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Legal Opinion 2007-018

TO: Mayor John Engen, City Council, Bruce Bender, Rusty Wickman, Mark Muir, Roger Millar, Tim Worley, Mary McCrea, Denise Alexander, Pat Keiley, David Loomis, Mike Barton, Steve King, Kevin Slovarp, Don Verrue, Steve Meismer, Marty Rehbein, Nikki Rogers

cc: Legal Staff

FROM: Jim Nugent, City Attorney

DATE November 26, 2007

RE: Montana statutory protection of shooting range locations and investments

FACTS:

Recently in City Council Plat Annexation and Zoning (PAZ) Committee, several City Council member questions arose during the City Council review and discussion of the proposed Clark Fork Terrace no. 2 subdivision located near a shooting range near East Missoula.

ISSUES:

Does Montana state law provide any statutory protection for shooting range locations and investments?

CONCLUSION:

Yes, several Montana State statutes provide statutory protections for shooting range locations and investments, primarily sections 76-9-101 through 76-9-105 MCA provide statutory protection for shooting range locations and investments. Additional statutory protection exists for various aspects of shooting range activities pursuant to sections 45-8-111(5), 45-8-101(1)(d), 45-8-45(2), 7-5-2110(2)(b), and 7-5-2109(1)(b) MCA.

LEGAL DISCUSSION:

Title 76, chapter 9 MCA is entitled "Shooting Ranges." Title 76, Chapter 9, Part 1, MCA is entitled "Protection of Shooting Range Location and Investments." Sections 76-9-101 through 76-9-105 MCA of Title 76, chapter 9, part 1 provide as follows:

76-9-101. Policy. It is the policy of the state of Montana to provide for the health, safety, and welfare of the citizens of the state by promoting the safety and enjoyment of the shooting sports among the citizens of the state and by protecting the locations of and investment in shooting ranges for shotgun, archery, rifle, and pistol shooting.

76-9-102. Prohibitions. (1) Standards adopted by a state agency or unit of local government to limit levels of noise that may occur in the outdoor atmosphere may not apply to shooting ranges.

(2) Standards adopted by a state agency or unit of local government promulgated pursuant to Title 75 and concerning pollution by lead, copper, or brass may not limit or prohibit the operation of a shooting range because of lead, copper, or brass deposition resulting from shooting activities.

76-9-103. Planning -- effect on shooting ranges. The laws of this state concerning planning or growth policies, as defined in 76-1-103, may not be construed to authorize an ordinance, resolution, or rule that would:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but the ordinance, resolution, or rule may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges.

76-9-104. Zoning -- effect on shooting ranges. A planning district growth policy, recommendation, resolution, rule, or zoning designation may not:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but it may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges.

76-9-105. Closure of shooting ranges -- limitations -- relocation cost.

(1) Except as provided in subsection (2), an established shooting range may not be prevented from operation by a state agency, unit of local government, or court unless the range presents a clear and provable

safety hazard to the adjacent population.

(2) If a pressing public need exists because of incompatibility with nearby population or land use, an established shooting range may be relocated by an agency of state government, unit of local government, or court, but only if all of the following conditions are met:

(a) pressing public need is documented through hearings, testimony, and a clear and precise statement of need by the agency, unit of local government, or court involved;

(b) the agency or unit of local government obtaining the closure pays the appraised cost of the land together with improvements to the operators of the shooting range. In return the shooting range operators shall relinquish their interest in the property to the agency or unit of local government obtaining the closure.

(3) If a shooting range presents a clear and provable safety hazard to adjacent population, the range may be suspended from operation if:

(a) reasonable notice and opportunity to respond are afforded the range operators; and

(b) reasonable opportunity is afforded the range operators to correct any safety defects. (Emphasis added.)

In summary, Sections 76-9-101 through 76-9-105 MCA are set forth and pertain to topics such as:

(1) Declaration of a state policy protecting the locations of and investment in shooting ranges for shotgun, archery, rifle, and pistol shooting;

(2) Statutory prohibition against local governments adopting noise standards that may occur in outdoor atmosphere that may not apply to shooting ranges;

(3) Statutory prohibition against local government adopting pollution standards pertaining to lead, copper, or brass pollution that limit or prohibit operation of a shooting ranger because of lead, copper, or brass resulting from shooting activities;

(4) Laws of the state of Montana pertaining to planning or growth policies “may not be construed to authorize an ordinance or resolution that would either prevent the operation of an existing shooting range as a nonconforming use or prohibit the establishment of new shooting ranges; but construction of shooting ranges may be limited to specified zones;

(5) A law providing that a planning district growth policy recommendation, resolution, rule, or shooting designation may not prevent the operation of an existing shooting range as a nonconforming use and may not prohibit the establishment of new shooting ranges, but may limit them to specified zones;

(6) A law providing that “an established shooting range may not be prevented from operation by a state agency, unit of local government, or court unless the range presents a cleat and provable safety hazard to the adjacent population.”

(7) “If a pressing public need exists because of incompatibility with nearby population or land use, an established shooting range may be relocated by an agency of state government, unit of local government, or court;” but only the pressing public need is documented through hearings, testimony, and a clear and precise statement of

the need and the government agency “obtaining the closure pays the appraised cost of the land together with improvements to the operators of the shooting range.”

The above referenced Montana laws were originally enacted in 1991. A couple of sections have been amended a couple of times over the years. In addition, there are other Montana statutory provisions that provide statutory protections for various aspects of shooting ranges. Subsection 45-8-111(5) MCA of Montana’s Criminal Code pertaining to public nuisances provides that “(5) noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance.” (Emphasis added.)

Also, subsection 45-8-101(1)(d) MCA of Montana’s Criminal Code provides that while the discharge of a firearm may be a disorderly conduct, it may not be disorderly conduct to discharge a firearm “at a shooting range during established hours of operation.” Subsection 45-8-343(2) MCA pertaining to generally prohibiting the shooting or firing of guns within the limits of a city provides that “(2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town or city or in a private dwelling if the shooting range is approved by the local governing body.”

Subsection 7-5-2110(2)(b) MCA pertaining to “community decay” provides that “community decay” may not be construed or defined to apply to “(b) normal activities of a shooting range.” (Emphasis added.” Also, pursuant to subsection 7-5-2109(1)(b) MCA a county litter ordinance “does not apply to lead, copper, or brass deposits directly resulting from shooting activities at a shooting range.” (Emphasis added.)

CONCLUSION:

Yes, several Montana State statutes provide statutory protections for shooting range locations and investments, primarily sections 76-9-101 through 76-9-105 MCA provide statutory protection for shooting range locations and investments. Additional statutory protection exists for various aspects of shooting range activities pursuant to sections 45-8-111(5), 45-8-101(1)(d), 45-8-45(2), 7-5-2110(2)(b), and 7-5-2109(1)(b) MCA.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

JN:mdg