

Stevensville Town Council Meeting Minutes

for THURSDAY, SEPTEMBER 12, 2024, 6:30 PM 206 BUCK STREET, TOWN HALL

CONDENSED MINUTES

1. Call to Order and Roll Call

Mayor Michalson called the meeting to order. Councilmembers Barker, Brown, Nelson and Smith were all present.

2. Pledge of Allegiance

3. Public Comments (Public comment from citizens on items that are not on the agenda)

Nena Williams, 105 College Street: I just wanted to find out if there was any progress on the land that I would like to lease for my flower garden.

Mayor Michalson: Jenelle found some old paperwork from Cindy and as soon as the budget is passed, we can start the process. In October, the budget is priority number one.

4. Approval of Minutes

Mayor Michalson: introduced all of the meeting minutes as one item a-g.

- a. Special Town Council Meeting Minutes 08/06/2024
- b. Town Council Meeting Minutes August 8, 2024
- c. Town Council Meeting Minutes August 22, 2024
- d. Budget Workshop Minutes 08/27/2024
- e. Special Town Council Meeting Minutes August 29, 2024
- f. C.O.W. Meeting Minutes September 4, 2024
- g. Budget Workshop Meeting Minutes September 5, 2024

Councilmember Smith: I move that we approve council minutes A-G on the agenda.

Councilmember Brown: 2nd.

Mayor Michalson: motion and a 2nd. Council discussion? Comments from the public?

PUBLIC COMMENT

Sarah Lucas, Grizzly Way here for my mother: I have a question on e. C.O.W. meeting. I was hoping to see something on the agenda for a committee on the assistance program. There was a discussion about that.

Jenelle Berthoud, Town Clerk: yes, that was talked about at the meeting, but I did not receive anything from the council on putting this on the agenda.

Sarah Lucas: is this something that I can do.

Mayor Michalson: you are more than welcome to put an agenda item in. Any other comments, seeing none, Jenelle please take the vote.

Councilmember Barker: aye.

Councilmember Brown: aye.

Councilmember Nelson: aye.

Councilmember Smith: aye.

Mayor Michalson: passes 4-0

5. Approval of Bi-Weekly Claims

a. Claims #19179-#19233

Mayor Michalson: introduced approval of bi-weekly claims, #19179-#19233.

Councilmember Smith: I move that we approve claims #19179-#19233.

Councilmember Nelson: 2nd.

Mayor Michalson: motion and a 2nd. Council discussion?

Councilmember Barker: #19181, Ravalli County Sheriff's Department, Zercure I see three of them on here why is that and two of them are very large.

Gina Crowe, Finance Officer: Central Square, the county decided that they would take on the payments.

John Boe, Chief of Police: we have the basic program.

Mayor Michalson: and this is something that is required?

John Boe, Chief of Police: yes.

Councilmember Barker: is that something that we are going to see quiet regularly?

Gina Crowe: you will probably see them quarterly. They are actually all yearly.

Councilmember Barker: #19226, Western States equipment and #19227.

Mayor Michalson: I believe that this the maintance on the big generator at the plant.

Stephen Lassiter, Public Works Director: yes, the well house and the plant. Yearly maintenance.

Councilmember Barker: #19231 HDR is the completion for the final project?

Gina Crowe: part of the final design, not the end.

Mayor Michalson: I will get into that in my executive report.

Councilmember Barker: I see that is says, budgeted and budgeted remaining.

Gina Crowe: I have to break it out like that for DNRC.

Councilmember Brown: #19186 and #19218, Rex Olsen Trucking, A/C repair. Is that one bill of two bills?

Gina Crowe: those are separate bills for the fire truck.

Councilmember Brown: is it for the same thing?

Gina Crowe: I think that they had an issue with the A/C in the truck and then they had to take it back.

Councilmember Brown: Credit card charges, I see we have hotel reservation for Colette if I remember correctly Colette will no longer be here.

Gina Crowe: it shows it there, it crosses months, and it will credit next month.

Councilmember Brown: #19191, is this something that we will be able to claim through MMIA?

Mayor Michalson: I do not believe so, it is something that they have been doing every year, it is for spraying of trees on Main Street.

Councilmember Brown: #19198 for M&M any information back from them on the RFP out for bids. Is that still going?

Jenelle Berthoud: Mr. Germane and I completed that with Diane and the FAA. That went on the website yesterday and we are taking bids until October 2nd.

