

**Troy City Council
Work Meeting
Council Chambers
October 14, 2010**

The meeting came to order at 5:30 pm. Present: Mayor Don Banning, Council: Phil Fisher, Fran McCully, Loretta Jones, and Gary Rose, and City Clerk Sandra Johnson

GUESTS: Robert McLeod – Troy Police Department, Heather McDougall, Dave Norman – Public Works, Janine Johnson – Kootenai Valley Record, John Clogston, and Hank LaSala

CHRISTMAS TREE LIGHTS: Loretta Jones advised that money had been raised in the past for the lights and banners for the Christmas Tree Lighting Ceremony. Jones added that there is a person who will climb the tree to change the bulbs for us. He is licensed and bonded. Usually this is done on a Sunday because there is less traffic. It will be \$200.00 for this, which is what had been paid in the past. She also advised that Clint Taylor has some ideas for power saving lights and donations for the future, but for right now we need to come up with the \$200 for this year. She added that she wanted to get it started before the snow. It would take about 12 people to help to do this. Phil Fisher advised that he will approach his office for a donation. This is tentatively scheduled for October 31, 2010. It is council's consensus to move forward. Mayor Don Banning stated that he can commit to the fee and the motion can be made at the regular council meeting. Heather McDougall will ask the Chamber for a donation as well. Discussion followed.

ROOSEVELT PARK COMMITTEE APPOINTMENT: Mayor Banning requested establishing a committee for Roosevelt Park. The committee would set fees and so forth. Banning asked each council person to could come up with some suggested names of interested persons. On the committee he would like to see two from council, two employees, and maybe one from the school and one from a chamber business. Banning recommended Bob McLeod and Dave Norman to serve as the employees. Banning asked for council to notify City Hall with recommendations. We will then get together to appoint and establish this committee. Phil Fisher agreed that a park committee is a good idea.

MMIA MEETING IN LIBBY: October 26th, 2010- Mayor Banning let the council know about the MMIA scheduled in Libby on October 26th at 8:30am to 4:30pm in the Ponderosa Room.. He explained that it is similar to the meeting they had in January. He advised council that he would be attending as well as Bob McLeod, Dave Norman, Tracy Rebo and Clint Taylor, and asked council to let City Hall know if they planned on attending as well.

OPEN DISCUSSION: Meetings with MMIA and MT Local Government Center: Mayor Banning advised that the purpose of keeping this agenda short was to open for discussion ideas on procedures for future council meetings.

Staff updates - Phil Fisher wanted to start with changing the structure of the work sessions to the wording; *staff updates* with regard to infrastructure; water, sewer, streets and alleys, sidewalks and trees, parks and recreation, and electric. Fisher stated that the department head doesn't necessarily have to be there, but they are to give the information to the Mayor so it can be given to council. The mayor announced that all the department heads are in attendance tonight other than the power manager. Fisher stated we need to decide if we want to make it mandatory for them to attend or if it would be ok for them to pass on the update to the Mayor for him to report. Loretta Jones stated that the department head would know more in-depth information, so it would depend on the project at the time. Gary Rose said that the department head should attend if possible. Fran McCully suggested that if the department head is unavailable for the work section, then they should attend the regular council meeting. She stated that their attendance should be part of the procedure. Jones brought up that if we require them to attend they will have to be paid for it, which would run into overtime. McCully suggested shortening their work day to allow the

evening meeting time. Don Banning advised that their hours are defined in their union contract. Discussion followed. McCully stated that she didn't see a 10 hour day in the contract. Banning advised that the hours are negotiable. Fran McCully referred to the Minutes of March 18, 2009; that it was requested by Councilman Don Banning but tabled for more discussion, and no decision was noted in any meeting after that. Dave Norman explained the background of the decision to go to four 10 hour work days at the time. Fran McCully brought up that a third day off opens more potential for call-in and overtime. Norman explained that the schedule works because the two departments help each other out to avoid having to call someone in on their day off. McCully asked what they do during the dark period. He explained that in the past it was spent on inside machinery maintenance and early morning snow plowing before heavy traffic. McCully stated that she would like to see them go back to the five 8 hour shifts for the winter. Phil Fisher stated that he doesn't see an extra hour in the evening saving any call-out time. Dave Norman explained that with the current four 10 hour shifts, there is actually 50 hours of coverage. Discussion followed.

