

WEST YELLOWSTONE TOWN COUNCIL  
**Town Council Meeting**  
**December 3, 2013**

COUNCIL MEMBERS PRESENT: Mayor Jerry Johnson, Brad Schmier (by speakerphone), and Doc Stewart, John Costello and Tom Cherhoniak

OTHERS PRESENT: Operations Manager Becky Guay, Public Services Superintendent James Patterson, Social Services Director Jack Dittmann, Finance Director Lanie Gospodarek, Chief of Police Gordon Berger, Council Members-Elect Greg Forsythe and Cole Parker

The meeting is called to order by Mayor Jerry Johnson at 7:00 PM in the Town Hall, 440 Yellowstone Avenue, West Yellowstone, Montana

Portions of the meeting are being recorded.

The Treasurer's Report with corresponding banking transactions is on file at the Town Offices for public review during regular business hours.

**ACTION TAKEN**

---

- 1) Motion carried to approve the claims which total \$102,372.94. (Stewart, Cherhoniak)
- 2) Motion carried to approve the Consent Agenda, which includes the minutes of the November 19, 2013 Town Council Meeting. (Stewart, Cherhoniak)
- 3) Motion carried to appoint Bill Howell to the 5-year position on the Police Commission. (Stewart, Cherhoniak)
- 4) Motion carried to appoint Doc DeTonancour to the four-year position on the Police Commission. (Stewart, Cherhoniak)
- 5) Motion carried to appoint Richard Gibson to the three-year position on the Police Commission. (Stewart, Cherhoniak)
- 6) Motion carried to approve the lease as modified with the Yellowstone Historic Center for the premises within the Union Pacific Dining Lodge for office space described as the "Rainbow Room" (old West Yellowstone Library) and the space described as the "Court Room" (clerk's office and actual court room). (Costello, Schmier)
- 7) Motion carried to approve the Application for Outside Amplification Permit made by West Yellowstone Executive Director Marysue Costello for outside amplification during the S'mores and More Evenings during the 2013-2014 winter season. (Stewart, Cherhoniak)
- 8) Motion carried to pass and adopt Resolution No. 642, a resolution amending the Social Services Help Fund to reflect an increase of \$5,200. (Stewart, Cherhoniak)
- 9) Motion carried to pass and adopt Resolution No. 643, a resolution writing off delinquent ambulance bills of identifiable accounts totaling \$18,633.61. (Stewart, Cherhoniak)

**Council Comments**

Mayor Johnson expresses condolences for the family of John Leafy, a long-time resident that recently passed away. He also wishes well to Mark Phillips, another resident that was badly injured in a car accident last weekend.

### **Public Comment Period**

West Yellowstone Chamber of Commerce Executive Director Marysue Costello expresses appreciation to the Town for support of last week's Ski Festival which was a huge success. She also invites the Council and everyone that is present to attend the Chamber's December meeting and social at Madison Crossing on December 10, 2013. Lastly, she mentions that they neglected to submit an outside amplification permit for the Christmas Stroll on December 12, 2013. Mayor Johnson indicates they will work that out with the staff.

### **DISCUSSION**

---

- 3) The Council discusses the appointments to the Police Commission. The Town has received five applications for the three person board. One of the applicants is council member-elect, Greg Forsythe. Operations Manager Becky Guay summarizes a legal opinion from Town Attorney Jane Mersen that says state law does not specifically preclude appointing a council member to the commission, it is her opinion that a council member should not serve concurrently on the Police Commission. Mersen outlines multiple reasons to support her position in the written opinion. Following Guay's summary, Greg Forsythe states that he would like to pull his application for Police Commission. Mayor Johnson reads the state statutes that outline the process the Council should follow to appoint the members of the commission. According to the statutes, the Mayor nominates three applicants and the Council then votes. Mayor Johnson nominates Richard L. Gibson to the three-year term, Doc Deconotour to the four-year term, and Bill Howell to the five-year term. Motions are made to appoint the individuals as nominated by Mayor Johnson. Council Member-elect Greg Forsythe reads a statement to share concerns about the appointment of a new police commission and the process to follow to hire new police officers. He suggests that the Police Commission and the Town seek help from the Town's new attorney, Jane Mersen, and also the County to establish a proper procedure for hiring police officers. The Council discusses what sort of guidelines can be established for hiring police officers. Guay reads a section of the state code that addresses that and also describes an existing consortium that screens police applicants before they apply for qualifications, physical and mental health. She says she has also discussed with Sheriff Gootkin doing more in-depth background checks like they do at the County. Forsythe says that he thinks it is very important that all of the codes that pertain to the Police Commission are given to the newly appointment members, not just some of them. Guay says that she has already made copies of all of the codes for the new members. Forsythe's written statement also alleges that the State has begun a DCI investigation into the operation and management of the police force. Guay says that this kind of information is not public and she will not comment as to whether it is valid or not. She says that especially in police work there are many instances where an individual's privacy outweighs the public's right to know. Stewart asks Forsythe where is he getting his information. Forsythe says he "takes the fifth" and refuses to name his source, but says it is reliable. Guay emphasizes that this allegation is inappropriate and statements such as this should not be made in a public forum.
  