Councilmember Brown: thank you

Councilmember Smith: #19206 the inspection fees and plan review.

Gina Crowe: it is not one building, it could be many. It could be building, electrical, plumbing and mechanical.

Mayor Michalson: any other comments from the council? Public comment? Seeing none, Jenelle, would you please take the vote.

Councilmember Barker: aye.

Councilmember Brown: aye.

Councilmember Nelson: aye.

Councilmember Smith: aye.

Mayor Michalson: passes 4-0

6. Administrative Reports

a. Airport

Mayor Michalson: we do not have an airport manager, but we have had five applications for the airport manager.

b. Building Department

IN THE PACKET

c. Finance

NONE

d. Fire Department

IN THE PACKET

e. Police Department

John Boe, Chief of Police gave his report to the council tonight on paper and presented the report in person.

f. Public Works

IN THE PACKET

Stephen Lassiter: meter replacements, we went from 180 unread meters and today we have 99. And we did 8 this week so hopefully 91. It is going so well because of the system, Andrena making the appointments and Cody replacing them. Pine Street we are still working on getting some meter pits there with ARPA money. that is all in four months. Thank you to Andrena and Cody.

Mayor Michalson: next week you are going to do all of Mission Street.

Stephen Lassiter: we are going to shoot for 23. 8-10 a week is pretty good.

Mayor Michalson: you are always going to have some failures, George figured 20-30 a month. Like I have said while I am here, my goal is to get a meter pit in every house. I want to thank you for doing the gravel on the alley way on Pine Street.

7. Guest

a. Fred Thomas, I am here as the building committee for Saint Mary's Catholic Church. We are planning on adding on to the church. My purpose of being here tonight is to talk parking and about the alley way. (provided the council with pictures to reference to) We would like to use the alley way for parking, this would be for Sunday's. We would like to put in the parking, this would not change the land ownership just the use of it. This would be for public parking. Lastly the parking line along this road, let me say on the outside, is not our land along the

outside of that lot. What you will find if you go up to the bank here, it is a parking lot, it is paved for parking. So that is what we would like to do, the same thing that has been done along Main Street. Try to answer any questions that you may have.

Councilmember Nelson: the block in question, who owns it.

Fred Thomas: we can not affect them at all. Between the church and the house.

Councilmember Nelson: so, it is public property?

Fred Thomas: there is nothing that shows, just along the street area. If you look along the side streets on 3rd Street, there is a strip on land that is just developed for parking.

Councilmember Baker: so, nobody owns this piece of property, but the town? This pretty confusing, just like Ramona Vance wanting to use parts of property. It sounds wonderful and not having the specifics.

Councilmember Brown: I think Stacie is asking for site layout plan with ownership.

Councilmember Barker: instead of what you want to do with it but who owns it.

Mayor Michalson: if it is town property.

Councilmember Barker: I want to see who owns what before we vote on anything.

Fred Thomas: the lot that we are talking about scrapping and adding gravel is owned by the church. It is the area of land around it. We can make that clear.

Mayor Michalson: any other questions? Thank you, Fred.

8. New Business

a. Discussion/Decision: Scarecrow Festival 2024 Warming Station/Smores

Mayor Michalson: introduced new business item a, Scarecrow Festival 2024 Warming Station/Smores.

Gretchen Spies: I am normally the one that fills out the permit. And Loey did it and the burn barrel was left off. I understand that if there is anything going on with weather or fire.

Mayor Michalson: that sits by the old Rocky Mountain Bank. It was just an oversight.

Councilmember Barker: I make a motion to approve the Scarecrow Festival 2024 Warming Station/Smores.

Councilmember Nelson: 2nd.

Mayor Michalson: motion and a 2nd. Council discussion?

Councilmember Barker: looking at the dates on the bottom, you have October 5th on west 3rd. we still have farmers market.

Gretchen Speis: yes, when you are done, we will set up.

Councilmember Nelson: are there going to be fire extinguishers handy?

Gretchen Speis: yes, and adults will be present.

Councilmember Brown: we did approve this.

Mayor Michalson: yes.

Jenelle Berthoud: everyone looked at this and it has been voted on. One thing when Ms. Loey turned it in was the warming station, that is the only change to the whole permit.

Mayor Michalson: any other comments? Seeing none, Jenelle, would you please take the vote.

Councilmember Smith: aye.

Councilmember Nelson: aye.

