

CHAPTER VI
MUNICIPAL PROPERTY AND CONTRACTS

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6.1 Real and Personal Property

- 6.101 Municipal Property Defined
- 6.102 Authority for a Municipality to Acquire, Own and Dispose of Property
- 6.103 Acquiring Personal Property
- 6.104 Cooperative Acquisition and Use of Personal Property
- 6.105 Disposing of Personal Property
- 6.106 Acquiring Real Property by Purchase or Gift
- 6.107 Acquiring Real Property by Eminent Domain
- 6.108 Disposing of Real Property

6.2 Municipal Contracts

- 6.201 Authority to Enter Into and Execute Contracts

6.1 REAL AND PERSONAL PROPERTY

6.101 Municipal Property Defined

For most municipal purposes there are two classes of tangible property: “real property” and “personal property.” *Real property includes land and whatever buildings, or structures (appurtenances) are affixed to land and whatever is growing upon the land, [70-1-106, MCA](#). Personal property is, in general, all property other than real property and includes, among other tangible things, a municipality’s capital equipment, as discussed below.*

6.102 Authority for a Municipality to Acquire, Own and Dispose of Property

Montana law [7-1-4124, MCA](#) delegates broad authority to municipalities to: “buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in *real or personal property*.”

However, there are a number of legally required procedures that must be followed in acquiring or disposing of municipal property. These procedures are identified and described below for the more common transactions involving municipal property.

6.103 Acquiring Personal Property

Most personal property, such as operating equipment (fire engines, police cruisers, office equipment and construction equipment, etc.) is acquired by a city or town by means of a purchase transaction. However, the law requires that if the equipment (or materials or supplies) cost *more than \$80,000, purchase must be by means of advertised, competitive bid, [7-5-4302, MCA](#).*

The procedures for *purchasing property by bid* are set forth explicitly in the statute, as follows:

- The advertisement must be published as provided in [7-1-4127, MCA](#), and the second publication must be made not less than 5 days or more than 12 days before the consideration of bids. If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for considering bids.
- The council may:
 - a) Postpone awarding a contract until the next regular meetings after bids are received in response to the advertisement;
 - b) Reject any or all bids; and
 - c) Re-advertise as provided in this section.
- Exceptions to the required bid procedure include purchases made under specified emergency circumstances and *with the approval of a three-fourths majority of the council present*. Additionally, a bid process is not required when purchasing equipment or supplies from a government agency at a substantial savings to the city or town, [7-5-4303, MCA](#). Finally, the Attorney General has held that municipalities may purchase goods and services through cooperative purchasing with the state as set forth in Title 18. (51 A.G. Op. 15 (2002)).
- The terms of a contract for purchase of property that extends for a period of *five years or more must be submitted to the voters, [7-5-4304, MCA](#).*
- When the amount to be paid under an *installment purchase contract* exceeds \$4,000, the council may provide for the payment of the amount in installments extending over a period of not more than 10 years, [7-5-4306, MCA](#).
- In lieu of soliciting bids, the council may *purchase at public auction* any vehicle, machinery,

appliances, apparatus, building, or materials and supplies for which must be paid a sum of \$50,000 or less, [7-5-4310, MCA](#).

In addition to the purchase of property, a city or town may also acquire real or personal property as a *gift, grant, donation or bequest*. However, such property shall be administered and *used by the city or town for the particular purpose* for which the same was given, donated, granted, devised, or bequeathed. In the event no particular purpose is mentioned in such gift, donation, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of the city or town, [7-8-103, MCA](#).

6.104 Interlocal Agreements to Acquire and Use Goods and Services

Montana law [7-11-102, MCA](#) enables municipal governments to cooperate with other local government units to provide services and facilities more efficiently than would otherwise be possible. By means of an *interlocal agreement* the details of the cooperative undertaking are reduced to writing in the form of a contract, the required contents of which are set forth in detail in [7-11-105, MCA](#). State law directs that interlocal agreements must be filed with the county clerk and recorder and the office of the Montana Secretary of State, [7-11-107, MCA](#).

An example of a long-standing and successful interlocal agreement to acquire and cooperatively share the use of expensive equipment is provided by the cooperating cities of Conrad and Shelby. Colstrip also utilizes shared service agreements with the Colstrip School District and the Colstrip Park District to the benefit of their taxpayers.

6.105 Disposing of Property

A city or town council may sell, dispose of, or lease any property belonging to the city or town by adoption of an ordinance or resolution *passed by a two-thirds vote of all the members of the council*, [7-8-4201, MCA](#).

Old supplies or equipment may be sold by the city or town to the *highest responsible bidder after calling for bid purchasers* as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price, [7-5-4307, MCA](#). A city or town may *trade* with or purchase from any county or political subdivision any property without an appraisal of the property, [7-8-101\(3\)\(b\), MCA](#).