Annual Work Plan: Phil Fisher requested having an annual work plan discussed in the work session. He stated that city goals need to be addressed and the mayor and council should sit down and discuss their wants and needs. It would also involve the department heads. Fran McCully added; so we know seasonally what goes on and when it goes on. Dave Norman agreed. Mayor Banning asked Norman to submit a rough draft of what he anticipates for the year beginning for January 2011. Norman said he would. Mayor Banning asked the same of Chief of Police Robert McLeod and City Clerk Sandra Johnson. McLeod and Johnson said they would. Mayor Banning stated that he would talk to the power manager as well. Fisher stated that this will give us a way to know what will be done and when so we can answer people's questions. Discussion followed.

Dave Norman updated council on the substantial completion of Phase II of the water project. Norman advised that he had talked to Ryan Mitchell about the paving and Mitchell said it is too late in the season and too cold to pave. Fran McCully asked if the city crew could do a couple blocks at a time, in phases. Dave Norman advised that asphalt tends to be the big thing for paving; cold mix is not an option. Discussion followed regarding pressure and looping the water mains. Banning advised Norman to address a council member when coming to that part on his annual work plan. Banning asked Norman for a run down on the snow removal policy. Norman advised there is city ordinance in place that states that public works will plow the streets when the snow reaches a depth of six inches. There is no mention of graveling. The discretion is up to me. Robert McLeod added that if the roads are too slick, it is the Police Department's responsibility to bring it to the attention of the Public Works Department. The council submitted a list of maintenance items that they would like to be updated on. There was more discussion on the substantial completion of Phase II water project. Norman advised that the only thing not done is the SCADA system down at the shop. Norman also mentioned the controversy over chlorination. Ryan Mitchell had advised that once the chlorinators are installed, the system has to be used. There is more to chlorination than just adding it to the water system. It involves daily water samples that would involve employee hours, lab and material costs. The information that Norman has received is that the ground water rule has not come into effect yet, so Troy is not mandated to do this yet. Fran McCully asked Norman if he had done any research for lab to do the testing for a lesser amount. Norman said that he received information from different labs. Most of the communities in this area use the lab in Kalispell, which is the one that we use. There was discussion on mailing time being an issue as well. Norman stated the Montana Environmental Lab has been good to work with. McCully suggested making it a goal to research what labs would be most cost effective. Discussion regarding the sampling and testing processes followed. Dave Norman advised that the State wants a sludge build-up report that he will be doing later on.

Dave Norman made mention of the new recycling trailer is set up. Loretta Jones asked if people would be fined for not using it. Norman answered; no, it is a volunteer program. Discussion on what is accepted followed. Once it is filled the trailer is taken to Kalispell.

