

**MINUTES  
COUNCIL WORKSHOP  
MAY 30, 2017 6:30 P.M.  
COUNCIL CHAMBERS**

A Council Workshop was held in the Council Chambers and called to order by Mayor Mark Mace at 6:30 p.m. on May 30, 2017.

**COUNCIL MEMBERS PRESENT:**

<input type="checkbox"/> Emelie Eaton	<input type="checkbox"/> Doug Poehls
<input checked="" type="checkbox"/> Bruce McGee	<input checked="" type="checkbox"/> Richard Herr
<input checked="" type="checkbox"/> Chuck Dickerson	<input type="checkbox"/> Scot Stokes
<input checked="" type="checkbox"/> Tom Nelson	<input type="checkbox"/> Bill Mountsier

**OTHERS PRESENT:**

Heidi Jensen, CAO	Alan Hulse, CEO of MMIA
Sam Painter, Civil City Attorney	Brandon Duffey, Great West Engineering

**Public Input**

There was no public input.

**General items**

There were no general items.

**Executive Review**

- Alan Hulse, CEO, Montana Municipal Insurance Authority - Discussion regarding shooting in Riverside Park

Alan Hulse, the Chief Executive Officer of the Montana Municipal Interlocal Authority, spoke regarding risk management issues, potential exposures, and possible concerns with shooting in Riverside Park. He presented an overview of MMIA and his role in this discussion. The MMIA is a risk retention pool for cities and towns in the state of Montana. MMIA is not an insurance company, but it acts similar to an insurance company. MMIA is different in that it is owned and operated by its members. It operates four separate pools, including the liability pool, the workers' compensation pool, the property pool, and the health insurance pool. Each of the pools or programs is operated separately from each other and they do not co-mingle funds across lines of coverage. A city can participate in one of the pools and not the others, or they can participate in all four pools.

Mr. Hulse spoke about liability exposure, particularly relative to indoor and outdoor shooting ranges. He talked about coverage because it is not his role to tell the council what it can and cannot do. He is not here to say that MMIA will write the city out if it continues with this practice. He spoke regarding covered exposures and non-covered exposures. MMIA does not specifically underwrite the exposure, but they rate risk by using the payroll as a basis for underwriting. Over 30 years of existence, they found that the payroll is reflective of the exposure for a community. The larger the community and the bigger the payroll, the more miles of streets, sewer, sidewalks, water system, etc., that need to be maintained. They establish base rates based on the payroll and then modify the rate based on the experience. He is here to talk about exposure. The city council's job is to look out for

the city's interests and to make decisions. Part of that decision making process should factor in the city's exposure to liability. Sometimes the best risk management decision is to accept the risk. Other times the best decision is to transfer the risk to someone else to insure it, or to try to manage the risk.

With regard to shooting ranges, three categories of risk exist. There is risk to injury, with either somebody using the range or somebody around the range. There is risk to disease, which predominantly rests with the indoor facility. There is risk to pollution exposure. Regarding the risk to injury, MMIA defends between 100 and 150 lawsuits against its members at any given time. He has seen claims argued relative to shooting ranges that shooting is an ultra-hazardous activity and therefore it is strict liability, and if something happens, the city is at fault and has no defense. He does not know how viable that theory is. Lawyers argue a lot of different theories when they are trying to prove their cases. MMIA handled a claim ten years ago involving a shooting range in one of the larger communities. The range was not owned by the city, but it was being used by the city's police department. An officer was on the range qualifying, went to draw his service revolver from the holster, and shot himself in the leg. He was acting in the course and scope of his job duties, so he had no claim against his employer, the city, other than a worker's compensation claim. Because it was a county shooting range and the city was using the range, he filed a tort claim against the county. The argument was that shooting is an ultra-hazardous activity and the range owner has a responsibility to manage, supervise, and oversee the range. They failed to do that, that is how he got injured, and therefore the county owed him money. MMIA was not involved in that aspect of the claim, but the county settled the claim for \$110,000 for his injuries. There is the risk of somebody being injured as the owner of that range. Whether somebody else is managing it or overseeing it does not make the risk go away for the city as the owner of the range.