The legal requirements imposed upon sale of municipal property are less stringent than on the sale of property by a county government. In the interests of caution or in highly controversial circumstances, a municipality may wish to follow the procedures legally required of county governments in the sale of personal municipal property:

- The sale of any personal property with a value greater than \$2,500 would be preceded by a competent appraisal of the fair market value of the property.

Property with a value greater than \$2,500 would be sold at public auction noticed as provided at [7-1-4127, MCA](#). If no acceptable bid is received at the public auction, the council could instead approve a private sale of the property at no less than 70 percent of the appraised value of the property.

Municipal property should not be sold to officials or employees of the municipal government except at a properly noticed public auction, [2-2-104](#) and [7-5-4109, MCA](#), to avoid the potential for a real or perceived conflict of interest.

6.106 Acquiring Real Property by Purchase or Gift

A municipal government may also acquire real property by purchasing it from the owner or by receiving it as a gift, grant donation or bequest. Again, in the interests of caution or in highly controversial circumstances, a municipality may wish to follow the procedures legally required of county governments in the acquisition of real property.

- Real property with a value in excess of \$20,000 *may not be purchased unless it has been previously appraised by a disinterested “certified general real estate appraiser” or three disinterested citizens of the county appointed by the district judge.*
- The government *may not pay more than the appraised value* for the real property.

If real property is to be received as a gift, grant donation or bequest, the real property must be administered and *used for the particular purpose* for which the property was given, donated, granted, devised, or bequeathed. In the event no particular purpose is mentioned in such gift, donation, grant, devise, or bequest, then the property shall be used for the general support, maintenance, or improvement of the city or town, [7-8-103, MCA](#).

6.107 Acquiring Real Property by Eminent Domain

Montana law [7-5-4106, MCA](#) enables municipal governments to condemn private property for certain public purposes, which are enumerated in [70-30-102, MCA](#). The legal processes required of a city or town government to exercise its power of eminent domain are set forth in numerous sections of law depending upon the public purpose to be served by the taking of private property. Hence, a review of the legally sufficient purposes and processes required for the lawful exercise of a municipality’s power of eminent domain are beyond the scope of this handbook and require the involvement of experienced legal counsel.

6.108 Disposing of Real Property

A city or town council may sell, dispose of, or lease any property belonging to the city or town by adoption of an ordinance or resolution *passed by a two-thirds vote of all the members of the council*, [7-8-4201, MCA](#). However, if the property is held in trust for a specific purpose, (such as a cemetery or park land) 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.

Although subsection [\(7-8-4201\(2\)\(a\), MCA](#) requires a two-thirds vote of the city commission to sell city land, *a city with self-governing powers may enact a superseding ordinance allowing the sale of city land by a simple majority vote* [43 A.G. Op. 41 (1989)]. “After analyzing subsection (2)(b) of this section, the Attorney General applied the same analysis and conclusion to allow the governing body of a *local government unit with self-governing powers to enact an ordinance providing for the disposition by majority vote of the council of property held in trust for a specific purpose.*” [43 A.G. Op. 55 (1990)].

Prudent municipal officials will seek a review and interpretation by the city attorney of this A.G. Opinion before proceeding with the sale of real property held in trust by a city or town.

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, [7-8-4201\(3\), MCA](#). The contract for the transfer of the property must contain a provision that requires the property to be preserved in its present or restored state upon any subsequent transfer; and

provides for the reversion of the property to the city or town for noncompliance with conditions attached to the transfer.

As is the case in the sale of personal property by a municipality, the legal requirements imposed upon sale of municipal real property are less stringent than on the sale of real property by a county government. However, in certain circumstances, a municipality may wish to observe the procedures legally required of county governments in the sale of personal property set forth above in the sale of municipal real property, as well.

6.2 MUNICIPAL CONTRACTS

6.201 Authority to Enter Into and Execute Contracts

A city or town is authorized to make any contracts necessary to carry into effect the applicable powers granted by this chapter and to provide for the manner of executing the contracts [7-1-4124\(4\)](#) and [7-5-4301, MCA](#).

All municipal contracts for goods or services should be drafted by the city attorney for review and approval by the city or town council prior to execution by the mayor or chief executive

As detailed in Section 6.103, a contract for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, equipment, or materials or supplies for construction, repair, or maintenance in excess of \$80,000 must be given to the lowest responsible bidder after advertisement for bids. A public work or construction project may not be divided into multiple contracts or separate work orders in an attempt to circumvent the competitive bidding requirements, [7-5-4305, MCA](#). Energy performance contracts and the solicitation and award of an investment grade energy audit are exempt from these competitive bidding requirements, [7-5-4315, MCA](#).

With certain limited exceptions, a contract for services must not extend beyond five years [7-5-4304, MCA](#). Printing contracts must be let annually, [7-5-4108, MCA](#).

The mayor, any member of the council, any city or town officer, or any relative or employee of an enumerated officer may not be directly or indirectly interested in the profits of any contract entered into by the council while the officer is or was in office. The requirements that must be met to waive this prohibition are set forth in detail at [7-5-4109, MCA](#).