

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2016-007

**TO:** Mayor John Engen, City Council, Dale Bickell, Mike Haynes, Leslie Schwab, Denise Alexander, Laval Means, Ginny Merriam, Marty Rehbein, Kirsten Hands, Kelly Elam, Steve Johnson, Leigh Griffing

**CC:** Department Attorney

**FROM:** Jim Nugent

**DATE** March 24, 2016

**RE:** Montana State Law Statute Duties of Municipal Mayor include Recommending Measures

### **FACTS:**

During the March 23, 2016 city council committee of the whole, a citizen email inquiry was read by the city council president inquiring about the role of the mayor with respect to city review of a historic preservation application for a demolition permit related to the current Merc building on the northeast corner of Higgins and Front Street. The city historic preservation permit ordinance is set forth in 20.85.085 Missoula Municipal Code (MMC) and the establishment of the historic preservation commission is set forth in section 20.90.030 MMC. Both of these sections are part of the City Council's adopted title 20 ZONING title. The city council did not provide any role for the mayor in its zoning historic preservation ordinance provisions set forth in sections 20.85.085 and 20.90.030 MMC.

On the other hand with respect to a mayor's role generally, there are multiple Montana state municipal government laws that state that it is a duty of a municipal mayor to make recommendations to the city council.

### **ISSUE(S):**

Is a municipal mayor in Montana authorized to make recommendations to the city council?

### **CONCLUSION(S):**

Pursuant to subsections 7-3-203(5) and 7-5-4102(1)(b) MCA a Montana municipal mayor has both a power as well as duty to make recommendations to the city council.

## **LEGAL DISCUSSION:**

Title 7, chapter 3, Montana Code Annotated (MCA) is entitled "ALTERNATIVE FORMS OF LOCAL GOVERNMENT". The City of Missoula electors on June 4, 1996 adopted a City of Missoula self-government charter with a city council and mayor local government structure effective January 1, 1997. Section 7-3-113 MCA entitled "STATUTORY BASIS FOR MUNICIPAL COUNCIL-MAYOR GOVERNMENT" identifies title 7, chapter 3, part 2 MCA entitled "COMMISSION-EXECUTIVE GOVERNMENT" as generally establishing the statutory basis for a council-mayor alternative form of local government in Montana.

Section 7-3-203 MCA of title 7, chapter 3, part 2 MCA is entitled "DUTIES OF EXECUTIVE" Subsection 7-3-203(5) MCA specifies that the municipal executive (mayor) shall recommend measures to the commission (city council). Section 7-3-203 MCA states in its entirety as follows:

**7-3-203. Duties of executive.** The executive shall:

- (1) enforce laws, ordinances, and resolutions;
- (2) perform duties required by law, ordinance, or resolution;
- (3) administer affairs of the local government;
- (4) carry out policies established by the commission;
- (5) recommend measures to the commission;**
- (6) report to the commission on the affairs and financial condition of the local government;
- (7) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;
- (8) report to the commission as the commission may require;
- (9) attend commission meetings and may take part in discussions;
- (10) execute the budget adopted by the commission; and
- (11) appoint, with the consent of the commission, all members of boards, except the executive may appoint without the consent of the commission temporary advisory committees established by the executive *(emphasis added)*

Also, in Montana's state laws pertaining to the general operation and conduct of municipal business set forth in part in title 7, chapter 5, part 41 MCA entitled "CONDUCT OF MUNICIPAL GOVERNMENT", section 7-5-4102 MCA is entitled POWERS AND DUTIES OF MAYOR RELATED TO ADMINISTRATION AND EXECUTIVE FUNCTION". Pursuant to subsection 7-5-4102(1)(b) MCA a municipal mayor may recommend measures to the city council connected with the public health, cleanliness, and ornament and the improvement of the government and the finances that the mayor considers expedient" of the city. Section 7-5-4102 MCA states as follows:

**7-5-4102. Powers and duties of mayor related to administration and executive function.**

- (1) The mayor may:
  - (a) communicate to the council, at the beginning of each session and more often if considered necessary, a statement of the affairs of the city or town, with

recommendations that the mayor considers proper;

- (b) recommend to the council measures connected with the public health, cleanliness, and ornament of the city or town and the improvement of the government and finances that the mayor considers expedient;
- (c) call special meetings of the council;
- (d) cause to be presented, once in 3 months, a full statement of the financial condition of the city or town;
- (e) bid for the city or town on any property sold at a tax or judicial sale whenever the city or town is an interested party;
- (f) procure and have in the mayor's custody the seal of the city or town;
- (g) take and administer oaths;
- (h) perform other duties that may be prescribed by law or by resolution or ordinance of the council.

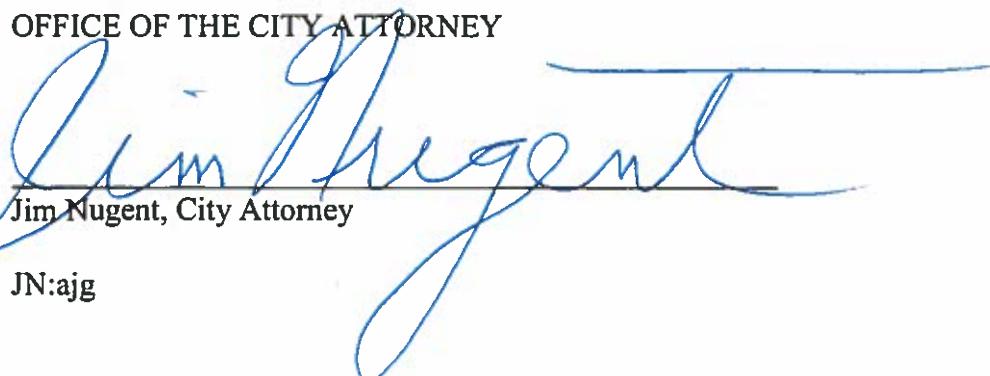
(2) The mayor is the presiding officer of the council and shall sign the journals of the council and all warrants on the city treasury and decide all ties by vote. The mayor has no other vote. *(emphasis added)*

Article III(8) of the Missoula City Charter also provides that the mayor shall break tie votes of the city council. In recent years it is quite rare that a City of Missoula mayor has had any opportunity to break a tie vote of the city council. Pursuant to the rules of statutory construction (interpretation) the Montana mayoral power to break city council tie votes must, when applicable, be interpreted in harmony with the Montana statutory provisions that make it the duty of a Montana municipal mayor to recommend measures to the city council. Clearly, a Montana municipal mayor has both the statutory power and duty to recommend measures.

#### **CONCLUSION(S):**

Pursuant to subsections 7-3-203(5) and 7-5-4102(1)(b) MCA a Montana municipal mayor has both a power as well as duty to make recommendations to the city council.

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Jim Nugent, City Attorney

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