Communication and mayor/council collaboration: Phil Fisher addressed Mayor Don Banning regarding the article in the paper about the council attacking him. Fisher asked Banning how the council is attacking him. Banning stated that he didn't know what article he was talking about. Fisher referred to the article in the Western News written by Canda Harbaugh that stated Don Banning's quote about the council flooding him with resolutions and ordinances. Fisher stated that he talks to Harbaugh and doesn't say any slanderous remarks about Mayor Banning and he was disappointed. Fisher also brought up another issue of policy. When the Mayor leaves town, the president of the council is supposed to preside over the city business. Mayor Banning replied that he had been in contact with City Attorney Mark Fennessy and the Local Government Center regarding the matter. Banning read from the reply back from the Local Government Center, quoting 7-4-4403 and 7-3-220 in MCA. Fisher said that Dan Clark, of the Local Government Center in Helena stated the Charter is the governing charter of our city. It says in the Charter that the president will preside. Gary Rose asked Mayor Banning who would stand-in for him, if he was to be gone for a three week period. Mayor Banning stated, nobody, the department heads would head their departments. Fisher read from the Charter; the chairman of the council will preside when the Mayor is absent. Banning replied; that is in a council meeting. Fisher stated it doesn't say that. Fisher read from MCA; officers of the city or town council: the council may elect a president who in the absence of the mayor is the presiding officer and may perform the duties of the mayor. Fisher stated it doesn't say preside over the council. Fisher continues reading; with the absence of the president, the council may appoint one of the other members to take that duty. Fisher stated that at the meeting with the Local Government Center; it was discussed about the unwritten policies that have been going on in the city for years. Fisher asked; what is the unwritten policy here? Banning answered that the president of council presides over the council meetings. Banning continued; I was president of the council for a year before becoming mayor, and that is all I did because he was still available by phone or email. Loretta Jones stated, but if he weren't available, I think in the past, they have stepped in and took care of the day to day things. Discussion followed regarding examples of when the president of the council would step in. Fran McCully suggested establishing a written policy on it. Heather McDougall stated, there is one. Mayor Banning stated, I don't know where we are going to get a definitive answer for this. Jones agreed and added, so we should just decide. Fisher stated; so we need to make a policy on it or a resolution. Council agreed. Again, McDougall stated; it is in the Charter, you don't need the rule. Fisher stated; Dan Clark told me that the Charter is Troy city law. That the MCAs are only a guideline, and the Charter takes precedence over MCAs. Discussion followed regarding the prior week's situation when the office had to be closed for a medical emergency and the other clerks were at training with the Mayor. Phil Fisher stated that he should have been notified because the Mayor was out of town. Mayor Banning stated that he wasn't absent he was out of town on training and not out of contact, and it was his decision to close the office. Fisher brought back up the Charter and let his feelings be known that he would have been the one to contact. Banning stated, that is not what I've been told. Discussion followed. Hank LaSala introduced himself as a resident of the City, and stated that he provided the MCA to council, and it is not just a guideline, it is law. Fisher stated; my bottom line is on the ordinances about hiring and firing. We are not trying to change the Charter; we are trying to clarify what is actually what we do. Banning stated that the Charter states; the chairman of the council shall preside when the mayor is absent, while the MCA states; the chairman of the council may preside when the Mayor is absent. Loretta Jones added; it also says; may perform the duties of the Mayor. Banning stated; I've been told by everyone at the state level that presides, in this sense, is defined as presiding over council meetings. It doesn't say to make decisions over hiring and firing, or negotiating contracts or anything else. I am still available for those things. Hank LaSala asked mayor and council to direct their attention to the Charter. Fisher read aloud; the powers and authority of this self government shall be liberally construed. Hank LaSala added; there is a line in there that states all powers are by the council. McCully acknowledged. Gary Rose continued reading; all powers of the City shall be vested in the city council, except as otherwise provided by law or this charter. Janine Johnson asked how long the mayor gone when this happened. Mayor Banning answered; three days. Janine Johnson asked; then what has the City done in the past when other mayors have been on vacation for two or three weeks. Loretta Jones answered; the president of the council took over. Janine Johnson asked; was there a process of notification of when he was going to be gone. Loretta Jones answered yes, just take care of every things

without anything major, or the Mayor would be contacted. Discussion followed. John Clogston asked if the City attorney is still the one that is supposed to be consulted by the Mayor and the Council to answer questions like this. Banning answered; yes, and added; my first contact with him regarding this was Tuesday. Heather McDougall directed her comment toward the council stating; but, if you guys write a resolution on this, that takes priority, and you don't have to even go to the Attorney General. Phil Fisher stated; that's what I'm saying, we need to resolve this. Mayor Banning stated; but the resolution can be held up because you have to get a legal definition on the resolution, which goes to the City Attorney first, and then comes back to the council for review. Fran McCully stated; it's not mandatory, it's recommended. Banning continued; in order to meet all the criteria and not be against the law, it should be researched by the City Attorney, if he doesn't know the answer, he has avenues to take. Discussion followed regarding John Clogston's comment on his personal experience serving on boards versus the type of government Troy falls under. Don Banning stated; there is no question on how it should be done. Banning continued; the president of council is not the vice president or the vice mayor, he is the president of the council. Gary Rose stated; but next in line to you. Mayor Banning stated; No, next in line is the vote. Guest Heather McDougall said; no. Mayor Banning stated; the president of the council does not automatically succeed the mayor. Heather McDougall stated; yes he does. Gary Rose added; unless he doesn't want it, he does. Banning continued; no, he does not automatically succeed the mayor. Heather McDougall stated; yes he does, if you resign he does. Mayor Banning; if I resign, yes; or the council can elect someone, or the commissioners of the County can get involved. Gary Rose stated; we voted him in as the president of the council, unless he doesn't want to be there, he is the guy. Mayor Banning stated; but I was still available to take care of business. Hank LaSala read to define an absence from 7-4-41 stating; absence is 10 days continuously vacant without the consent of the council. Mayor Banning stated that he is in agreement. Fisher stated; I read the Charter, it says one thing. Either we go by the charter or we make another. We are going to make another resolution that states it exactly, but I don't think there is a reason to because it states it right here. Mayor Banning asked who the Charter goes to for approval.

