

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2021-007

**TO:** City Council, Department Mayor's Office, Department MRA, Department City Clerk, Leigh Griffing, Jeremy Keene, Eran Pehan, Donna Gaukler, Tiffany Brander, Kevin Slovarp, Troy Monroe, Mary McCrea, Brian Hensel, Angela Simonson

**CC:** Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** April 14, 2021

**RE:** A municipal governing body may bind its successors for reasonable length of time for public purposes. THE LAW OF LOCAL GOVERNMENT OPERATIONS by Charles S. Rhyne

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### FACTS:

A legal issue arose in city council administration and finance committee Wednesday April 7, 2021 pertaining to the continuity of a city contract continuing to exist even if successor elected officials now hold city council office.

### ISSUE:

May a city council governing body contractually bind successor city councils to contracts approved by a current city council?

### CONCLUSION:

Yes, historic settled court case law more than 100 years old; indicates that generally it is legal for a legislative body, such as a city council, to bind successor city council legislative bodies for a reasonable length of time for public purposes.

### LEGAL DISCUSSION:

THE LAW OF LOCAL GOVERNMENT OPERATIONS by Charles S. Rhyne, Published by The Law of Local Government Operations Project, Government Law Series is a 1,314 page book published in 1980 designed to meet the need for a restatement of the basic principles of law applicable to operations of MUNICIPAL local governments. Charles Rhyne served as attorney

and general counsel of the National Institute of Municipal Law Officers (NIMLO) for many years.

Charles Rhyne states in his volume, THE LAW OF LOCAL GOVERNMENT OPERATIONS, volume at chapter 27 entitled LOCAL GOVERNMENT CONTRACTS, pursuant to section 27.5 entitled POWER OF COUNCIL TO BIND SUCCESSORS-TIME AND PURPOSE LIMITATION, in pertinent part that:

“A municipal governing body may bind its successors by contracts for a reasonable length of time for public purposes, . . . .”

One of the court cases cited in footnote 99 for the above quoted statement is an 1897 City of Great Falls Montana Supreme Court case, State ex. Rel. Great Falls Waterworks v. Mayor of Great Falls, 19 Mont. 518,49 P 15(1897). The case involves the City of Great Falls, city council unsuccessfully attempting to repudiate a water contract; in a dispute about fire hydrant charges assessed for 251 fire hydrants by the private water company. The city did not assert any defects existed in any fire hydrants; and in response to an expressed concern that three of the fire hydrants were located outside the city limits, the Montana Supreme Court stated:

“So far as the three hydrants outside of the city limits are concerned, they may be so near the city limits as to be necessary at those points for the protection of the city.”

Also, in his 234 page legal volume entitled “MAYOR: CHIEF MUNICIPAL EXECUTIVE LAW”, Charles Rhyne states in chapter 11 entitled EXECUTIVE AND ADMINISTRATIVE POWERS, in section 11.11 entitled POWERS INVOLVING MUNICIPAL CONTRACTS, in pertinent part at page 92 that:

“The mayor may enter into a contract the time of performance of which will exceed his office term.”.

Obviously, for a variety of reasons there could be some legal grounds or legal basis for terminating a city council authorized contract with a private third party, such reasons might include; but are not limited to mutual cancellation, third party violation of the contract, non-performance of the contract, by the third party, identified reasons set forth in the contract, expiration of the contract with no renewal entered into, mutual agreement, etc..

However, basic legal principles intended to prevent arbitrary and capricious attempts by a city council as governing body could include such factors or legal principles as:

- (1) Orderly, uninterrupted continuity of government operations;
- (2) Third party vested rights in the contract being executed;
- (3) Third party detrimental reliance on the contract; or some provisions of the contract;
- (4) Third party proceeding in good faith to execute the contract; once it has been authorized and signed.;
- (5) Etc..

**CONCLUSION:**

Yes, historic settled court case law more than 100 years old; indicates that generally it is legal for a legislative body, such as a city council, to bind successor city council legislative bodies for a reasonable length of time for public purposes.

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/s/ Jim Nugent

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Jim Nugent, City Attorney

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