

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2019-034

TO: Mayor John Engen, City Council, Dale Bickell, Marty Rehbein, Kirsten Hands, Kelly Elam, Leigh Griffing, Scott Paasch, Mary McCrea, Denise Alexander, Jenny Baker, Andrew Boughan, Jen Gress, Laval Means, Ben Brewer

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE December 17, 2019

RE: Montana state law states that local government business improvement districts may not include areas that are zoned primarily as residential areas.

FACTS:

Monday evening December 16, 2019 during the public hearing agenda item for extending the duration time period of the Missoula Downtown Business Improvement District for a period of 10 years, there was some discussion as well as likely some confusion as to the inclusion of residential real properties within a business improvement district.

ISSUE(S):

What does Montana's local government business improvement district law state with respect to the inclusion of residential properties within a business improvement district?

CONCLUSION(S):

Subsection 7-12-1111(3) of Montana's local government business improvement district law states that "the district may not include areas that are zoned primarily as residential areas".

LEGAL DISCUSSION:

Title 7, chapter 12, part 11 Montana Code Annotated is entitled "BUSINESS IMPROVEMENT DISTRICTS". Section 7-12-1111 MCA states in its entirety as follows:

"7-12-1111. Establishment or expansion of district.

(1) Upon receipt of a petition signed by the owners of more than 60% of the area of the property proposed in the petition to be included in a district or in the

expansion of a district, a governing body shall establish a district or expand a district as provided in this part.

- (2) The boundaries of a district must comply with applicable zoning regulations.
- (3) The district may not include areas that are zoned primarily as residential areas.
- (4) (a) A district may be composed of noncontiguous areas if the properties in a district have a common purpose of providing overnight stays at lodging facilities.
- (b) The boundaries of a district with noncontiguous areas must encompass all properties in the district with the same identified purpose.”

Subsection 7-12-1111(3) MCA states that: “The district may not include areas that are zoned primarily as residential areas”.

Montana’s local government business improvement district law does not define what is meant by the phrase “zoned primarily as residential areas”. No definition of what the Montana State Legislature intended to mean by the phrase “zoned primarily as residential areas” was located in Montana state laws.

CONCLUSION(S):

Subsection 7-12-1111(3) of Montana’s local government business improvement district law states that “the district may not include areas that are zoned primarily as residential areas”.

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/s/

Jim Nugent, City Attorney
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