Councilmember Brown: aye.

Councilmember Barker: aye.

Mayor Michalson: passes 4-0

b. Discussion/Decision: Renewal of Town Attorney Contract, Effective October 15, 2024

Mayor Michalson: introduced new business item b, Renewal of Town Attorney Contract, Effective October 15, 2024. Has been our attorney since fall of 2021. I ran some numbers on the work that Greg has done. I took the numbers from January of this year to now. Greg's rate is \$165.00 per hour, so far from January to now \$412.50 for Burnt Fork Estates, \$1,468.50 for water rights, \$1,683.00 for Berta Farms, \$6,733.00 for his total. Right now, he is averaging about \$352.00 per month. As you know we have to have an attorney. I say that Greg and I have a good working relationship. If you choose to go another route it will, Greg has a good relationship with Ross Miller and the water rights.

Councilmember Barker: I make a motion for the Renewal of Town Attorney Contract, Effective October 15, 2024

Councilmember Smith: 2nd.

Mayor Michalson: motion and a 2nd. Council discussion?

Councilmember Barker: one thing that concerns me is that you are running for HD 88, what is that going to leave us with.

Greg Overstreet: before the meeting I had this conversation with Councilmember Smith. If I was to win, I will be keeping two clients Stevensville and the Town of Philipsburg, I am looking at around 10 hours per month. I can easily do it.

Councilmember Barker: I here you say, 5 months. What does that 5 months look like?

Greg Overstreet: The 5 months in the legislature? The busy month is the last month. They do not meet on Saturdays and Sundays. I will have time to access my emails.

Councilmember Brown: In our discussion, reminder to the council when we go to vote. Because we are so deep in Berta Farms and our water rights if we put it out for bid, a new attorney would have to get into those files and then we would be billed for those hours.

Greg Overstreet: it would be a lot of time. There are few attorneys in Ravalli County, back in July of 2021. An RFP went out to all of the attorneys in Ravalli County and the rate that I charge is about a 1/3 of what I charge in Washinton state.

Councilmember Smith: I was reading through the contract, and it says 3 years. Looking through some of the MCA's it says a 2-year term.

Greg Overstreet: I only answer questions that I am asked. The past contract was based on the one before that. Written 3-year contract was modified by the statute.

Councilmember Smith: also, in the terms of duties I do not see you prosecuting.

Greg Overstreet: as you know I am not. My civil practice has grown so we have a town attorney and a prosecuting attorney.

Councilmember Smith: is she working under you.

Greg Overstreet: no, she works independently, and there is no need for her to work under me. It would cost more money for her time and my time, and she does a fantastic job.

Councilmember Barker: if we are going to put this contract in place, it needs to say 2 year not 3 year.

Mayor Michalson: easy to do. You can make a sub-motion.

Councilmember Barker: I would like to make an amendment to the motion that in the contract that it goes from a 3-year to a 2-year. For October 15, 2024-October 15, 2026.

Councilmember Smith: 2nd.

Mayor Michalson: motion and a 2nd. Discussion on that amended motion. Public comment?

PUBLIC COMMENT

Melissa Bailey, College Street: page 91 of the packet. That the contractor should have a sub-contractor perform his duties. Is that voted on by the council or is that up to Mr. Overstreet.

Mayor Michalson: where is this now?

Councilmember Barker: is this similar to when you were out with COVID and you had the lady that came in and sat for you, she did not charge for anything. She came in and sat so that we had an attorney when he was gone. And he made that choice.

Greg Overstreet: she contacted the town and said that she would fill in.

Melissa Bailey: in the event that you had to go to Philipsburg for something and you need to appoint a substitute we would be obligated to pay them at \$165.00

Councilmember Barker: at no charge. At no additional cost to the town.

Greg Overstreet: it just happened that way. I go to Philipsburg and return phone calls and emails. It would be in an incapacity situation. There are other attorneys that I could call on. Other lawyers could step in.

Councilmember Barker: I think her question is, will we be charged.

Greg Overstreet: I would insist that it be at the same rate.

Melissa Bailey: if we are going to pay an additional attorney \$165.00 per hour do, we want the ability to approve who that attorney is. It just says that Mr. Overstreet is responsible for a substitute contractor.

Mayor Michalson: hopefully we never get to that.

Councilmember Barker: is there some sort of wording that needs to go in there.

