

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2020-006

TO: Mayor, City Council, Mike Colyer, Scott Hoffman, Richard Stepper, Laurie Clark, Ellen Leahy, Marty Rehbein, Kirsten Hands, Kelly Elam, Charmell Owens, Jeff Brandt, Gordy Hughes, Brad Davis

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE February 6, 2020

RE: Mayoral power vested by city council health and quarantine ordinance may be exercised over all places within 5 miles of city limits if the ordinance is also approved by the local health board as well as the county commissioners.

FACTS:

During some recent discussions pertaining to possible additional regulation of vaping products and flavored tobacco products, inquiry has arisen pertaining to the City's extraterritorial health powers.

ISSUE(S):

What is the extent of municipal health powers outside the municipal city limits?

CONCLUSION(S):

Pursuant to section 7-4-4306 MCA, a municipality has extraterritorial health and quarantine ordinance declared powers over all places within 5 miles of the city limits if both the local health board and the county commissioners have approved the city ordinance by majority vote.

LEGAL DISCUSSION:

Pursuant to Montana municipal local government law, a Montana municipality may exercise health and quarantine powers outside the city limits over all places within 5 miles of the boundaries of the city if both the local health board as well as the county commissioners have approved the city health or quarantine ordinance as well

Section 7-4-4306 MCA entitled “EXTRATERRITORIAL POWERS states:

“7-4-4306. EXTRATERRITORIAL POWERS. The mayor has power to exercise the power as may be vested in the mayor by ordinance of the city or town, in and over all places within 5 miles of the boundaries of the city or town for the purpose of enforcing the health and quarantine ordinances and regulations of the city or town. The board of county commissioners of the county affected by the ordinance and the local health board if a local health board exists in the area affected by the ordinance, shall approve the ordinance by majority vote.”

There are no Montana Supreme Court decisions interpreting the application of section 7-4-4306 MCA. There is a Montana Attorney General Opinion, 42 Attorney General Opinion 8(1987) issued to the City of Missoula that held that an ordinance regulating the discharge of firearms is not a health ordinance. The Montana Attorney General Opinion held that a City of Missoula ordinance regulating the discharge of firearms outside the city limits may not be enacted as a health ordinance and enforced pursuant to the extraterritorial powers granted to a mayor under section 7-4-4306 MCA.

CONCLUSION(S):

Pursuant to section 7-4-4306 MCA, a municipality has extraterritorial health and quarantine ordinance declared powers over all places within 5 miles of the city limits if both the local health board and the county commissioners have approved the city ordinance by majority vote.

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/s/

Jim Nugent, City Attorney

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