

## WORKING TOGETHER FOR MONTANA'S MUNICIPALITIES.

*Photo Courtesy of Montana Office of Tourism and Business Development*

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### MONTANA LEAGUE OF CITIES AND TOWNS LEGISLATIVE UPDATE

The 2023 Legislative Session is finally over. It lasted a total of 87 days and can only be described as fast and furious. Legislators introduced 1,644 bills – a number second only to the number introduced in 1973 according to the Montana Legislative Branch.

As the legislative voice for Montana's 127 incorporated cities and towns, it is the League's goal to develop and advocate for policies that build and maintain unique, vibrant, healthy, and safe communities.

#### TO THAT END, THIS SESSION AND EVERY SESSION, OUR ACTIVITIES INCLUDE:

- Drafting legislation for the benefit of municipalities
- Communicating the interests of municipal government to legislators
- Monitoring and acting on legislation impacting cities and towns
- Organizing local leaders and supporters of local decision-making for a united legislative response

  
**THE 2023**  
**LEGISLATIVE SESSION**  
ADJOURNED ON MAY 3RD



**LEGISLATORS  
WROTE & INTRODUCED**



**MORE BILLS THAN THE  
PREVIOUS SESSION**

*(far above the average  
for the last 13 sessions)*



**OVER 1,600  
PIECES OF LEGISLATION**



**WERE INTRODUCED  
THIS SESSION**

*(second only to the number introduced in  
1973)*

## The sheer volume of bills to track this session was no small feat, but we did it!

From appropriations to zoning, we monitored, supported, and opposed legislation affecting cities and towns on not just a daily, but hourly basis - because legislation can truly happen at lightning speed.

By staying in the thick of the action, the League successfully supported an array of bills benefiting local government as well as opposed many that would have hindered local decision-making.

FOR LEGISLATIVE  
RESOURCES AND  
REPORTS, VISIT THE  
LEAGUE'S WEBSITE

[www.mtleague.org](http://www.mtleague.org)



## ➤ SB 382 | The Montana Land Use Planning Act



### For us, a highlight of the session was assisting in the development, introduction, and passing of SB 382, The Montana Land Use Planning Act.

For the last several years, the League has been working with a group of realtors, builders, legislators, municipalities, and counties to create a comprehensive fix to Montana's outdated land use and planning statutes. The outcome of that effort was SB 382 which provides cities and towns the mechanisms to update their zoning and plan for current and future community needs while simplifying the process for developers. With SB 382 in place, more housing can be built throughout Montana while preserving the right for locals to have their say.

SB 382 is a real win for local government and the fundamental change Montana needs to create more housing. The League will be sharing more information about SB 382 over the next few months so that cities and towns have a clear understanding of what the bill does and how they may implement it in their communities.

As we continue to process SB 382 and the other bills passed this session, one thing is very clear, engaging in the legislative process by contacting legislators and testifying at committee hearings had an impact. Together, we influenced legislation for the benefit of us all. Thanks so much to all of you that took action this session.



**Your voice  
made a  
difference!**



# SPECIAL EVENTS COVERAGE

As we move closer to Spring, many of us are ready to get out and enjoy our municipal spaces for: sporting events, farmer's markets, concerts, sidewalk sales, weddings & receptions, car shows, and fun times.



**In the coming weeks, MMIA will receive many inquiries regarding the use of municipal properties by individuals and organizations (the Event Holder) for their own events.**

We are often asked if there are any concerns the municipality should be aware of, and how the municipality should limit their exposure on events it isn't sponsoring or controlling. MMIA has always maintained that if exposures are created by others who are using municipal facilities and if you (the city/town) can't control the outcome, then you should transfer that exposure onto the Event Holder. If you can't control the outcomes, you can't manage the risk. If you can't manage the risk, you should require the Event Holder who can manage the risk, to assume the exposure by accepting the liability for the event and providing insurance.

**A SPECIAL EVENT** could be anytime an Event Holder wants to use municipal property for their own event. Each of these events comes with its own list of hazards and risk that could result in the injury to the public, an event attendee, or an innocent by-stander. It could also cause damage to municipal structures and property.

**A SPECIAL EVENTS POLICY**, purchased by the Event Holder, would provide liability insurance for injuries to others or the damaging of municipal property during the event.

