

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2020-004

**TO:** Mayor John Engen, City Council, Dale Bickell, Ginny Merriam, Marty Rehbein, Kirsten Hands, Kelly Elam, Kathy Crego, Tiffany Brander, Leigh Griffing, Jessie Hogg, Ellen Buchanan, Chris Behan, Jeremy Keene, Mary McCrea, Jenny Baker, Laval Means, Andrew Boughan, Dennis Bowman, Jeff Brandt, Gordy Hughes, Brad Davis, Mike Colyer, Scott Hoffman, Kevin Slovarp, Troy Monroe

**CC:** Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** January 21, 2020

**RE:** Identification of instances when either a majority vote of the entire membership of the city council or an extraordinary majority vote of the city council is necessary in order for city council approval to be valid.

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### FACTS:

There exist numerous instances when either a majority vote of the entire membership of the city council or an extraordinary majority vote of the city council is necessary pursuant to law or city council rules in order for city council approval to be valid.

### ISSUE(S):

Are there instances when the City Council is required to achieve a favorable vote of a majority of the whole membership of the city council or an extraordinary majority of the members of the city council in order for the city council vote to be successful?

### CONCLUSION(S):

There are numerous instances in law and city council rules that require either a majority of the entire membership of the city council or an extraordinary majority of the city council in order for the item being considered by the city council to be approved.

### LEGAL DISCUSSION:

There are numerous instances when the city council as city governing body must attain either a majority vote of the entire membership of the city council or an extraordinary majority of the city council in order for the item being considered by the city council to be approved. An itemization

of numerous examples are set forth hereafter as a quick reference guide for city council members. The topics are quite diverse; so the order of examples will be in chronological order.

**I. PROVISIONS OF CITY OF MISSOULA VOTER APPROVED CITY CHARTER EFFECTIVE JANUARY 1, 1997 REQUIRING EITHER A MAJORITY OF ENTIRE CITY COUNCIL MEMBERSHIP OR AN EXTRAORDINARY MAJORITY OF CITY COUNCIL IN ORDER FOR ITEM BEING CONSIDERED BY CITY COUNCIL TO RECEIVE A FAVORABLE VOTE.**

- (1) Article III, THE MAYOR, section 9 VETOES requires a two-thirds (2/3 rds) vote of the entire city council membership in order to override a mayoral veto.
- (2) Article VIII ADDITIONAL PROVISIONS, section 2, FILLING OF VACANCIES requires a majority vote of the members of the city council to appoint someone to fill a vacancy.

**II. CITY COUNCIL RULES REQUIRING EITHER A MAJORITY OF CITY COUNCIL OR AN EXTRAORDINARY MAJORITY OF CITY COUNCIL IN ORDER FOR ITEM BEING CONSIDERED BY CITY COUNCIL TO RECEIVE A FAVORABLE VOTE.**

- (1) Rule 2, SPECIAL MEETINGS, empower 8 city council members to call a special meeting.
- (2) Rule 7, SUSPENSION OF RULES, suspension of rules requires a two-thirds vote of approval by those city council members present and voting.
- (3) Rule 8, AMENDMENT OF CITY COUNCIL RULES, requires an affirmative vote of at least two-thirds of all city council members to amend city council rules.
- (4) Rule 11(B) CLOSING OF AGENDA items not on the agenda will not be considered except under a suspension of the rules which pursuant to rule 7, requires a two-thirds vote of those city council members present and voting.
- (5) Rule 12, CONSENT AGENDA, pursuant to a unanimous committee vote of if committee members concur an item may be placed on the consent agenda.
- (6) Rule 14, PUBLIC HEARINGS, provides that a city council member's desire to return a public hearing item to city council committee may be overridden by a suspension of the rules pursuant to Rule 7, SUSPENSION OF RULES, requiring a two-thirds vote of those city council members present and voting.
- (7) Rule 20, RECONSIDERATION, before or during the second regular city council meeting after the city council has taken action on an item, a city council member who voted on the prevailing side may if the item has been placed on the meeting agenda make a motion to reconsider that requires a two-thirds vote of approval by those city council members present and voting.
- (8) Rule 28(B), EMERGENCY ORDINANCES, must receive a two-thirds vote of all city council members elected to the city council.
- (9) Rule 29(B) ELECTION OF OFFICERS a majority of the full city council is required to elect the city council president.

