# 9-1-1 Advisory Council Minutes

**January 23, 2018**

**2:00 p.m.**

**Mitchell Building, Room 7, Helena**

**Members Present:**

Jennie Stapp, MSL, Interim Chair

Sandra Barrows, Barrows Consulting ☎

Liz Brooks, PSAP >30K (Alternate) ☎

Delila Bruno, DES

Michael Fashoway, MT State Library (Alternate)

Geoff Feiss, MTA

Peggy Glass, PSAPS <30K

Dorothy Gremaux, PSAPS <30K (Alternate) ☎

Lisa Kelly, CenturyLink ☎

Clint Loss, MEMSA

Chris Lounsbury, Missoula Co. ☎

Commissioner Gary MacDonald, MACO ☎

Shantil Siaperas, MACo (Alternate)

Zach Slattery, MT APCO (Alternate)

Captain Curt Stinson, MACOP

**Staff Present:** Don Harris, DOA/SITSD, Quinn Ness, PSCB, Rhonda Sullivan, DOA/SITSD/PSCB and Wing Spooner DOA/SITSD/PSCB,

# Welcome

Quinn Ness welcomed everyone and introduced Jennie Stapp, the interim chair. Members and guests were introduced.

# Minutes

Motion:Zach Slattery made a motion to approve the November 16, 2017 minutes. Peggy Glass seconded the motion. The motion carried.

**9-1-1 Program Proposed Administrative Rules Comments & Responses:** Don Harris explained the goal of responding to all comments received in the Proposed Administrative Rule Making process. Several oral and written comments were received, and areas of concerns were organized into about 20 categories. If the Council provides the information needed today, the department can meet the February 13 filing date. This will allow the department to review all responses and recommendations from the Council, to ensure they are all addressed, and that the department is complying with the requirements of the law. The goal is to file the adoption notice on Feb. 13, 2018, which would result in the rules becoming effective on Feb. 23, 2018. This timeline is consistent with the goal of having the rules in place to allow PSAPs and local governments sufficient time to get their certification paperwork together.

Don explained to Council members that adoption of New Rule VII, the list of allowable uses of 9-1-1 funds, is being postponed to a later date because even though the list was posted on the PSCB website, it wasn’t in a logical location. Hence, members of the Legislative Interim Committee had difficulty finding it. Comments received about New Rule VII can still be discussed today, and, the Council can suggest changes, but its adoption will not be simultaneous with the adoption of New Rules I – VI & VIII. Gretchen Bingham, the Department of Administration’s rule expert, recommended that New Rule VII be filed as a proposal at the same time the adoption notice for this rule making package is filed on Feb. 13. If the Council is willing to agree to this recommendation, it will expedite the adoption of New Rule VII. The New Rule VII Proposal Notice will trigger a new round of public comment

**NEW RULE I - DEFINITIONS**

Comment #1: The department received a request to clarify the definition of "department." A definition was used from another area of statute and not the one in HB 61. Because "department" is defined in 10-4-101, MCA, it does not need to be defined in the administrative rules.

So, the definition has been struck.

**NEW RULE II - PSAP CERTIFICATION**

Comment #2: The only comment we received was from the legislature indicating that there was another statute, 10-4-103, MCA that ought to be listed as an implementation citation.

