OFFICE OF THE CITY ATTORNEY

Legal Opinion 2009-004

TO: John Engen, Mayor; City Council; Bruce Bender, CAO; Marty Rehbein, City Clerk; Nikki Rogers, Deputy City Clerk; Kelly Elam, Deputy City Clerk; Donna Gaukler, Parks & Rec Director

FROM: Jim Nugent, City Attorney

DATE February 26, 2009

RE: Montana Municipal Statutes pertaining to Mayoral veto procedure

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FACTS:

There has been a suggestion made that Mayor John Engen should veto the City Council resolution adopted Monday evening, February 23, 2009 pertaining to dogs being on leashes on some city conservation open space lands. It has been some time since a City of Missoula Mayor vetoed a City Council Ordinance or resolution. This legal opinion is intended to facilitate understanding of Montana state law and City Charter pertaining to potential mayoral veto interaction between the executive and legislative branches of municipal government.

ISSUE(S):

1. Does a municipal mayor in Montana have power to veto an ordinance or resolution?

2. How many city council members must vote to override a mayoral veto in order for the city council override to be successful?

3. What are the requirements pursuant to Montana statutes, City of Missoula Charter, and City Council rules for a mayor to exercise mayoral veto powers?

4. Does a municipal mayor in Montana have the power to veto only parts of a city council ordinance or resolution?

CONCLUSIONS:

1. Statutorily, Montana mayors have power to veto a city council adopted ordinance or resolution pursuant to Mont. Code Ann. §§ 7-3-214(2), 7-5-106, 7-5-122, 7-5-4205 and 7-5-4206.
2. Pursuant to Mont. Code Ann. §§ 7-3-214(2) and 7-5-4206(1) and City of Missoula Charter Art. III, § 9, a two-thirds ($^2/_3$) vote of the entire city council is required to override a veto.

Thus, it requires at least eight (8) votes of the entire 12 member city council to override a mayoral veto.

3. After city council adoption of an ordinance or resolution, the procedure for exercising a mayoral veto is for the mayor, prior to or at the next regular meeting of the city council, to inform the city council, in writing, of the veto and the reasons for the mayor's objections. See Mont. Code Ann. §§ 7-5-106, 7-5-122 and 7-5-4206; as well as Art. III, § 9, City of Missoula Charter.

4. Yes, pursuant to Mont. Code Ann. § 7-5-4205(3) the mayor has power to veto any objectionable part of a resolution or ordinance and approve the other parts. Thus, in Montana a municipal mayor may exercise line item veto authority.

LEGAL DISCUSSION:

Several provisions of Montana law pertain to mayoral power to veto an ordinance or resolution. See Mont. Code Ann. §§ 7-3-214(2), 7-5-106, 7-5-122, 7-5-4205, and 7-5-4206 as well as City of Missoula Charter Art. III, § 9.

Section 7-5-106 MCA pertaining to the procedure for vetoing an ordinance provides:

> **7-5-106. Ordinance veto procedure.** If the plan of government allows the chief executive to veto an ordinance, the power must be exercised in writing prior to the next regularly scheduled meeting of the governing body. Whenever the chief executive vetoes an ordinance, the governing body must act at the next regularly scheduled meeting to either override or confirm the veto. Whenever the veto is overridden or the executive fails to act, the ordinance shall take effect. *(Emphasis added.)*

Sections 7-5-4205 and 7-5-4206 MCA pertaining to a mayoral veto of an ordinance resolution provide:

> **7-5-4205. Powers of mayor related to ordinances and resolutions.** The mayor has power to:
> (1) cause the ordinances of the city or town to be executed;
> (2) approve all ordinances and resolutions of the council adopted by it;
> (3) veto any objectionable part of a resolution or ordinance and approve the other parts. *(Emphasis added.)*

> **7-5-4206. Procedure to veto ordinance or resolution.** (1) In case an ordinance or resolution does not meet the mayor's approbation, the mayor has power to return the same to the next regular meeting of the council, with all objections in writing. No ordinance or resolution so vetoed by the mayor must go into effect unless the same be afterwards passed by two-thirds vote of the whole number of members of the council.
> (2) If the mayor fails to return any resolution or ordinance as aforesaid, the same takes effect without further action.