Mayor Michalson: if the council would like to add that in. "the contractor shall be responsible at no additional cost to the town, a substitute contractor will perform the duties in his absence upon approval by the town council." We can add that in there. Any other comments from the public? Further comments from the council? I think that it can not hurt the town to have a town attorney on the legislature.

Greg Overstreet: I have been given a spot on the local government committee. They were tickled to have an attorney from a small town of 2000 and 950.

Councilmember Nelson: on that point there is no conflict of interest in the legal sense.

Greg Overstreet: no, councilmember Smith brought this up before the meeting. If this was of a personal nature.

Mayor Michalson: any other comments from the council, voting on the amendment.

Councilmember Brown: aye.

Councilmember Smith: aye.

Councilmember Barker: aye

Councilmember Nelson: aye.

Mayor Michalson: passes 4-0 on the amendment

Councilmember Smith: can I get that language into the contract, the way that you said it.

Mayor Michalson: motion on "the contractor shall be responsible for having available at not additional cost to the town a substitute contractor perform his duties while in his absence upon approval by the town council."

Councilmember Smith: I so move.

Councilmember Nelson: 2nd.

Mayor Michalson: motion and a 2nd to amend number 9. Council comments? Public comments? Seeing none, Jenelle please take the vote.

Councilmember Brown: aye.

Councilmember Smith: aye.

Councilmember Barker: aye.

Councilmember Nelson: aye.

Mayor Michalson: motion passes 4-0 on the amendment. Can I get a motion to approve the contract.

Councilmember Barker: make a motion to approve the renewal of the towns attorney contract effective October 15, 2024.

Councilmember Nelson: 2nd.

Mayor Michalson: motion and a 2nd. Further discussion from the council? Public comments? Seeing none Jenelle take the vote.

Councilmember Brown: aye.

Councilmember Smith: aye.

Councilmember Barker: aye.

Councilmember Nelson: aye.

Mayor Michalson: passes 4-0

- c. Discussion/Decision: Resolution No. 457d, a Resolution of the Town of Stevensville, Town Council Amending Water & Sewer Billing Policies

Mayor Michalson: introduced new business item c, Resolution No. 457d, a Resolution of the Town of Stevensville, Town Council Amending Water & Sewer Billing Policies. This is clean up work and has to do with DEQ.

Councilmember Barker: I make a motion to approve Resolution No. 457d, a Resolution of the Town of Stevensville, Town Council Amending Water & Sewer Billing Policies

Councilmember Smith: 2nd.

Mayor Michalson: motion and a 2nd. Council discussion?

Councilmember Barker: just reading through some of the other things in the policy why is it the water and sewer billing office are only from 8-4 when the office is open 8-5.

Jenelle Berthoud: that was approved when it went through last time, I think it is because Public Works is only here until 4:00. That has been there a long time.

Councilmember Barker: I was just curious as to why that hour was different.

Jenelle Berthoud: at the last council meeting when you approved this that was what was in there, the only thing that is being changed tonight is the addition of the DEQ fee.

Councilmember Barker: I must have missed it.

Jenelle Berthoud: Nancy had mentioned to me once that they only used to collect water bills until 4:00 so that they had the last hour to balance their till and close up.

Mayor Michalson: any other comments from the council or the public? Seeing none, Jenelle please take the vote.

Councilmember Barker: aye.

Councilmember Brown: aye

Councilmember Nelson: aye.

Councilmember Smith: aye.

Mayor Michalson: passes 4-0

- d. Discussion/Decision: Resolution No. 548a, a Resolution Adopting a User Fee for Unmetered Water by the Town of Stevensville

Mayor Michalson: introduced new business item d, Resolution No. 548a, a Resolution Adopting a User Fee for Unmetered Water by the Town of Stevensville. this is basically another clean up. Bulk is just to vague.

Councilmember Smith: I move to approve Resolution No. 548a, a Resolution Adopting a User Fee for Unmetered Water by the Town of Stevensville

Councilmember Nelson: 2nd.

Mayor Michalson: motion and a 2nd. Council discussion?

Councilmember Smith: I would just say that is a good change of wording.

Mayor Michalson: Public comments?

PUBLIC COMMENT

Pat Gronniger: you are saying that it is unmetered. The water coming out of the hydrant, how are you keeping track of that.

Jenelle Berthoud: those are filled out contracts and they report to us by the size of the truck that they are filling.

Pat Gronniger: so, we are working on merit and who is doing what.

