

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2018-012

**TO:** Mayor John Engen; City Council; Marty Rehbein; Dale Bickell; Ginny Merriam; Steve Johnson

**CC:** Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** May 10, 2018

**RE:** Statutorily required public comment on non-agenda items at public meetings are intended to be for public matters that are not on the public meeting agenda that are within the jurisdiction of the public agency conducting the public meeting

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### FACTS:

Concern has arisen pertaining to public comment at the May 7, 2018, Monday evening city council meeting when an individual personally attacked and made accusations against his landlord about a lease. The comments did not pertain to a public matter within the jurisdiction of the City of Missoula and also involved personal attacks against another person.

### ISSUE(S):

What is the intended purpose of the non-agenda public meeting public comment that public agencies are statutorily required to provide time for during public agency public meetings?

### CONCLUSION(S):

Pursuant to section 2-3-103 Montana Code Annotated (MCA), the agenda for a public meeting of a public agency must include an item allowing public comment on any public matter that is not on the agenda of the public meeting that is within the jurisdiction of the public agency conducting the meeting.

### LEGAL DISCUSSION:

Montana's Constitutional "RIGHT OF PARTICIPATION" provision in Article II, section 8 states:

"Section 8. RIGHT OF PARTICIPATION". The public has the right to expect governmental agencies to afford such reasonable opportunity for

citizen participation in the operation of the agencies prior to the final decision as may be provided by law.”

Montana state law does extensively address public participation in governmental operations. Title 2, chapter 3, MCA, is entitled, “PUBLIC PARTICIPATION IN GOVERNMENTAL OPERATIONS”. Pursuant to a 2003 Montana State Legislative amendment, section 2-3-103, MCA, provides the provisions of law that public agencies like the City of Missoula must be aware of with respect to providing public comment opportunity for non-agenda public comment on public matters within the jurisdiction of the City of Missoula. The requirement for allowing public comment at public meetings of a public agency is intended to allow public comment on public matters not on the public meeting agenda that are within the jurisdiction of the public agency conducting the public meeting.

It should also be noted that section 2-3-103, MCA, also states that “public matter” does not include contested case and other adjudicative proceedings.

Section 2-3-103, MCA, provides as follows:

**2-3-103. Public participation -- governor to ensure guidelines adopted.** (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as defined in **2-3-202**, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in **2-3-212**.  
(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.  
(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request.

Note also that when a public agency receives public comment on non-agenda items for that specific public meeting, the public agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that public matter during the public meeting.

**CONCLUSION(S):**

Pursuant to section 2-3-103 Montana Code Annotated (MCA), the agenda for a public meeting of a public agency must include an item allowing public comment on any public matter that is not on the agenda of the public meeting that is within the jurisdiction of the public agency conducting the meeting.

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Jim Nugent, City Attorney

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