

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2022-016

TO: City Council, Ellen Buchanan, Dale Bickell, Leigh Griffing, Department City Clerk, Department MRA, Department Mayor's Office

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE: August 25, 2022

RE: PURSUANT TO MONTANA STATE LAW THE MISSOULA CITY COUNCIL ELECTED TO HAVE CITY URBAN RENEWAL POWERS EXERCISED BY AN URBAN RENEWAL AGENCY

FACTS:

During the Wednesday August 24, 2022 city council committee of the whole meeting there was some confusion and misunderstanding about the city urban renewal agency and the role of the mayor.

ISSUE(S):

How was the Missoula urban renewal agency created?

CONCLUSION(S):

The City of Missoula urban renewal agency was created by Missoula City Council resolutions 3778 and 3779 in 1978 stating that it was "in the best interest of the public" as declared by Missoula City council resolution. In addition, pursuant to Missoula City Council resolution set forth a lengthy itemization of eighteen (18) areas of urban renewal powers to be assigned to and exercised by the Missoula urban renewal agency.

LEGAL DISCUSSION:

Current Montana state municipal urban renewal powers are set forth in title 7, chapter 15, parts 42 and 43 MCA. As codified in MCA there are sixteen pages of Montana municipal urban renewal laws.

Pursuant to sections 7-15-4231 and 7-15-4232 MCA a municipal local government city council as the local governing body of the municipal entity is empowered to create an urban renewal agency if the city council determines it to be in the public interest to do so. The city council may designate the urban renewal agency to exercise municipal urban renewal powers pursuant to an urban renewal agency, rather than by a city department.

Pursuant to Missoula City Council resolutions 3778 and 3779 adopted May 22, 1978 the Missoula City Council declared that it was “in the best interest of the public to have” “urban renewal project powers exercised by an urban renewal agency”.

Missoula City Council resolution 3779 created an urban renewal agency and explicitly assigns eighteen (18) areas of powers that the urban renewal agency is authorized to exercise. Montana state law provides powers as well.

Earlier that year on January 23, 1978, the Missoula City Council had adopted a city council resolution 3737 declaring that a blighted area existed within the Missoula city limits and that rehabilitation and redevelopment of the area was necessary in the interest of the public health, safety, and welfare of the residents of the City of Missoula.

Each of the three Missoula City Council resolutions are attached hereto.

CONCLUSION(S):

The City of Missoula urban renewal agency was created by Missoula City Council resolutions 3778 and 3779 in 1978 stating that it was “in the best interest of the public” as declared by Missoula City Council resolution. In addition, pursuant to Missoula City Council resolution set forth a lengthy itemization of eighteen (18) areas of urban renewal powers to be assigned to and exercised by the Missoula urban renewal agency.

OFFICE OF THE CITY ATTORNEY

/s/ Jim Nugent

Jim Nugent, City Attorney

JN:dj

A RESOLUTION TO DECLARE THAT A BLIGHTED AREA EXISTS WITHIN THE CITY OF MISSOULA, MONTANA, AND TO DETERMINE THE BOUNDARIES OF THAT AREA.

WHEREAS, the State of Montana has provided for the redevelopment of those portions of its cities which constitute a menace to public health and safety, constitute an economic and social liability and substantially impair the sound growth of a municipality; and

WHEREAS, the procedure provided in Title II, Chapter 39, of the Revised Codes of Montana allows such redevelopment by the creation of an Urban Renewal Plan with a Tax Increment Financing Provision; and

WHEREAS, the City of Missoula is desirous of utilizing such an Urban Renewal Plan with Tax Increment Financing Provision to revitalize and redevelop its urban area; and

WHEREAS, the City of Missoula cannot proceed with the development of an Urban Renewal Plan with a Tax Increment Financing Provision until it has adopted a resolution finding that a blighted area exists and that rehabilitation or development of the area is necessary; and

WHEREAS, on November 7, 1977, the City Council of the City of Missoula authored the Missoula Planning Board to conduct a study to determine the existence of blight within the Missoula urban area and to describe the boundaries of the blighted area; and

