

**Troy City Council Meeting
Council Chambers
October 20, 2010
7:00 pm**

The meeting came to order at 7:00 pm. Present: Mayor Banning, Council: Phil Fisher, Fran McCully, Gary Rose, Loretta Jones, and City Clerk Sandra Johnson.

Mayor Banning lead the Pledge of Allegiance.

GUESTS: Linda Rose, Janine Price, David Norman-Public Works Director, Robert Boren, Robert McLeod-Chief of Police, Sam Shupe, Debbie Shupe, John Clogston, Sharon Johnson, Vel Shaver, Wayne Maffit, Ivy McGavan, Lexi Ninez, Rachel Geuther, Nastassja Hines, Sandi Sullivan, Tracy Rebo, Carol Parsons, Maggie Anderson, Clint Taylor, Susan Taylor, Nicole Heine, Jayme Brown, Dennis Dupuis, John Brown, Steve Bowen, Chris Reichert, Jim Jones, Sylvia Maffit, Marcia Boris, Bob Welch, Joyce Welch

CLAIMS: Mayor Banning presented the claims and asked if there was any discussion. Loretta Jones made the **Motion** to approve the claims in the amount of \$155,663.85. Phil Fisher seconded the motion. Phil Fisher asked who Big Horn Consulting is. It is the new business name for Dan Parks. Gary Rose asked what the MMIA deductible was for. He was advised that it was a small accident involving a patrol car. Rose also asked what RPA was. This is the engineer for Phase II water project that is still ongoing. **Motion** carried. Fisher – Y, McCully – Y, Rose – Y, Jones - Y

MINUTES: Phil Fisher made the **Motion** to approve the Minutes of September 2, 2010 Budget Meeting, the Minutes of September 8, 2010 Preliminary Budget Hearing, the Minutes of September 9, 2010 Council Work Meeting, and the Minutes of September 15, 2010 Council Meeting. Gary Rose seconded the motion. **Motion** carried. Fisher – Y, McCully – Y, Rose – Y, Jones - Y

NEW BUSINESS LICENSE: Mobile Hearing Care – Owner: Dana Fox resides in Bonners Ferry and sees clients at the Kootenai Senior Citizens Center in Troy. Loretta Jones made the **Motion** to approve the Business License for Mobile Hearing Care and Gary Rose seconded it. Fox was not present. Fran McCully asked to see the application and State Certification. **Motion** carried. Fisher – Y, McCully – Y, Rose – Y, Jones - Y

COMMUNITY EVENTS POLICY: Maggie Anderson- Thanked everyone for their attendance. Anderson wanted to clarify that it is not the intent of United for Youth to shut down the 4th of July Celebration like rumored. She expressed the organization's support for this event and volunteers. Anderson stated that they are not advocating the stopping of the event or closing the beer garden. She stated; we are asking that the Council acknowledge Montana law and the liabilities in serving alcohol to underage minors, and drinking and driving which leads to our part of Montana being number one in the nation for alcohol related crashes. Anderson asked council to implement an ordinance which required community groups who intend to sell alcohol at their events to be prepared with plans on how they will reduce liability issues associated with youth access to alcohol, over service, and DUI related accidents. Anderson submitted information to the council and continued giving youth statistics on alcohol. She gave information on the laws and that servers can be held criminally responsible for serving to someone who causes a drinking and driving accident. Maggie Anderson asked the Troy High School Student Council to review the information and asked if they would like to speak. Rachel Geuther, representing the student council, gave a student petition stating; ***we the students of Troy High School want an option to discuss the upcoming changes in the suggested Ordinance in regards to the 4th of July. We would encourage the City Council to allow Troy students to comment on the proposed changes before introducing this Ordinance.*** It was signed by sixteen students. Maggie

Anderson introduced Carol Parsons to speak on behalf of her family who had experienced the effects of a DUI related accident. Parsons explained that three years ago she lost her son when a vehicle struck him. The driver had been under the influence of alcohol and drugs. Carol Parsons stated; you now have the ability to affect those children whose names are on the list and to protect the children of this town. Maggie Anderson reminded the council that by MT Code it is illegal to serve those or provide alcohol to those under age as well as visibly intoxicated persons. It is a \$535 fine for the server. Anderson asked council to work with them to create an Ordinance and not approve the Ordinance that came to them from Heather McDougall at the previous work meeting.

