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Legal Opinion 2013-007

TO: John Engen, Mayor; City Council; Bruce Bender; Ginny Merriam; Marty Rehbein; Nikki Rogers; Kelly Elam; Brent Ramharter; Mark Muir, Mike Brady, Chris Odlin, Jason Diehl, Jeff Brandt

CC: Legal Staff

FROM: Jim Nugent, City Attorney

DATE April 2, 2013

RE: While a majority of City Council Members present and voting generally may adopt an ordinance, two-thirds of entire City Council must approve general emergency ordinances.

FACTS:

There is a possibility that some City Council Members may soon propose a City Council ordinance to allow some limited personal use of State Law allowed Fireworks within the city limits prior to July 4, 2013.

ISSUES:

- 1.) How many city council member votes are generally necessary to adopt a general city council ordinance?
- 2.) How many city council member votes are necessary to adopt a general emergency ordinance?

CONCLUSIONS:

- 1.) Unless vetoed by the Mayor, generally a majority of City Council members present and voting may adopt a city ordinance. However, a two-thirds vote of the entire City Council would be necessary to override a mayoral veto.
- 2.) Pursuant to 7-5-104 and 7-5-4204, MCA, a 2/3 vote of approval of the entire city council is required in order to adopt an emergency ordinance.

LEGAL DISCUSSION:

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

Regularly adopted City Ordinances generally go into effect thirty (30) days after adopting. See Sections 7-5-105 and 7-5-4203 MCA.

7-5-105. Effective date of ordinance. No ordinance other than an emergency ordinance shall be effective until 30 days after second and final adoption. The ordinance may provide for a delayed effective date or may provide for the ordinance to become effective upon the fulfillment of an indicated contingency.

7-5-4203. Effective date of ordinances and resolutions. (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 measures.

(2) A resolution is immediately effective unless a delayed effective date is specified in the resolution.

Two provisions of Montana municipal local government law address the required vote of approval necessary for a city council's adoption of an emergency ordinance.

7-5-104. Emergency ordinance. In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days. (emphasis added).

7-5-4204. Details relating to emergency measures. In the case of emergency measures, the emergency must be expressed in the preamble or in the body of the measure and the measure must receive a two-thirds vote of all the members elected. In emergency ordinances, the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety and shall not include:

(1) a franchise or license to a corporation or individual;

(2) any provisions for the sale of real estate;

(3) any lease or letting of any property for a period exceeding 1 year; or

(4) the purchase or sale of personal property exceeding \$5,000 in value. (emphasis added).

Further, City Council Rule 28(B) pertaining to emergency ordinances states, "The ordinance (emergency) must receive a 2/3 vote of all members elected."

7-5-104 MCA 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.

7-5-4204 MCA also requires that the emergency be expressed in the preamble or body of the emergency ordinance, the emergency measure must receive a 2/3 vote of all members elected and shall include only such measures as are immediately necessary for the preservation of peace, health, and safety.

A Mayor could veto either a regular ordinance or an emergency City Council ordinance pursuant to sections 7-5-106 and 7-5-4205 and 7-5-4206 as well as subsection 7-3-214(2), MCA.

7-5-4106. Power of condemnation. The city or town council may condemn private property for any public use listed in [70-30-102](#). The ordinance authorizing the taking of private property for a public use is conclusive as to the necessity of the taking and must conform to and be conducted as provided in Title 70, chapters 30 and 31, concerning eminent domain.

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.

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.

Subsection 7-3-214(2) MCA authorizes a Mayor to veto an ordinance or resolution subject to override by a two-thirds vote of the City Council.

Pursuant to 76-2-306 MCA, an interim zoning ordinance, which is effective for only 6 months, may be adopted by a majority vote of the city council members, but a 2/3 vote of approval is required for the city council to adopt an authorized 1 year extension of the interim ordinance.

76-2-306 MCA pertaining to Municipal interim zoning should not be confused with the general emergency ordinance laws set forth in 7-5-104 and 7-5-4204 MCA.

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

CONCLUSIONS:

- 1.) Unless vetoed by the Mayor, generally a majority of City Council members present and voting may adopt a city ordinance. However, a two-thirds vote of the entire City Council would be necessary to override a mayoral veto.
- 2.) Pursuant to 7-5-104 and 7-5-4204, MCA, a 2/3 vote of approval of the entire city council is required in order to adopt an emergency ordinance.

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/s/

Jim Nugent
City Attorney

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