

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2019-021

TO: City Council, Mayor John Engen, Dale Bickell, Jeremy Keene, Ben Brewer, Laval Means, Denise Alexander, Mary McCrea, Jenny Baker, Aaron Bowman, Marty Rehbein, Kirsten Hands, Kelly Elam, Department Attorney

FROM: Jim Nugent, City Attorney

DATE August 22, 2019

RE: City council by two-thirds vote of approval may extend an urgent interim zoning ordinance to protect the public safety, health and welfare for one year twice.

FACTS:

Currently an existing urgent interim zoning ordinance could expire in early November 2019.

ISSUE:

Does Montana state municipal zoning law recognize an ability for Montana municipalities to extend an urgent land use ordinance?

CONCLUSION:

Yes. Pursuant to section 76-2-306 MCA of Montana's municipal zoning laws Montana municipalities are authorized to extend urgent interim land use ordinances for a one year extension twice. Any extension must be adopted pursuant to a two-thirds vote of the city council for passage.

LEGAL DISCUSSION:

Montana Municipal Zoning laws authorize municipal enactment of urgent interim zoning ordinances. Title 76, chapter 2, part 3 MCA is entitled "MUNICIPAL ZONING". Section 76-2-306 MCA is entitled "INTERIM ZONING ORDINANCES". Pursuant to section 76-2-306 MCA it is authorized that Montana municipalities may adopt urgent land use ordinances in an effort to protect the public safety, health and welfare.

Article XI, section 4(2) of the Montana Constitution establishes a Montana Constitutional mandate that powers of incorporated cities and towns shall be liberally construed. 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 Montana Constitution and Montana State Law do not prohibit the ability and authority of a municipality to adopt urgent zoning ordinances.

The City of Missoula city electorate has adopted a self-government charter for the operation and administration of City of Missoula municipal government. The City of Missoula self-government charter does not prohibit the City of Missoula City Council from adopting urgent zoning ordinances to protect the public safety, health and welfare.

Section 7-1-106 MCA provides that the powers and authority of a local government 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.” (emphasis added)

CONCLUSION:

Yes. Pursuant to section 76-2-306 MCA of Montana's municipal zoning laws Montana municipalities are authorized to extend urgent interim land use ordinances for a one year extension twice. Any extension must be adopted pursuant to a two-thirds vote of the city council for passage.

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/s/ Jim Nugent

Jim Nugent, City Attorney
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