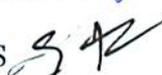


COMMISSIONERS APPROVAL

IMAN 

CHILCOTT 

FOSS 

KANENWISHER 

STOLTZ 

PLETTENBERG (Clerk & Recorder)

Members Present.....Commissioner J.R. Iman, Commissioner Greg Chilcott, Commissioner Suzy Foss, Commissioner Matt Kanenwisher and Commissioner Ron Stoltz

Date.....April 25, 2011

► Minutes: Beth Perkins

► Commissioner Chilcott attended the Drug Free Awards Breakfast ceremony at 8:30 a.m.

► The Board met with Weed Supervisor Kellieann Morris to review subdivision ground disturbance, the weed plan and fees at 9:00 a.m. Present were Incoming Planning Administrator Terry Nelson, Maggie Wright, Ren Cleveland, Rick Fuhrman and William Menager.

Kellieann reviewed the subdivision ground disturbance and weed management plan with the Board. Key points of discussion were having a plan in place prior to preliminary plat, amending the weed management plan to have less impact on the landowner, individualized weed plans, the timeframe prior to soil disturbance, the establishment of a homeowners' association and transfer of the weed plan and fees. **The Board concurred to review subdivision ground disturbance, the weed plan and fees and make recommendations to Kellieann.**

► The Board met for an update with Sapphire Community Health at 9:50 a.m. Present were Janet Woodburn, Nancy Anderson, Rick Fuhrman, and William Menager. Janet Woodburn reviewed the financial reports with the Board.

► The Board met for an update with Environmental Health Director Lea Guthrie at 10:00 a.m. Present was William Menager.

► The Board met with Civil Counsel Karen Mahar regarding procedures for public records at 11:00 a.m. Present were Civil Counsel Dan Browder, Civil Counsel Geoff Mahar, Clerk & Recorder Regina Plettenberg, H.R Director Robert Jenni, I.T. Director Joe Frohlich, William Menager, Maggie Wright, Ren Cleveland, Ravalli Republic report Whitney Bernes, and Administrative Assistant Glenda Wiles.

Commissioner Iman opened the meeting and requested any conflicts of interest be disclosed. Hearing none, he then requested the Attorney staff report be presented.

Civil Counsel Karen Mahar presented the Attorney Staff report to the Board and reviewed the laws for public records. (See Attached) She addressed concerns from the Board regarding electronic records, purchasing and discussion by individual Commissioners to bring information back to the Board. She also addressed a draft being a public document until a final copy is adopted.

Civil Counsel Dan Browder discussed the local government records act and retention schedules with the Board. State laws allow a local policy to provide a structure for every department to ensure proper retention. Clerk & Recorder Regina Plettenberg has been working on developing a policy for retention in order to have organization in the event of disaster, if it can be destroyed, when it can be destroyed and easy access for public. There is a legal standard that if no local policy exists, it will revert to State law. Karen reviewed the Montana Local Government Records Schedules, email policies, policies with subcommittees and volunteer boards (restricting public comment to written comment) with the Board.

Commissioner Iman opened public comment on the staff report. Hearing none, he requested any written comment be submitted. No written comment was submitted. He closed public comment and opened Board discussion.

Discussion included open public board meetings with public comment given. Any public meetings should have public record of comment given. Information generated would be a public record. Are there are different standards for an elected board versus a volunteer board? When there is a body of elected officials, there are specific laws for record keeping in their rules? If there are none, it would default to State law.

Commissioner Iman called for public comment not otherwise on the agenda. Hearing none, he then closed public comment. Meeting adjourned.

► Commissioner Chilcott participated in a MACo Legislative Conference call at 12:00 p.m.

► Commissioner Chilcott attended a MR. TMA meeting at 2:00 p.m.

4/25

<b>Sapphire Community Health, Inc. Ravalli County Utilization Report February 2011</b>		
<b>Number of Patients:</b>	<b>All Patients</b>	<b>Low Income Uninsured Patients</b>
Patients Served	143	68
Total Patient Visits	196	96
<b>Patient Charges:</b>	<b>\$</b>	<b>\$</b>
Medical Visits	\$ 17,500	\$ 9,138
Procedures	\$ 1,993	\$ 1,041
Laboratory	\$ 13,880	\$ 7,248
Vaccine Administration and Medications	\$ 17	\$ 9
<b>Total Charges</b>	<b>\$ 33,389</b>	<b>\$ 17,436</b>
<b>Patient Responsibility</b>		<b>\$ 2,245</b>
<b>Sliding fee adjustment - February</b>		<b>\$ 15,191</b>
Total Slide adjustment to-date		<b>\$ 30,777</b>