- 6) The Council discusses the proposed lease with the Yellowstone Historic Center for the portion of the Union Pacific Dining Lodge commonly known as the "Rainbow Room" (formerly known as the Library) and the space described as the Court Room. Ed Geiger, YHC Manager, explains that this request is based on current ongoing negotiations between the Town and the YHC to take over management of the UPDL entirely. Johnson asks for input from the staff on the modified lease. Guay says they do not recommend at this point including the Court Room space until the Town has determined the long-term use and management of the building. Johnson asks Geiger what the ramifications are if they do not approve use of the Court Room tonight as opposed to making a decision a month or two in the future. Schmier asks if the Town has any intention of using that court room space in the next ten months. Stewart says that space has been suggested as a possible place for the clothing bank.

- 7) The Council considers whether it would be appropriate to add the request for outside amplification during the Christmas Stroll on December 12 to this request. Ultimately they decide they cannot because the item was not properly noticed but that they will call a short meeting next week, after proper notice, to vote on the request.
  - 8) Dittmann, Guay, and Gospodarek explain that all they are really doing is moving money that is already in the Community Help Fund into the budget so it can be spent to compensate for some unexpected expenditures.
  - 9) Gospodarek explains that they are still collecting on ambulance accounts that go back as far as 2005 and as recent as 2009. The accounts named have either passed the statute of limitations, filed bankruptcy, or responsible party is deceased.
- A) Operations Manager's Report: Operations Manager Becky Guay reports on current issues: **Town Hall Project** – Todd Barta will be installing additional electrical outlets and telephone jacks in the town offices and the courtroom. Liz and Jerry are working to get historic pictures of the town printed to hang on the walls. We have tentatively scheduled an open house/employee holiday party for Thursday evening, December 19. **UPDL Window Replacement Project** – Because of the weather, Rand-Olson is delaying mobilization until next Monday, December 9. **Public Services** – It looks like winter has begun in earnest so crews are busy plowing and moving snow. **YHC Office Space Lease in UPDL** –The YHC has submitted a letter (Attachment A) requesting that the draft lease be modified to allow the YHC to lease both their current space in the "Rainbow Room" and also the "Court Room". This item will be placed on the next Council agenda for discussion/action. **Discussions on Management of UPDL** – Council members, Town staff, and YHC staff met this morning to begin discussions about management of the UPDL. **Police Department** – The Chief has prepared a Search and Seizure policy for review by the Town Attorney, officers, and MPEA. **Town Attorney Transition** – Jane Mersen, Jim McKenna and I have been in frequent contact about the process to transition the Town's legal services to Kasting, Kaufman and Mersen. Jim believes that he most of the transfer of files and cases will be completed by December 6. Jane and I will be meeting with police department staff next week to discuss the process we will use to transfer information back and forth between the P.D. and the Attorney.
- B) The Council briefly discusses plans for a Town Hall Open House/Holiday Party for later this month. Mayor Johnson offers to work with the supervisors to plan the event and the rest of the Council agrees.

The meeting is adjourned. (8:40 PM)

---

Mayor

ATTEST:

---

Town Clerk

WEST YELLOWSTONE TOWN COUNCIL  
**Town Council Meeting**  
**December 10, 2013**

COUNCIL MEMBERS PRESENT: Mayor Jerry Johnson, Brad Schmier, John Costello, Doc Stewart, Tom Cherhoniak

OTHERS PRESENT: Finance Director Lanie Gospodarek, West Yellowstone Chamber Executive Director Marysue Costello

The meeting is called to order by Mayor Jerry Johnson at 12:00 Noon in the West Yellowstone Town Hall, 440 Yellowstone Avenue, West Yellowstone, Montana

Portions of the meeting are being recorded.

The Treasurer's Report with corresponding banking transactions is on file at the Town Offices for public review during regular business hours.

**Public Comment Period**

West Yellowstone Chamber Executive Director Marysue Costello thanks the Council for taking the time to call this special meeting.