- (10) Rule 32(E) CITY COUNCIL PROCEDURES FOR FILLING A VACANCY IN AN ELECTED OFFICE, requires a majority vote of all city council members to fill a vacancy in an elected city office.
- (11) Rule 33(G) PERTAINING TO APPOINTMENT OF CITY COUNCIL BOARD MEMBERS TO BOARDS AND COMMISSIONS, requires a majority of all city council members elected to approve an appointment.

III. MISSOULA MUNICIPAL CODE PROVISIONS REQUIRING EITHER A MAJORITY OF CITY COUNCIL OR AN EXTRAORDINARY MAJORITY OF CITY COUNCIL IN ORDER FOR ITEM BEING CONSIDERED TO RECEIVE A FAVORABLE VOTE.

- (1) 5.08.120 Missoula Municipal Code (MMC) pertaining to the right pursuant to resolution refuse issuance of a license by two-thirds vote of all city council members or by two-thirds vote of all city council members revoke a license.
- (2) 20.85.040(F)(3) and (H)(3) MMC, ZONING AMENDMENTS, when there is a valid written zoning protest petition by adjacent or nearby property owners within statutory geographic radius a two-thirds vote of those city council members present and voting is required for approval.(Based on section 76-2-305 Montana Code Annotated.
- (3) 20.85.060 (C )(6)(c ) MMC, PLANNED UNIT DEVELOPMENTS, when there is a valid written zoning protest petition by adjacent or nearby property owners within statutory geographic radius, a two-thirds vote of those city council members present and voting is required for approval. (Based on section 76-2-305 MCA)

IV. MONTANA STATE LAW PROVISIONS REQUIRING EITHER A MAJORITY OF ENTIRE CITY COUNCIL MEMBERSHIP OR AN EXTRAORDINARY MAJORITY OF THE CITY COUNCIL IN ORDER FOR THE ITEM BEING CONSIDERED BY CITY COUNCIL TO RECEIVE A FAVORABLE VOTE.

- (1) 3-6-101(2) Montana Code Annotated (MCA), ESTABLISHMENT OF COURT, a city may establish a municipal court only if the governing body of the city elects by a two-thirds majority vote to adopt the provisions of title 2, chapter 6 MCA entitled "MUNICIPAL COURTS".
- (2) 7-2-4902 MCA, DISINCORPORATION BY ELECTION, city governing body by two-thirds vote of all its members may call for an election to disincorporate the city.
- (3) 7-3-214(2) MCA VETO POWER, mayoral veto of ordinances and resolutions subject to override by a two-thirds vote of the city council;
- (4) 7-4-4105 MCA AUTHORITY TO ABOLISH APPOINTIVE MUNICIPAL OFFICES, REQUIRES A MAJORITY OF THE CITY COUNCIL.
- (5) 7-4-4112 MCA FILLING OF VACANCY in any elective city office, shall by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until a successor is elected and qualified.