**NEW RULE III - APPLICATION FOR CERTIFICATION**

* Comment #3: The department was asked to clarify whether a tribal government can receive direct distributions from the 9-1-1 systems account. It was not anyone’s intent to have tribal governments receive funding directly from the 9-1-1 systems account. A tribal government would have to form a relationship with a local government entity that hosted a PSAP and they could get sub-distributions from that local government. To make this clear, language was added to subsection (4) clarifying that a tribal government will receive a distribution of funds for 9-1-1 purposes from the local government entity receiving payments made under 10-4-305, MCA.
* Comment #4: A minor discrepancy was noted between the language in the PSAP Certification Form posted on the department's website and the wording of New Rule III. No changes are required to the rule itself; the form just needs to be edited. This correction will be made before publishing the adoption notice.
* Comment #5: The next comment in this section was about types of agreements. The original text only referred to interlocal agreements. The department was asked to allow a memorandum of understanding or a memorandum of agreement as an acceptable form of documentation. As long as they meet criteria set forth in 7-11-105, MCA, the department will accept alternative forms of documentation. NEW RULE VII has been amended to include this.
* Geoff pointed out a grammatical error in the response to Comment 5. The sentence reads: “The department will accept alternate forms of documentation. . . “The correct word should be “alternative.” “Alternate” means “every other,” while “alternative” means “a substitute for.”
* Comment #6: Some commenters seemed to think that the two-year PSAP certification period also applied to the duration of interlocal and other agreements submitted by local government entities in support of an application for certification. This is not the case. New Rule III does not specify a duration for agreements. Local governments can enter into an agreement of any length that they feel is appropriate. The response provides clarification. No change is needed in the rule.
* Comment #7: The department was asked to extend the PSAP certification period for more than two years. Don did not prepare a response to this comment because he believes the response should come from the Council. Don pointed out that the Council does not need to make a change to the rules if it feels that two years is the appropriate time frame. Here were the main discussion points:
	+ A state agency can enter into a contract for no more than seven years. So, that is a benchmark that could be used as a maximum certification duration.
	+ The Montana State Library asks for annual certifications.
	+ More frequent re-certifications allow the department to capture information about changed circumstances.
	+ PSAP representatives were asked to consider factors that are likely to change within two years. Will the information submitted be redundant? If the certification process is simply procedural, why should the onus be on the PSAP if no new information is being captured.
	+ As the Statewide Plan and GIS Assessment develops and perhaps prompts changes in the rules, it may be that PSAPs will need to re-apply for certification. Maybe for now, it’s best to have a shorter certification period, and then transition to a longer term.
	+ Typically, what changes is elected officials more than PSAPs operations. Newly elected officials may want to change agreements or how services are being providing.
	+ We should include a requirement that if anything does materially change, then the local government must notify the department at least on an annual basis and initiate a new certification process at that time.
	+ A five-year certification period was suggested. If there are substantial changes within that five-year period, the PSAP shall notify the department and re-apply for certification.
	+ Don isn’t sure how far he can go with adding new text to the rules. The number of years can be changed easily. He can make an effort to add the additional text, but if his colleagues are not comfortable with that change, then the text will need to be proposed in a separate notice.
	+ It was suggested that this requirement be covered in the department’s certification process. So that when a PSAP is formally notified of its certification, a statement could be included in a formal letter that is sent to the PSAP, (sort of like a terms and conditions) indicating that if there are substantial changes, the local government must notify the department and initiate a new certification process.
	+ The department can request this information, and most of the time the PSAP is likely to provide it. However, it the department wants to make it a requirement, it needs to go through the rule-making process. This requirement will be added later when other rule-making processes are being addressed.
	+ It was agreed to change the certification period to five years.

**NEW RULE IV – CERTIFICATION PROCESS:**

Comment #8: The department received a comment from the interim committee staff pointing out it the way this section was written a PSAP would only get a chance to contest an action of the department if it was a conditional certification. The language was ambiguous as to whether notice and hearing is required in the event an application is denied. The department agrees with the comment and has clarified that when an application is denied or granted conditional PSAP certification, the notice and hearing process will be triggered.

**NEW RULE V – DECERTIFICATION AND FUNDING REDUCTION**

Comment #9: The department received a comment suggesting that 10-4-108, MCA, be listed as a statute implemented by New Rule V. This suggestion was appropriate, and the citation to 10-4-108, MCA should be added.

**NEW RULE VI – ALLOCATION OF FUNDS**

Comment #10: The department received a comment suggesting that 10-4-201, MCA, be listed as a statute implemented by New Rule VI. Once again, the department agrees, and would like to add citation 10-4-201, MCA.

**NEW RULE VII – ALLOWABLE USES**

Comment #11: The list of allowable uses was originally posted in a subdirectory of the public safety communications bureau's website, and it was a challenge to find. The list has been reposted in a more prominent location. In the interest of providing a full opportunity to comment about the list of allowable uses, the department will not adopt New Rule VII at this time. The department expects to propose adoption of New Rule VII and the referenced list of allowable uses in a separate rulemaking to be filed on Feb. 13.

Quinn clarified that the proposed list of Allowable Uses is the same list that the department has had as its guidelines for the past 20-30 years. No substantive changes have been made to the list. Commissioner MacDonald, MACo and MTA have expressed concern that the list of allowable uses is too broad and believe use of the funds should be restricted to one-time only or capital expenditures. Quinn wanted to specifically hear from PSAPs, and encouraged discussion.