**Sapphire Community Health, Inc.  
Ravalli County Utilization Report  
March 2011**

<b>Number of Patients:</b>	<b>All Patients</b>	<b>Low Income Uninsured Patients</b>
Patients Served	165	81
Total Patient Visits	226	111
<b>Patient Charges:</b>	<b>\$</b>	<b>\$</b>
Medical Visits	\$ 20,980	\$ 12,166
Procedures	\$ 1,169	\$ 678
Laboratory	\$ 12,445	\$ 7,216
Vaccine Administration and Medications	\$ 7	\$ 4
<b>Total Charges</b>	<b>\$ 34,601</b>	<b>\$ 20,064</b>
<b>Patient Responsibility</b>		<b>\$ 5,630</b>
<b>Current Month Sliding fee adjustment</b>		<b>\$ 14,434</b>
Total Slide adjustment to-date		<b>\$ 45,211</b>

**SAPPHIRE COMMUNITY HEALTH INC**  
**Balance Sheet**  
**As of March 31, 2011**

	<u>Mar 31, 11</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
10000 · First Security Bank Checking	155,399.66
10100 · Petty Cash	<u>200.00</u>
<b>Total Checking/Savings</b>	155,599.66
<b>Accounts Receivable</b>	
11000 · Accounts Receivable	36,610.86
11001 · Allowance for Doubtful Accounts	<u>-20,143.89</u>
<b>Total Accounts Receivable</b>	16,466.97
<b>Other Current Assets</b>	
12000 · Pre-paid Expenses	<u>413.34</u>
<b>Total Other Current Assets</b>	<u>413.34</u>
<b>Total Current Assets</b>	172,479.97
<b>Fixed Assets</b>	
14000 · Leasehold Improvements	72,786.80
15000 · Furniture and Equipment	7,234.00
16000 · Computer Equipment	61,668.00
17000 · Accumulated Depreciation	<u>-41,160.82</u>
<b>Total Fixed Assets</b>	<u>100,527.98</u>
<b>TOTAL ASSETS</b>	<u><u>273,007.95</u></u>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Other Current Liabilities</b>	
24000 · Payroll Liabilities	2,679.21
25000 · Deferred Revenue	<u>34,788.70</u>
<b>Total Other Current Liabilities</b>	<u>37,467.91</u>
<b>Total Current Liabilities</b>	<u>37,467.91</u>
<b>Total Liabilities</b>	37,467.91
<b>Equity</b>	
32000 · Unrestricted Net Assets	262,142.35
Net Income	<u>-26,602.31</u>
<b>Total Equity</b>	<u>235,540.04</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>273,007.95</u></u>

## SAPPHIRE COMMUNITY HEALTH INC

## Profit &amp; Loss

March 2011

	<u>Mar 11</u>
<b>Ordinary Income/Expense</b>	
<b>Income</b>	
41000 · Sliding Fee Adjustment	-14,434.00
41500 · Contractual Adjustment	-4,881.28
43700 · Fee for Service Income	34,601.32
45000 · Grant Revenue	14,434.00
46200 · Nonmedical Income	500.00
<b>Total Income</b>	<u>30,220.04</u>
<b>Expense</b>	
60000 · Advertising and Promotion	637.95
60300 · -Audit Services	2,520.00
60350 · Bad Debt Expense	629.87
60400 · Bank Service Charges	66.70
61100 · Board Expense	115.31
61700 · Computer and Internet Expenses	844.99
63300 · Insurance Expense	6,243.75
63500 · Janitorial Expense	860.00
63600 · Laboratory Fees	3,298.90
64900 · Office Supplies	29.00
66000 · Payroll Expenses	36,781.86
66200 · Payroll Fringe	5,404.65
66300 · Payroll Expense - Taxes	4,152.50
66500 · Postage and Delivery	87.98
67100 · Rent Expense	3,000.00
67200 · Repairs and Maintenance	297.50
67300 · Security Expense	220.23
67800 · Staff Meeting Expense	415.17
68100 · Telephone Expense	418.10
68600 · Utilities	1,025.42
68700 · Vaccines and Medicines	15.95
<b>Total Expense</b>	<u>67,065.83</u>
<b>Net Ordinary Income</b>	-36,845.79
<b>Other Income/Expense</b>	
<b>Other Income</b>	
70200 · Interest Income	7.84
<b>Total Other Income</b>	<u>7.84</u>
<b>Net Other Income</b>	<u>7.84</u>
<b>Net Income</b>	<u><u>-36,837.95</u></u>

