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Legal Opinion 2010-010

TO: John Engen, Mayor; City Council; Bruce Bender; Ginny Merriam; Marty Rehbein; Nikki Rogers; Kelly Elam; Brentt Ramharter; Steve King; Kevin Slovarp; Jessica Miller

CC: Legal Staff

FROM: Jim Nugent, City Attorney

DATE: June 1, 2011

RE: Two-thirds of the entire City Council must approve general emergency ordinances.

FACTS:

Monday evening, May 23, 2011, only 10 city council members were present when a general emergency ordinance vote occurred. While 7 city council members voted in favor of the ordinance, and 3 against it, the majority city council vote was not sufficient to adopt the general emergency ordinance. At least 2/3 of the entire city council is required to vote for the emergency ordinance for it to go into effect.

ISSUES:

(1) How many city council member votes are necessary to adopt a general emergency ordinance?

CONCLUSIONS:

(1) Pursuant to 7-5-104 and 7-5-4204, MCA, a 2/3 vote of approval of the entire city council is required in order to adopt an emergency ordinance.

LEGAL DISCUSSION:

Two provisions of Montana municipal local government law address the required vote of approval necessary for a city council's adoption of an emergency ordinance.

Montana Code Annotated Title 7, chapter 5, part 1 is entitled *Local Government Ordinances, Resolutions, and Initiatives and Referendums*. Also, Title 7, chapter 2, part 42 is entitled *Municipal Ordinances and Resolutions*.

7-5-104. Emergency ordinance. In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole

governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days. (emphasis added).

7-5-4204. Details relating to emergency measures. In the case of emergency measures, the emergency must be expressed in the preamble or in the body of the measure and the measure must receive a two-thirds vote of all the members elected. In emergency ordinances, the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety and shall not include:

- (1) a franchise or license to a corporation or individual;
- (2) any provisions for the sale of real estate;
- (3) any lease or letting of any property for a period exceeding 1 year; or
- (4) the purchase or sale of personal property exceeding \$5,000 in value. (emphasis added).

Further, City Council Rule 28(B) pertaining to emergency ordinances states, “The ordinance (emergency) must receive a 2/3 vote of all members elected.”

7-5-104 MCA provides in pertinent part that an emergency ordinance shall recite the facts giving rise to the emergency, require a two-thirds vote of the whole governing body for passage, be effective on passage and approval, and remain effective for no more than 90 days.

7-5-4204 MCA also requires that the emergency be expressed in the preamble or body of the emergency ordinance, the emergency measure must receive a 2/3 vote of all members elected and shall include only such measures as are immediately necessary for the preservation of peace, health, and safety.

7-5-105 MCA pertains to the effective date for general municipal ordinances and provides that any ordinance, other than an emergency ordinance, shall not become effective until 30 days after adoption.

Pursuant to 76-2-306 MCA, an interim zoning ordinance, which is effective for 6 months, may be adopted by a majority vote of the city council members, but a 2/3 vote of approval is required for the city council to adopt an authorized 1 year extension of the interim ordinance.

76-2-306 MCA should not be confused with the general emergency ordinance laws set forth in 7-5-104 and 7-5-4204 MCA.

If the city council desires to adopt an emergency ordinance and continue it in effect beyond the statutory 90 day time period, the city council must adopt the regular ordinance within 60 days after adopting the emergency ordinance because it takes 30 days after adoption for a regular ordinance to go into effect.

CONCLUSIONS:

(1) Pursuant to 7-5-104 and 7-5-4204, MCA, a 2/3 vote of approval of the entire city council is required in order to adopt an emergency ordinance.

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Jim Nugent
City Attorney

JN:mdg