

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2021-005

TO: Mayor John Engen; City Council, Dale Bickell, Ginny Merriam, Eran Pehan, Dave Degrandpre, Emily Glukin, Mary McCrea, Marty Rehbein, Kirsten Hands, Jeremy Keene, Donna Gaukler, Kevin Slovarp, Troy Monroe, Neil Minor

CC: Department Attorney

FROM: City Attorney, Jim Nugent

DATE March 3, 2021

RE: A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

FACTS:

Nearby real property owner written zoning protest sufficient pursuant to section 76-2-305 MCA to require a favorable vote of two-thirds of those city council members present and voting in order to override the zoning protest has been filed against the pending McNett Flats, zoning proposal. As a result, the action item has been returned to city council land use and planning committee to discuss some applicant proposed revisions to their application for annexation, zoning and subdivision.

ISSUE(S):

May persons who have filed a written protest with respect to a municipal government matter, withdraw their protest?

CONCLUSION(S):

Yes, pursuant to Montana's state laws pertaining to municipalities, subsection 7-1-4132 (4) MCA pertaining to protests authorizes persons to withdraw protests in writing.

LEGAL DISCUSSION:

With respect to Montana municipal government operations, Montana state law provides a statutory right for protestors to in writing withdraw their protests. Title 7, chapter 1, part 41

Montana Code Annotated is entitled “MUNICIPALITIES”. Section 7-1-4132 MCA of this part of Montana state law is entitled “PROTEST”.

Pursuant to subsection 7-1-4132(4) MCA of this part of Montana municipal law it is stated:

“(4) A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.”

While section 7-1-4132 MCA is a general Montana municipal government law; it is not the only Montana state law that recognizes a protestor’s right to withdraw their protest prior to final action being taken by the municipal governing body. Another explicit example is set forth in 7-12-4112(2) MCA of Montana’s municipal special improvement district law where it states:

“(2) The council or commission may adjourn said hearing from time to time. Protestants shall have the right to withdraw protest or protests at any time before final action thereon by the council or commission.”

CONCLUSION(S):

Yes, pursuant to Montana’s state laws pertaining to municipalities, subsection 7-1-4132 (4) MCA pertaining to protests authorizes persons to withdraw protests in writing.

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/s/ Jim Nugent

Jim Nugent, City Attorney

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