WHEREAS, the Staff of the Missoula Planning Board has conducted such a study and has determined the existence of blight as defined in Section 11-3901, R.C.M., 1947, in the following particulars:

1. Incidence of Crime. There is a substantially higher incidence of crime in the study area than the city as a whole.
2. Incidence of Fire. The incidence of fire within the study area is considerably higher than for any other area of the city.
3. Housing Condition. A housing survey conducted by the Missoula Planning Board in 1974 showed that seventy-six percent (76%) of the residential structures within the study area are of less than good condition.
4. Adequacy of Sewers. Sanitary and storm sewers within the study area were installed during 1910-1911. In general, these sewers are approaching or have exceeded expected design life and their condition is less than desirable.
5. Circulation. The study area contains three bridges crossing the Clark Fork. All three bridges have been identified by the State Highway Department as having traffic volumes that exceed the capacity of the bridges.
6. Zoning. The existing zoning within the study area is not adequate to control future development and redevelopment.
7. Public Facilities. Additional deficiencies exist within the study area for sidewalks, streets, traffic-control devices, street landscaping, and off-street parking.

NOW, THEREFORE, BE IT RESOLVED THAT the area in the City of Missoula which is inside the boundaries is described as:

Beginning at the southeasterly intersection of the Bitterroot Branch of the Burlington Northern Railroad and the mainline of the Burlington Northern Railroad; thence southeasterly along the centerline of the mainline of the Burlington Northern

Railroad to a point of intersection with the westerly boundary of Van Duren Street; thence southerly along said westerly boundary and boundary extended across the Clark Fork River to the northerly line of the alley vacated by City Resolution No. 1628 running in an east-west direction through Block 17, Montana Addition; thence westerly along said alley line and line extended through Blocks 16, 15, 14, 13, and 12 of Montana Addition, said blocks being bounded on the north by South Fourth Street East and the south by South Fifth Street East, to the centerline of Gerald Avenue; thence along said street centerline to the centerline of Connell Avenue; thence west along said street centerline to the east boundary of Higgins Avenue; thence southwesterly across Higgins Avenue to the centerline of Roosevelt Street; thence northwesterly along said street centerline to the centerline of Woodford Street; thence northeasterly along said street centerline to the centerline of Myrtle Street; thence north along said street centerline to the centerline of South Third Street; thence west along said street centerline to the centerline of Hazel Street; thence north along said street centerline to the centerline of South Second Street; thence west along said street centerline to the centerline of Chestnut Street; thence north along said street centerline to the centerline of South First Street; thence west along said street centerline to the centerline of Orange Street; thence north along said street centerline to the centerline of River Road; thence west along said centerline to a point of intersection with the Bitterroot Branch of the Burlington Northern Railroad; thence northeasterly along the centerline of said railroad to the point of beginning.

and is blighted under the definition contained in Section 11-3901, R.C.M., 1947, and that rehabilitation of and redevelopment of this area (pursuant to Section 11-3901, R.C.M., 1947) is necessary in the interest of the public health, safety, and welfare of the residents of the City of Missoula.

PASSED by the City Council of Missoula, Montana, and

APPROVED by the Mayor this 23rd day of January, 1978.

ATTEST:

APPROVED:

Barbara G. Horton /s/
City Clerk

Bill Cregg /s/
Mayor

(SEAL)

RESOLUTION NUMBER 3778

A RESOLUTION OF THE CITY OF MISSOULA ELECTING TO HAVE URBAN RENEWAL PROJECT POWERS AND DECLARING IT TO BE IN THE PUBLIC INTEREST THAT SUCH POWERS BE EXERCISED BY AN URBAN RENEWAL AGENCY.

WHEREAS, the State of Montana has provided for the redevelopment of those portions of its cities which constitute a menace to public health and safety, constitute an economic and social liability and substantially impair the sound growth of a municipality; and

WHEREAS, the procedure provided in Title II, Chapter 39, of the Revised Codes of Montana allows such redevelopment by the creation of an Urban Renewal Plan with a Tax Increment Financing Provision; and

WHEREAS, the City of Missoula is desirous of utilizing such an Urban Renewal Plan with Tax Increment Financing Provision to revitalize and redevelop its urban area; and

WHEREAS, on January 23, 1978 the City of Missoula pursuant to Section 11-3905, R.C.M. 1947 adopted Resolution Number 3737 declaring that a blighted area existed within the city and determining that rehabilitation and redevelopment of this area is necessary in the interest of the public health, safety and welfare of the residents of the City of Missoula,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Missoula

That the City of Missoula elects to have urban renewal project powers pursuant to Section 11-3915 and 11-3916, R.C.M. 1947.

