

JOURNAL OF SPECIAL CITY COMMISSION WORK SESSION
Virtual Meeting by Zoom
November 2, 2021

City Commission Work Session

Mayor Kelly presiding

CALL TO ORDER: 4:00 p.m.

Due to the COVID-19 health concerns, the format of the Special City Commission Work Session was held in a virtual video-conferencing environment.

ROLL CALL/STAFF INTRODUCTIONS: City Commission members participated electronically via Zoom Webinar: Bob Kelly, Tracy Houck, Mary Sheehy Moe, Owen Robinson and Rick Tryon. City Staff participating electronically were: City Manager Greg Doyon and Deputy City Manager Chuck Anderson; and, City Attorney Jeff Hindoien. Also participating in the Executive Session via Zoom were retained attorneys Ben Snipes and Mark Kovacich of Odegaard Kovacich Snipes PC and Jeffrey Simon of the Simon Greenstone firm. City Clerk Lisa Kunz was present in the Commission Chambers.

To honor the Right of Participation and the Right to Know (Article II, Sections 8 and 9 of the Montana Constitution), modifications have also been made for public participation.

To attend and participate in the virtual meeting utilizing Zoom, attendees must register in advance for the Commission Meeting at:

https://us02web.zoom.us/webinar/register/WN_hpUz8B81RvqRZ4yvk9Dy_A

For all other participation options, please see **Public Participation Guide for City Commission Meetings**.

PUBLIC COMMENT. None.

1. OPIOID LITIGATION UPDATE.

City Attorney Jeff Hindoien reported that in 2018 the Commission approved the hiring of a national firm, Simon Greenstone, and a local firm, Odegaard Kovacich & Snipes, to represent the City of Great Falls in connection with advancing legal claims against a host of opioid-based drug manufacturers and distributors based in part or whole on theories that the City of Great Falls, like many other municipalities or governmental entities around the country, had suffered harm by virtue of opioid use, over-use and abuse.

The purpose of this meeting is for the City's local and national legal counsel to update the Commission on the status of the opioid litigation, discuss strategies and concepts to be followed

with respect to potential settlement of claims that are being asserted in this case. That is one of the two reasons that a public body can close a meeting in Montana, the other being for individual privacy. Pursuant to the rules of the Great Falls City Commission, by a majority vote at this point in public session, the Commission can move to hold an executive session to discuss litigation strategy upon the advice of the City Attorney. It is his advice and the advice of retained counsel that the conversation take place in executive session to discuss the litigation strategy.

Commissioner Robinson moved, seconded by Commissioner Tryon, that the City Commission enter into Executive Session to discuss strategy.

Mayor Kelly reiterated that the executive portion of the meeting is to discuss pending litigation, strategy, and settlement discussions in *In Re National Prescription Opiate Litigation*, Opioid Litigation Negotiating Class, United States District Court, Northern District of Ohio, Case No. 1:17-MD-2804 (DAP).

Mayor Kelly discussed process for the Commission and the public pertaining to the executive session and coming back into open meeting with the public via Zoom.

Commissioner Tryon requested that the City Attorney explain why the Commission needs to go into executive session and why that portion isn't open to the public.

City Attorney Hindoien explained that the basis for this exception to the open meeting rule is that having an open discussion about strategy and settlement options in an attempt to get litigation resolved in front of the opposing party is something that is not advantageous for anyone and it certainly doesn't occur in the private sector to any extent. These are the very essence of conversations that lawyers need to have with their clients about getting litigation matters resolved. The public policy justification for this is a public body should have the very same entitlement to have those conversations with their counsel in a way that isn't putting them at a disadvantage relative to the people involved in litigation. From the City's perspective, protecting its legal position is better held in confidence than held in front of the people the City is in litigation with. This exception does not apply to two public bodies in litigation.

There being no further discussion, Mayor Kelly called for the vote.

Motion carried 5-0.

At 4:19 p.m., the meeting convened in executive session via Zoom with the City Commission, City Manager, Deputy City Manager, City Attorney, City Clerk, and retained attorneys Mark Kovacich and Ben Snipes of Odegaard Kovacich Snipes PC, and Jeff Simon of the Simon Greenstone firm, for the purpose of discussing strategy and the status of current settlement discussions in the opioid litigation case.

-- EXECUTIVE SESSION --

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The meeting reconvened into an open meeting via Zoom. Mayor Kelly called the special meeting back to order at 5:00 p.m.

City Attorney Hindoien summarized that the meeting was closed in accordance with Mont. Code Ann. § 2-3-203(4)(a) to discuss strategy in a pending litigation matter. The meeting was closed on that basis to have a conversation with the City's outside counsel in the claims that the City has advanced against a pharmaceutical manufacturer, Johnson & Johnson, and several distributors of pharmaceuticals, specifically opioids. The purpose of the conversation was to bring the Commission up to speed as to the status of some settlement frameworks that have been proposed and are now being discussed between the City's counsel and counsel for other subdivisions, both in the State of Montana and around the country, and discussions going on between the City's counsel and the Montana Attorney General's Office regarding how these types of settlement structures might come together. Those conversations with counsel in the executive session are privileged and confidential. There is no action being asked of the Commission at this time.

ADJOURN

There being no further business to come before the Commission, **Mayor Kelly adjourned the special work session of November 2, 2021, at 5:03 p.m.**