

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2010-012

TO: John Engen, Mayor; City Council; Bruce Bender, Ellen Buchanan, MRA Director; Chris Behan, MRA; Mark Muir, Chief of Police; Mike Brady, Assistant Chief of Police; Steve King, Public Works Director; Kevin Slovarp, City Engineer; Marty Rehbein, City Clerk; Nikki Rogers, Senior Deputy City Clerk; Donna Gaukler, Parks & Recreation Director; Jackie Corday, Open Space Manager; Mike Barton, OPG; Dan Jordan, GIS Manager

CC: Legal Staff

FROM: Jim Nugent, City Attorney

DATE August 25, 2010

RE: Montana state law pertaining to disposal or lease of municipal property must occur pursuant to adoption of either city council ordinance or resolution approved by two-thirds of all city council members

FACTS:

Wednesday, August 25, 2010 the Administration & Finance Committee will discuss potential disposal or lease of city owned land deemed to be excess land.

ISSUE:

What is statutorily required for the city council to dispose of or lease municipal real property?

CONCLUSION:

Generally pursuant to Mont. Code Ann. § 7-8-4201 entitled *Disposal and Lease of Municipal Property*, a lease or transfer of municipal property must be made by ordinance or resolution passed by a two-thirds vote of all members of the city council. Thus, at least eight Missoula City Council members must vote to adopt either an ordinance or resolution transferring ownership of City of Missoula owned municipal real property.

LEGAL DISCUSSION:

The 2009 Montana State Legislature amended Mont. Code Ann. § 7-8-4201 by inserting “donate” in subsection (1), “donation” in subsection (2), and new subsections (5) and (6).

Title 7, chapter 8, part 42 of Montana’s Municipal Government Statutes, entitled *Disposal and Lease of Municipal Property*, only has one section of law which provides:

7-8-4201. Disposal or lease of municipal property. (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 the 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 conjunction with a regular or primary election.

(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.

Pursuant to Mont. Code Ann. § 7-8-4201(2) it is generally required that the sale, other disposal or lease of municipal property "must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council." (Emphasis added.) Further, if the land is held in trust by the city for a specific purpose, sale or lease of the land must be approved by a majority vote of the city electorate.

It should also be noted that the Missoula City Council adopted ordinance provisions for in some cases converting or diverting open space lands purchased "with the intent to pursue limited development or to hold land for prospective trade or sale from which the proceeds shall be used for acquisition of open space real property." See 12.56.030(H) and 12.56.110 Missoula Municipal Code.

CONCLUSION:

Generally pursuant to Mont. Code Ann. § 7-8-4201 entitled *Disposal and Lease of Municipal Property*, a lease or transfer of municipal property must be made by ordinance or resolution passed by a two-thirds vote of all members of the city council. Thus, at least eight Missoula City Council members must vote to adopt either an ordinance or resolution transferring ownership of City of Missoula owned municipal real property.

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