Jenelle Berthoud: they have to have a key to use that hydrant and the only other hydrant that is being used is on South Ave.

Pat Gronniger: I just noticed the hose laying there.

Jenelle Berthoud: this is because that one is strictly being used by the Forest Service for the fire camp. They have a contract with us, and they are paying. The one on South is being used by Big Sky Utilities and they report to us by email.

Councilmember Smith: the Forest Service is filling up for the camp how are they paying? Three years from now?

Jenelle Berthoud: they come in and pay with a credit card and takes place at the end of their fire camp.

Councilmember Smith: I have heard stories.

Jenelle Berthoud: always check in with the town.

Mayor Michalson: any other comments from the council or the public. Seeing none, Jenelle please take the vote.

Councilmember Barker: aye.

Councilmember Brown: aye.

Councilmember Nelson: aye.

Councilmember Smith: aye.

Mayor Michalson: passes 4-0

9. Board Reports

Mayor Michalson: I attended the airport board meeting last night. At the meeting the curtesy car status came up, gravel pit status and they are still working on

that, I brought up leases there is probably 30,000 in unpaid leases. Next week the girls and I will get together and get the leases out. I will give them 30 days, and then I will take the chief up and put locks on them. The Hawthorne Fuel status, Hawthorne is willing to sell the tank back to us, but there may need to be an assessment on the tank before we pay \$20,000 for the tank. Tyler brought up a good point that we put the fuel tank into the current grant funding. We have five applicants for the airport manager position, I will be bringing a person forth at the next council meeting.

10. Town Council Comments

Councilmember Brown: I need to inform the public that an email was sent to council and the mayor. I would like all councilmembers to read their town council rules. (councilmember Brown provided a typed statement that is included in the minutes of this meeting). I also have concerned citizens if we have started to garnish the wages for the fines that were supposed to be paid back to the town by Mr. Dewey.

Councilmember Barker: I need to touch on a few things, I wish that Sarah would have stayed about the COW meeting. I spoke to Joyceann about the Stevensville Foundation. We have a meeting next week, September 26th and we are going to also meet with Sandy that is the treasurer and talk about the help for you program. On the website there is budget billing, maybe that is something that people can do. The yellow crossing flags, many citizens have commented that they look dingy and dirty and unattractive for our town. They would like to see the flags go, we are not a big city, and they would like to see them go. The construction trucks in Creekside was the issue resolved on the excess use off of Sassafras was there ever a solution for an alternative route. We had a gentleman come to us from Park Street parking were we able to have proper patrol for the parking concern.

11. Executive Report

Mayor Michalson: on 8/27/24 I did a walk through with Stephen and Riley Lubbers on Spring Street, I think that it looks really good. 8/29/24 I attended a water systems class with Stephen Lassiter and his team they get credits and a start on the certification. On Sunday I will be doing a proclamation for Ralph Serrette. Also had a meeting with HDR with Jenelle, Steve and Gina about Park Street and drainage. Pine Street is a different deal, they will be telling PCI that this will be going to DEQ. Also discussed the remaining ARPA money for the SCADA system and meter pits. Spring Street and Railroad Street are wrapping up. I would like to thank HB355, which gave the town \$144,000.00 dollars. I would like to thank HDR, Riley Lubbers, MR Asphalt, thank former mayor Steve Gibson, I would like to thank councilmembers past and present, Nancy Lowell, Cindy Brown, Isaiah Nelson, Stacie Barker and Wallace Smith. I would like to thank public works, former Steve Kruse, Steve Lassiter, Glenn Beiss, Matt and Jeff Wilkinson, and Cody Anderson. I would like to thank the town staff, Jenelle Berthoud, Robert Underwood, Gina Crowe and Andrena Case. I want to thank all the citizens of Spring Street and for your patience, we have talking about

Spring street being done and now it is. I want to move to the Mission Street Water Main Replacement Project. I want to thank the president of the United States and congress that passed the ARPA grant, they gave us \$1.1 million dollars. Need to thank the current and former presidents. I want to thank the council and former mayors Brandon Dewey and Steve Gibson. The ARPA grant came to fruition in 2021, and I was on the council then, why are we doing this and paying HDR. I need to thank the councilmembers at the time, Jaime Devlin, Patrick Shourd, Karen Wandler, Dempsey Vick, Robin Holcomb, Paul Ludington, Marilyn Wolff, Nancy Lowell, Isaiah Nelson, Wallace Smith, Stacie Barker, Cindy Brown. I want to thank all of those councilmembers for putting in the time. I would like to thank public works past and now, Steve Kruse, Steve Lassiter, Cody Anderson, Glenn Beiss, Jeff and Matt Wilkinson I want to thank them for their hard work and putting these projects together. I want to thank the town staff former and present Pam Sosa, Jenelle Berthoud, Gina Crowe, Melanie Sawyer and Andrena Case for their hard work and keeping it going. I want to thank you all.

