

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2019-032

**TO:** John Engen, City Council, Dale Bickell, Jeremy Keene, Mary McCrea, Jenny Baker, Andrew Boughan, Jen Gress, Laval Means, Eran Pehan, Marty Rehbein, Kirsten Hands, Kelly Elam, Dennis Bowman, Kevin Slovarp, Troy Monroe, Department Attorney

**CC:** Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE** November 1, 2019

**RE:** A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

### FACTS:

There currently are multiple land use proposals pending before the city council involving zoning changes that have generated written property owner protest that if statutorily adequate pursuant to municipal zoning law section 76-2-305 MCA could be sufficient to require a two-thirds (2/3 rds) vote of the city council members present and voting in order for the land use project to achieve a favorable vote of the city council.

### ISSUE:

At what point in a proceeding pending before the city council may a person withdraw in writing a protest that was previously filed with the city?

### CONCLUSION:

Pursuant to Montana state law a person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

### LEGAL DISCUSSION:

Pursuant to Montana municipal government law, the term “governing body” generally refers to the legislative body, such as the city council. See 7-1-4121(6), 7-3-122(4), and 7-12-1103(5) MCA.

Section 7-1-4132 MCA of Montana municipal law entitled “PROTEST”, generally establishes several general municipal law provisions pertaining to protests with respect to municipal government operations. Section 7-1-4132 MCA states as follows:

- 7-1-4132. Protest.** (1) Whenever a protest is authorized, it is sufficient if it is in writing, signed, and contains the following:
- (a) a description of the action protested sufficient to identify the action against which the protest is lodged;
  - (b) a statement of the protestor's qualifications to protest the action against which the protest is lodged, including ownership of property affected by the action; and
  - (c) the address of the person protesting.
- (2) Protests shall be submitted as provided by law and ordinance. The person receiving protests for a municipality shall note on each protest the date it was received.
- (3) A protest which contains the required information may be signed by more than one person. A protest signed by more than one person is a valid protest by each signer.
- (4) A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.
- (5) Signers are encouraged to print their names after their signatures. (Emphasis added)

Pursuant to subsection 7-1-4132(4) MCA a person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

The legal ability to withdraw a previously filed protest is a legal right that a person has pursuant to Montana law. Another example in Montana municipal law recognizing a person’s right to withdraw a previous protest is subsection 7-12-4112(2) MCA of Montana municipal special improvement district law.

**CONCLUSION:**

Pursuant to Montana state law a person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

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/s/

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Jim Nugent, City Attorney

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