

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2022-004

TO: City Council, Mayor John Engen, Dale Bickell, Ginny Merriam, Department City Clerk, Leigh Griffing, Eric Halstrom

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE February 7, 2022

RE: Identification of specific number of city council votes required for specific action pursuant to city council rules or Montana state law

FACTS:

I have been requested to identify for City Council in summary fashion the specific number of votes required for various city council actions that could occur.

LEGAL DISCUSSION:

(I.) APPLICATIONS OF CITY COUNCIL RULES: (rule numbers are proposed numbers)

- (1) Rule 1 Call SPECIAL MEETINGS mayor or by a majority of (all) Council members.
- (2) Rule 8 SUSPENSION OF RULES Two-thirds of those present and voting.
- (3) Rule 9 AMENDMENTS CITY COUNCIL RULES two-thirds of all city council members
- (4) Rule 10 ORDER OF BUSINESS may take item out of order unless a majority of council members' object.
- (5) Rule 12(2) CLOSING OF AGENDA. –Items that are not on agenda will not be considered, except under a suspension of rules which requires two-thirds of those present and voting.
- (6) Rule 13 CONSENT AGENDA –If a committee vote is unanimous or if committee members concur item may be placed on consent agenda.
- (7) Rule 16 PUBLIC HEARINGS after public hearing a single member may return the public herring item to committee unless overruled by a suspension of the rules (Rule 8, two-thirds of those present and voting
- (8) Rule 18 RECONSIDERATION motion made by member of prevailing side requires two-thirds of those members present and voting to reconsider item.
- (9) Rule 19(J) COMMITTEE AND SUBCOMMITTEE MEETINGS majority vote of (entire) committee required to remove agenda item.

- (10) Rule 21 GETTING ITEM FROM COMMITTEE after 6 weeks petition by 2 members of committee to activate in committee. After committee discussion any 2 members of committee may bring item directly to city council floor.
- (11) Rule 24 ADOPTION OF RESOLUTIONS after public has had opportunity to comment majority vote of (entire) city council
- (12) Rule 26 EMERGENCY ORDINANCES must receive two-thirds vote of all members elected.
- (13) Rule 27 ELECTION OF OFFICERS. A majority of full council is required to elect Council President.
- (14) Rule 29 ABSENCES OF CITY OFFICERS FROM CITY FOR CONTINUOUS TIME PERIOD OF 10 DAYS OR MORE. Authorized pursuant to process in rule, unless 6 or more Council members have objection to
- (15) Rule 30 CITY COUNCIL PROCEDURES FOR FILLING A VACANCY IN AN ELECTED CITY OFFICE. . A MAJORITY OF THE EXISTING MEMBERS OF THE COUNCIL IS NECESSARY TO MAKE THE APPOINTMENT
- (16) Rule 31(A) APPOINTMENTS TO VARIOUS BOARDS, AGENCIES AND COMMISSIONS chair of relevant committee may propose an alternate method for filling vacancy subject to a majority vote of the relevant committee.
- (17) Rule 31(G) APPOINTMENTS TO VARIOUS BOARDS, AGENCIES AND COMMISSIONS---APPOINTMENT OF CITY COUNCIL MEMBERS TO BOARDS AND COMMISSIONS. A MAJORITY OF THE Council members elected is required to approve this type of appointment.
- (18) Rule 31(J) APPOINTMENTS TO VARIOUS BOARDS, AGENCIES AND COMMISSIONS---A MAJORITY OF THE WHOLE NUMBER OF THE Council members elected is required to appoint a board member

(II.) MISSOULA CITY CHARTER

- (1) ARTICLE III, section 9. MAYOR'S VETOES ---The Mayor's veto is subject to an override by a two-thirds vote of the fill City Council at the next regularly scheduled meeting of the City Council following issuance of the veto.
- (2) Article VIII Section 2. FILLING OF VACANCIES ---City Council by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until the successor is elected and qualified.