* Liz Brooks, Flathead 9-1-1, said it was important to retain the list of allowable uses to 1) provide consistency from what we’re currently doing and what we will be doing going forward, and 2) maintain local control on how funds are spent. There are a lot of different PSAP variables, such as size, funding models, priorities and needs when it comes to using 9-1-1 funds.
* Peggy Glass, Livingston/Park County 9-1-1, supported having a broad list of uses, especially for smaller PSAPs. Each agency should be able to decide how they want to use funds.
* Shantil Siaperas, MACo, definitely supports local control. MACo is concerned that if 9-1-1 funds are used for operational expenses, there might not be enough money to implement the upgrades that are necessary to ensure that residents are receiving 9-1-1 in the new ways that are going to be required, such as text messaging and implementing NG911. Right now, PSAPs do not have the funds to implement NG911.
* Chris Lounsbury, Missoula 9-1-1, reiterated that operational expenses are already an allowable use under the current guidelines. Chris pointed out that restricting 9-1-1 funds will simply shift operational expenses to the county or local government, and he asked how locals will absorb those costs? MACo believes that 9-1-1 is the responsibility of the county.
* Geoff Feiss, MTA, recalls discussions on this topic in consideration of HB 61 where expenses for personnel and operating expenses were thought to be the responsibility of local government. MTA filed comments concurring with MACo’s observation. He also clarified that grant funds will first go to carriers for their expenses, so PSAPs can’t necessarily depend on grant funds that might already be fully or at least partially spent before the PSAPs have access to them may not be a prudent policy.
* Commissioner Gary MacDonald, Roosevelt County, expressed a view that the detail in the list of allowable uses is unnecessary. The more general term of “operational expenses” should be used.
* Curt noted that PSAPs have been following the guidelines for spending their 9-1-1 funds for the past 20 years. He would strenuously object to changing the list of allowable uses because the Helena PSAP relies heavily on 9-1-1 funds for operating expenses. Curt asked what are the capital projects that are not getting done under the current guidelines? This is not state money. It’s a pass through our taxpayers are paying in support of 9-1-1 programs in their communities, and they expect it to go back to their communities. There is a stewardship responsibility to make sure the 9-1-1 money is spent responsibility. Rhonda said this is accomplished through the monitoring program. There have been very few issues regarding their expenditures.
* Liz Brooks noted that during HB 61 discussion about this topic, she specifically recalls that some smaller PSAPs said that without the ability to use funds for operating expenses, they would be unable to operate at all. Changing the list of allowable uses now would create another obstacle to be overcome and would be counterproductive.
* Quinn clarified that when staff performs monitoring, that is after the fact. The funds have already been expended. One of the reasons there such a lengthy and detailed list of allowable uses, is because the 9-1-1 program did not want to mislead PSAPs about what is allowable and what is not. The program has worked to make the process as transparent as possible, and it has worked very well for the past decade. Quinn also said that if we want to make what he believes is a significant policy change in how 9-1-1 funds are expended, his preference would be to have that take place at the legislative level. Changing this policy could have a huge effect on PSAPs, including consolidation or possible closures. Policies with this great of an effect should be debated at the legislative level.
* Jennie Stapp weighed in with two items she found compelling: 1) State pass-through monies are being brought to bear on how PSAPs operate. The greatest opportunity for local control is to let local jurisdictions know what resources they have and allow them to make best possible determinations on their budget priorities. If we restrict that in rule, then we restrict that opportunity for local determinations. 2) There is a great deal of uncertainty in the future as the grant program is developed and implemented, and to make a very significant change to how this source of funding is used in light of that uncertainty, would only add to future concern. Her recommendation would be to follow through with the current rule and see how the grant program works—to see what kind of difference it does make over the next few years as it is implemented—and then if we feel as though changes need to be made to the list of allowable uses, we will have an opportunity to re-visit these rules.
* Commissioner MacDonald admonished members to be aware that if the budget doesn’t straighten out on the state level, that grant program money is vulnerable. Two million of it has already been taken.
* Liz believes that is a very compelling argument for why maintaining the current allowable list of expenses is important.

Don Harris pointed out that this discussion addresses Comment 14, which suggested restricting the use of 9-1-1 funds to capital expenses rather than operating expenses. The response is likely to be the same from this department because we are moving forward with this as a separate proposal.

Comment 12: Don indicated that a question was posed about what rules would govern reimbursement of PSAPs if the department does not adopt rules regarding allowable uses of funds prior to July 1, 2018.

Having New Rule VII filed on Feb. 13 at the same time as this adoption notice will hopefully alleviate that concern.

Comment 13: This comment asked whether the department should retain some discretionary ability to approve allowable uses not on the list. Quinn said if it makes stakeholders uncomfortable that the department could have some discretion on what would be allowed, then discretionary approval can be removed. Our list of allowable uses has been stable for several years, so he does not anticipate future changes.

Geoff said the providing the department with discretion to approval possible additional uses is one side of the coin. The other side is allowing the department the discretion to exclude certain allowable uses.