**WITHOUT A SPECIAL EVENTS POLICY**, the Event Holder could be vulnerable to the financial responsibility & risks that are not normally covered under their homeowner's policy or their current business insurance policy. The resulting out-of-pocket liability costs could be devastating to them as well as the municipality. Without coverage, the municipality could be retaining the cost of repairing the damaged property the municipality owns as well as the potential of having to address a claim for injury to someone who attended the event if the Event Holder did not secure the appropriate insurance coverage. Having the appropriate coverage helps to preserve the reputational risk of the Municipality and the Event Holder.



## EVENT HOLDERS CAN PURCHASE SHORT-TERM AFFORDABLE COVERAGE

for various types of events through the Special Event Liability Coverage MMIA has developed with the Independent Insurance Association of MT and their Authorized Special Events Agencies throughout Montana.

**This program has features such as:**

- Naming the municipality as an additional insured
- Options to purchase increased liability limits
- Purchase liquor liability coverage

You can get connected to the agencies or the Independent Insurance Association of MT through the [MMIA Risk Management page](#).

## INSTRUCTIONS FOR OBTAINING COVERAGE

- 1** City/Town receives a request to use public property and provides the applicant the city/s/ town's permit/agreement requirements.
- 2** Refer the Event Holder to a list of local agents. Go to [www.mmia.net/riskmanagement/specialevents/](http://www.mmia.net/riskmanagement/specialevents/)
- 3** The Event Holder contacts an agent, completes the application and pays the premium. The holder must allow a minimum of 5 business days prior to the event for coverage to be offered.
- 4** When the event is covered, a certificate of insurance will be issued naming the municipality as an additional insured.

**FOR A CLOSER LOOK,**  
call Risk Management at

1-800-635-3089  
or email us at  
[riskmgmt@mmia.net](mailto:riskmgmt@mmia.net)

# NEW APPROVAL PROCESS FOR VOLUNTEER COVERAGE



- **NEW ONLINE APPLICATION PROCESS**
- **WC COVERAGE FOR CASUAL EVENT VOLUNTEERS**

These are the special event volunteers that require approval from the MMIA prior to the event for Workers' Compensation coverage. The MMIA recently implemented a new online application process for these events. The form is now available on the MMIA website at [mmia.net/request-coverage/](https://mmia.net/request-coverage/). The application is also accessible at [live.origamirisk.com/origami/incidententry/welcome](https://live.origamirisk.com/origami/incidententry/welcome).

## APPROVAL PROCESS STEPS

**STEP 1** Once the application is submitted, MMIA staff will review and contact the individual submitting the application if there are questions.

**STEP 2** If there are no questions, the application will be reviewed for compliance with the underwriting criteria. If denied, the applicant will receive a notification of the denial. If approved, a written approval will be issued to the Member along with an endorsement of coverage and an invoice for the cost of the coverage based on the estimated number of volunteers. See chart below.

NUMBER OF CASUAL VOLUNTEERS	STANDARD ASSESSMENT
1 - 25 Volunteers	\$91
29 - 100 Volunteers	\$161
101 - 199 Volunteers	\$186
200 - 299 Volunteers	\$238
For each 100 volunteers above 299 add	\$64

**STEP 3** After approval is granted, the Member must submit a roster of volunteer names and the last four numbers of their social security number within two days following the event. Coverage will be bound when both the roster, and payment of the invoice are received by the MMIA.



### IF YOU HAVE QUESTIONS OR CONCERNS

regarding the reporting  
instructions or how to  
submit an application:

Please call the MMIA at  
1-800-635-3089 and enter the  
extension for either

- Ann Komac,  
Claims Manager ext. 121  
- Britani Laughery,  
Operations Manager ext. 114



# SPOILIATION

## IS NOT JUST A LAW ENFORCEMENT CONCERN

**Over the last decade MMIA has seen an increase in arguments of spoliation against law enforcement, public works, street and roads, as well as other departments.**

The majority of spoliation claims against law enforcement have typically related to the retention and preservation of video and audio recordings. Plaintiff attorneys tend to become more and more creative when making spoliation arguments. We have also experienced spoliation claims related to trees, sidewalks, plumbing, and other types of tort claims.

### **SPOILIATION CAN OCCUR UNINTENTIONALLY WITHOUT A SECOND THOUGHT.**

- **For instance, how often has your water department responded to a residential or commercial property water leak at the meter?** The city may have determined the leak was in the pipe just before or just after the meter. At times the city or town elects to replace an aging water meter, and at the same time replace the internal plumbing (e.g., copper horn) that was leaking; then simply discard the failed plumbing without further thought.