**SAPPHIRE COMMUNITY HEALTH INC**  
**Balance Sheet**  
**As of February 28, 2011**

	<u>Feb 28, 11</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
10000 · First Security Bank Checking	209,930.54
10100 · Petty Cash	200.00
<b>Total Checking/Savings</b>	<u>210,130.54</u>
<b>Accounts Receivable</b>	
11000 · Accounts Receivable	35,740.75
11001 · Allowance for Doubtful Accounts	-19,514.02
<b>Total Accounts Receivable</b>	<u>16,226.73</u>
<b>Other Current Assets</b>	
12000 · Pre-paid Expenses	413.34
<b>Total Other Current Assets</b>	<u>413.34</u>
<b>Total Current Assets</b>	<u>226,770.61</u>
<b>Fixed Assets</b>	
14000 · Leasehold Improvements	72,379.30
15000 · Furniture and Equipment	7,234.00
16000 · Computer Equipment	61,668.00
17000 · Accumulated Depreciation	-41,160.82
<b>Total Fixed Assets</b>	<u>100,120.48</u>
<b>TOTAL ASSETS</b>	<u><u>326,891.09</u></u>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Accounts Payable</b>	
20000 · Accounts Payable	3,215.46
<b>Total Accounts Payable</b>	<u>3,215.46</u>
<b>Other Current Liabilities</b>	
24000 · Payroll Liabilities	2,074.94
25000 · Deferred Revenue	49,222.70
<b>Total Other Current Liabilities</b>	<u>51,297.64</u>
<b>Total Current Liabilities</b>	<u>54,513.10</u>
<b>Total Liabilities</b>	<u>54,513.10</u>
<b>Equity</b>	
32000 · Unrestricted Net Assets	262,142.35
Net Income	10,235.64
<b>Total Equity</b>	<u>272,377.99</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>326,891.09</u></u>

**SAPPHIRE COMMUNITY HEALTH INC**  
**Profit & Loss**  
**February 2011**

	Feb 11
<b>Ordinary Income/Expense</b>	
<b>Income</b>	
41000 · Sliding Fee Adjustment	-15,191.30
41500 · Contractual Adjustment	-3,659.14
43700 · Fee for Service Income	33,389.17
45000 · Grant Revenue	15,191.30
<b>Total Income</b>	29,730.03
<b>Expense</b>	
60000 · Advertising and Promotion	163.09
60350 · Bad Debt Expense	1,580.35
60400 · Bank Service Charges	40.00
61700 · Computer and Internet Expenses	832.99
63300 · Insurance Expense	8,120.48
63500 · Janitorial Expense	957.16
63600 · Laboratory Fees	1,183.92
64700 · Miscellaneous Expense	24.83
64900 · Office Supplies	-3,315.24
64920 · Medical Supplies	359.38
66000 · Payroll Expenses	25,202.49
66200 · Payroll Fringe	4,575.78
66300 · Payroll Expense - Taxes	2,527.81
66700 · Professional Services	2,500.00
67100 · Rent Expense	3,000.00
67200 · Repairs and Maintenance	1,197.80
68100 · Telephone Expense	425.08
68400 · Travel Expense	175.44
68600 · Utilities	810.06
68700 · Vaccines and Medicines	42.00
<b>Total Expense</b>	50,403.42
<b>Net Ordinary Income</b>	-20,673.39
<b>Other Income/Expense</b>	
<b>Other Income</b>	
70200 · Interest Income	7.49
<b>Total Other Income</b>	7.49
<b>Net Other Income</b>	7.49
<b>Net Income</b>	-20,665.90

# *Ravalli County Attorney*

205 Bedford Street, Suite C ♦ Hamilton, MT 59840 ♦ (406) 375-6750 ♦ Fax (406) 375-6731

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County Attorney:  
**Bill Fulbright**

Deputy Attorneys:  
**John Bell**  
**Daniel Browder**  
**Karen Mahar**  
**T. Geoffrey Mahar**  
**Angela Wetzsteon**

## **Agenda for BCC meeting on procedures for public documents**

April 25, 2011, 11:00 am  
Commissioners Meeting Room

- 1) Open Meeting
- 2) Disclosure of conflicts of interest
- 3) Attorney Staff Report
- 4) Public Comment
- 5) BCC review of any written comment submitted
- 6) BCC discussion & questions
- 7) Public Comment on Items Not on Agenda
- 8) Adjournment



## CHAPTER 6 PUBLIC RECORDS

### Part 1

#### Public Records Generally

**2-6-101. Definitions.** (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country, except records that are constitutionally protected from disclosure;

(b) public records, kept in this state, of private writings, including electronic mail, except as provided in 22-1-1103 [library records] and 22-3-807 [burial site records] and except for records that are constitutionally protected from disclosure.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings, including electronic mail.

(4) All other writings are private.

**2-6-102. Citizens entitled to inspect and copy public writings.** (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or subsection (3) of this section and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing that a citizen has a right to inspect is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy, and the copy is admissible as evidence in like cases and with like effect as the original writing. The certified copy provision of this subsection does not apply to the public record of electronic mail provided in an electronic format.

