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Legal Opinion 2019-006

TO: City Council, Mayor John Engen, Dale Bickell, Marty Rehbein, Kristen Hands, Kelly Elam, Ginny Merriam, Steve Johnson

FROM: Jim Nugent, City Attorney

DATE March 25, 2019

RE: A quorum of the city council is necessary to be present to approve a transaction of city council business. A majority of City Council members is a quorum for the transaction of City Council business

FACTS:

A Missoula City Council member inquired about the necessity of a quorum approval of transaction of city council business.

ISSUE:

What constitutes a quorum of the city council governing body?

CONCLUSION:

The twelve (12) member City Council governing body must have a quorum of at least seven (7) City Council members present to conduct business. Pursuant to section 7-5-4121 MCA pertaining to the conducting of municipal city council business in order to have a majority of the members of the City Council it is necessary to create a quorum for the transaction of City Council business.

LEGAL DISCUSSION:

Mason's Manual of Legislative Procedure pursuant to section 49 utilized by the Missoula City Council states in the 2000 edition that, "It is recognized as a general rule that a majority of a group is necessary to act for the entire group." Title 7, chapter 5, part 41 MCA is entitled "CONDUCT OF MUNICIPAL GOVERNMENT". Section 7-5-4121 MCA of this part of Montana municipal government law is entitled "CONDUCT OF COUNCIL BUSINESS". Subsection 7-5-4121(1) MCA of Montana municipal government law provides

that at least a majority of the members of the City Council is necessary for the transaction of City Council business.

Subsection 7-5-4121 MCA states:

7-5-4121. CONDUCT OF COUNCIL BUSINESS. (1) A MAJORITY OF THE MEMBERS OF THE COUNCIL CONSTITUTES A QUORUM FOR THE TRANSACTION OF BUSINESS, but a less number may meet and adjourn to any time stated and may compel the attendance of absent members under such rules and penalties as the council may prescribe. " (emphasis added)

Requiring a majority of a body's membership to be present to constitute a quorum is a common requirement. Black's Law Dictionary, Eighth Edition, page 1284 defines a "quorum" as meaning:

"QUORUM. The minimum number of members (usu. A majority of all the members) who must be present for a deliberative assembly to legally transact business."

Mason's Manual of Legislative Procedure pursuant to section 21- provided, "If a quorum is established prior to adjournment, the transaction of business can be continued." The Missoula City Council consists of twelve (12) members. A majority of the Missoula City Council membership is at least seven (7) city council members.

CONCLUSION:

The twelve (12) member City Council governing body must have a quorum of at least seven (7) City Council members present to conduct business. Pursuant to section 7-5-4121 MCA pertaining to the conducting of municipal city council business in order to have a majority of the members of the City Council it is necessary to create a quorum for the transaction of City Council business.

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/s/ Jim Nugent

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