BE IT FURTHER RESOLVED that it is in the best interest of the public to have these urban renewal project powers exercised by an urban renewal agency.

PASSED by the City Council of the City of Missoula, Montana, and

APPROVED by the Mayor this 22nd day of May, 1978.

ATTEST:

APPROVED:

Barbara G. Horton /s/
City Clerk

Bill Cregg /s/
Mayor

(SEAL)

A RESOLUTION OF THE CITY OF MISSOULA CREATING AN URBAN RENEWAL AGENCY AND ASSIGNING TO SUCH AGENCY URBAN RENEWAL PROJECT POWERS.

WHEREAS, the State of Montana has provided for the redevelopment of those portions of its cities which constitute a menace to public health and safety, constitute an economic and social liability and substantially impair the sound growth of a municipality; and

WHEREAS, the procedure provided in Title II, Chapter 39, of the Revised Codes of Montana allows such redevelopment by the creation of an Urban Renewal Plan with a Tax Increment Financing Provision; and

WHEREAS, the City of Missoula is desirous of utilizing such an Urban Renewal Plan with Tax Increment Financing Provision to revitalize and redevelop its urban area; and

WHEREAS, on January 23, 1978 the City of Missoula pursuant to Section 11-3905, R.C.M. 1947 adopted Resolution Number 3737 declaring that a blighted area existed within the city and determining that rehabilitation and redevelopment of this area is necessary in the interest of the public health, safety and welfare of the residents of the City of Missoula,

WHEREAS, on May 22, 1978 the City of Missoula pursuant to Section 11-3915 and 11-3916, R.C.M. 1947, adopted Resolution Number 3778 electing to have Urban Renewal Project Powers and declaring it to be in the public interest that such powers be exercised by an Urban Renewal Agency.

NOW, THEREFORE, BE IT RESOLVED that the Missoula Urban Renewal Agency is hereby created and shall consist of five commissioners appointed by the Mayor pursuant to Section 11-3916.

BE IT FURTHER RESOLVED that the Missoula Urban Renewal Agency shall be authorized to exercise the following urban renewal project powers:

1. To formulate and co-ordinate a workable program as specified in Section 11-3904.
2. To prepare urban renewal plans.
3. To prepare recommended modifications to an urban renewal project plan.
4. To undertake and carry out urban renewal projects as required by the local governing body.
5. To make and execute contracts as specified in Section 11-3907, with the exception of contracts for the purchase or sale of real or personal property.
6. To disseminate blight clearance and urban renewal information.
7. To exercise the powers prescribed by Section 11-3907 (b), except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body.
8. To enter any building or property, in any urban renewal area, in order to make surveys and appraisals in the manner specified in Section 11-3907 (c).
9. To improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area.
10. To insure real or personal property as provided in Section 11-3907 (c).

11. To effectuate the plans provided for in Section 11-3907 (f).
12. To prepare plans for the relocation of families displaced from an urban renewal area and to co-ordinate public and private agencies in such relocation.
13. To prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.
14. To conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects.
15. To negotiate for the acquisition of land.
16. To study the closing, vacating, planning, or replanning of streets, roads, sidewalks, way, or other places and to make recommendations with respect thereto.
17. To organize, co-ordinate, and direct the administration of the provisions of this act.
18. To perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

Any powers granted in Title II, Chapter 39 of the Urban Renewal Law that are not herein granted to the Missoula Urban Renewal Agency shall be exercised by the City Council of the City of Missoula.

PASSED by the City Council of the City of Missoula, Montana, and

APPROVED by the Mayor this 22nd day of May, 1978.

ATTEST:

APPROVED:

Barbara G. Horton /s/
City Clerk

Bill Cregg /s/
Mayor

(SEAL)