

OFFICE OF THE CITY ATTORNEY

435 Ryman • Missoula MT 59802
(406) 552-6020 • Fax: (406) 327-2105
attorney@cj.missoula.mt.us

Legal Opinion 2010-010

TO: John Engen, Mayor; City Council; Bruce Bender; Ginny Merriam, Communications Director; Marty Rehbein, City Clerk; Nikki Rogers, Senior Deputy City Clerk; Kelly Elam, City Clerk's Office; Brentt Ramharter, Finance Director; Mark Muir, Chief of Police; Mike Brady, Assistant Chief of Police; Chris Odlin, Police Captain; Gregg Willoughby, Police Captain; Scott Hoffman, Police Captain

CC: Legal Staff

FROM: Jim Nugent, City Attorney

DATE June 7, 2010

RE: General emergency ordinances of Montana municipal governments

FACTS:

The City Council is currently considering adoption of a City of Missoula emergency ordinance to provide city police officers jurisdiction and authority to make arrests within five miles of the city limits.

ISSUES:

- (1) How many city council member votes are necessary to adopt a general emergency ordinance?
- (2) Pursuant to Montana municipal government statutes pertaining to emergency ordinances, how long is an emergency ordinance effective?
- (3) When is an emergency ordinance effective?
- (4) When is a regularly enacted ordinance effective?
- (5) If the city council desires to continue an emergency ordinance uninterrupted, how soon after the emergency ordinance is adopted must the city council adopt the regular ordinance?

CONCLUSIONS:

- (1) Mont. Code Ann. §§ 7-5-104 and 7-5-4204 both require a two-thirds (2/3) vote of approval of the entire city council in order to adopt an emergency ordinance.

(2) Pursuant to Mont. Code Ann. § 7-5-104, a municipal government emergency ordinance is effective for 90 days.

(3) Pursuant to Mont. Code Ann. §§ 7-5-104 and 7-5-4203, an emergency ordinance is effective on passage and approval. Also, City Council Rule 27 provides that emergency ordinances shall become effective immediately.

(4) Pursuant to Mont. Code Ann. §§ 7-5-105 and 7-5-4203, a regular ordinance shall be effective 30 days after final adoption.

(5) If the city council desires to have an emergency ordinance continue in effect uninterrupted, the city council must adopt the regular ordinance within 60 days of the adoption of the emergency ordinance.

LEGAL DISCUSSION:

Two parts of Montana municipal local government statutes attempt to address a city council's adoption of an emergency ordinance.

Montana Code Annotated Title 7, chapter 5, part 1 is entitled *Local Government Ordinances, Resolutions, and Initiatives and Referendums*. Also, Title 7, chapter 2, part 42 is entitled *Municipal Ordinances and Resolutions*.

City Council Rule 27 provides that emergency ordinances shall become effective immediately. Mont. Code Ann. § 7-5-104 entitled *Emergency ordinance* provides in pertinent part that an emergency ordinance shall recite the facts giving rise to the emergency, require a two-thirds vote of the whole governing body for passage, be effective on passage and approval and remain effective for no more than 90 days.

Mont. Code Ann. § 7-5-4204 is entitled *Details relating to emergency measures*, but does not address the topic in the identical manner as Mont. Code Ann. § 7-5-104. Section 7-5-4204 also requires that the emergency be expressed in the preamble or body of the emergency ordinance, the emergency measure must receive a two-thirds vote of all members elected and shall include only such measures as are immediately necessary for the preservation of peace, health and safety. While § 7-5-4204 does not address either the effective date of the emergency ordinance or how long it is effective, it indicates that emergency ordinances are an exception to the 30 day delay before an ordinance becomes effective.

Mont. Code Ann. § 7-5-105 pertains to the effective date for general municipal ordinances and provides that any ordinance, other than an emergency ordinance, shall not become effective until 30 days after adoption. This section also notes that the city council could provide for a delayed effective date for the ordinance. Mont. Code Ann. § 7-5-4203 is entitled *Effective date of ordinances and resolutions*. Mont. Code Ann. § 7-5-105(1) provides:

(1) An ordinance passed by the council of any city or town may not become effective until 30 days after its passage except: (a) general appropriation ordinances providing for the ordinary and current expenses of the city or town; and (b) emergency ordinances.

As noted earlier, Mont. Code Ann. § 7-5-104 provides that an emergency ordinance "shall be effective on passage and approval and shall remain effective for no more than 90 days."

If the city council desires to adopt an emergency ordinance and continue the emergency ordinance uninterrupted beyond the statutory 90 day time period established, the city council must adopt the regular ordinance within 60 days after adoption of the emergency ordinance. It takes 30 days for a regular ordinance to go into effect after adoption.

CONCLUSIONS:

(1) Mont. Code Ann. §§ 7-5-104 and 7-5-4204 both require a two-thirds (2/3) vote of approval of the entire city council in order to adopt an emergency ordinance.

(2) Pursuant to Mont. Code Ann. § 7-5-104, a municipal government emergency ordinance is effective for 90 days.

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/s/

Jim Nugent
City Attorney

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