

OFFICE OF THE CITY ATTORNEY

435 Ryman • Missoula MT 59802
(406) 552-6020 • Fax: (406) 327-2105
attorney@ci.missoula.mt.us

Legal Opinion 2019-029

TO: Mayor John Engen

CC: Dale Bickell, Eran Phan, John Adams, Leigh Griffing and Scott Paasch

FROM: Jim Nugent, City Attorney

DATE: November 4, 2019

RE: City has legal authority to perform actions necessary to manage a revolving fund and to access sites as necessary to comply with Environmental Protection Agency (EPA) grants.

The purpose of this legal opinion is to respond to EPA grant application requirements that the City of Missoula has the legal authority to perform actions necessary to manage a revolving loan fund and to access sites as necessary to comply with EPA brownfields requirements. Examples of Montana state law provisions that provide the City of Missoula as a self-government municipal corporation the necessary legal authority or power to manage a revolving fund include the following provisions of Montana state law; but is likely not an exhaustive list of potential statutory sources of municipal authority and power.

- (1) Pursuant to 7-1-4101 Montana Code Annotated (MCA), all incorporated Montana municipalities are “a body politic and corporate with the general powers of a corporation”.
- (2) Article XI, section 4 of the Montana Constitution establishes a Montana constitutional mandate that the powers of all Montana local governments shall be liberally construed. Also, see subsection 7-1-4105(2) MCA “Finding-contract authority”.
- (3) The City of Missoula has self-government powers that, pursuant to Article XI, Section 4, of the Montana Constitution, must be liberally construed that allow it the exercise of any power not prohibited by the Constitution, state law or city charter. This legal authority provides municipal power to secure and protect persons and property. Subsection 7-1-4105(1) MCA. “Finding-contract authority”.
- (4) Section 7-1-4124 MCA “Powers” of a municipality sets forth numerous powers of municipal governments that may be relevant to managing a revolving loan fund. Examples set forth in subsections of 7-1-4124 MCA include: power to (3) manage any interest in real or personal property; (4) contract with persons, corporations or any other governmental entity; (5) pay debts and expenses; (6) borrow money; (7) solicit and

accept bequests, donations, or grants of money, property, services or other advantages not contrary to the public interest; (8) execute documents necessary to receive money, property, services or other advantages from state or federal government or any other source; (9) make grants and loans of money, property and services for public purposes; (14) acquire by eminent domain any interest in property for public use authorized by law; (15) initiate a civil action to restrain or enjoin violation of an ordinance; (16) enter private property, obtaining warrants if necessary and (19) condemn and demolish hazardous structures.

- (5) Montana municipal government corporations are subject to Montana state audits pursuant to the “State of Montana Single Audit Act” set forth in title 2, chapter 7, part 5 MCA.
- (6) Title 7, chapter 6, part 6 MCA of Montana’s state financial administration and taxation laws for Montana local governments is entitled “LOCAL GOVERNMENT ACCOUNTING” and establishes accounting laws for Montana local governments.
- (7) Montana municipal government corporations are subject to the Montana “LOCAL GOVERNMENT BUDGET ACT” set forth in title 7, chapter 6 part 40 MCA
- (8) Section 7-6-4006 of the Montana “LOCAL GOVERNMENT BUDGET ACT” PROVIDES THAT A GOVERNING BODY MAY APPROPRIATE MONEY AND PROVIDE FOR THE PAYMENT OF DEBTS AND EXPENSES OF LOCAL GOVERNMENT AND ADJUST APPROPRIATIONS FOR “ANY FUND FOR FEDERAL, STATE, LOCAL, OR PRIVATE GRANTS AND SHARED REVENUE ACCEPTED AND APPROVED BY THE GOVERNING BODY”. See subsection 7-6-4006(3)(C) MCA.
- (9) Montana state law title 85, chapter 1, part 6 MCA is entitled “RENEWABLE RESOURCE GRANT AND LOAN PROGRAM” that establishes a renewable resource grant and loan program providing financial and administrative assistance to Montana local governments for renewable resource grant and loan projects. See section 85-1-601 MCA et. seq..
- (10) Subsections 7-33-2001 (5), (6) and (7) empower a fire chief to enter any property to take any action necessary to protect public health and safety and protect property or mitigate damage to property.
- (11) Section 1.04.3 of the applicable state fire code adopted by the City of Missoula authorizes/empowers city fire staff to enter any building or premises that they believe may be unsafe, dangerous or hazardous obtaining warrants if necessary.
- (12) Applicable state and city adopted building codes allow the city to act in response to life safety or health risks to the public through actions such as boarding windows or doors and placing a fence around safety hazards such as open excavations.

Based on these authorizations I conclude that the City of Missoula has the legal authority to perform the actions necessary to manage a revolving loan fund including, at minimum, the ability to hold funds, make loans, enter into loan agreements, and collect repayments.

Examples of Montana state law provisions that provide the City of Missoula as a self-government municipal corporation the necessary legal authority or power to access and secure sites in the event of an emergency or default of a loan agreement or non-performance under a subgrant include the following provisions of Montana state law; but is likely not an exhaustive list of potential statutory sources of municipal authority and power.

- (1) Section 7-1-4124 MCA “Powers” of a municipality sets forth numerous powers of municipal governments that establish local authority to (15) initiate a civil action to restrain or enjoin violation of an ordinance; (16) enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety; (19) condemn and demolish hazardous structures;
- (2) Missoula has, under interlocal agreement with Missoula County, consistent with MCA title 50, chapter 2, section 106 et seq established a City-County Board of Health, as well as a water quality district (MCA 75-5-311) and air quality pollution board (75-2-301). The water quality district and air pollution control board have quasi-judicial authority over air and water quality within their jurisdictions. The Health Department is entitled under MCA title 50, chapter 2, section 118, to “make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the condition.”
- (3) Under municipal code Section 13.26.110 the Health Department is authorized to inspect facilities and procure warrants for entry to facilities handling Regulated Substances “in the interest public health, safety, and general welfare.”
- (4) City fire department staff are empowered to enter private property pursuant to both Montana State law as well as applicable fire code to protect public health and safety. See 7-33-2001 (5), (6) and (7) MCA and Section 1.04.3 of the applicable state fire code.
- (5) State and city adopted building codes also allow city building officials to enter private property to address life safety and health problems as well as to fence hazards.

Based on these authorizations I conclude that the City of Missoula has the necessary legal authority to access and secure sites in the event of an emergency or default of a loan agreement or non-performance under a subgrant.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

JN:ka