One of the goals of HB 61 was to include a public rule making process by which public comment would be taken and the rules would follow the administrative procedures act which would result in rules that are more concrete and more legally defensible than “guidelines,” which are departmentally established. Rules are closer to a law than are guidelines. Guidelines can be changed. Rules can’t be changed without a rule making process.

Quinn believes that the “discretionary approval” language may have been carried over from the old guidelines. He believes that Geoff makes a strong argument that the department should not have discretion to add to the list and that the process be transparent. So, Quinn recommends removing that statement from the allowable uses. Rhonda said that if there has been a question in the past, she has always told folks that the Advisory Council would review it and decide. If someone wants a new expenditure added to the list, then it would come before the Advisory Council. If the Council felt it should be added to the list, then we would need to go through the formal rule-making process, which would be open to public comment and be transparent to everyone. This applies to the addition or deletion of something from the list.

**NEW RULE VIII – REPORTING, MONITORING, AND RECORDKEEPING**

No comments were received.

**GENERAL COMMENTS**

Comment #15: The department was urged to adopt rules to implement the 9-1-1 grant program to ensure there is no gap in funding. The subcommittee is already working on the grant funding rules and plans to present them to the Advisory Council, so they can be issued before the end of the fiscal year.

Quinn noted that, in general, the Statewide Plan-GIS Assessment subcommittee is considering not including requirements in the grant guidelines related to the Statewide Plan or GIS Assessment at this time. Once the Plan and Assessment are complete, then we can go back into the rules process and amend the grant program guidelines. Staff did prepare the draft application guidelines for the grant program, and they have been out for review and comment by subcommittee members for the past couple of weeks. The subcommittee hopefully will soon have recommended guidelines come to the Advisory Council for adoption. Then we can move forward with the rule-making process.

So, the subcommittee could be on target for having rules established for the grant program shortly after the July 1, 2018 date. However, an application process will be triggered at that time, which will need sufficient time to implement. Quinn does want to reassure the Council that the subcommittee is making progress.

Comment 16: The department received a comment encouraging the department to address the Statewide 9-1-1 Plan in New Rules I through VIII and in the rules implementing the grant program when the Statewide Plan has been completed and adopted.

Don indicated that this will be the first of several rule-making processes. He anticipates that references to the Statewide 9-1-1 Plan will be added to these rules and the grant program rules when the Plan has been completed.

Comment #17: A commenter requested clarification of the process for amending a document that is adopted and incorporated by reference.

Don pointed out that the draft response incorporates language from 2-4-307, MCA. If we are going to adopt any materials by reference, the materials must be in existence at the time of a proposed rulemaking and if anything changes in that external document (i.e. the list of allowable uses), we must go through the rule-making process to amend it.

Comment 18: A commenter requested that materials adopted by reference be located in the same place as other administrative rules pertaining to the same subject. It was suggested that both the administrative rules and materials adopted by reference be posted to the PSCB website.

The last three comments represented kudos to the program folks for the work they have done on rule making. Don was thanked for his review and comments.

**New Rule VII to be Proposed on Feb. 13 Discussion**: The consensus was that there was no need for further delay. A motion to respond to the public comments as reflected in today’s discussion and to adopt New Rules 1 – VI and VIII could not be made since it was not listed as an action item on today’s agenda. Rather than taking a formal action, Don was directed to carry forward our discussion with our appreciation. Quinn and Don will prepare for a formal action on the agenda for the next meeting, so it can be part of the public record. A vote of confidence was taken to acknowledge that we are directing Don and Quinn to share our comments and recommendations with the department, and that we will take formal action at the next meeting.

# MDOA/SITSD Organizational Changes & 9-1-1 Program Budget Reductions:

# Quinn wanted to bring the Council up to date on recent organizational changes and the 9-1-1 budget. Subcommittee members are already aware of these. As reported at the beginning of the meeting, Ron Baldwin, CIO announced his retirement effective January 19, 2018. The Governor is engaging in a nationwide search for a new CIO. The Chief Technology Officer is the interim CIO. Jennie Stapp is the Interim Chair of the state 9-1-1 Advisory Council. In addition, the Deputy CIO and Chief IT Security Officer, Lynne Pizzini, retired on December 31, 2017.

# Quinn explained that we used to have a half-time FTE, Carrie Castle, who provided administrative support to the 9-1-1 Advisory Council and subcommittees. A few years ago, all administrative support for SITSD Boards and Councils was centralized within the state CIO’s Office under the management of Jennifer Schofield. After Carrie’s retirement, we had Wendy Jackson provide support to the Council. Wendy has moved on to another position. Then we had Sarah Mitchell, who, unfortunately, left the department at the end of December. We are under the impression that the budget office has not approved the filling of those positions. This is important is that 9-1-1 funds were not funding administrative support. This was being assumed in the state CIO’s office.

