



## OFFICE OF THE CITY ATTORNEY

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### Legal Opinion 2007-019

**TO:** Mayor John Engen, City Council, Bruce Bender, Ellen Buchannan, Chris Behan, Rusty Wickman, Mark Muir, Steve King, Kevin Slovarp, Marty Rehbein, Nikki Rogers, Donna Gaukler, Jackie Corday

**cc:** Legal Staff

**FROM:** Jim Nugent, City Attorney

**DATE** November 27, 2007

**RE:** Transfer of ownership of municipal property pursuant to sale, other disposal or lease must occur pursuant to adoption of either City Council ordinance or resolution approved by two-thirds of all City Council members.

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#### **FACTS:**

In the near future, potentially, there might be real estate transaction transfers of City owned real property involving lands near the City Civic Stadium and/or at the former Fox Theater, Holiday Gas Station, Mustard Seed Restaurant site at Orange and Front Streets.

#### **ISSUE:**

What is statutorily required for a City Council to transfer ownership of a municipal real property?

#### **CONCLUSION:**

Pursuant to section 7-8-4201 MCA pertaining to disposal or lease of Municipal property, a lease or transfer of municipal property must be made by ordinance or resolution passed by two-thirds vote of all the members of the City Council. Thus, at least eight (8) Missoula City council members must vote to adopt either an ordinance or resolution transferring ownership of City of Missoula-owned municipal real property.

## **LEGAL DISCUSSION:**

Title 7, chapter 8, part 42 of Montana's Municipal Government Statutes is entitled, "Disposal and Lease of Municipal Property." Title 8, chapter 8, part 42 only has one section of law which provides as follows:

**7-8-4201. Disposal or lease of municipal property.** (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, or lease any property belonging to the city or town.

(2) (a) Except for property described in subsection (3), the lease or transfer must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.

(b) Except for property acquired by tax deed or property described in subsection (3), if the property is held in trust for a specific purpose, the sale or lease must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose. The election must be held in conjunction with a regular or primary election.

(3) If a city or town owns property containing a historically significant building or monument, the city or town may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:

(a) requires the property to be preserved in its present or restored state upon any subsequent transfer; and

(b) provides for the reversion of the property to the city or town for noncompliance with conditions attached to the transfer.

(4) This section may not be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city that were acquired for parks within the limitations prescribed by 7-16-4223. (Emphasis added.)

Pursuant to subsection 7-8-4201(2) MCA, the sale, other disposal or lease of municipal property statutorily "must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council." (Emphasis added.) Further, if the land is held in trust by the City for a specific purpose, sale or lease of the land must be approved by a majority vote of the city electorate.

It should also be noted that the Missoula City Council has adopted City ordinance provisions for in some cases converting or diverting some open space lands purchased "with the intent to pursue limited development or to hold land for prospective trade or sale from which the proceeds shall be used of open space real property." See subsection 12.56.030(h) and 12.56.110 Missoula Municipal Code. However, these ordinance provisions are not applicable to the real estate transactions that may occur in the near future pertaining to transfers of ownership of Municipal real property.

**CONCLUSION:**

Pursuant to section 7-8-4201 MCA pertaining to disposal or lease of Municipal property, a lease or transfer of municipal property must be made by ordinance or resolution passed by two-thirds vote of all the members of the City Council. Thus, at least eight (8) Missoula City council members must vote to adopt either an ordinance or resolution transferring ownership of City of Missoula-owned municipal real property.

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/s/

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Jim Nugent, City Attorney

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