- 
- 1) Motion carried to approve the Application for Outside Amplification made by the West Yellowstone Chamber of Commerce for the 2013 Christmas Stroll, scheduled for December 12, 2013, for outside amplification on that date between the hours of 5 PM and 9 PM. (Stewart, Cherhoniak)
  - 2) Mayor Johnson reads the letter of support prepared by Town Operations Manager Rebecca Guay for the proposed turbojet service at the West Yellowstone airport. Stewart and Schmier advise that the letter should specifically address the two points of possible impact that were delineated in the request letter from Morrison Maierle, Inc. The group discusses the proposal and the possible impacts on the Town.
  - 2) Motion carried to approve the letter of support for turbojet service to the Yellowstone Airport and to amend the letter to specifically address the two points in the letter that pertain to potential project-related effects. (Stewart, Cherhoniak)

The meeting is adjourned. (8:50 PM)

---

Mayor

ATTEST:

---

Town Clerk

WEST YELLOWSTONE TOWN COUNCIL  
**Town Council Meeting & Training Session**  
**December 17, 2013**

COUNCIL MEMBERS PRESENT: Mayor Jerry Johnson, Brad Schmier, Doc Stewart, John Costello and Tom Cherhoniak

OTHERS PRESENT: Operations Manager Becky Guay, Finance Director Lanie Gospodarek, Chief of Police Gordon Berger, Council Members-Elect Greg Forsythe and Cole Parker, Town Attorney Jane Mersen

The meeting is called to order by Mayor Jerry Johnson at 12:00 PM in the Town Hall, 440 Yellowstone Avenue, West Yellowstone, Montana.

Portions of the meeting are being recorded.

The Treasurer's Report with corresponding banking transactions is on file at the Town Offices for public review during regular business hours.

**Public Comment Period**

Mayor Johnson shares an article that's been circulating online by Ian Douglass and published on the blog [www.movoto.com](http://www.movoto.com) which ranks West Yellowstone as the best place to live in Montana. Mayor Johnson also states that he will not accept any nominations for Mayor for the next year. He says that will make some of the discussions that are going around about who will be the Mayor next year a little easier. He says he would have appreciated a little "heads up" but that's how things go. Tom Chernoniak thanks the Council for the opportunity to serve this year and hopes he has the opportunity to serve again in the future.

**ACTION TAKEN**

---

- 1) Motion carried to approve the claims, which total \$198,743.83. (Stewart, Cherhoniak)

**DISCUSSION**

---

- 1) The Council discusses the claims and specifically the claim for the recent election from Gallatin County. Finance Director Lanie Gospodarek explains that the cost for the election was estimated to be only \$1700 and they budgeted \$2000. The actual cost came in to nearly \$2500 due to the number of ballots they printed and travel costs and she was able to negotiate an agreement with the Clerk & Recorder that the Town would only have to pay just over \$2100.

12:15 PM, the meeting is recessed until 1 PM

At 1 PM, the Council reconvenes to participate in Roles and Responsibilities Training with Dan Clark, Director of the Montana State Local Government Center and Alan Hulse, Chief Executive Officer of the Montana Municipal Interlocal Authority (MMIA). Clark and Hulse introduce themselves and summarize the topics they are going to cover today. Clark asks the group if there are any specific topics they would like to cover. Forsythe asks them to cover the relationship between the Montana State statutes and city government. Johnson asks about ethics and privacy issues pertaining to the open meeting law and personnel issues. Guay suggests they discuss conflict of interest. Costello asks about rules of conduct and ground rules, both inside and outside of meetings.

Clark starts his presentation by outlining the structure of government in Montana. He explains that the Constitution is a vision of how things should operate in Montana. It is the Legislature's responsibility to pass laws to fulfill that vision. When there are questions about interpretation, the Attorney General may issue an opinion or it could go to the Montana Supreme Court. He points out specific sections in the Constitution of Montana that address the public's right to participate and the public's right to know. Clark explains that the Constitution guarantees the public the right to address a public body. He explains that they should be very careful about limiting public comment and ensure that it is fair. Clark and Hulse share some examples of good and not so good ways to keep public comment limited to a finite amount of time. Clark also