# Subsequently, Jennifer Schofield, who was the executive assistant to Ron Baldwin, was promoted to Bureau Chief of the newly created Business Operations Bureau. The State CIO Office no longer has the resources to provide support to the 9-1-1 Advisory Council. When Carrie’s position wasn’t filled, it was eliminated and funding for the Advisory Council was also reduced. Going into the 2017 legislative session, the 9-1-1 Program administration budget authority was reduced, and it was reduced again in the 2017 special session. As a result, there has been about a 37% reduction in program administration funding and funding that supports the 9-1-1 Advisory Council. So, staff is proposing a change in the frequency of meetings for the 9-1-1 Advisory Council as well as the subcommittees. Many Council member agencies have assumed all costs for participation on the Council, and the department greatly appreciates that. We would be very appreciative if that could continue until this budgetary dilemma can be resolved. Wing Spooner is still the Mutual Aid Frequency Program Manager, but has graciously volunteered to help the 9-1-1 Program and Advisory Council.

**Meeting Schedules**: Quinn proposed having 9-1-1 Advisory Council meetings on a quarterly basis on second Thursday of the month—March 8, June 14, Sept. 13 and Dec. 13. It is being proposed that subcommittees meet monthly. Due to staffing, we really can’t hold meetings back to back, which is too much of a workload for the resources that we have.

The Administrative Rules subcommittee would meet the fourth Thursday of every month, except for the already-scheduled meeting on Feb 8. Upcoming meetings would be: February 22, March 22, April 26, May 24, June 28, July 26, Aug. 23, Sept. 27, and Oct. 25. Geoff suggested adding a two-hour conference call midway between the Feb. 22 and March 22 meetings as a potential date due to anticipated time needed to draft the grant program guidelines. Quinn explained that the meetings are staggered, so that when subcommittees take action, staff will have two weeks to prepare and distribute materials to Council members in advance of the next 9-1-1 Advisory Council meeting.

The Statewide Plan-GIS Assessment subcommittee would meet on the second Thursday of the month except on those days when the 9-1-1 Advisory Council is meeting. Subcommittee conference calls will be scheduled for two hours, starting at 1:00 and ending at 3:00 pm. The next Statewide Plan-GIS subcommittee meeting will be April 12, followed by meetings on May 10, July 12, Aug. 9, Oct. 11 and Nov. 8. Quinn will send this schedule out to everyone and then we will formally re-schedule those on everyone’s calendars. Wing apologized for the rather arbitrary way that all the upcoming 9-1-1 meetings started being cancelled without anyone being informed ahead of time.

Quinn recommended that the Advisory Council meetings go back to 1:00 to 3:30 pm. He emphasized that we are trying to use electronic means as much as possible to reduce travel and venue expenses. We are still staying on an aggressive schedule, while minimizing costs.

**Council Updates:**

* **GIS Assessment RFP**: Jennie provided an update to the Council on a change with the GIS Assessment RFP. The original plan was to combine the GIS Assessment with the Statewide Plan RFP, but State Procurement expressed concern that some vendors for the Statewide Plan might not have the expertise to meet the GIS portion of the RFP. The GIS Assessment work can be moved forward with a Bid for Contract. The Scope of Work for the Statewide Plan has largely been drafted by the subcommittee. Quinn anticipates that the Statewide Plan Scope of Work will be available at the next Advisory Council meeting. Hopeful the subcommittee will recommend moving forward with it during its next meeting this Thursday.
* **Applications for 9-1-1 Advisory Council Membership**: Quinn reported that the Governor’s office has not received an application to be on the Advisory Council from Terry Ferestad, or another telecommunications provider, one of the three positions on the Council. Lisa’s application has been received as well as Geoff’s. Quinn will try to follow up with him. No applications have been received from Chuck Winn (MT League of Cities and Towns), Leonard Lundby (Volunteer Fire Fighters Association), or Vern Burdick, (MT Sheriff’s and Peace Officers Assoc.). Anyone can apply for these vacancies, but they need to represent certain disciplines/organizations/ associations.

# Public Comment: Geoff commended department members for a very professional and thorough rule-making process.

# Next Meeting: The next meeting will be held on Thursday, March 8 from 1:00 p.m. to 3:30 p.m.

# Adjournment: The meeting adjourned at 3:38 p.m.