

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2019-019

**TO:** Mayor John Engen, City Council Dale Bickell, Leigh Griffing, Ginny Merriam, Steve Johnson, Scott Paasch, Marty Rehbein, Kirsten Hands, Kelly Elam, Department Attorney

**FROM:** Jim Nugent, City Attorney

**CC:** Department Attorney

**DATE** June 26, 2019

**RE:** Pursuant to Montana state law the ayes and noes must be called and recorded on the final city council passage of any ordinance, bylaw, resolution or the making of any contract.

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### FACTS:

It might seem puzzling to municipal officials as to what city council actions require called and recorded vote. Montana state municipal government law does provide for when a municipal government must call and record votes on certain city council actions.

### ISSUE(S):

When does Montana state law require that the ayes and noes be called and recorded on city council votes?

### CONCLUSION(S):

Pursuant to subsection 7-5-4121(2) MCA, the ayes and noes must be called and recorded on the final passage of any ordinance, bylaw, resolution or the making of any contract.

### LEGAL DISCUSSION:

Title 7, chapter 5 MCA is entitled "GENERAL OPERATION AND CONDUCT OF BUSINESS". Part 41 of title 7, chapter 5, MCA is entitled "CONDUCT OF MUNICIPAL GOVERNMENT".

Pursuant to section 7-5-4121 MCA entitled "CONDUCT OF COUNCIL BUSINESS", Montana state law provides that "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”. Section 7-5-4121 MCA states in its entirety 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.

Black’s Law Dictionary, Eighth Edition, page 1604 defines the term “viva voce” By word of mouth; orally. In reference to votes, the term means that a voice vote was held rather than a vote by ballot.” Pursuant to subsection 7-5-4121(2) MCA “the voting on the election or appointment of any officer must be viva voce”.

**CONCLUSION(S):**

Pursuant to subsection 7-5-4121(2) MCA, the ayes and noes must be called and recorded on the final passage of any ordinance, bylaw, resolution or the making of any contract.

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/s/

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Jim Nugent, City Attorney

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