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Legal Opinion 2012-15

TO: John Engen, Mayor; City Council; Bruce Bender; Marty Rehbein; and Brentt Ramharter

CC: Legal Staff

FROM: Jim Nugent, City Attorney

DATE October 26, 2012

RE: Legal ability to withdraw petition signatures prior to a final decision being made on subject.

FACTS:

There apparently currently might be a couple of petition drives being discussed or that are already active within the Missoula community reportedly concerning generally protesting any future zoning regulation enactment and/or amendment authorizing accessory dwelling units (ADUs) within residential single dwelling unit zoning districts as well as a possible effort to recall a city council member for proposing accessory dwelling units within residential single dwelling unit zoning districts. Often when petition activities are being conducted or even already submitted to the city clerk there are citizen inquires as to the ability of someone to withdraw their signature from any petition.

ISSUE(S):

May a person who has signed a petition that is being submitted to municipal government, withdraw their signature?

CONCLUSION(S):

Yes, any person who signs a petition submitted to a municipal government may withdraw their signature at any time prior to any final action by the governing body on the subject matter of the petition.

LEGAL DISCUSSION:

Generally, Montana state law allows petition signers to withdraw their signatures from petitions, especially specifically protest petitions, if the withdrawal of the petition signature occurs prior to

final action being taken by the governing body. Section 7-1-4132 MCA of Montana's general municipal government laws, authorizes a person signing in writing to withdraw their signature/protest prior to final action by the governing body. Section 7-1-4132 MCA provides as follows:

7-1-4132. Protest. (1) Whenever a protest is authorized, it is sufficient if it is in writing, signed, and contains the following:

(a) a description of the action protested sufficient to identify the action against which the protest is lodged;

(b) a statement of the protestor's qualifications to protest the action against which the protest is lodged, including ownership of property affected by the action; and

(c) the address of the person protesting.

(2) Protests shall be submitted as provided by law and ordinance. The person receiving protests for a municipality shall note on each protest the date it was received.

(3) A protest which contains the required information may be signed by more than one person. A protest signed by more than one person is a valid protest by each signer.

(4) A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

(5) Signers are encouraged to print their names after their signatures.

CONCLUSION(S):

Yes, any person who signs a petition submitted to a municipal government may withdraw their signature at any time prior to any final action by the governing body on the subject matter of the petition.

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/s/

Jim Nugent, City Attorney

JN:tfa