Alan stated that the indoor range is the more concerning exposure to him as a risk manager. There is lead contamination in the building and there is an inadequate ventilation system. That is going to continue to get worse and is a real exposure to anybody that is in the building. He does not know what to do about that short of totally reclaiming the building and putting in some type of ventilation system to continue to use it. He has concerns about continuing to allow use of that facility until something is done.

Alan spoke regarding the last exposure of overall general pollution. With shooting, especially with the outdoor range, shooting is done in a concentrated area. The shots fall down to the ground and build up over time, which is a potential long-term exposure. That exists whether the city does anything or not, and it will grow over time. From a coverage standpoint, MMIA has no exclusions in the memorandum for shooting activities. If the city had a claim involving somebody being injured as a result of a shooting activity, there would be no exclusion and MMIA would provide coverage for the claim. Depending on the circumstances, they would either defend or try to settle the claim, and that would be reflected in the city's loss history. MMIA would not rate the city higher for that or charge more for having that exposure, but it will be reflected in the city's experience modification. MMIA has a 5-year lookback for claims, which would drive future premiums based on that experience.

The potential exposure for disease from using a building that is contaminated with lead, or the pollution exposure to the land itself, may or may not be covered. MMIA has an absolute pollution exclusion in its Memorandum of Liability Coverage. It basically says they will not cover any liability

arising out of pollution. If somebody who was exposed to lead in a contaminated polluted building filed a claim as a result of the exposure, it may trigger the exclusion. It would depend on what else was pled. If somebody filed some type of a claim for pollution to land, he does not know how that would come about. It would not be covered by MMIA's memorandum.

Alan spoke regarding how to manage the exposure, and if the exposure could be managed by leasing, donating or selling the property to someone else. He thinks to some extent the injury exposure on the range could be managed if the city did not own the property. However, the range sits in a city park area. If somebody happens to be injured, that could rest at the city's doorstep as the park owner and not taking precautions to keep the public in general out of harm's way. Regarding the pollution exposures, he does not know how to transfer that exposure, as those are legacy exposures that the city owns.

Alan concluded his informational overview and mentioned that he has addressed the council regarding this property in the past. He is not anti-shooting range, as Montana is a state in which people hunt. Shooting ranges are needed, but there is exposure and risk. The council needs to consider these issues when making decisions regarding the shooting range.

Mayor Mace thanked Mr. Hulse and asked if there were any questions.

Tom did not know why the council was having this discussion. He does not know about the indoor shooting range and whether or not there is active shooting there because of the flooding and if it is occupied or not. He knows that outdoor shooting terms in May 2018 in the lease.

Mayor Mace questioned what can be done as far as the indoor shooting range.

Alan understands that that indoor range has been tested and the tests indicated that there is lead contamination. It is also his understanding that that indoor range does not have an adequate ventilation system for an indoor firing range. If asked for a recommendation, he would not allow the public to access the indoor shooting range until the city has dealt with the current conditions. The claim in the large community is what is driving his experience with this issue. The community has a controlled indoor range for limited use for the police department only. They have a ventilation system that they have not adequately and properly maintained, managed, and cleaned and there is a high lead content in that range. Right now, that range has been shut down and that city is looking for solutions. From his perspective, if there is a known contaminated site without adequate ventilation, he would be remiss to say the city should do anything other than shut it down. He knows that is easy to say and it may create more difficulties, but it is a real risk.

Tom had a copy of the Laurel Rod and Gun Club's lease, but did not have the Laurel Rifle Club's lease. He questioned if the Rifle Club had a current lease and the expiration date.

Heidi thought the lease expired and had not been renewed since the flooding event of 2011 because the building is in disrepair.

Tom stated that, if there is no lease, then there is no activity.

Heidi stated that the club still uses the building. The city would need to block the door in order to stop use of the building.

Tom thought the council had previously discussed "no lease, no activity."

Bruce stated that the council has discussed that. He thinks the council has been told at different times that the building was not in use, but the citizens have never respected that, and it has remained in use.

Heidi explained that the city has asked it to not be in use, but unless staff is directed to block the door, staff has no authority to do that. Unless directed to lock/barricade that door closed, staff cannot act on it.

Bruce questioned whether that directive needed to come from the council or if it could be made on an administrative level.

Mayor Mace stated that this should be discussed at the next council workshop.