Heather McDougall stated; I am the one that wrote the Ordinance for the Chamber. We proposed it to the City Council because we did have issues last year and wanted to take care of them. We suggested to Maggie Anderson, that if she wanted to run the ID booth, she was more than welcome. She presented a paper to Maggie Anderson with the newly selected wrist bands that should help prevent them from being taken off to be given to underage drinkers. McDougall explained the Chamber's efforts to stop underage drinking. There was discussion between Anderson and McDougall regarding volunteers and free server training offered. Fran McCully stated to Anderson; I can see your validity in wanting a policy for community events, but why is it being tied now to the Ordinance we have moving forward regarding the 4th of July. Why can't we address this as you want, but as a separate issue. Maggie Anderson answered; because there are parts of that ordinance that are about a community event. Why would we have one for the 4th of July, and then one for other community events? Fran McCully stated; there are other community events that this would be applicable to, so why are we tying to the 4th of July Ordinance that was proposed, and I thought that there was good effort as far as addressing the problems that have been documented in the past. Anderson answered; that is what I am requesting; that we complete a special event policy for any community organization that is applying to sell alcohol and should have a process in place that will prevent incidents from happening. I don't feel like the Ordinance proposed is effective. There is no research base to any of the proposed parts of it that reduces underage drinking. Anderson continued; that no outside food or drink to a family friendly 4th of July; if I come down with my cooler to have a picnic while I listen to the music, then later walk through the vendors, that is my right as a community member, and I would be very offended if you come to my family and say I cannot have food while I listen to the music. Mayor Banning advised that at there was discussion at the work meeting to establish a committee to meet on rules and regulations for the park. In that discussion, I asked the council for their suggestions for the committee. This Ordinance from the Chamber came out shortly after that discussion. Banning continued; there is no big rush, in my opinion, about this. I have been advised, because of the content of the Ordinance, that it needs to be cleared through our City Attorney and MMIA, who provides our insurance. Mayor Banning read aloud the submitted Ordinance, but stressed that it was not the 1st reading of the Ordinance, it is for information only.

WATER PROJECT PHASE II: Mayor Banning asked for a motion on the approval of RPA Invoice #13 and #14 for a total of \$4,898.88 and S&L Underground request #7 for \$96,535.16. Phil Fisher made the **Motion** to approve the payments and Gary Rose seconded it. Banning stated that this is the last one to S&L with the exception of the \$18,000 withheld for project completion. **Motion carried.** Fisher – Y, McCully – Y, Rose – Y, Jones - Y

ANIMAL CONTROL: Robert McLeod All of you should have the final contracts in front of you. All three contracts have been signed; the one from KPFL will be mailed shortly. He is asking for permission to move forward with the hiring of a part-time animal control officer. Fran McCully stated that she isn't ready to hire right now. She stated that she has questions and they haven't had time to talk. She asked if there is an animal control policy currently. Robert McLeod answered; yes, it has been in effect for quite some time. McCully stated that they haven't seen it. She asked; where would the animal control officer do their paperwork and how is it done. McLeod explained. McCully asked; have we had an animal control officer in the past access the SWIFT network and do the reports through SWIFT. McLeod stated that all of them have. He continued explaining the process. McCully asked for specific names on who has in the past.

McLeod stated; Kelly Stevens, Bill Sontag, and Louis Garrison. Fran McCully stated that she wanted to take a month to gather information rather than just say do it and talk about it afterwards. Gary Rose asked; why an on-call dog catcher wouldn't be as effective as a scheduled one. Mayor Banning tabled the discussion until the next Council Work Meeting when Bob McLeod can put something down in writing to present to council. Bob McLeod stated that he can do that, but the town has suffered long enough without an animal control officer.