12. Adjournment

Councilmember Smith: I move.

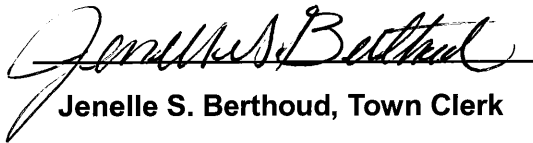
Councilmember Nelson: 2nd.

APPROVE:



Bob Michalson, Mayor

ATTEST:



Jenelle S. Berthoud, Town Clerk

Council Comments

I need to inform the public and the council that on August 29, 2024 we had an email incident that may have created an inadvertent violation of the Montana Public Open Meeting as defined under MCA 2-3-202. An email was sent to the mayor and all of the Town Council Members from one council member stating that one member would not be in attendance at the September 5, meeting.

By emailing more than one member of the council at the same time this potentially establishes a quorum of the council.

In this particular case incident the correct procedure as delineated in the Town of Stevensville Council Rules Part XIII paragraph 1 is as follows:

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- A Town Council Member desiring to be absent from the Town continuously for 10 calendar days or more shall submit a written or electronic request for permission to be absent to the Town Clerk's office.
 - The request shall be directed to the Town Council Members and the Mayor. The Town Clerk shall forward a copy to the Town Council Members request to be absent to each Town Council member and the Mayor.
 - If three or more Council Members have an objection to the absence, they may object, in writing or via email, within three calendar days after a copy of the request for absence has been sent to the Town Council Members (by the Town Clerk)
 - General information, anytime a member of the council emails more than one other council member, a quorum has potentially been established electronically. This is a potential violation of the Open Meeting Laws in the State of Montana.
 - If the Mayor emails more than two council members at the same time, there is a potential establishment of a quorum. This is the reason communications between Council Members and between the Council and the Mayor need to be sent to the Clerk. The Clerk can provide information to the council and the mayor without establishing a quorum. The information is sent to the council and there is no group discussion. Any replies to an email should be sent individually from a Council Member to the Clerk. Thus no discussion between council members occurs.
 - The same thing applies to conference calls. One Council Member call another member, but no three members of the council may be on the same call. The same applies to the Mayor and Council. Two Members of the Council and the Mayor may be on a call together, but not three members. This prevents an establishment of a quorum. However, the number of members actually on the Council determine a quorum. 3 of 4 members, or 2 of 3, etc., establish a quorum.

Secondly, I would like all the members to please review the Town of Stevensville Council Rules especially Part VI Section 1. Item, 1 Every member desiring to speak shall address the presiding officer and, upon recognition, shall confine himself/herself to the question under debate. All comments and questions shall be directed to the Presiding Officer and not to another member of the council, public or staff. This is consistent with the Council Rules and Roberts Rules of Order. No member of the public may directly engage in a conversation with the Council, not a member of the Staff without first obtaining concurrence from the presiding Officer.

- For example, if a Ward X Council member needs further information from the Treasurer regarding an item, the member will seek to be acknowledged by the Presiding Officer. Once recognized, the Member will make the request to the Presiding Officer not the Treasurer. The Presiding Officer may request the information from the Treasurer as a Presiding Officer request to the Treasurer or he may authorize the Treasurer to provide the information directly to the Council. But unless authorized by the Presiding Officer no council member may address the staff and the staff may not address a member of the Council.
- The same applies to the public. Public comment is public comment, not question and answer unless it is placed on the agenda as so. Unless the Presiding Officer authorizes it, no Council Member may address a member of the public.
- During the presentation of an agenda item, questions by the Council may arise. As such they must be administered in the same way as stated above.

And lastly once, when a Meeting of the Council has been, adjourned the members need to disperse and not discuss any town business amongst themselves in such a manner as to not establish a quorum.

Open Meetings

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A “ministerial” decision or action is one that is generally performed pursuant to legal authority, and requires no exercise of judgment. Id.