In most instances, the internal plumbing configuration is owned by the homeowner and the meter is owned by the city or town. Most members by ordinance own the water meter, but not the plumbing configuration. The city does not own nor have maintenance responsibilities for the property's internal plumbing configuration. Therefore, any private owned plumbing repaired by the city or town as a goodwill gesture, remains the property of the building owner and as such the failed part should be left with the property owner.

## What is **Spoliation?**

noun

Spoliation, in a legal context, is any act that renders potential evidence invalid, either intentionally or through negligence.

*In the case of a document, for example, destroying, altering, or hiding it would all be considered spoliation if the document were relevant to current litigation.*

MMIA in recent years handled a claim in which a city performed a private water service line repair and the city disposed of the failed pipe flare. The property owner attempted to make a claim against the pipe fitting manufacturer, however, evidence was no longer available as the city disposed of the privately owned flare. This resulted in the court ruling that the city spoiled the evidence. The MMIA ended up paying \$113,000 to defend and settle the case against the city for spoliation of evidence.

The same holds true whether it is for damage arising out of a main water line failure or a sanitary sewer system obstruction where damage occurs. All material that failed or resulted in damage should be retained and preserved as evidence of a potential claim to protect the city and/or town from a spoliation exposure.

## SPOILIATION DOES NOT NECESSARILY LIMIT ITSELF TO PIPES, VIDEO, OR AUDIO RECORDINGS.

- For instance, a privately owned tree limb falls onto the city sidewalk, boulevard, or street. The tree limb damages a privately owned vehicle. The city responds to the complaint and removes the fallen tree limb and elects to dispose of the limb. The damaged vehicle owner argues that the tree limb was defective, but the city disposed of any evidence of the condition of the tree limb, which created a spoliation argument against the city. Instead of leaving the liability exposure with the owner of the tree, the city has taken on liability exposure by disposing of privately owned evidence.
- How about sidewalk joint offsets that result in trips and falls? There is strong argument the condition should be well documented by taking photographs, and measurements following a report of an incident and that information should be retained and preserved prior to performing a sidewalk repair. Failure to capture and preserve the condition at the time of the loss could be interpreted as spoliation.

**Any notice of a complaint or incident should be promptly reviewed by the city or town where there is a potential of a claim. If there is an indication of damage or injury, the city and/or town should take reasonable steps to document the condition and facts at the time.**

### THIS MAY INCLUDE:

- taking date/time stamped wide angle and tighter photos of the area
- taking/recording measurements
- identifying witnesses and witness statements
- completing incident reports, and any additional information that may be related to the incident in order to protect the city or town from a spoliation argument. In doing so, making sure all evidence is properly retained and preserved

Just as the city or town has a duty to preserve public record, the city also has a duty to preserve evidence it owns and/or chooses to retain. A spoliation finding can result in a *negligent per se* ruling against the party. That is, a defendant is automatically considered to have breached a duty of care and is therefore negligent as a matter of law.

Evidence retained by the city or town must be preserved for an extended period of time. Typically, the statute of limitations on negligence is three (3) years. A damaged party has up to three years from the date of an incident to file a complaint in order to preserve statute based on negligence. Often court filed complaints do not get served against the city/town

for an additional two to three years. Therefore, it could be as many as five years, or more, following a problem that you will need to preserve evidence or risk a spoliation argument. This holds true whether or not you perceived an incident could potentially result in a claim.

In summary, once receiving notice of an incident, it is best to document and preserve all evidence, in anticipation of a claim against the city or town. Well preserved evidence makes it less time consuming to produce documentation and often easier to defend once the city or town has presented a claim with the MMIA.

IT SEEMS EVERYWHERE WE  
TURN THESE DAYS WE SEE

## INFLATION & COSTS INCREASE

Whether it be eggs at the grocery store, gasoline at the pumps, or a burger at your favorite restaurant, prices are up across the board. Medical costs are certainly not immune to this trend, and we are experiencing increases both locally and nationally.

Though MMIA Employee Benefits (EB) would love to reduce premium costs or keep them flat year after year, it is just not realistic with medical costs continually rising. Instead, our goal is to keep rates for our self-funded program as stable as possible, ideally below medical trend over the long term. We have been largely successful in these endeavors with an average rate increase of 4.3% over the past ten years compared to 8-10% trend across the industry.

This success stems from a variety of efforts. In addition to investing in cost saving initiatives like the Wellness Program, case and disease management, Teladoc, Employee Assistance Program (to name a few), we have also rolled out several effective cutting-edge programs attempting to maximize cost savings potential (see savings from Reference Based Pricing and MMIA Scripts in the graphic to the right).

