

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2015-028

**TO:** Mayor John Engen; City Council; Marty Rehbein; Kirsten Hands; Kelly Elam; Dale Bickell; Steve Johnson; and Ginny Merriam

**CC:** Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE** August 26, 2015

**RE:** Statutorily required recording of ayes and no votes at City Council meetings

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### **FACTS:**

The purpose of this opinion is to assist city council members understand the instances where Montana state municipal government law statutorily requires that the City Council aye and no votes be recorded.

### **ISSUE:**

Does Montana state municipal government law statutorily identify instances where the aye and no votes of City Council members must be recorded?

### **CONCLUSION:**

Pursuant to subsection 7-5-4121(2) MCA Montana state municipal government law provides that the ayes and noes must be called and recorded on the final passage of any (1) ordinance, (2) bylaw, (3) resolution or (4) contract.

### **LEGAL DISCUSSION:**

Title 7, chapter 5 MCA is entitled “general operation and conduct of business”. Title 7, chapter 5, part 41 MCA is entitled “conduct of municipal government”. Section 7-5-4121 MCA is entitled “conduct of council business”.

Section 7-5-4121 MCA provides as follows:

**“7-5-4121. Conduct of council business.** (1) A majority of the members of the council constitute a quorum for the transaction of business, but a less number may meet and

adjourn to any time stated and may compel the attendance of absent members, under such rules and penalties as the council may prescribe. (2) The ayes and noes must be called and recorded on the final passage of any ordinance, bylaw, or resolution or the making of any contract. The voting on the election or appointment of any officer must be *viva voce*. A majority of the whole number of the members elected is requisite to appoint or elect an officer, and such vote must be recorded.” (emphasis added)

Also, Missoula City Council Rule 19 is entitled “VOTING”. Rule 19(A) states “A. All contracts, ordinances and resolutions require a roll call vote.”

**CONCLUSION:**

Pursuant to subsection 7-5-4121(2) MCA Montana state municipal government law provides that the ayes and noes must be called and recorded on the final passage of any (1) ordinance, (2) bylaw, (3) resolution or (4) contract.

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/s/

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Jim Nugent, City Attorney

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