Notice of a meeting must be given sufficiently in advance of the meeting to permit the public to attend. Id.; Montana Code Annotated § 2-3-103. The amount of notice required “should increase with the relative significance of the decision to be made,” with the ultimate goal of encouraging and assisting citizen participation. See 47 Op. Att’y Gen. No. 13 at 6 (1998). In the case of county commission meetings, the Attorney General has suggested that 48 hours advance notice should generally be considered “sufficient to notify the public of contemplated action.” 47 Op. Att’y Gen. No. 13 at 6 (1998). However, each case will be considered based on its own unique facts, and depending on the circumstances less than 48 hours notice may be adequate. See Jones v. Missoula County, 330 Mont. 205, 127 P.3d 406 (2006).

Failure to comply with the notice requirements may subject any decision made in violation of the requirement to be voided under Montana Code Annotated § 2-3-213.

Closing a Meeting

Montana Code Annotated § 2-3-203 lists the circumstances under which a public meeting may be closed. The most litigated exception to the open meeting requirement is the one expressed in subsection (3) of the statute:

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

The presiding officer of the agency or public body that holds the meeting makes the determination whether to close the meeting. In making the determination, the officer must balance the demands of individual privacy against the constitutional right to know, which can be a difficult process depending on the circumstances. If the presiding officer determines that a meeting should be closed pursuant to this subsection, he or she should state on the record that a determination has been made that the demands of individual privacy clearly exceed the merits of public disclosure.

The right to privacy is guaranteed by Article II, Section 10 of the Montana Constitution:

Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Open Meetings

Montana's open meeting and public participation laws are based on two fundamental rights contained in the Montana Constitution. Article II, Section 9 contains a strong right to know provision:

Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Article II, Section 8 guarantees the right of public participation:

Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

In the case of meetings of public agencies and other entities, these constitutional rights are primarily implemented through Montana's open meeting laws, codified at Montana Code Annotated §§ 2-3-201 through 2-3-221. See SJL of Montana v. City of Billings, 263 Mont. 142, 147, 867 P.2d 1084 (1993). The general provision for open public meetings is contained in Montana Code Annotated § 2-3-203(1), which provides:

Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds, or expending public funds, including the supreme court, must be open to the public.

...

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

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Open Meetings

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What is a Meeting?

Under the open meeting laws, a “meeting” is very broadly defined as “. . . the convening of a quorum of the constituent membership of a public agency or association . . . , whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.” Montana Code Annotated § 2-3-202.

A “quorum” is defined as “a majority of the entire body” when members are acting as a group, “not merely the action of a particular number of members as individuals.” 42 Op. Att’y Gen. No. 51 at 200-01. The same opinion found that the terms “discuss,” “deliberations,” and “discussions” contemplate “collective discussion and collective acquisition of information among the ‘constituent membership’ of the agency.” *Id.* At 201.

An agency may not appoint any committee or subcommittee for the purpose of conducting business that is within the jurisdiction of the agency in order to avoid the requirements of the open meeting laws. Montana Code Annotated § 2-3-203(6).

There is no statutory distinction between a “regular” or “special” meeting for purposes of determining whether it is a “meeting” subject to the open meeting laws. See Montana Code Annotated § 2-3-202.

A “meeting” subject to the open meeting laws occurs regardless of whether it is conducted in person, by telephone conference call, by videoconferencing, or by email. See Montana Code Annotated § 2-3-202 (“whether corporeal or by means of electronic equipment . . .”).

Notice of the Meeting

The open meeting laws themselves contain no explicit notice requirements. The notice requirement as it pertains to open meetings is derived from Montana’s public participation laws, and it attaches only when an issue is of significant public interest. See Montana Code Annotated § 2-3-103; Common Cause of Mont. v. Statutory Comm. To Nominate Candidates for Comm’r of Political Practices, 263 Mont. 324, 326, 329, 868 P.2d 604, 605, 607 (1994); Board of Trustees, Huntley Project Sch. Dist. No. 24 v. Board of County Comm’rs, 186 Mont. 148, 154, 606 P.2d 1069, 1072 (1980).

The term “significant public interest” is not defined for purposes of the open meeting laws. In the context of meetings of a county commission, the Attorney General has determined that the term refers to “any non-ministerial decision or action . . . which has meaning to or affects a portion of the community . . .” 47 Op. Att’y Gen. No. 13 (1998).