

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2014-031

TO: Mayor John Engen; City Council; Bruce Bender; Dale Bickell; Leigh Griffing; Mike Haynes; Jessica Morriss; Marty Rehbein; Ginny Merriam; Kevin Slovarp; Jessica Miller; and Doug Harby

CC: Legal Department Staff

FROM: Jim Nugent, City Attorney

DATE: November 17, 2014

RE: Protestants to propose special district improvement district shall have the statutory right to withdraw protest or protests at any time before final action thereon by the City Council.

FACTS:

The City of Missoula is currently considering a special improvement district to partially fund street improvements to Hill View Way. A public hearing on the proposed special improvement district occurs Monday evening, November 17, 2017.

ISSUE:

If real property owners protest a proposed special improvement district, may those protestors withdraw their protest?

CONCLUSION:

Yes, pursuant to multiple sections of Montana state law, a real property owner filing a protest may withdraw their protest. Most specifically with respect to proposed special improvement districts, subsection 7-12-4112(2) MCA specifically authorizes real property owners to withdraw their protests at any time before final action is taken by the city council on the proposed special improvement district.

LEGAL DISCUSSION:

Montana's municipal special improvement district laws are set forth in title 7, chapter 12, parts 41 and 42 Montana Code Annotated (MCA). Section 7-12-4112 MCA is entitled "HEARING ON PROTEST". Pursuant to subsection 7-12-4112(2) MCA a statutory right is created to allow a

real property owner protesting the creation of a special improvement district (SID) to withdraw their protest at any time before final action is taken by the city council. Section 7-12-4112 MCA provides as follows:

- 7-12-4112. Hearing on protest.** (1) At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.
- (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.
- (3) In determining whether or not sufficient protests have been filed on a proposed district to prevent further proceedings therein, property owned by a county, city, or town shall be considered to the same effect as other property in the proposed district. More generally, Montana municipal law, pursuant to subsection 7-1-4132(6) MCA allows a person in writing to withdraw their previously filed protest at any time prior to final action by the governing body. (emphasis added)

Section 7-1-4132 MCA provides as follows:

- 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. (emphasis added)

CONCLUSION:

Yes, pursuant to multiple sections of Montana state law, a real property owner filing a protest may withdraw their protest. Most specifically with respect to proposed special improvement districts, subsection 7-12-4112(2) MCA specifically authorizes real property owners to withdraw their protests at any time before final action is taken by the city council on the proposed special improvement district.

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/s/ _____
Jim Nugent, City Attorney

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