

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2018-024

TO: City Council, Mayor John Engen, Dale Bickell, Mike Haynes, Denise Alexander, Mary McCrea, Jenny Baker, Don Verrue, Marty Rehbein, Kirsten Hands, Kelly Elam, Department Attorney

FROM: Jim Nugent, City Attorney

DATE November 15, 2018

RE: Montana municipalities may take urgent interim zoning action to protect the public safety, health and welfare.

FACTS:

Currently the Missoula community is experiencing a shortage of safe overnight lodging for homeless people during the fall and winter cold weather temperatures that regularly are below freezing and even below zero at night. The Missoula City council in conjunction with the Salvation Army would like to prohibit or stop a current zoning classification or regulation from being applied to their building at 355 South Russell that currently does not allow the Salvation Army building on South Russell to be utilized as a warming center at night during cold weather. Further, the City of Missoula voters adopted self-government powers for the City of Missoula that allows flexibility to take action to protect the public safety, health and welfare in the Missoula community.

ISSUE:

Does Montana state municipal zoning law recognize an ability for Montana municipalities to take urgent land use regulatory actions in order to protect the public safety, health and welfare?

CONCLUSION:

Yes, section 76-2-306 MCA of Montana's municipal zoning laws authorizes Montana municipalities to take urgent interim land use actions in order to protect the public safety, health and welfare by adopting a specific land use action for up to six (6) months and further authorizes extension of that specific land use regulation for up to one year, twice after the six month interim land use regulation expires. An initial six month land use regulation action may be adopted by a

majority vote of the city council. However, any one year extensions must be adopted pursuant to a two-thirds vote of the city council for passage.

LEGAL DISCUSSION:

Title 76, chapter 2, part 3 MCA is entitled “MUNICIPAL ZONING”. Section 76-2-306 MCA in this part of Montana law is entitled “INTERIM ZONING ORDINANCES”. Pursuant to this section of Montana municipal zoning law it is recognized that Montana municipalities may take urgent land use actions in an effort to protect the public safety, health and welfare.

In addition article XI, section 4(2) of the Montana Constitution establishes a Montana Constitutional mandate that the powers of incorporated cities and towns shall be liberally construed. Further, Article XI, section 6 of the Montana Constitution entitled “SELF-GOVERNMENT POWERS” provides that a local government with self-government powers may exercise any power not prohibited by the Montana Constitution, Montana state law or the local government’s self-government charter.

The City of Missoula city electorate has adopted a self-government charter for the operation and administration of City of Missoula local municipal government. There is nothing in the City of Missoula self-government charter that prohibits the City of Missoula city council from adopting urgent action to protect the public safety, health and welfare.

Also, section 7-1-106 MCA provides that the powers and authority of a local government unit with self-government powers “shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority”.

Montana municipal zoning law, section 76-2-306 MCA states as follows:

“76-2-306. INTERIM ZONING ORDINANCES.

(1) Except as provided in 76-2-340, the city or town council or other legislative body of the municipality, to protect the public safety, health, and welfare and without following the procedures otherwise required prior to the adoption of a zoning ordinance, may adopt as an urgency measure an interim zoning ordinance prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time.

(2) An interim zoning ordinance may be applicable only within the city limits and up to 1 mile beyond the corporate boundaries of the city or town and takes effect upon passage if a hearing is first held upon notice reasonably designed to inform all affected parties. A notice must be published in a newspaper of general circulation at least 7 days before the hearing.

(3) An interim zoning ordinance is no longer in effect 6 months from the date of its adoption. However, after notice pursuant to 76-2-303 and pursuant to public hearing, the legislative body may extend the interim zoning ordinance for 1 year. Any extension requires a two-thirds vote for passage and becomes effective upon passage. No more than two extensions may be adopted.”

CONCLUSION:

Yes, section 76-2-306 MCA of Montana's municipal zoning laws authorizes Montana municipalities to take urgent interim land use actions in order to protect the public safety, health and welfare by adopting a specific land use action for up to six (6) months and further authorizes extension of that specific land use regulation for up to one year, twice after the six month interim land use regulation expires. An initial six month land use regulation action may be adopted by a majority vote of the city council. However, any one year extensions must be adopted pursuant to a two-thirds vote of the city council for passage.

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/s/ Jim Nugent

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