After all the reviews and approval by a vote by the people, it ultimately goes to the Secretary of State. Gary Rose asked for Heather McDougall's opinion. Discussion followed regarding the differences in Troy's Charter and the Charter for Libby. Heather McDougall stated that the charter in Libby allows the Mayor to appoint without council consent and this charter is way stronger for the Council. More discussion followed with more comments from the public.

Fran McCully asked if this is the place that Council is supposed to ask for items to be put on the agenda for the council meetings. Mayor Banning answered yes, but I thought we were in agreement to keep everything at a minimum at the work meeting. Fran McCully stated; but now we're progressed to a council meeting and we have some things we want on there. Gary Rose added if there are things we need to put on, it has to happen now. Mayor Banning answered; they should be presented before council meeting. Fran McCully asked; so we can just walk into city hall and give them to the clerk. Mayor Banning answered; preferably you can come talk to me about them.

PUBLIC COMMENTS: Heather McDougall stated that she understood that this was going to be on the agenda for the work meeting. She asked if the resolution about the agenda items passed. Mayor Banning asked if this topic (4th of July Park Ordinance) is from the Council. McDougall answered; it's from the Chamber of Commerce. Mayor Banning stated; then it should be presented to the Council. Fran McCully stated; I have no problem with it. Mayor Banning stated; then they can talk about it, but you have to remember, they cannot make a decision. McDougall answered; I'm not asking for a decision, but I want them to think about things.

Heather McDougall, representing the Chamber of Commerce, gave examples of the Chamber not being able to enforce their rules from the 4th of July Celebration in Roosevelt Park. She presented council with paperwork written as an Ordinance for rules and enforcement for Troy's Old Fashioned Fourth of July. McDougall explained the reasoning behind the five specific rules listed on the Ordinance. Loretta Jones stated that other city's special events do not allow outside food and drinks. Fran McCully added that many things are planned around this event, it isn't just the Fourth of July any longer. More discussion followed regarding alcohol in the park at

