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Legal Opinion 2022-017

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

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE August 26, 2022

RE: STATUTORILY PURSUANT TO SECTION 7-15-4234 MCA. A MUNICIPAL URBAN RENEWAL AGENCY IS TO BE ADMINISTERED BY AN APPOINTED BOARD OF COMMISSIONERS

FACTS:

There seems to be some confusion among some city council members as to the administration of an urban renewal agency pursuant to Montana state law.

ISSUE(S):

What does Montana state urban renewal law provide with respect to the administration of a municipal urban renewal agency?

CONCLUSION(S):

Pursuant to section 7-15-4234 MCA a municipal urban renewal agency is to be administered by an appointed board of commissioners.

LEGAL DISCUSSION:

Pursuant to sections 7-15-4231 and 7-15-4232 MCA a city council may itself exercise its urban renewal project powers; or may by resolution determine administration of the exercise of urban renewal powers to be exercised by an urban renewal agency created by resolution of the city council.

Sections 7-15- 4231 and 7-15-4232 MC provide as follows:

7-15-4231. Exercise of powers related to urban renewal. A municipality may itself exercise its urban renewal project powers as herein defined or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency created by **7-15-4232** or a department or other officers of the municipality as they are authorized to exercise under this part and part 43.

7-15-4232. Authorization to assign urban renewal powers to municipal departments or to create urban renewal agency. When a municipality has made the finding prescribed in **7-15-4210** and has elected to have the urban renewal project powers exercised as specified in **7-15-4233**:

- (1) such urban renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate; or
- (2) the legislative body of a city may create an urban renewal agency in such municipality, to be known as a public body corporate, to which such powers may be assigned.

May 22, 1978 the Missoula City Council adopted city council resolution 3778 entitled “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”. The text of resolution 3778 in part resolves “that it is in the best interest of the public to have these urban renewal project powers exercised by an urban renewal agency.”

Also, on May 22, 1978 the Missoula City Council adopted Missoula City Council resolution 3779 entitled “A RESOLUTION OF THE CITY OF MISSOULA CREATING AN URBAN RENEWAL AGENCY AND ASSIGNING TO SUCH AGENCY URBAN RENEWAL PROJECT POWERS”.

Montana municipal urban renewal law defines “agency” pursuant to subsection 7-15-4206(1) MCA as meaning:

“(1) ‘Agency’ or ‘urban renewal agency’ means a public agency created by 7-15-4232”.

Section 7-15-4232 MCA is set forth above. Clearly pursuant to Montana urban renewal law an urban renewal agency created by city council resolution is not a city department.

Section 7-15-4234 MCA of Montana’s urban renewal laws is entitled “URBAN RENEWAL AGENCY TO BE DETERMINED BY APPOINTED BOARD OF COMMISSIONERS”. Pursuant to this section of municipal urban renewal law the urban renewal agency is authorized to transact business and exercise urban renewal powers. Section 7-15-4234 MCA also provides that the mayor with the advice and consent of the city council appoints the urban renewal board of commission members.

Section 7-15-4234 MCA provides as follows:

7-15-4234. Urban renewal agency to be administered by appointed board of commissioners. (1) If the urban renewal agency is authorized to transact business and exercise powers under this part, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency consisting of five commissioners.

(2) The initial membership shall consist of one commissioner appointed for 1 year, one for 2 years, one for 3 years, and two for 4 years. Each subsequent appointment must be for 4 years. A certificate of the appointment or reappointment of a commissioner must be filed with the clerk of the municipality, and the certificate is conclusive evidence of the proper appointment of the commissioner.

(3) Each commissioner shall hold office until a successor has been appointed and has qualified.

(4) A commissioner may not receive compensation for services but is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of duties.

(5) Any persons may be appointed as commissioners if they reside within the municipality.

(6) A commissioner may be removed for inefficiency, neglect of duty, or misconduct in office.

CONCLUSION(S):

Pursuant to section 7-15-4234 MCA a municipal urban renewal agency is to be administered by an appointed board of commissioners.

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/s/ Jim Nugent

Jim Nugent, City Attorney

JN:dj