CLARIFICATION DRAFT ORDINANCE - Regarding the City Charter: Mayor Don Banning stated that he as a Letter of Opinion written by the City Attorney. First he read aloud the presented Ordinance, then presented exhibit #3, the City Attorney's opinion: Is not permitted by the Montana Constitution or Statutes in general parts 1-7 of Chapter 3 Title 7 Montana Code Annotated; this sets out the procedure to carry out the constitutional mandate for establishing and changing the alternative forms of government in Montana. The proposed Ordinance would amend the Troy Charter. The proper procedure to amend the Charter is set forth in the Troy Charter in Article 6 which refers to the Statutory authority section 7-3-103 MCA; provided in part an amendment of a self governed charter may only be made by submitting the question of amendment to the electors of the local government. An alteration of an existing form of government may be proposed by petition see section 3-121 MCA or through the study commission process see section 7-3-171 MCA. Both procedures require the proposed alterations be submitted to the electors. Mayor Banning stated; based on that, the Ordinance is out of order and not to be voted on at this time. Fran McCully asked; can you actually do that. Mayor Banning answered; yes. Fran McCully asked; what if we want to pass an Ordinance regardless. Mayor Banning answered; you can't pass this one, it has to be voted on by the citizens of Troy. Fran McCully stated; that is an amendment, not a clarification. Mayor Banning stated; anything that has to do with the charter cannot be changed without being voted on by the citizens of Troy. Heather McDougal stated; you can clarify the Charter without a vote from the citizens of Troy. Mayor Banning repeated that the Charter cannot be changed without a vote of the citizens of Troy. McDougall again stated; but it can be clarified. Mayor Banning stated; it is clear that the State Law stands. Fran McCully asked; how can it be clear if we have argued about it for hours. Mayor Banning read section 3-04 Powers of Duties of the Charter. Fran McCully presented an attorney general ruling that was based on a mayor that wanted to promote from within a police department. It was suggested that he didn't have the power so it went to the attorney general that said: the former section empowers the mayor to appoint and remove department heads with the consent of a majority of the council and to appoint all other employees of the local government. Your letter appears to recognize that under the municipal council in a council mayor form of government has the power under MCA 7-32-4104 to legislate in this area by adopting an ordinance that will establish a procedure for selection of subordinate officers within this department. McCully read what 7-32-4104 stated. She stated; the final ruling from the attorney general said the mayor can do it, but it also states that the council has the power to do it with that statute. Mayor Banning asked; the council had the authority to do what. Phil Fisher answered; to make an Ordinance. Mayor Banning stated; I'm advised by the City Attorney that according to Montana Law there has to be something prepared but it does not go into effect until it goes to election board and the citizens of Troy vote on it. Anytime you do anything with a charter, it has to go back to the vote of the people. Fran McCully stated; I think you should have Mr. Fennessy look into that attorney general's ruling. Mayor Banning stated; that's what I've done so far, is ask the City Attorney, and that is what I based my ruling on. Phil Fisher stated; you said your ruling. Phil Fisher stated; nowhere in the mayor's powers and duties does it say rulings. It says recommend. Guest Heather McDougall stated; one of your 14 powers doesn't say you can rule on it. It says if it is not enumerated in those 14 powers it reverts back to the Council. Mayor Banning stated; it reverts back to MCA. Heather McDougal stated; there is nothing in there that says they can't do it. They can clarify the Charter. Discussion followed. Fran McCully asked if Mr. Fennessy is still the City Attorney. Banning answered; yes. McCully asked; is he available for council for the rest of his time. Mayor Banning he will be back from vacation the 1st of November. Guest Wayne Maffit asked if Mr. Fennessy was the attorney that drew this up. Mayor answered yes, some 25 years ago.

Mayor Banning took this time to enter his decision on the vote of the previously submitted Ordinance regarding the council placing items on the agenda. He stated he had 30 days from their decision to pass the ordinance and it has been 28 days. Mayor Banning read aloud the Ordinance in question. He handed all council members his decision and Phil Fisher refused his. Mayor Banning read aloud his decision to Veto with the reasoning listed. Phil Fisher made the **Motion** to override the veto. Gary Rose seconded the motion. Phil Fisher asked Mayor Banning; how many times have we had discussions on the agenda in meetings. Several, and there was public at those meetings. You said we never had discussions in council. That is a lie; we have had several discussions in several work and council meetings on agenda items. Mayor Banning asked what he was referring to. Fran McCully interrupted by stating; for nine months we have requested items to be put on the agenda and got zero items put on the agenda. Tracy Rebo stated; no. Fran McCully asked her, what have we had put on. Tracy Rebo answered; in May. Fran McCully said; anyhow. Mayor Banning stated that certain items don't belong on the agenda when they are matters of administration. Fran McCully brought up an example of the Pink Apartments to be put on the agenda. Mayor Banning stated that he did what council asked by meeting with a realtor, they advertised and nobody has made any offers. Fran McCully asked if we signed an agreement with the realtor. Mayor Banning stated; no. Phil Fisher stated; I made a motion to vote, I want to vote. Mayor Banning called for the vote. **Motion carried** with a three of four to override.