previous events. Steve Bowen stated that allowing coolers makes it too easy for people to bring in alcohol. Bob McLeod stated that he had taken a package of sample ordinances on drinking to Phil Fisher and he hadn't heard back from anyone yet. Fran McCully stated; I haven't seen it, but it has floated around; and Maggie Anderson has called all of us, and we were under the impression that these ordinances were part of her presentation too. More discussion followed. Chief Police Bob McLeod stated that he has all the legislative changes that will take place for 2011 which makes it mandatory for server training. He stated that in his opinion there is over-serving at the park and now servers can be criminally prosecuted if somebody leaves the event and causes a serious accident. Fran McCully asked McLeod for statistics that prove it is only from the park when there are five bars in town. Discussion followed. Phil Fisher stated that because this is a Troy City Park and the event is at the Troy City Park; the Chamber of Commerce cannot be held responsible for policing the beer garden, that has to be the city police because it is a city department and it's a city park. Bob McLeod stated; the problem is, we have six to seven thousand people in that park during the 4th of July. If we obligate ourselves to patrol the beer garden, and we have to leave on a call, and something happens at the beer garden, the city will be held responsible. With three officers, that is over two thousand people per officer. Discussion followed. Steve Bowen stated that the year before when the county reserve officers were present, things were a lot better. That has to be something we have to get back especially when it starts getting dark. Discussion followed regarding the expense of the event and the cost of employing and insuring reserve officers. Mayor Banning asked council if they were opposed to having a committee to look into this and make a recommendation to the council. Phil Fisher stated; no, we never said we were. Fran McCully stated; we can do both. Mayor Banning stated; this could go to committee to include all investigation. Heather McDougall stated; I don't want it to, because I don't want to come 15 times to get it passed. Phil Fisher stated; according to how the committee would work for the park, any issue would go before the committee to discuss before it would come to council. So, by having a committee, then this would be to the committee then to the council. Fran McCully stated; the policy on that though, how far are we out for getting a committee, and government does not move fast, this has to be done at least three months before the Fourth. Phil Fisher stated; I'm not against this ordinance, I'm just saying, if we have a parks committee, it should go to the committee first then to the council. Heather McDougall asked; is that after you form the committee or is that right now. Phil Fisher stated; we haven't formed a committee yet, I'm just saying that is how the process should work, but right now we don't have a committee, so my opinion is that I want this put on the next agenda at the meeting because we don't have a committee. Mayor Banning read from the presented Ordinance which states that the Chamber may designate where the beer garden is located. Mayor Banning added; the City maybe should not allow other organizations to designate what goes on in areas of the park because it is a City park. Loretta Jones suggested that it should state in collaboration with the City. Mayor Banning stated that the Police Department should have a say in the alcoholic part of it. Heather McDougall answered; yes, they have to sign off on the permit. Steve Bowen reminded everyone that last year, everyone got together in January to discuss what would happen so everything was ironed out prior. Mayor Banning answered, and we can do the same thing, but I'm trying to keep an Ordinance off the books that allows another organization to designate what goes on in the city park other than the City. Discussion followed. It was council's consensus to change the wording **from**; *The beer garden area will be that area designated by the Chamber of Commerce. No person shall be allowed to take beer out of the designated area after 9 p.m. The Chamber may designate the softball field closest to the Kootenai River as the beer garden are if it so desires. To*; the following wording: *No persons shall be allowed to take beer out of the designated area after 9 p.m. It shall be designated that the softball field closest to the Kootenai River be the beer garden area unless a three months notice is given.* Bob McLeod expressed that his view wasn't recognized. He stated that his ordinance was done; now this one was submitted. He stated that he is the one that has to enforce the Ordinance and he wasn't contacted for involvement in it. Phil Fisher answered; your Ordinance wasn't for the 4th of July, it was for the park, and I'm against having a no drinking Ordinance within the City of Troy. Bob McLeod stated; it was for the park only. Discussion followed. Bob McLeod stated that having a no drinking ordinance is the only way you can have a beer garden because Montana doesn't have an open container law for walking around in a public park, therefore; you cannot contain somebody inside a specific area. Fran McCully stated; ultimately enforced; you would lose a park

host. McCully also stated her feelings of not being able to walk across the street to visit friends if you have a beer in your hand. McLeod stated; it was never intended for the entire city, only the park. Discussion followed. Phil Fisher stated I want this presented to the City Attorney; I want answers from the Attorney General, on the statute in the State of Montana, on the open container law; if you can make a confined area and hold people to be in that area. Mayor Banning said okay. Discussion followed regarding times that the City Attorney is available. Phil Fisher stated that he will come in and speak to the City Judge to follow up.

Mayor Banning called for other public comments:

Bob McLeod apologized for not getting his topic on the agenda in time. He advised that he will be starting the positive tickets program for children. There are ten businesses in town participating. He will be giving certificates and tickets for children that do positive things in the community for wearing helmets and picking up litter, etc. McLeod explained how it started. It was council's consensus that it is a good program.

Bob McLeod also wanted to share the three letters concerning the Animal Control contracts with Kootenai Pets for Life, Lincoln County Animal Control, and Debbie's Pet Grooming. He is hoping to have them all signed for council at the next meeting. Mayor Banning let council know that he had spoken with John Konzen earlier the same day and he had commented that it is a good thing the City is doing this for Animal Control. Mayor Banning stated; once these have been signed, it will be presented with discussion for hiring an Animal Control Officer or not.

Heather McDougal asked to know about the park feature that Gary Rose and the committee are working on. Gary Rose let everyone know that they met down at the park today and he presented pictures to the mayor and council. Next week his plans are to go up to Kilbrennan lake and get rocks to place at the park. The plumbing has to be replaced before we can move ahead with the rest of the rock work. The pond will not be any larger when this is completed. The project is not going to cost a lot of money. We may have some donations coming in and can see if we can continue with the roofing at the picnic area.

Heather McDougall suggested using the area behind the shop for the mud bogs so they do not have to be moved. Bob McLeod stated that he thought they are being relocated to a place up near the airport.

Mayor Banning adjourned the meeting at 9:05 p.m.

Donald C. Banning, Mayor

ATTEST:

Sandra Johnson, Clerk