Tom asked for the city attorney's thoughts on this matter. He asked why the city is having a problem with a building that is being used that should not be used. There is one year left for shooting in the lease. He questioned if the council should consider a resolution to terminate the lease early.

Sam stated that Tom asked a multiple level question. There have been ongoing discussions about shooting down at the park, and the fact that it is in a city park has been the problem. Everybody has recognized that. This council, or the former council, made a decision to sunset shooting in the park. The intervening flood created yet another urgency with the water that flooded and contaminated the building, making the bathrooms inoperable. When it was dried out, the club went in and there was more shooting. The city did some tests and the tests came back positive for lead contamination. During this time period, the club has attempted to come up with an idea as to how they can take over the shooting operation down there all together. Sam attended a Park Board meeting where there was discussion about giving or leasing the buildings in the park to the club. Sam's response was that, yes, if the city would de-annex the property and convey it all to this club, it would not be the city's property anymore. That is the only way to minimize the personal injury-type risk. This will not get rid of the pollution problem. That is the city's problem and the city cannot get rid of it. The problem remains that they are still shooting in the park and the council wants to know what to do. Studies show that there is lead poisoning. The city owns the building, which causes liability concerns if people are allowed to shoot in it. The insurer has pointed out the fact that there is exposure, and that exposure may not be covered. The ramifications are that, if a substantial judgement is obtained against the city, the city pays it. The citizens all pay it, as a levy comes about, and the funds are paid for the damage. The council, as the managers of the city, has to realize that there is a potential liability there and the council needs to determine whether or not to continue with the risk.

Tom stated that, from Sam's answer and Alan's earlier statement, he would infer that perhaps the best remedy is to have the building go away, as in demolished/burnt/hailed off in a manner according with the contaminant it has.

Sam stated that properly disposing of the property would certainly resolve the problem.

Tom stated that it is probably not cheap, but it is probably the least expensive option.

Sam stated that, if the club came in with a substantial chunk of money and bought the park from the city, he would have a hard time saying that does not resolve the injury case or issues, but only if the council de-annexed the property so it was not part of the city anymore. The biggest problem is that it is located on city property. Regardless of what happens down there, the city will always be a defendant.

Alan agreed that the city would be the primary target of a complaint.

Sam stated it is always presumed that the cities have unlimited resources, even when they do not. He agreed that the city has some potential uncovered liability.

Alan stated that it is a pollution exposure. A recent claim in another community was ultimately resolved for \$7.5 million. MMIA paid a portion of it, but a big portion of the claim fell to the city. Alan stated that pollution type claims get very expensive. In addition to the \$7.5 million, there was \$3 to \$3.5 million in defense costs, which did not even get to depositions. It was just the initial engineering work behind the scenes.

Alan stated that the exposure can be managed, but from a decision standpoint, the exposure exists today as it exists, but it gets worse as time goes on. The priority from his perspective is a known contamination site. From a public safety standpoint, it is probably incumbent upon the city to take some action to eliminate the public from access to that contamination site.

Mayor Mace thanked Mr. Hulse for his presentation.

- Resolution - Engagement Letter with Dorsey & Whitney

Heidi discussed a resolution to approve an engagement letter with Dorsey & Whitney. The engagement letter was already signed by Heidi in April and authorizes Dorsey & Whitney to prepare paperwork to create the Special Improvement District No. 118 on South Washington Avenue and Southeast 4<sup>th</sup> Street.

- Resolution - Create Special Improvement District No. 118

Heidi introduced the resolution to create Special Improvement District No. 118, which is the improvement district on South Washington Avenue and Southeast 4<sup>th</sup> Street. A portion of this project will be paid with TIF District funds, and the owners will also pay a portion. There have been no objections from the property owners on South Washington Avenue at this time.

- Resolution - Award the bid for the South Washington Avenue and SE 4<sup>th</sup> Street Project

Heidi explained that this resolution awards the bid for Special Improvement District No. 118. The project on Southeast 4<sup>th</sup> Street is located by the 90-degree corner near Walmart. The road will be widened so the whole road will be the same width all the way around the corner. Schedule 1 is

\$124,066.00 for the creation of the SID, and Schedules 2 and 3 are \$101,710 and \$34,405 respectively. No street maintenance dollars will contribute to this project as it will be paid with TIFD dollars and payments from the property owners. Once the project is completed, Southeast 4<sup>th</sup> Street will be painted, as the paint has worn off from last summer and the turn lane cannot be seen.

