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Legal Opinion 2017-024

TO: Mayor John Engen; City Council; Dale Bickell; Mike Brady; Scott Hoffman; Mike Colyer; Chris Odlin; Richard Stepper; Laurie Clark; Donna Gaukler; Mike Haynes

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE September 6, 2017

RE: A city plan to control, remove and restrict game animals within the city limits must be approved by Montana Department of Fish, Wildlife and Parks. Montana Fish, Wildlife and Parks may impose conditions on any city plan to control, remove, and restrict game animals.

FACTS:

The topic of potentially controlling urban deer inside the city limits is once again a topic of discussion in a city council committee on Wednesday September 6, 2017.

ISSUE(S):

If a Montana municipality develops a plan to control, restrict or remove deer within the city limits, must the plan have State of Montana approval?

CONCLUSION(S):

Yes, any Montana municipal plan to control, restrict or remove deer from within the city limits, must be approved by the Montana Department of Fish, Wildlife and Parks. Montana Fish, Wildlife and Parks may impose conditions on any city proposed plan to control, restrict or remove deer within the city limits.

LEGAL DISCUSSION:

Section 7-31-4110 MCA pertains to a Montana municipality's ability to control, remove and restrict game animals, including deer by a city. Section 7-31-4110 MCA is entitled "RESTRICTION OF WILDLIFE". This section provides:

7-31-4110. Restriction of wildlife. (1) A city or town may adopt a plan to control, remove, and restrict game animals, as defined in **87-2-101**, within the boundaries of the city or town limits for public health and safety purposes. Upon adoption of a plan, the city or town shall notify the department of fish, wildlife, and parks of the plan. If the department of fish, wildlife, and parks approves the plan or approves the plan with conditions, the city or town may implement the plan as approved or as approved with conditions.

(2) The plan may allow the hunting of game animals and provide restrictions on the feeding of game animals.

Pursuant to section 7-31-4110, MCA, any Montana city that develops a plan to control, restrict and remove game animals must notify Montana Fish, Wildlife and Parks of the city plan. The plan may only be implemented if Montana Fish, Wildlife and Parks approves the city plan. The Montana Fish, Wildlife and Parks department may impose conditions on any city plan to control, restrict and remove game animals.

The definition of “game animals” that is set forth in subsection 87-2-101(4) MCA states:

“(4) ‘Game animals’ means deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, bear and wild buffalo.”

Pursuant to subsection 7-31-4110(2) MCA, the city plan may allow the hunting of game animals and/or provide restrictions on the feeding of game animals.

Section 87-6-402 MCA prohibits hunting within a city limits, unless there is hunting allowed pursuant to a plan developed by the city that has also been approved by the Montana Fish, Wildlife and Parks department. Section 87-6-402 MCA is entitled “UNLAWFUL HUNTING WITHIN CITY OR TOWN”. Section 87-6-402 MCA states as follows:

87-6-402. Unlawful hunting within city or town. (1) A person may not hunt or attempt to hunt any deer within the boundaries of any incorporated or unincorporated city or town of this state except as allowed under a plan developed by a city or town and approved by the department pursuant to **7-3-1105**, **7-3-1222**, or **7-31-4110**.

(2) A person convicted of a violation of this section shall be fined not less than \$50 or more than \$1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in **77-1-101**, for recreational purposes for a period of time set by the court.

(3) A violation of this section may also result in an order to pay restitution pursuant to **87-6-905** through **87-6-907**.

However, it must also be noted that both Montana state law and Missoula Municipal Code prohibit the discharge of firearms inside the city limits, pursuant to Montana's state criminal code, section 45-8-343, MCA, and section 9.62.020 Missoula Municipal Code. The discharge of a firearm inside the city limits is a punishable criminal offense, unless the firing of the firearm occurs at a shooting range located within the city limits or is justifiable pursuant to Montana's criminal code, provisions in title 45, chapter 3, part 1 MCA in instances such as for example defense of person or property. See sections 45-3-102, 45-3-103 and 45-3-104, MCA.

It should also be noted that the City of Missoula currently declares it unlawful to provide food or attractants to wildlife within the city limits. Sections 6.07.1220 and 6.07.1230, Missoula Municipal Code provide:

6.07.1220 Conduct declared unlawful.

- A. It is unlawful to feed, provide feed or other attractants, excluding ornamental plants, vegetable gardens and properly hung feeders, to wildlife within the city limits.
(Ord. 3472, 2011)

6.07.1230 Exceptions.

- A. It is legal to feed birds, other than waterfowl and upland game birds, utilizing a bird feeder that can be accessed only by birds. Birdfeeders that are accessed by other animals other than birds or squirrels are in violation.
- B. This ordinance is not intended to prohibit feeding livestock in normal agricultural operations.
(Ord. 3472, 2011)

Bow and arrow hunting may be approved by the City and the Montana Fish, Wildlife and Parks pursuant to Section 9.62.050, MMC, which states:

9.62.050 Bow and arrow restrictions.

- A. No person shall shoot, fire, or otherwise discharge any arrow or projectile through the use of a bow or other device within the city limits, except when done in the lawful defense of the person, property or family; or when done on public or private land that has been approved by the landowner and Montana Fish, Wildlife & Parks (FWP) for a FWP managed bow hunting location; or when done either at an organized and established public or private archery shooting range or gallery; or when done at an archery shooting target area on private grounds or premises under circumstances and in such a manner where any shooting, firing or other discharge of an arrow or projectile can be and is being performed in a manner so as not to endanger person, property, animal or fowl, and also performed in such a manner so as to prevent any arrow or projectile from traversing any grounds or air space outside the established boundaries or limits of any archery shooting range gallery or archery shooting target area on private grounds or premises.

B. No person who is less than fifteen years of age shall shoot, fire, or otherwise discharge any arrow or projectile through the use of a bow or other device except when done in the lawful defense of the person, property or family; or when done while being supervised by an adult as that term is defined in Montana state law. (Ord. 3449; 2010; Ord. 2431 §1, 1985) .

CONCLUSION(S):

Yes, any Montana municipal plan to control, restrict or remove deer from within the city limits, must be approved by the Montana Department of Fish, Wildlife and Parks. Montana Fish , Wildlife and Parks may impose conditions on any city proposed plan to control, restrict or remove deer within the city limits.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

JN:ajg