(3) Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

(4) A public officer may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility. Security features that may be protected under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and facility staffing plans, including staff

numbers and locations. A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest.

**2-6-103. Filing and copying fees.** (1) The secretary of state shall charge and collect fees for filing and copying services.

(2) A member of the legislature or state or county officer may not be charged for any search relative to matters appertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.

(3) The secretary of state may not charge a fee, other than the fees authorized in 2-6-110, for providing electronic information.

(4) Fees must be collected in advance and, when collected by the secretary of state, are not refundable.

(5) Fees authorized by this section must be set and deposited in accordance with 2-15-405.

**2-6-104. Records of officers open to public inspection.** Except as provided in 27-18-111 [prejudgment writs of attachment] and 42-6-101 [adoption records], the public records and other matters, except records that are constitutionally protected from disclosure, in the office of any officer are at all times during office hours open to the inspection of any person.

**2-6-105. Removal of public records.** Any record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court or judge in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending or where the court is held in the same building with such office.

**2-6-106. Possession of records.** Each public officer is entitled to the possession of all books and papers pertaining to that office or in the custody of a former incumbent by virtue of that office.

**2-6-107. Proceedings to compel delivery of records.** If any person, whether a former incumbent or another person, refuses or neglects to deliver to the actual incumbent any such books or papers, such actual incumbent may apply, by complaint, to any district court or judge of the county where the person so refusing or neglecting resides and the court or judge must proceed in a summary way, after notice to the adverse party, to hear the allegations and proofs of the parties and to order any such books and papers to be delivered to the petitioners.

**2-6-108. Attachment and warrant to enforce.** The execution of the order and delivery of the books and papers may be enforced by attachment as for a witness and also, at the request of the plaintiff, by a warrant directed to the sheriff or a constable of the county, commanding the sheriff or constable to search for the books and papers and to take and deliver them to the plaintiff.

**2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty.** (1) Except as provided in subsections (3) through (9), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing list by examination of records that are otherwise open to public inspection.

(4) This section does not apply to the lists of:

(a) registered electors and the new voter lists provided for in 13-2-115;

(b) the names of employees governed by Title 39, chapter 31;

(c) persons holding driver's licenses or Montana identification cards provided for under 61-5-127;

(d) persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 29, 31, 34 through 36, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, and 73; and Title 50, chapters 39, 72, 74, and 76; or

(e) persons certified as claims examiners under 39-71-320.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(10) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

**2-6-110. Electronic information and nonprint records -- public access -- fees.**

(1) (a) Except as provided by law, each person is entitled to a copy of public information

compiled, created, or otherwise in the custody of public agencies that is in electronic format or other nonprint media, including but not limited to videotapes, photographs, microfilm, film, or computer disk, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic or nonprint information.

(b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society established pursuant to 22-3-101.

(2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;

(b) expenses incurred by the agency as a result of mainframe and midtier processing charges;

(c) expenses incurred by the agency for providing online computer access to the person requesting access;

(d) other out-of-pocket expenses directly associated with the request for information, including the retrieval or production of electronic mail; and

(e) the hourly market rate for an administrative assistant in pay band 3 of the broadband pay plan, as provided for in 2-18-301, in the current fiscal year for each hour, or fraction of an hour, after one-half hour of copying service has been provided.

(3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative agency or committee.

(b) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(c) All fees received by the department of revenue under subsection (2) and this subsection (3) must be deposited in a state special revenue fund as provided in 15-1-521.

(d) Fees charged by the secretary of state pursuant to this section must be set and deposited in accordance with 2-15-405.

(4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) An agency may not charge more than the amount provided under subsection (2) for providing a copy of an existing nonprint record.

(6) An agency shall ensure that a copy of information provided to a requester is of a quality that reflects the condition of the original if requested by the requester.

(7) This section does not authorize the release of electronic security codes giving access to private information.

**2-6-111. Custody and reproduction of records by secretary of state.** (1) The secretary of state is charged with the custody of:

- (a) the enrolled copy of the constitution;
- (b) all the acts and resolutions passed by the legislature;
- (c) the journals of the legislature;
- (d) the great seal;
- (e) all books, records, parchments, maps, and papers kept or deposited in the secretary of state's office pursuant to law.

(2) All records included in subsection (1) may be kept and reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in 2-15-1013.

(3) The state records committee created by 2-15-1013 may approve the disposal of original records once those records are reproduced as provided for in subsection (2), unless disposal takes the form of transfer of records. Reproduction is not necessary for transferred records. The reproduction or certified copy of a record may be used in place of the original for all purposes, including as evidence in any court or proceeding, and has the same force and effect as the original record.