- (6) 7-4-4113 MCA, REMOVAL OF APPOINTED OFFICER, requires written charges, a trial by city council and a vote for removal by two-thirds of the members elect.
- (7) 7-5-104 MCA, EMERGENCY ORDINANCE, a two-thirds vote of the whole governing body is required for passage of an emergency ordinance.
- (8) 7-5-4103 MCA, COUNCIL RULES AND DISCIPLINE, City council may determine the rules of its proceedings, punish its members for improper conduct, and expel any member for the same by a two-thirds vote of the council”.
- (9) 7-5-4121 MCA CONDUCT OF COUNCIL BUSINESS, Subsection (1) provides that a majority of the members of the city council constitute a quorum for the transaction of business. Subsection (2) requires that “A majority of the whole number of the members elected is requisite to appoint or elect an officer”.
- (10) 7-5-4204 MCA. DETAILS RELATING TO EMERGENCY MEASURES, Emergency measures must receive a two-thirds vote of all city council members elected.
- (11) 7-5-4206 MCA, PROCEDURE TO VETO ORDINANCE OR RESOLUTION, a vetoed ordinance or resolution may go into effect if after mayoral veto the ordinance or resolution is passed by a two-thirds vote of the whole number of members of the council.
- (12) 7-5-4303 MCA, EXEMPTIONS FROM BIDDING OR ADVERTISING REQUIREMENTS FOR CERTAIN CONTRACTS. When addressing emergencies caused by fire, flood, explosion, storm, earthquake, riot, insurrection, or other similar emergency, city council may proceed without following advertising law set forth in section 7-5-4302 MCA if three-fourths of the city council members present at the meeting vote in favor of the emergency contract.
- (13) 7-6-1601 IMPACT FEE TO FUND CAPITAL IMPROVEMENTS--- DEFINITIONS (7) PUBLIC FACILITIES MEANS, after identifying five (5) public facilities within the definition meaning, the Montana state law definition provides: “(f) other facilities for which documentation is prepared as provided in 7-6-1602 that have been approved as part of an impact fee ordinance or resolution by: (i) a two-thirds majority of the governing body of an incorporated city”
- (14) 7-6-4032 MCA, emergency budget appropriations must be adopted by two-thirds of the members of a governing body who are present at a meeting.
- (15) 7-8-4201 MCA, DISPOSAL AND LEASE OF MUNICIPAL PROPERTY, Generally City may sell, dispose of, donate, or lease property, except historically significant buildings or monuments, by either a city council ordinance or resolution passed by two-thirds vote of all members of the city council. However, if the property is held in trust for a specific purpose the sale or lease must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose.
- (16) 7-12-4113 MCA SUFFICIENT PROTEST TO BAR PROCEEDINGS--- EXCEPTIONS, of Montana’s special improvement district laws, City council may overrule any and all objections and pave the proposed block with gravel

and oil surface when improvement proposed is not more than one cross block to connect with streets or avenue. Also, with respect to the construction of sanitary sewer improvement protest may be overruled by an affirmative vote of a majority of the members of the city council unless more than 75% of the property owners to be assessed protest.

- (17) 7-14-4623 MCA, TRANSFER OF PARKING COMMISSION PROPERTY TO MUNICIPALITY, at any time after activation of a parking commission the city council as legislative body may adopt by a two-thirds vote thereof a resolution transferring the property of the parking commission to the city.
- (18) 10-3-405 MCA, LEVYING EMERGENCY TAX---DISPOSITION OF SURPLUS. The city council may levy up to two (2) mills as emergency millage to cover estimated expenditures to be paid by the emergency tax levy. Any leftover emergency levy funds must be placed in an emergency fund and only utilized for future emergencies.
- (19) 19-3-201 MCA, CONTRACTS WITH POLITICAL SUBDIVISIONS, pertains to Public Employee Retirement (PERS) benefits. If a majority of the City employees covered by PERS vote for termination of PERS for city employees, the city council may adopt by a two-thirds majority a resolution terminating coverage.
- (20) 76-2-305 MCA, ALTERATION OF ZONING REGULATIONS---PROTEST. If written petitions signed by the owners of 25% or more of the owners of property of the area being rezoned or within 150 feet from a lot included in the zoning change protests, then the zoning amendment may not become effective except upon a favorable vote of two-thirds of the city council members present and voting.
- (21) 76-2-306 MCA, INTERIM ZONING ORDINANCES, Any extensions of an urgency measure 6 month interim zoning ordinance may only be approved for up to two one-year time period extensions and those extensions require a two-thirds vote for passage to become effective.
- (22) Title 76, Chapter 8 “BUILDING FOR LEASE OR RENT”. Section 76-8-108 MCA “Additional Review Criteria – Four or more buildings for lease or rent.”
  - (2) Upon a supermajority vote (at least two-thirds of those city council members present and voting) the city council may adopt regulations pursuant to 76-8-107 for purpose of reviewing four or more buildings for lease or rent.

**CONCLUSION(S):**

There are numerous instances in law and city council rules that require either a majority of the entire membership of the city council or an extraordinary majority of the city council in order for the item being considered by the city council to be approved.

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Jim Nugent, City Attorney

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