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Legal Opinion 2014-012

TO: John Engen, City Council, Bruce Bender, Mike Brady, Scott Hoffman, Ginny Merriam, Marty Rehbein, Nikki Rogers, Kelly Elam

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE March 7, 2014

RE: Mayoral authority to veto all or part of a City Council ordinance or resolution prior to the next regular City Council meeting after the ordinance or resolution is adopted.

FACTS:

Recently the Missoula City council adopted two controversial ordinances related to pedestrians for which there was not unanimity in perspectives between Mayor John Engen and the City Council with respect to each and every aspect of the ordinances. There are many new city council members as a result of the past two city council elections. It seemed like a good time to generally inform, educate and/or remind city elected officials about the mayoral veto process and the number of city council votes required to override a mayoral veto. The issuance of this legal opinion does not mean that Mayor Engen is considering a veto or a partial veto of either of the two pedestrian ordinances.

ISSUE(S):

- (1) May a municipal mayor in Montana veto an ordinance or resolution or any part thereof?
- (2) What are the procedural requirements pursuant to Montana municipal state law and city charter for a mayor to exercise mayoral veto powers?
- (3) In order for the city council to override a mayoral veto, how many city council member votes are necessary for the city council to successfully override a mayoral veto?

CONCLUSION(S):

- (1) Yes, a mayor in Montana has the power and authority to veto an ordinance or resolution or any part of the ordinance or resolution that the mayor considers to be objectionable pursuant to

both Montana municipal government law as well as pursuant to City of Missoula's self-government charter.

(2) After city council adoption of an ordinance or resolution, the procedure for a mayor exercising their veto power is for the mayor prior to or at the next regular meeting of the city council after the ordinance or resolution is adopted, to inform the city council in writing of the veto and the reasons for the mayor's veto. See Montana Code Annotated sections 7-5-106, 7-5-122 and 7-5-4206 as well as Article III, section 9 of the City of Missoula charter.

(3) At least two-thirds of the entire city council membership is required for the city council to successfully override a mayoral veto. See sections 7-3-2142(2) and 7-5-4206(1) MCA as well as City of Missoula charter provision, Article III, section 9.

LEGAL DISCUSSION:

Pursuant to section 7-5-4205 (3) MCA pertaining to powers of a municipal mayor, a mayor has the power to veto any objectionable part of a city council adopted resolution or ordinance. Several provisions of Montana municipal government state law recognize a municipal mayor's power to generally veto an ordinance or resolution. See sections 7-5-106, 7-5-4205, 7-5-4206, 7-3-214 and 7-5-122 MCA as well as Article III, section 9 of the City of Missoula self-government charter establishing the City of Missoula's municipal form of government.

Sections 7-5-106, 7-5-4205 and 7-5-4206 MCA pertaining to mayoral veto procedure provide as follows:

7-5-106. Ordinance veto procedure. If the plan of government allows the chief executive to veto an ordinance, this 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)

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. (emphasis added)

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

Note that subsection 7-5-4206(1) MCA requires a “two-thirds vote of the whole number of members of the council” to successfully override a mayoral veto. Also, subsection 7-3-214(2) MCA pertaining to the mayor (executive)-council (commission) statutory form of municipal government requires a two-thirds vote of approval to override a mayoral veto as well. Subsection 7-3-214(2) MCA provides:

“7-3-214. VETO POWER. The executive (mayor) may (2) veto ordinances and resolutions subject to override by a two-thirds vote of the whole number of members of the City council in order to override a veto.” (emphasis added)

Two-thirds of the current twelve member city council would require at least eight (8) city council members to vote to override all or parts of a mayoral veto of a city council ordinance or resolution.

The City of Missoula’s charter for its municipal government is consistent with the above quoted and discussed provisions of Montana state municipal government law. The City of Missoula charter effective January 1, 1997 pursuant to Article II, section 9 pertaining to the Mayor provides the following with respect to mayoral veto power and authority:

“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 with any objections in writing. The Mayor’s veto is subject to an override by a two-thirds vote of the full City Council at the next regularly scheduled meeting of the City council following issuance of the veto.” (emphasis added)

Missoula City Council; Rule 27(C) also in part procedurally addresses a mayoral veto Missoula City Council rule 27 provides:

Rule 27. EFFECTIVE DATE OF ORDINANCES AND RESOLUTIONS.

A. Ordinances shall become effective thirty (30) days after final passage or as provided in the ordinance. Emergency ordinances and general appropriation ordinances shall become effective immediately.

B. Resolutions shall become effective immediately upon passage.

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." (emphasis added)

CONCLUSION(S):

- (1) Yes, a mayor in Montana has the power and authority to veto an ordinance or resolution or any part of the ordinance or resolution that the mayor considers to be objectionable pursuant to both Montana municipal government law as well as pursuant to City of Missoula's self-government charter.
- (2) After city council adoption of an ordinance or resolution, the procedure for a mayor exercising their veto power is for the mayor prior to or at the next regular meeting of the city council after the ordinance or resolution is adopted, to inform the city council in writing of the veto and the reasons for the mayor's veto. See Montana Code Annotated sections 7-5-106, 7-5-122 and 7-5-4206 as well as Article III, section 9 of the City of Missoula charter.
- (3) At least two-thirds of the entire city council membership is required for the city council to successfully override a mayoral veto. See sections 7-3-2142(2) and 7-5-4206(1) MCA as well as City of Missoula charter provision, Article III, section 9.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

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