(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

(5) At least two copies must be made of all records reproduced as provided for in subsection (2). The secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in the office with suitable equipment for displaying a record by projection to not less than its original size and for preparing copies of the record for persons entitled to copies.

(6) All duplicates of records must be identified and indexed.

**2-6-112. Concealment of public hazards prohibited -- concealment of information related to settlement or resolution of civil suits prohibited.** (1) This section may be cited as the "Gus Barber Antisecrecy Act".

(2) As used in this section, "public hazard" means a device, instrument, or manufactured product, or a condition of a device, instrument, or manufactured product, that endangers public safety or health and has caused injury, as defined in 27-1-106.

(3) Except as provided in this section, a court may not enter a final order or judgment that has the purpose or effect of concealing a public hazard.

(4) Any portion of a final order or judgment entered or written final settlement agreement entered into that has the purpose or effect of concealing a public hazard is contrary to public policy, is void, and may not be enforced. This section does not prohibit the parties from keeping the monetary amount of a written final settlement agreement confidential.

(5) A party to civil litigation may not request, as a condition to the production of discovery, that another party stipulate to an order that would violate this section.

(6) This section does not apply to:

- (a) trade secrets, as defined in 30-14-402, that are not pertinent to public hazards and that are protected pursuant to Title 30, chapter 14, part 4;
- (b) other information that is confidential under state or federal law; or
- (c) a health care provider, as defined in 27-6-103.

(7) Any affected person, including but not limited to a representative of the news media, has standing to contest a final order or judgment or written final settlement agreement that violates this section by motion in the court in which the case was filed.

(8) The court shall examine the disputed information or materials in camera. If the court finds that the information or materials or portions of the information or materials consist of information concerning a public hazard, the court shall allow disclosure of the information or materials. If allowing disclosure, the court shall allow disclosure of only that portion of the information or materials necessary or useful to the public concerning the public hazard.

(9) This section has no applicability to a protective order issued under Rule 26(c) of the Montana Rules of Civil Procedure or to any materials produced under the order. Any materials used as exhibits may be publicly disclosed pursuant to the provisions of subsections (7) and (8).

**Part 4**  
**Local Government Records**

**2-6-401. Definitions.** For the purposes of this part, the following definitions apply:

- (1) "Local government" means:
    - (a) any city, town, county, consolidated city-county, or school district; and
    - (b) any subdivision of an entity named in subsection (1)(a).
  - (2) (a) "Public records" includes:
    - (i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including copies of the record required by law to be kept as part of the official record, regardless of physical form or characteristics, that:
      - (A) has been made or received by any local government to document the transaction of official business;
      - (B) is a public writing of the local government pursuant to 2-6-101(2)(a); and
      - (C) is designated for retention by the local government records committee established in 2-6-402; and
    - (ii) all other records or documents required by law to be filed with or kept by any local government in the state of Montana, except military discharge certificates filed under 7-4-2614.
  - (b) The term includes electronic mail sent or received in connection with the transaction of official duties.
  - (c) The term does not include any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other type of document that is for reference purposes only, a preliminary draft, a telephone messaging slip, a routing slip, part of a stock of publications or of preprinted forms, or a superseded publication.
- (3) "Records custodian" means any individual responsible for the proper filing, storage, or safekeeping of any public records.

**2-6-402. Local government records committee -- creation.** (1) There is a local government records committee.

- (2) The committee consists of the following eight members:
    - (a) the state archivist;
    - (b) the state records manager;
    - (c) a representative of the department of administration;
    - (d) two local records custodians, appointed by the director of the Montana historical society;
    - (e) two additional local records custodians, appointed by the secretary of state;and
  - (f) a citizen representing the Montana state genealogical society, appointed by the secretary of state, who shall serve as a volunteer.
- (3) Committee members subject to appointment shall hold office for a period of 2 years beginning on January 1 of the year following their appointment.

- (4) Any vacancies must be filled in the same manner that they were filled originally.
- (5) The committee shall elect a presiding officer and a vice presiding officer.
- (6) The committee shall meet twice a year upon the call of the secretary of state or the presiding officer.
- (7) Except as provided in subsection (2)(f), members of the committee not serving as part of their compensated government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attending committee meetings.

**2-6-403. Duties and responsibilities.** (1) The local government records committee shall approve, modify, or disapprove proposals for local government records retention and disposition schedules.

