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Legal Opinion 2021-004

TO: Mayor John Engen; City Council, Marty Rehbein, Kirsten Hands, Rob Gannon, Leigh Griffing, Ross Mullenhauer, Jeremy Keene, Eran Pehan

CC: Department Attorney

FROM: City Attorney, Jim Nugent

DATE: February 24, 2021

RE: 7-8-4201 MCA requires that sale of city property must be by ordinance or resolution approved by at least two-thirds of entire city council.

FACTS:

Soon, City of Missoula will be selling three parcels of city Missoula Water property that are no longer needed by Missoula Water's operations.

ISSUE(S):

What are the statutory requirements applicable to the disposal/sale/transfer of city owned property?

CONCLUSION(S):

Pursuant to subsections 7-8-4201(1) & (2) MCA the disposal/sale/transfer of ownership of city owned real property must be pursuant to either an ordinance or resolution that is passed by two-thirds of the entire city council.

LEGAL DISCUSSION:

TITLE 7, CHAPTER 8, PART 42 OF Montana municipal government law is entitled "DISPOSAL OR LEASE OF MUNICIPAL PROPERTY-ELECTION." Pursuant to subsections 7-8-4201(1) & (2) MCA a city may sell, dispose of, donate or lease any property belonging to the city pursuant to an ordinance or resolution passed by two-thirds of all members of the city council.

Section 7-8-4201 MCA provides in its entirety as follows:

“7-8-4201. Disposal or lease of municipal property -- election.

(1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, donate, or lease any property belonging to the city or town.

(2) (a) Except for property described in subsection (3), the lease, donation, or transfer must be made by an ordinance or resolution passed by a two-thirds vote of all members of the council.

(b) Except for property acquired by tax deed or property described in subsection (3), if the property is held in trust for a specific purpose, the sale or lease must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose. The election must be held in accordance with Title 13, chapter 1, part 4.

(3) If a city or town owns property containing a historically significant building or monument, the city or town may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:

(a) requires the property to be preserved in its present or restored state upon any subsequent transfer; and

(b) provides for the reversion of the property to the city or town for noncompliance with conditions attached to the transfer.

(4) This section may not be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city that were acquired for parks within the limitations prescribed by **7-16-4223**.

(5) A city or town may donate land or sell the land at a reduced price to a corporation for the purpose of constructing:

(a) a multifamily housing development operated by the corporation for low-income housing;

(b) single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.

(c) improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements.

(6) Land that is transferred pursuant to subsection (5) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.”

CONCLUSION(S):

Pursuant to subsections 7-8-4201(1) & (2) MCA the disposal/sale/transfer of ownership of city owned real property must be pursuant to either an ordinance or resolution that is passed by two-thirds of the entire city council.

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/s/ Jim Nugent
Jim Nugent, City Attorney

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