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Legal Opinion 2013-003

TO: John Engen, Mayor; City Council, Bruce Bender, Marty Rehbein, Denise Alexander, Mary McCrea, Kevin Slovarp, Gregg Wood, Laval Means, Tom Zavitz, Jenn Gress, Don Verrue, Nikki Rogers

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE: March 8, 2013

RE: A property owner may in writing withdraw a previously filed zoning protest at any time prior to final action on the zoning regulation amendment by the governing body.

FACTS:

It is anticipated that a significant number of protests will be submitted concerning proposed zoning regulation revisions concerning accessory dwelling units.

ISSUE(S):

May a property owner withdraw a protest to a zoning regulation amendment prior to the City Council taking final action on the proposed zoning regulation amendment?

CONCLUSION(S):

Yes, Montana municipal government state law expressly authorizes that “a person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.” See subsection 7-1-4132(4), MCA.

LEGAL DISCUSSION:

Title 7, Chapter 1, Part 41, MCA is entitled *Municipalities*. Mont. Code Ann. §7-1-4132 of Montana’s general municipal government statutes expressly authorizes that “a person may in writing withdraw a previously filed protest at any time prior to final action by a governing body.”

7-1-4132. Protest. (1) Whenever a protest is authorized, it is sufficient if it is in writing, signed, and contains the following:

(a) a description of the action protested sufficient to identify the action against which the protest is lodged;

(b) a statement of the protestor's qualifications to protest the action against which the protest is lodged, including ownership of property affected by the action; and

(c) the address of the person protesting.

(2) Protests shall be submitted as provided by law and ordinance. The person receiving protests for a municipality shall note on each protest the date it was received.

(3) A protest which contains the required information may be signed by more than one person. A protest signed by more than one person is a valid protest by each signer.

(4) A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

(5) Signers are encouraged to print their names after their signatures.

Another example of Montana Municipal government law allowing withdrawal of property owner protests before final action is subsection 7-12-4112(2) MCA of Montana Municipal Special Improvement District law where it is stated:

“(2) The council or commission may adjourn said hearing from time to time. Protestants shall have the right to withdraw protest or protests at any time before final action thereon by the council or commission.” (emphasis added)

It is common for protests to be allowed to be withdrawn prior to final city council action.

CONCLUSION(S):

Yes, Montana municipal government state law expressly authorizes that “a person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.” See subsection 7-1-4132(4), MCA.

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/s/

Jim Nugent, City Attorney

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