(2) The local government records committee shall appoint a subcommittee, known as the local government records destruction subcommittee, to handle requests for disposal of records. The subcommittee consists of the state archivist and a representative of the department of administration. Unless specifically authorized by statute or by the retention and disposition schedule, a local government public record may not be destroyed or otherwise disposed of without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction of any local government records must be submitted to the subcommittee by the entity concerned. If there is not unanimous approval of the subcommittee, the issue of the disposition of a record must be referred to the local government records committee for approval. When approval is obtained from the subcommittee or from the local government records committee for the disposal of a record, the local government records committee shall consider the inclusion of a new category of record for which a disposal request is not required and shall update the schedule.

(3) The local government records committee shall establish a retention and disposition schedule for categories of records for which a disposal request is not required. The committee shall publish the retention and disposition schedules. Updates to those schedules, if any, must be published at least annually.

(4) The committee shall respond to requests for technical advice on matters relating to local government records.

(5) The committee shall provide leadership and coordination in matters affecting the records of multiple local governments.

**2-6-404. Rulemaking authority.** The secretary of state shall adopt rules to implement 2-6-402 and 2-6-403.

**2-6-405. Destruction of local government public records prohibited prior to offering -- central registry -- notification.** (1) A local government public record more than 10 years old may not be destroyed without it first being offered to the Montana historical society, the state archives, Montana public and private universities and

colleges, local historical museums, local historical societies, Montana genealogical groups, and the general public.

(2) The availability of a public record to be destroyed must be noticed to the entities listed in subsection (1) at least 180 days prior to disposal.

(3) (a) Claimed records must be given to entities in the order of priority listed in subsection (1).

(b) All expenses for the removal of claimed records must be paid by the entity claiming the records.

(c) The local government records committee, provided for in 2-6-402, shall establish procedures by which public records must be offered and claimed pursuant to this section.

(d) The local government records committee shall develop and maintain a central registry of the entities identified in subsection (1) who are interested in receiving notice of the potential destruction of public records pursuant to this section. The registry must be constructed to allow a local government entity to notify the local government records committee when the entity intends to destroy documents covered under this section and that allows the local government records committee to subsequently notify the entities in the registry. A local government entity's notice to the local government records committee pursuant to this subsection and the record committee's notice to the entities listed on the registry fulfills the notification requirements of this section.

## **Administrative Rules of Montana**

### **44.14.201 USE OF ELECTRONIC RECORDS STORAGE SYSTEMS FOR LOCAL GOVERNMENT DOCUMENTS**

(1) Electronic records storage systems may be used for the daily management, storage and retrieval of documents with a retention schedule of 10 years or more (long-term documents) or records with a retention schedule of less than 10 years (short- or medium-term documents) .

### **44.14.202 STORAGE REQUIREMENT FOR ELECTRONICALLY STORED DOCUMENTS WITH GREATER THAN TEN YEAR RECORD RETENTION SCHEDULE**

(1) Original long-term documents that are electronically stored must either be maintained in paper form or they may be destroyed or otherwise disposed of if copies are maintained on archival quality microfilm.

### **44.14.203 STORAGE REQUIREMENT FOR ELECTRONICALLY STORED DOCUMENTS WITH LESS THAN TEN YEAR RECORD RETENTION SCHEDULE**

(1) Original short- or medium-term documents that are electronically stored may be destroyed or otherwise disposed of without maintaining a

copy in another medium.

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**Schedules No. 1 - 17**

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**Montana  
Local Government  
Records Schedules**

**Prepared and Published by the  
Montana Local Government Records Committee  
Helena, Montana, 1999**

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# Introduction

## About This Book

### Why Schedules?

We have created these schedules to help you fulfill your recordkeeping responsibilities. Records retention and disposition schedules help you manage your records systematically by specifying how long, where, and in what format they will be kept and what their final disposition will be.

The Local Government Records Committee, with help from local records custodians, appraised the records and prepared the records retention and disposition schedules. The scheduling process is on going and involves close cooperation among local records custodians, local government officials, and state government agencies whose policies and procedures affect local government records or who have the expertise to provide valuable assistance. If you have suggestions to make about the schedules – changes, additions, questions – please contact the Local Government Records Committee.

### What Schedules Include

Every record series listed on a schedule includes a title (and variant titles if needed for identification), a brief description of the records series' function and its contents (if necessary), a retention period (the length of time the record must be maintained), and a final disposition.

General schedules are designed for categories of records that many offices have in common, for example, correspondence and subject files. The Local Government Records Committee also produces specific schedules designed for specific offices.

### Related schedules

Records relating to your function may exist in other offices. For example, records may be maintained in any number of county offices or state agencies. Records in other offices may have different retention requirements – and therefore different retention periods – than the same records kept in your office.

Many times, duplicate documents have a shorter life span than the “record” copy or official copy of a document. The “owner” of the record has the “record” copy and any other copy may be considered a duplicate copy. Any record with a “permanent” retention should be considered the “record” copy.