Fisher – Y, McCully – Y, Rose – Y, Jones abstained.

CHAMBER OF COMMERCE-4TH OF JULY ORDINANCE:

Brown asked if Item #8 was bypassed. Mayor Banning stated; I was advised not to put it out for reading until the City Attorney and MMIA could go over it. Guest Heather McDougall commented that Chamber of Commerce puts on the 4th of July Celebration and she feels that even though United for Youth said it is not their intent to do away with the 4th of July, she sees that as a real possibility because when volunteers have to start fighting for their events, they are going to quit. This Ordinance was to address underage drinking. That no coolers in the park will help prevent the underage drinking. McDougall stated there should be a first reading. Sandi Sullivan stated instead of pushing the Ordinance through right now, why don't you or a representative of the Chamber be on the committee to form the park ordinances. Discussion followed.

Fran McCully asked to be heard regarding the previous discussion on the resolution the Mayor vetoed. She expressed her frustration with being told that everything they do is illegal, yet nobody could tell them what was illegal about it.

ALLEY MAINTENANCE SCHEDULE RESOLUTION: Mayor Banning read aloud the resolution. Mayor Banning read the response from the City Attorney's response; although exhibits #1 and #2 do not appear to be invalid on its face, an alternative procedure may be more appropriate regarding the alleys. He suggested consulting with the street department as to the exact type of alley maintenance requested in the resolution. He should then be able to provide a budget with the cost and time involved to either amend this year's budget or be included in the 2011-2012 budgets. Mayor Banning stated; the department heads are hired to do a job, and he should be allowed to do it. We don't need a resolution to deal with something like this. Fran McCully asked; then why did you bring Dan down. Dan Clark said; that is the exactly the procedure to do. Heather McDougall asked the Mayor to re-read aloud the first paragraph. Mayor Banning did. Heather McDougall stated; in other words it's legal. Fran McCully asked Mayor Banning; are you ruling again then, that we can't pass this resolution. Mayor Banning answered; that is an administrative function. Gary Rose and Fran McCully stated; we can make a resolution. Gary Rose added; it states right there how to do it. It doesn't say nothing about not being able to do it. Mayor Banning stated; if you want to take it up with the attorney, then do that. He is suggesting what to do. Fran McCully stated; but he is not the council, he only advises. He can't make the final decision. Mayor Banning stated; the City Attorney is somebody we have to rely on. Fran McCully asked; why is the City Council elected. Mayor Banning answered; I wonder, then he apologized. Phil Fisher read from the Troy Codes; highways, avenues, lanes and alleys are a street. All we are doing is trying to make a resolution so they are maintained. Mayor Banning

stated; and all I am doing is trying to have you do it the proper way. McCully asked; by who's determination. We have the right to legislate a resolution. Mayor Banning stated; do it with the assistance of the City Attorney like you are supposed to. Fran McCully stated; we don't have to. Phil Fisher stated; he gave us his advice. Fran McCully stated; we take it or we don't. Phil Fisher added; now it is up to us, now it is up to us to act upon the resolution. Fran McCully made the **Motion** to accept the resolution. Phil Fisher seconded the motion. Mayor Banning stated that he cannot allow the motion. Phil Fisher made the **Motion** to adjourn the meeting. Fran McCully seconded the **Motion**. Mayor Banning stated to the public that if anyone wanted to stay, there would be an information meeting on the rest of the agenda items, but if council wanted to leave, they would be marked as unexcused absence.

Meeting adjourned 8:23 pm without completing the remaining agenda items.

Donald C. Banning, Mayor

ATTEST:

Sandra Johnson, City Clerk/Treasurer