Chuck asked if Schedules 2 and 3 would be automatically awarded to CMG upon completion or if it would go out for a re-bid.

Heidi confirmed that CMG was the lowest bidder on all three schedules, and all schedules were advertised as a package.

Sam clarified that Schedules 2 and 3 are contingent upon approval and creation of the SID, but Schedule 1 would proceed with or without approval of the SID.

Tom asked if all three schedules are being paid with TIFD funds.

Heidi said yes.

Tom asked if there were any sidewalks or crossings included in the project.

Heidi explained that sidewalks and crossings are included in this project. Three properties on the east side of South Washington Avenue would add sidewalks. A sidewalk currently goes around the outside of the corner at Southeast 4<sup>th</sup> Street and Bernhardt Road, and all pedestrian traffic will be required to take this route. Adding sidewalk along the inside of the corner is cost-prohibitive because it would require covering two ditches. There will be two lighted crossings added to Southeast 4<sup>th</sup> Street and one standard crossing added to South Washington Avenue.

Tom asked if this would allow for two semi-trucks to navigate the corner at the same time in their own lanes.

Heidi deferred to Brandon Duffey of Great West Engineering.

Brandon Duffey handed out some plans for the Special Improvement District. The plans show the dimensions of the street, and Brandon described simulations of semi-truck traffic in each lane. A semi-truck would cross into the center turn lane, but it would not encroach on the other lane of traffic. Semi-trucks would still cross the center turn lane when turning onto Bernhardt Road, but there is no way to change that without extremely modifying that corner. The intent of this project was to widen out to the north where there is room and to keep the southbound traffic in its own lane.

- Resolution - Zoning variance from LMC 17.20.010 List of Uses in Highway Commercial Zoning for medical marijuana dispensary or dispensary. (PH - June 6, 2017)

Heidi spoke regarding the resolution for a zoning variance requested for a medical marijuana dispensary or dispensary. The public hearing will be next week, June 6, 2017. Heidi briefly summarized the variance, saying it was recommended unanimously to be approved by the City-County Planning Board [Note: Per the Planning Board minutes of May 4, the vote was 5-2]. She

asked the applicant's representative, Jason Smith, to come forward.

Jason introduced himself as the co-owner of Montana Advanced Caregivers in Billings, Montana. He is asking for a 1500 square-foot variance to help serve the patients in this area. It would not be for producing or growing any sort of medication or marijuana, it would just be a storefront. All medications would be dispensed in sealed packages with warning labels. They are the first dispensary in the state to do that. Jason asked if there were any questions.

Richard asked where their business is located in Billings.

Jason described the location, which is just off Interstate 90 near the South Billings Boulevard exit.

Richard remembered that the City-County Planning Board recommended allowing medical marijuana only in Light Industrial zones back in 2011.

Jason acknowledged that, and he listed property owners he believed to currently occupy Light Industrial zones as Montana Rail Link, Fiberglass Structures, and the refineries. Because these business are federally regulated, Jason said, they cannot allow a dispensary on their property. He believed that the location listed in the variance was zoned as Light Industrial in 2011 when they made that recommendation.

Richard asked about the number of patients they have in Laurel.

Jason said there are currently about 20 patients from Laurel, but a Laurel location would be closer to patients from the surrounding area including Red Lodge, Absarokee and others.

Richard asked if 20 patients was enough to make this a viable business, considering it is only ten more miles to their Billings location.

Mayor Mace pointed out this was not related to the variance and stopped the discussion.

Tom asked regarding the current zoning for the property at 204 South Washington Avenue.

Heidi responded that it is zoned Highway Commercial.

Tom made a statement about the council considering rezoning rather than granting variances to avoid losing the continuity that was in the original zoning plan.

Heidi reminded the council that they have to take the application as it stands.

Chuck thinks variances are an avenue for other businesses to come into the city, and he does not believe the city will lose control of the type of businesses that open. He wants to be welcoming to new things coming into the city.

Heidi pointed out that there is criteria in which a variance can be allowed or should be permitted.

These were listed on the front page of the resolution and were answered by the applicant, as well as discussed by the Planning Board.

