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Legal Opinion 2019-008

TO: Mayor John Engen, City Council, Dale Bickell, Mary McCrea, Mike Haynes, Mary McCrea, Laval Means, Denise Alexander, Ben Brewer, Andrew Boughan, Ginny Meriam, Marty Rehbein, Kirsten Hands, Kelly Elam, Department City Attorney

FROM: Jim Nugent, City Attorney

DATE March 29, 2019

RE: Montana municipalities authority to adopt interim zoning ordinance as urgency measure prohibiting any uses that may be in conflict with a contemplated zoning proposal that the Municipal legislative body is considering or intending to study within a reasonable time.

FACTS:

Recently there has been some inquiry concerning the process or procedure pursuant to Montana state law for a municipality adopting an interim zoning ordinance.

ISSUE:

What is the statutory process or procedure for a Montana municipality to adopt interim zoning ordinances as an urgency measure for purposes of protecting the public safety, health and welfare?

CONCLUSION:

Section 76-2-306 MCA entitled “INTERIM ZONING ORDINANCES” of Montana’s municipal zoning laws authorizes Montana municipalities to adopt interim zoning ordinances to protect the public safety, health and welfare as an urgency measure after a public hearing held after published public notice at least seven (7) days in advance of the public hearing.

LEGAL DISCUSSION:

Title 76, chapter 2, part 3 MCA is entitled “MUNICIPAL ZONING”. Section 76-2-306 MCA in Title 76, chapter 2, part 3 is entitled “INTERIM ZONING ORDINANCES”. Section 76-2-306

MCA authorizes a municipal legislative body to protect the public safety, health, and welfare without following the procedures otherwise required prior to the adoption of a zoning ordinance.

Pursuant to section 76-2-306 MCA a municipal legislative body may adopt as an urgency measure an interim zoning ordinance prohibiting any uses that may be in conflict with a contemplated zoning proposal that the municipal legislative body is considering or studying or intends to study within a reasonable time.

An interim zoning ordinance adopted pursuant to section 76-2-306 MCA takes effect upon the passage of the interim zoning ordinance, if a public hearing is first held upon notice reasonably designed to inform affected parties. Section 76-2-306 MCA does require a notice be published in a newspaper of general circulation at least 7 days before the public hearing.

An initial municipal interim zoning ordinance may be adopted by a majority vote. The initial municipal interim zoning ordinance is only in effect for six (6) months after its adoption. Only two one year extensions of the interim ordinance may occur. Section 76-2-306 MCA requires that a two-thirds vote of approval is necessary in order to become effective. Extensions of the interim ordinance are also effective immediately upon adoption.

Montana municipal zoning law section 76-2-306 MCA states in its entirety as follows:

“76-2-306. INTERIM ZONING ORDINANCES.

- (1) Except as provided in 76-2-340, the city or town council or other legislative body of the municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required prior to the adoption of a zoning ordinance, may adopt as an urgency measure an interim zoning ordinance prohibiting any uses that may be in conflict with the contemplated zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time.
- (2) An interim zoning ordinance may be applicable only within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and takes effect upon passage if a hearing is first held upon notice reasonably designed to inform all affected parties. A notice must be published in a newspaper of general circulation at least 7 days before the hearing.
- (3) An interim zoning ordinance is no longer in effect 6 months from the date of its adoption. However, after notice pursuant to 76-2-303 and pursuant to public hearing, the legislative body may extend the interim zoning ordinance for 1 year. Any extension requires a two-thirds vote for passage and becomes effective upon passage. No more than two extensions be adopted.”

CONCLUSION:

Section 76-2-306 MCA entitled “INTERIM ZONING ORDINANCES” of Montana’s municipal zoning laws authorizes Montana municipalities to adopt interim zoning ordinances to protect the public safety, health and welfare as an urgency measure after a public hearing held after published public notice at least seven (7) days in advance of the public hearing.

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/s/ Jim Nugent

Jim Nugent, City Attorney
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