(III.) MONTANA STATE LAWS APPLICABLE TO MUNICIPAL GOVERNMENT OPERATIONS THAT POTENTIALL COULD OCCUR:

- (1) ESTABLISHMENT OF MUNICIPAL COURT, section 3-6-101(2) MCA if the governing body of the city elects by a two-thirds majority vote.
- (2) MAYORAL VETOES. Sections 7-3-214(2) and 7-5-4206 provide that a City Council override of mayoral veto of an ordinance or resolution or any part of an ordinance or resolution requires two-thirds vote of whole number of city council,
- (3) CITY COUNCIL REMOVAL OF APPOINTED OFFICER, section 7-4-4113 MCA by vote of two-thirds of all the members elect.

- (4) AUTHORITY TO ABOLISH APPOINTIVE MUNICIPAL OFFICES- section 7-4-4105 MCA—by a majority vote of the council.
- (5) CITY COUNCIL ELECTION TO FILL VACANCY IN ANY ELECTED CITY OFFICE- section 7-4-4112 MCA--the council shall by a majority vote of the members, appoint a person within 30 days of the vacancy.
- (6) EMERGENCY ORDINANCES. Sections 7-5-104 and 7-5-4204 MCA, requires a two-thirds vote of the whole governing body (city council) for passage.
- (7) CITY COUNCIL VOTING ON ELECTION OR APPOINTMENT OF A CITY OFFICER-section 7-5-4121 MCA ---A MAJORITY OF THE WHOLE NUMBER OF THE MEMBERS ELECTED IS REQUISITE TO APPOINT OR ELECT AN OFFICER AND SUCH VOTE MUST BE RECORDED.
- (8) COUNCIL RULES AND DISCIPLINE section 7-5-4103---by two-thirds vote of the members elected.
- (9) EMERGENCY EXEMPTIONS FROM BIDDING AND ADVERTISING REQUIREMENTS FOR CERTAIN CONTRACTS section 7-5-4303
- (10) EMERGENCY EXPENDITURES -section 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.
- (11) IMPACT FEES TO FUND CAPITAL IMPROVEMENTS---section 7-6-1601(7)(f)(i) MCA--- stator definition of public facilities may include other facilities for which documentation prepared as required may be part of an impact fee or ordinance by a two-thirds majority of the governing body.
- (12) DISPOSAL OR LESE OF MUNICIPAL PROPERTY-ELECTION, section 7-8-4201 MCA---made by an ordinance or resolution passed by a two-thirds vote of all the members of the council. Note if the real property is held in trust the city electors must vote approval to dispose of the public trust land(s).
- (13) Special Improvement District Sections 7-12-4113 MCA SUFFICIENT PROTEST TO Bar Proceedings – Exceptions, when the SID improvement project is Sanitary sewer if statutory protest is between 50% and 75% a majority of city council may overrule protest.
- (14) TRANSFER PARKING Commission Property Sections 7-14-4623 MCA, City Council authority to effect a transfer of parking commission property to City by two-thirds vote of city council by resolution.
- (15) LEVYING EMERGENCY TAX-DISPOSITION OF SURPLUS-section 10-3-405 MCA---governing body may levy up to two (2) mills to cover emergency expenditures by a unanimous vote of the governing body.
- (16) ALTERATION OF ZONING REGULATIONS-PROTEST, section 76-2-305 MCA---if property owner protest by 25% or more nearby property owner within statutory radius state law requires a favorable vote of two-thirds of the city council members present and voting to override the property owner protest.
- (17) INTERIM ZONING ORDINANCES---UP TO 2 ONE YEAR EXTENSIONS THAT REQUIRE A TWO-THIRDS VOTE OF APPROVAL BY THE CITY COUNCIL

(IV.) MISSOULA MUNICIPAL CODE (not part of this Legal Opinion)

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/s/ Jim Nugent

Jim Nugent, City Attorney

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