Chuck acknowledged that there may be another location ten miles away, but the council should want to be user-friendly to the citizens of Laurel. There may be more medical situations in Laurel that the council is not familiar with, and this could open up a new avenue for them.

Jason added that they offer a product called Charlotte's Web at their facility. It is a product made strictly from hemp that is not psychoactive. It is not marijuana. It is made in Colorado, and it can be used to treat children with seizures. Jason stated that they have a lot of patients that do not have medical marijuana cards, that have nothing to do with marijuana, but they have to access their other products.

- Resolution - Contract with Nixle for Reverse 911 services

Heidi discussed the resolution for a contract with Nixle for Reverse 911 services. The city currently contracts with a company called CodeRED for Reverse 911. It has become too cumbersome to operate and the yearly fee has continued to go up. The Police Chief evaluated options using test runs with the dispatchers, and he would like to move the city's Reverse 911 services to Nixle. It works well with the city's Zuercher software.

Heidi stated that Reverse 911 is a wonderful public service that the city can use for all sorts of disasters, emergencies, fires, etc. The city used the Reverse 911 service recently when there was an active shooting situation in the city about a month ago. It asked all residents in the neighborhood to stay inside and helped ensure that everyone stayed safe in that situation.

Tom asked where that call went.

Heidi said the active shooting situation was on Roundhouse Drive and the Reverse 911 called the neighbors and asked them to stay inside while the police were containing the situation.

- Council Issues:
  - Update on 2011 Yellowstone River flooding event

Heidi reported that the intake is online, and the city is currently using water from the new intake down at the treatment plant building. She went on a walkthrough with the construction company and then met with the property owner, Mr. Harkins. The city wants to continue to be a good neighbor, and would like to thank Mr. Harkins for being a good neighbor to the city. Heidi talked to Public Works Director, Kurt Markegard, and the punch list is not very long. The contractor has done a really good job with restoration, and the city should be closing this project out soon.

Mayor Mace recalled that the Public Works Director took the council to see the initial damage, and said they should see it again as the restoration has gone very well. Mayor Mace asked if there were any questions from the council.

Chuck asked if it would be possible to set something up prior to the next Council Workshop meeting



to see the restoration site.

Mayor Mace said that information would be sent to the council members.

Other items

There were none.

Review of draft council agenda for June 6, 2017

- Public Hearing:
  - Zoning variance from LMC 17.20.010 List of Uses in Highway Commercial Zoning for medical marijuana dispensary or dispensary

There was no discussion.

Attendance at the June 6, 2017 council meeting

All council members present will attend.

Announcements

Chuck announced there would be no Park Board meeting June 1<sup>st</sup>.

Tom announced that there will be a Cemetery Commission meeting on June 13<sup>th</sup>. The Cemetery Commission created brochures to help citizens locate gravesites. They are now available at the cemetery in a water resistant box or at the Water Office in City Hall.

Tom presented a retirement card and gift to Cindy Allen, Council Secretary, in appreciation of her hard work over the years. He acknowledged it is not easy, and sincerely thanked her on behalf of the council.

Mayor Mace verified that Cindy Allen served as Council Secretary for 19 years, and stated, "That's a lot of taking care of mayors and councilmen."

Chuck requested a discussion at the next workshop about combining the Cemetery Commission and the Park Board. Sam said he could put together a draft ordinance for discussion.

Tom requested that council members discuss the liabilities in Riverside Park and work toward a solution at the June 13<sup>th</sup> council workshop.

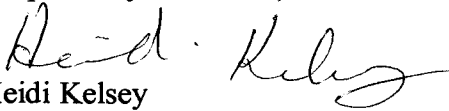
Mayor Mace said it will be added to council issues with the flooding.

Chuck suggested moving the discussion about combining the Park Board and the Cemetery Commission to the June 27<sup>th</sup> Council Workshop.

Heidi agreed, citing that the Clerk/Treasurer is presenting her first management budget at the June 13<sup>th</sup> council workshop.

The council workshop adjourned at 7:31 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Heidi Kelsey".

Heidi Kelsey  
Administrative Assistant

**NOTE: This meeting is open to the public. This meeting is for information and discussion of the Council for the listed workshop agenda items.**