



OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2008-018

TO: John Engen, Mayor; City Council; Bruce Bender, CAO; Steve King, Public Works Director; Kevin Slovarp, City Engineer; Brian Hensel, Superintendent of Street Maintenance

FROM: Jim Nugent, City Attorney

DATE December 16, 2008

RE: Municipal Government General Emergency Ordinance Statutes

FACTS:

Monday evening November 24, 2008, after conducting a public hearing the Missoula City Council adopted an emergency ordinance amending the Missoula Valley Water Quality Ordinance to allow the use of granular deicer. A regular ordinance addressing the same topic and same amendments was returned to City Council committee and subsequently adopted by the City Council Monday evening, December 15, 2008, well within the sixty (60) day time period within which a City Council may ensure keeping the substantive provisions of an emergency ordinance on the same topic without there being an interruption or an ordinance being in effect.

ISSUES:

(1) Pursuant to general Montana municipal government statutes pertaining to emergency ordinances, how long is an emergency ordinance effective?

(2) When is an emergency ordinance effective?

(3) When is a regularly enacted ordinance effective?

(4) If a city council desires to continue an emergency ordinance in continuous effect by adopting a similar general ordinance, how soon after the emergency ordinance is adopted must the city council adopt the regular ordinance?

CONCLUSIONS:

- (1) Pursuant to section 7-5-104 MCA, a municipal government general emergency ordinance is effective for only ninety (90) days.
- (2) Pursuant to section 7-5-104 MCA an emergency ordinance is effective on passage and approval.
- (3) Pursuant to section 7-5-105 MCA a general regular ordinance shall be effective thirty (30) days after final adoption.
- (4) If a city council desires to have an emergency ordinance continue in effect uninterrupted as a general regular ordinance, the city council must adopt the general regular ordinance within sixty (60) days of the adoption of the emergency ordinance.

LEGAL DISCUSSION:

Title 7, chapter 5, part 1 is entitled “Local Government Ordinances, Resolutions, and Initiatives and Referendums”. Also, title 7, chapter 2, part 42 MCA is entitled “Municipal Ordinances and Resolutions.”

Section 7-5-104 MCA entitled “Emergency ordinance” provides in pertinent part that an emergency ordinance shall recite the facts giving rise to the emergency, “requires a two-thirds vote of the whole governing body for passage,” “shall be effective on passage and approval and shall remain effective for no more than 90 days.”

Section 7-5-4204 MCA is entitled “Details relating to emergency measures,” but actually does not address the topic in the identical manner as section 7-5-104 MCA. Section 7-5-4204 MCA also requires that the emergency be expressed in the preamble or body of the emergency ordinance, that the emergency “measure must receive a two-thirds vote of all the members elected” and indicates that emergency ordinance “shall include only such measures as are immediately necessary for the preservation of peace, health and safety.” Section 7-5-4204 MCA does not address either the effective date of the emergency ordinance or how long it is effective.

Section 7-5-105 MCA pertains to the effective date for general municipal ordinance and provides that any ordinance, other than an emergency ordinance, shall not become effective until 30 days after adoption. This statutory section also notes that the city council could also provide for a delayed effective date for the ordinance. Also, section 7-5-4203 MCA is entitled “Effective date of ordinances and resolutions.” Subsection 7-5-105(1) MCA 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, section 7-5-104 MCA provides that an emergency ordinance “shall be effective on passage and approval and shall remain effective for no more than 90 days.”

Therefore, if a city council desires to adopt an emergency ordinance and also desires to continue that emergency ordinance in continuous effect beyond the 90 day time period associated with an emergency ordinance, for ordinance coordination purposes in order to ensure continuity of the emergency ordinance as it transitions to a regular ordinance, the city council would have to adopt the general regular ordinance within sixty (60) days after the emergency ordinance is adopted in order to maintain the continuity, because it takes thirty (30) days after adoption before a regular ordinance may go into effect.

CONCLUSIONS:

- (1) Pursuant to section 7-5-104 MCA, a municipal government general emergency ordinance is effective for only ninety (90) days.
- (2) Pursuant to section 7-5-104 MCA an emergency ordinance is effective on passage and approval.
- (3) Pursuant to section 7-5-105 MCA a general regular ordinance shall be effective thirty (30) days after final adoption.
- (4) If a city council desires to have an emergency ordinance continue in effect uninterrupted as a general regular ordinance, the city council must adopt the general regular ordinance within sixty (60) days of the adoption of the emergency ordinance.

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A handwritten signature in black ink that reads "Jim Nugent". The signature is fluid and cursive, with "Jim" on the top line and "Nugent" on the bottom line, both slightly slanted to the right.

Jim Nugent, City Attorney

JN:kmr