Savings from Reference Based Pricing (RBP) equates to approximately

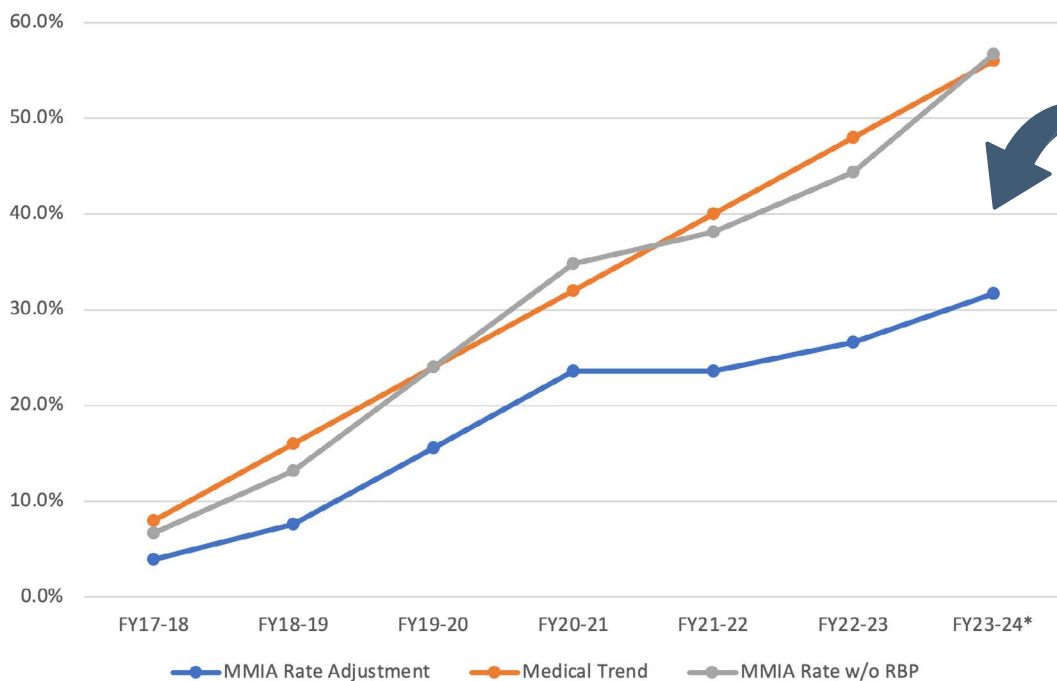
**3.3%** ANNUAL  
REDUCTION  
IN RATES  
since it started in 2017

MMIA Scripts saves the plan

**60-70%**

on brand name drugs and the new ProAct+ initiative has saved the plan **\$1,340,528 in the first seven months alone.**

### MMIA RATES VS. MEDICAL TREND



The following chart illustrates how MMIA has performed over the past seven years compared to medical industry trend.

**The orange line** reflects medical rate increase trend as 8% each year.

**The silver line** shows what MMIA's rate would have been if it had not enacted Reference Based Pricing.

**The blue line** shows the actual rate adjustment year over year including RBP and utilization of reserves for rate stabilization.

*It is quite evident that the cost-saving efforts and initiatives are paying significant dividends in the long run.*





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FOR MONTANA'S MUNICIPALITIES.**

PO Box 6669  
Helena, MT 59604-6669

 **HELENA, MT**



**SAVE THE DATE!**

 **OCTOBER 11 – 13**



#### **MUNICIPAL SUMMIT LOCATIONS**

Tuesday, May 16 - Dillon  
Thursday, May 18 - Townsend  
Monday June 5 - Chinook  
Tuesday, June 6 - Fort Benton  
Tuesday, June 20 - Plains

Wednesday, June 21 - Whitefish  
Tuesday, July 18 - Colstrip  
Wednesday, July 19 - Roundup  
Thursday, July 20 - Livingston

**EXECUTIVE  
FORUM**

**2023  
RECAP**

#### **The 2023 Executive Forum was a great success!**

Over 50 attendees including Mayors, City Managers, and Administrators joined the League, MMIA, and MSU Local Government Center in Helena for a three-day educational and networking event. Attendees had the opportunity to have a Q&A with Lt. Governor Juras at the Capitol, discuss current happenings in local government, receive a first-hand legislative update from the League, and review important risk management strategies. We would like to thank all who attended! The team is already looking forward to a great event in 2024.