discussion

Commissioner Peura indicated his strong support for the ordinance and addressed concerns related to the inclusion of landlords. While he understands the concern of some landlords, it will raise the level of community involvement in the issue and that is part of it taking a village to raise a child. The rebuttable presumption makes it very doable for responsible, concerned landlords to rebut the presumption that they are taking measures to stop underage drinking in the homes they rent. He noted Youth Connections is willing to work with landlords to help craft things the landlords can do to create the rebuttable presumption. Commissioner Peura commented the ordinance addresses a public health and safety issue and the Commission needs to pass the ordinance to address the issue.

Commissioner Oitzinger spoke in support of the ordinance. She asked City Attorney Nielsen if the ordinance could bootstrap the liability on the part of the landlord if an accident were to happen because of drinking at their property? Attorney Nielsen explained the ordinance doesn't mandate what the action is, it says that if there is underage drinking on premises, the owner will be put on notice and raises a rebuttable presumption that the owner knows or should've known it would happen. The way the owner resolves the issue is going to be a balance; the city isn't asking for extreme measures to overcome the rebuttable presumption, it's asking for reasonable measures.

Commissioner Elsaesser expressed concern the ordinance would create renting difficulties for younger persons. Attorney Nielsen stated he does not believe eviction is the only action available. If there is partying going on, the landlord needs to take whatever reasonable means to correct the problem. Commissioner Elsaesser asked what triggers the ordinance, three underage persons consuming alcohol or the presence of three underage persons? Attorney Nielsen explained three

or more persons, even if only one was drinking, would trigger the ordinance. Commissioner Elsaesser asked if it is anticipated that the ordinance will result in increased calls to the Police Department? Attorney Nielsen stated no.

Commissioner Cartwright asked what would happen if there was a violation of the ordinance on Helena Housing Authority (HHA) property? Attorney Nielsen stated HHA would get a notice just as anyone else would. He explained a different property would be a new notice but the same property or same occupants would receive a second notice. Commissioner Cartwright asked if HHA could potentially be fined. Attorney Nielsen stated yes. Commissioner Cartwright asked if the proposed ordinance is about binge drinking or any drinking? Attorney Nielsen stated it is about underage drinking. Commissioner Cartwright commented his understanding was the intent of the ordinance was to affect the person controlling the premises so offending persons couldn't defend the state contributing law because they didn't buy the alcohol. He indicated he would support the ordinance applying to people that controlled the premises, not owned the premises.

Commissioner Elsaesser recommended revising the ordinance to apply to three minors present instead of three persons under 21.

Motion

Commissioner Peura moved approval of final passage of the Social Host Ordinance that requires a person who knows of illegal consumption or possession of alcoholic beverages by underage minors that is occurring on that person's premises to notify law enforcement of the illegal activity. Commissioner Oitzinger seconded the motion.

Amendment

Commissioner Cartwright moved to amend Section 5-14-3B by substituting "owns" with "possessory interest". Commissioner Elsaesser seconded the motion.

Discussion

Commissioner Peura indicated he would not support the amendment, as there are irresponsible landlords that need to be held accountable. Police officers visit the same houses over, and over, and over again and those scofflaw landlords should not be let off the hook.

Commissioner Oitzinger indicated she would support the amendment. She expressed concern that the ordinance may exacerbate teen homelessness. She urged Helena landlords to educate their peers on underage drinking.

Mayor Smith commented he would not support the amendment as the Helena Landlord Association indicated they would not oppose the ordinance.

Commissioner Elsaesser indicated he would support the amendment as it is unclear what kind of reasonable action a landlord can take.

Commissioner Cartwright spoke in support of the amendment.

Vote

Motion carried 3-2, with Commissioner Peura and Mayor Smith voting no.

Amendment

Commissioner Elsaesser moved to amend the definition of gathering to insert "legally described as minors, under the age of 18" after the word "persons" and insert "where they are likely to

have been consuming alcohol" after the word "activity". Motion died for lack of a second.

Commissioner Oitzinger explained she could not support the amendment because of concern for the continuum of addiction.

Vote

Motion carried 4-1, with Commissioner Elsaesser voting no.
Ordinance #3099

Public Communications

PUBLIC COMMUNICATIONS
No public communications were given.

Meetings of Interest

MEETINGS OF INTEREST
The next Administrative Meeting is Wednesday, July 16, 2008 and the next Commission Meeting is Monday, July 21, 2008. There will be a Budget Work Session before the Administrative Meeting from 3:00 – 4:00 p.m. on July 16, 2008.

Adjournment

There being no further business to come before the Commission, the meeting was adjourned at 8:40p.m.

Mayor James E. Smith

ATTEST:

Clerk of the Commission

Identifying the Problem - Underage Drinking in Montana

Lewis and Clark County

- Students report the average age of first use is 12.7 years
  2006 Montana Prevention Needs Assessment Survey

- Six hundred sixty six (666) Minor in Possession (MIP) violations were filed in Lewis and Clark County in 2006
  City of Helena and County Justice Court Records Combined

- 40% of Lewis and Clark County 12th graders report binge drinking in the previous two weeks prior to taking the survey
  2006 Montana Prevention Needs Assessment Survey
  Binge Drinking identified as drinking 5 or more drinks in one setting

- 71.4% of all 8th, 10th and 12th grade students surveyed in Lewis and Clark County report it is "sort of" or "very easy" to get beer, wine or hard liquor.
  2006 Montana Prevention Needs Assessment Survey

Montana

- Montana high school students rank among the highest in the nation in binge drinking and drinking and driving
  2007 Montana Kids Count Data

- 18 to 20 year olds drivers in Montana had the highest incidence of fatal alcohol related crashes in 2006
  2008 MDT Traffic Safety Problem Identification

- Montana's teen suicide rate is more than twice the national average.
  2005 Montana Youth Risk Behavior Survey

In a national survey 33% of teens surveyed responded that it's easy to obtain alcohol from their own parents (knowingly); this increases to 40% when it's from a friend's parent.
Teenage Drinking Key Findings, American Medical Association, 2005

Alcohol is one of the most common contributors to injury, homicides, suicides, sexual assaults, date rape and other criminal behavior among youth. (American Medical Association. Teenage drinking: Key findings of Teenage Research Unlimited survey of teenagers and Harris Interactive Survey of parents. *Office of Alcohol and Other Drug Abuse,* Chicago, IL, 2006 and National Institute on Alcoholism and Alcohol Abuse).