discusses the components of a legal meeting, which include a minimum notice of 48 hours, an agenda, time for public comment, and notice that there will be discussion or action on specific items. The group discusses public comment. Clark points out that there are two types of public comment. Comment on things that are on the agenda and comment on things that are not on the agenda but are still within the purview of the Council. Johnson points out that often members of the public expect a reply or action on the item they have brought up. Mersen agrees but says they need to remember it is public comment not public interrogation. Johnson says there is a fine line between running an open meeting and chaos. Clark describes the proper process to follow when making a decision: gather information, answer questions, public comment, Council comment, make a motion, discussion, and then act. The discussion returns to public comment and Forsythe says that he thinks it is important to respond to public comment, whether with an answer or by indicating when they will get an answer. Clark asks the group what they think fosters a high level of trust between the Council and the community. The answer is communication. Clark describes the City of Shelby, which uses very effective strategies including newsletters, radio broadcasts, and lots of public participation. It has taken over twenty years, but Shelby has attracted a wind farm, a new prison, and multiple other economic improvements. Clark explains that there is a difference between what is legal and what is politically wise. He uses the example of changing a resolution. He says that making changes to the resolution at the meeting may be legal, but politically it may be better to delay action until the next meeting. He cautions the group to be aware of the public perception of a quorum, such as at a basketball game or other social event. Costello asks about three council members serving on the board for a private non-profit and whether that should be considered a public meeting and be noticed. Clark answers that he thinks that it should be noticed and worded something like "a quorum of the Council will be present, no public business will be conducted." Guay adds that the board in question has also asked for public land to build a medical facility. Clark says that to be certain, everything must be open. The other question is about conflict of interest, considering that there is currently a quorum of the Council on the private non-profit board and board has been promised land through a resolution to build the medical facility. Costello says that it will be easy to eliminate this problem by a member of the Council resigning from the board. Johnson asks what happens if there are only two council members on the private board, but then another council member shows up at the meeting. Clark emphasizes that is exactly what they have to be careful about. Clark explains that government is nothing like running a business and says that government is designed to be fair, not efficient. Clark also discusses electronic communication and points out the pros and cons. He shares examples of other instances in the state where emails or instant messaging has been construed as a de facto meeting in a court case. He cautions them to be careful of responding to an issue by responding to everyone on an email. He also illustrates that the Town of Chester has a council member that is a professional snowboarder that uses Skype to attend meetings part of the year and that seems to work well. He also cautions the Council Members about using personal email addresses and encourages them to only use their Town email address. Clark and Hulse also emphasize that they need to understand that public records are open to the public and they have a responsibility to provide information when requested.

Clark discusses general governing powers versus self-governing powers. He first explains that every ten years, local governments in Montana are required to ask the voters if they want to form a study commission to study the Town's form of government. The Town will have to pass a resolution between now and March to pass a resolution to put the question on the ballot. Citizens can then run for a seat on the study commission in 2015 and any changes that are recommended will go on the ballot in 2016. Clark explains the difference between general governing powers and self-governing powers. Typical governments in Montana such as the commission-executive form or commission-manager form have general governing powers, meaning their powers are outlined in state law. West Yellowstone has a Charter with self-governing powers, which means their powers are only limited by what is prohibited by state law. Clark describes the differences between the forms of government and then reviews West Yellowstone's charter. Clark also briefly talks about open meeting law, duties and responsibilities of the Operations Manager, and privacy rights. He also briefly discusses Council Members disclosing personal business interests, especially in relation to approving claims.

Alan Hulse addresses the group and explains that the MMIA is a risk-retention pool that offers liability, property, workers compensation, and employee benefits coverage to cities and towns in Montana. Hulse explains how the MMIA risk retention pool works. He addresses common claims against municipalities including sewer backups, sidewalks, wrongful discharge, vehicle damage, and law enforcement claims. Hulse explains that regardless of what they do, claims will be filed against the Town and that is where the MMIA comes in. He encourages the Town to do what it can to manage exposure and names four things that must be proved for the Town to be liable: 1-duty to exercise reasonable care for infrastructure, 2-was the duty breached, 3-what was the cause, 4-what are the damages. Hulse says that is the basic formula they look at when evaluating claims. He says they also have to consider general damages, which include pain and suffering, emotional distress, etc. Hulse explains that there are tort limits for municipalities in Montana, which are \$750,000 per occurrence and \$1,500,000 aggregate. He says that the MMIA actually provides \$12 million worth of coverage in case of federal claims or instances where Montana's tort limits do not apply. Hulse explains the process they follow to evaluate and settle claims and shares multiple examples. He cautions the group when it comes to firing employees. He explains that employees have a right to their job once they have completed probation. Therefore, firing an employee correctly requires a lot of documentation and time. He explains that council members can be sued individually, but as long as they take their roles and responsibilities seriously, it is unlikely anything will ever come of it. He says that since 1992, he has only seen two instances where an employee or elected official committed an act that they would not cover. He says that the key to minimizing risks is transparency, professionalism, and courtesy as well as having the proper policies and procedures in place.

The meeting is adjourned. (5:30 PM)

---

Mayor

ATTEST:

---

Town Clerk