### Records not listed in this schedule

Local government offices may still have records that are no longer created and do not conform to the record types listed in this schedule. To prevent the accidental destruction of historically-significant records, please notify the Local Government Records Committee before destroying or otherwise disposing of records that may not appear in this schedule.

# Authority

2-6-401, 2-6-402, 2-6-403, MCA In 1993 the State Legislature created a Local Government Records Committee to “approve, modify, or disapprove proposals for local government records retention and disposition schedules.” The Committee also can approve or disapprove requests to dispose of or destroy records; establish categories of records for which a disposal request is not required; respond to requests for technical advice on matters relating to local government records; and provide leadership and coordination in matters affecting the records of multiple local governments.

The Committee is composed of the State Archivist, the State Records Manager, a representative of the Local Government Services Bureau in the Department of Administration, two local records custodians, appointed by the director of the Montana Historical Society, two additional local records custodians, appointed by the secretary of state, and a citizen representing the Montana Genealogical Society, appointed by the secretary of state, who shall serve as a volunteer.

The State Archives also was given authority to accept transfers of records that local governments may no longer have room to store themselves. You may want to consider depositing your records with your local library, museum, or historical society. If you decide to deposit them locally, please contact the State Archivist for a deposit agreement form.

## **Disposition approval**

An important component of any records management program is the disposition of records that have reached their prescribed retention period. The legislature established a Destruction Subcommittee to approve the disposal of local government records. The Subcommittee is composed of the State Archivist and a representative of the Local Government Services Bureau in the Department of Administration. The Department of Administration is concerned with records that need to be saved for audit purposes and the State Archivist is interested in preserving records that have ongoing administrative, legal, or research value. On October 1, 2001, SB 443 was passed by the 2001 Legislature that required local officials to provide 180 days notice to certain interested parties before destroying any record that is 10 years or older. For more information about SB 443 and the disposal of local government records, contact the Records and Information Management Services, (406) 444-9000, or e-mail [pborsberry@mt.gov](mailto:pborsberry@mt.gov). Please see the Request and Authorization for Records Disposal form. The disposal form also includes a Certification of Destruction, which provides proof that the records were actually destroyed.

# Definitions

<b>Active records</b>	Records frequently referred to and used on a daily, weekly, or monthly basis.
<b>Administrative records</b>	Records relating to budget, personnel, supply, and similar housekeeping or facilitative functions common to most offices, in contrast to program records.
<b>Case files</b>	Material related to a specific action, event, person, organization, location, or project. Also known as project files.
<b>Destruction</b>	Methods of destroying records include: <ul style="list-style-type: none"><li>■ burning, pulping, shredding macerating, burial,</li><li>■ discarding with other waste materials, and</li><li>■ selling or salvaging the record medium (e.g., recycling).</li></ul>
<b>Disposition</b>	Disposition is the actions taken regarding records no longer needed for current government business, including: <ul style="list-style-type: none"><li>■ transfer to a storage facility,</li><li>■ transfer from one department or government entity to another,</li><li>■ transfer of permanent records to an archives, and</li><li>■ destruction of temporary records.</li></ul>
<b>Inactive files</b>	Records infrequently referred to; generally used less than once every three months.
<b>Local government</b>	As defined in <u>2-6-401, MCA</u> , a local government means: <ul style="list-style-type: none"><li>■ any city, town, county, consolidated city-county, or school district;</li><li>■ any subdivision of an entity named above.</li></ul>
<b>Non-current records</b>	Records no longer required in the conduct of active business.
<b>Office of record</b>	Office which maintains the “record” copy of a document.

# Definitions – cont.

<b>Program records</b>	Records relating to the mission or the unique, substantive functions of an office.
<b>Project files</b>	Material related to a specific action, event, person, organization, location, or project. Also known as case files.
<b>Public records</b>	Quoting from <u>2-6-401, MCA</u> , a public record includes “any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies of the records, <i>regardless of physical form or characteristics</i> , that has been made or received by any local government, in connection with the transaction of official business, and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any local government in the state of Montana.”
<b>Reading files</b>	Material, such as correspondence and reference materials, filed in chronological order; generally used for reference and convenience.
<b>Record copy</b>	The “record” copy is the principal copy of any letter or document. Also referred to as the official file copy.
<b>Record series</b>	File units or documents arranged according to a filing system or kept together because they relate to a particular subject or function, result from the same activity, document a specific kind of transaction, take a particular form, or have some other relationship arising out of their creation, receipt, or use. Generally handled as a unit for disposition purposes.
<b>Records schedule</b>	A records schedule - or records retention and disposition schedule – is a document providing minimum period of time records must be retained and instructions for what to do with records no longer needed for current government business.
<b>Subject files</b>	Material filed by subject, usually in alphabetical order.
<b>Transitory records</b>	Records which do not have value beyond the immediate purpose for which the document is created, such as transmittals and meeting notices.
<b>Vital records</b>	Records that are essential to resume or continue operations during and after an emergency; records necessary to recreate the local government’s legal and financial position; and records necessary to preserve the rights and interests of the local government, its employees, residents, and other individuals directly affected by the local government’s activities.