The two above quoted statutes provide that pursuant to Mont. Code Ann. § 7-5-4205(3) a mayor is expressly empowered to veto any objectionable part of a resolution or ordinance and approve the other parts. The original ordinance or resolution with the vetoed parts identified is returned to the City council for the City council's consideration of the vetoed parts of the ordinance or resolution. Meanwhile, the mayor has already approved the remaining portions of the ordinance or resolution or the mayor has allowed them to take effect without further action from the mayor.

A two-thirds ($^2/_3$) vote of the entire city council is required to override a mayoral veto. See Section 7-5-4206 MCA as well as Mont. Code Ann. § 7-3-214(2) pertaining to the mayor (executive) - council (commission) form of municipal government which provides:

> **7-3-214. Veto power.** The executive [mayor] may:
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> . . . .
>
> (2) veto ordinances and resolutions, subject to override by a <u>two-thirds vote</u> of the commission [city council]. *(Emphasis added.)*

Note Mont. Code Ann. § 7-5-4206(1), quoted above requires a "two-thirds vote of the <u>whole number</u> of members of the City Council in order to override a veto." *(Emphasis added.)*

Also, with respect to a mayor vetoing a city council adopted resolution, Mont. Code Ann. § 7-5-122 provides:

> **7-5-122. Resolution veto procedure.** If the plan of government allows the chief executive to veto resolutions, <u>this power must be exercised in writing at the next regular meeting</u>. If the chief executive fails to act, the resolution is approved. If the chief executive vetoes a resolution, <u>the governing body must act at the same meeting or its next regularly scheduled meeting</u> to either override or confirm the veto. *(Emphasis added.)*

If the city council desires to override the mayor's veto of any ordinance or resolution or override the veto of any objectionable parts of an ordinance or resolution, it requires a two-thirds vote of the entire membership of the city council to override the mayor's veto, which is at least eight (8) votes for the current Missoula City Council.

The City of Missoula Charter effective January 1, 1997, for Missoula's current form of municipal government is consistent with Montana statutes with respect to mayoral veto power. City of Missoula Charter Art. III, § 9 also requires a two-thirds ($^2/_3$) city council vote to override a mayoral veto. Article III of the City Charter is entitled *The Mayor*. Section 9 of Article III of the City of Missoula Charter pertaining to mayoral veto provides:

> **9. Vetoes.** The Mayor shall have the authority to veto any ordinance or resolution, in whole or in part, of the City Council. The Mayor shall return any vetoed item to the next regular meeting of the City Council <u>with any objections in writing</u>. The Mayor's veto is subject to an override by <u>a two-thirds vote</u> of the full City Council at the next regularly scheduled meeting of the City Council following issuance of the veto. *(Emphasis added.)*

Also, Missoula City Council Rule 26(c) provides:

C.   Prior to the next regularly scheduled City Council meeting, all ordinances and resolutions approved by the City Council must be either vetoed by the Mayor, signed by the Mayor or returned to the City Clerk without the Mayor's signature. If an ordinance or resolution is not signed or vetoed by the Mayor prior to the next regularly scheduled City Council meeting, the ordinance or resolution will go into effect without the Mayor's signature. In the Mayor's absence, the Council President may sign ordinances and resolutions, except those ordinances and resolutions the Mayor requests not be signed.

CONCLUSIONS:

1.   Statutorily, Montana mayors have power to veto a city council adopted ordinance or resolution pursuant to Mont. Code Ann. §§ 7-3-214(2), 7-5-106, 7-5-122, 7-5-4205 and 7-5-4206.

2.   Pursuant to Mont. Code Ann. §§ 7-3-214(2) and 7-5-4206(1) and City of Missoula Charter Art. III, § 9, a two-thirds ($^2/_3$) vote of the entire city council is required to override a veto. Thus, it requires at least eight (8) votes of the entire 12 member city council to override a mayoral veto.

3.   After city council adoption of an ordinance or resolution, the procedure for exercising a mayoral veto is for the mayor, prior to or at the next regular meeting of the city council, to inform the city council, in writing, of the veto and the reasons for the mayor's objections. See Mont. Code Ann. §§ 7-5-106, 7-5-122 and 7-5-4206; as well as Art. III, § 9, City of Missoula Charter.

4.   Yes, pursuant to Mont. Code Ann. § 7-5-4205(3) the mayor has power to veto any objectionable part of a resolution or ordinance and approve the other parts. Thus, in Montana a municipal mayor may exercise line item veto authority.

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