# Legal Considerations

## **Destruction of personnel records**

Although the law allows you to destroy employment records 10 years after termination, you should consider keeping employment records from the 1960s and 1970s longer because they may not be available anywhere besides your office.

## **Destruction of certain financial records (20-9-215 versus 27-2-202, MCA)**

Although 20-9-215, MCA, provides for a five-year retention for claims, warrants, vouchers, bonds, and receipts, the Montana Local Government Records Committee would have you also look at 27-2-202, MCA. This section includes "Time Limits on Specific Kinds of Actions," and states in part:

- (1) The period prescribed for the commencement of an action upon any contract, obligation, or liability founded upon an instrument in writing is within 8 years.

Because of this, the Montana Local Government Records Committee recommends an "audit + 8 years" retention to meet statute of limitation requirements.

For further help with financial records, contact Lorin E. Flesjer at (406) 365-6582 or Marlene Hughes at (406) 841-2909, Local Government Services – Systems Program, Department of Administration.

## **Stopping scheduled destruction of records when a law suit is filed**

When a law suit is filed, it is very important that *you* stop the destruction of records that might be pertinent to the law suit, even if the records have already meet their scheduled retention period. If you continue with the destruction, it may *appear* to a judge that you intentionally disposed of records that could be needed in the law suit. If the judge thinks you intentionally destroyed records, your local government entity could be sanctioned.

If your local government is presented with a subpoena:

- Immediately tell your attorney.
- Get an explanation from the attorney about what is involved in the case so you know what records should not be destroyed and so you can help advise the attorney about what records exist.
- Coordinate with your attorney about what records are needed and when.

# Legal Considerations – cont.

## Privacy versus the right-to-know

The Montana Constitution assures citizens of both the right to know (Article II, Section 9) and the right to privacy (Article II, Section 10). When it comes to public records, these two sections sometimes appear to be in conflict. In addition to the constitutional right to know, MCA 2-6-102 also provides citizens the right to inspect and copy public records. Which is more important, the individual's right to privacy or the right to know?

There is a body of case law where Montana courts have done a balancing act between the two sections and decided which is more important in specific instances. These existing cases can be used to provide guidance. Also, it is sometimes possible to provide the information a citizen seeks without allowing the person to look at the confidential portions of the records. This can be done by looking at the records yourself and providing a verbal response to the citizen, or by photocopying and blocking out the confidential information before allowing the citizen to see the document(s).

When in doubt about whether something is confidential and or whether you have to allow access, consult your attorney.

# General Guidelines

## **Applying retention periods**

Retention periods assigned to records are minimums. It is not required that records be destroyed or otherwise disposed of at the end of the minimum. Records may always be kept longer, but they cannot be disposed of sooner. The disposition actions of each office should depend upon its own needs and capabilities to keep records.

For local governments that are not required to have an audit, retention periods begin at the end of the fiscal year in which the records are created. For local governments that are required to have an audit, the retention period begins at the end of the fiscal year when the commissioners/council/directors/trustees receive the Final Fiscal Year Audit Report.

## **Microfilming local government records**

The Attorney General has ruled that microforms may be considered as a permanent storage medium for public records. Local governments may keep and preserve public records through the use of microforms (film or fiche) providing the filming, development, and storage of the camera master meet applicable standards. Records and Information Management Services in the Secretary of State's Office will test and verify that your film meets the national standards. Contact them at: Records and Information Management Services, PO Box 202805, Helena, MT 59620-2804 or phone (406) 444-9000.

When deciding whether or not to film, local governments should consider factors such as the retention period of the records to be filmed and the estimated cost of the microfilming. If a microform is chosen as the primary storage medium, the paper records become duplicate records and they may be destroyed without obtaining approval from the Destruction Subcommittee once the film has been verified.

## **Imaging local government records**

The Local Government Records Committee adopted an administrative rule concerning the use of optical imaging for local government records. Optical imaging was designed for fast retrieval by multiple users; it was not designed for long-term storage of records and does not currently meet the requirements for records needing to be stored for ten years or more. For that reason, the following rule is in effect for all local governments:

Electronic records storage systems may be used for the daily management, storage, and retrieval of documents. For records whose retention period is 10 years or more, electronic records storage systems may be used if the records also are maintained in paper form or on archival quality microfilm.

*For the complete text see*  
"Administrative Rules of Montana." [44.14.201-203](#)