

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2020-015

**TO:** Mayor John Engen, Dale Bickell, Ellen Buchanan, Tiffany Brander, Jaeson White, Scott Hoffman and Laurie Clark

**CC:** Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** October 28, 2020

**RE:** Montana state law and Missoula Municipal Code require the municipal legislative body (city council) to clearly specify areas within the city within which the parking commission is to have jurisdiction and control.

### **FACTS:**

A recent discussion with Dale Bickell and Ellen Buchanan in part pertained to City of Missoula parking commission jurisdiction to issue parking violation citations in the geographic area west of the Orange Street bridge and south of west Front street in the context of potential future development opportunities in that geographic area. Various development hypothetical options were discussed that included a potential desire to have the City of Missoula parking commission potentially be responsible for administering and managing parking areas in the geographic area, including issuance of parking violation citations. It was recognized that bond counsel for city development bonds in the area must be included in parking enforcement discussions based on parking commission revenues to retire those development bonds.

Also, it was noted that several weeks ago the city parking commission had issued a parking violation citation in that geographic area and the person receiving the parking violation citation challenged the legality of the parking commission to be issuing parking violation citations in that geographic area; because the city council had not authorized the parking commission to issue parking violation citations in that geographic area.

### **ISSUE(S):**

What is Montana law with respect to establishing city parking commission jurisdiction to issue parking violation citations?

## **CONCLUSION(S):**

Montana state law section 7-14-4608 MCA provides that the municipal legislative body (city council) shall clearly specify areas within the city where the parking commission is to have jurisdiction and control. In addition, the Missoula City Council has established the jurisdictional area of the parking commission pursuant to Exhibit A attached to section 10.22.240 Missoula Municipal Code.

## **LEGAL DISCUSSION:**

Title 7, chapter 14, part 46 MCA is entitled “PARKING COMMISSIONS”. Section 7-14-4608 is entitled “ADOPTION OF RESOLUTIONS---JURISDICTIONAL AREA”. Section 7-14-4608 MCA states as follows:

7-14-4608. ADOPTION OF RESOLUTIONS---JURISDICTIONAL AREA. Either or both such resolutions referred to in 7-14-4606 and 7-14-4607 may be ADOPTED BY THE LEGISLATIVE BODY OF A CITY. If both such resolutions are adopted, they SHALL CLEARLY SPECIFY AREAS WITHIN THE CITY LESS THAN THE WHOLE THEREOF, WITHIN WHICH OR PROJECTS OVER WHICH THE COMMISSION AND THE CITY RESPECTIVELY, ARE TO HAVE JURISDICTION AND CONTROL. THE DIVISION OF SUCH JURISDICTION AND CONTROL SHALL BE AS SO SPECIFIED but may be changed from time to time BY ACTION OF BOTH THE LEGISLATIVE BODY AND THE COMMISSION TO SUCH EXTENT AS MAY BE CONSISTENT WITH OBLIGATIONS TO BONDHOLDERS assumed under this part.” (emphasis added)

Sections 7-14-4606 and 46-14-4607 MCA that are cross referenced to within section 7-14-4608 MCA provide as follows:

7-14-4606. RESOLUTION OF NEED REQUIRED. A city shall not transact any business or exercise any powers of this part unless and until the legislative body of the city shall by resolution declare that there is need for such city to exercise the powers of a parking commission as provided in this part.”

7-14-4607. RESOLUTION OF PARKING COMMISSION TO FUNCTION. In any suit, action, or proceeding by or against or in any manner relating to a parking commission, the commission shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of a resolution by the legislative body declaring the need for the commission to function.

Pursuant to the municipal form of city government adopted by the electors/voters of the City of Missoula, the Missoula City Council is the legislative body of the City of Missoula.

Sections 10.22.230 and 10.22.240 Missoula Municipal Code are two important sections of Missoula Municipal Code pertaining to City of Missoula parking commission jurisdiction and control. These two sections of Missoula Municipal Code provide as follows:

**10.22.230 Parking commission--Rulemaking power--Enforcement authority.**

A. The Parking Commission, within the limits of its authority, is empowered to regulate on-street and off-street parking, subject to traffic regulations imposed by the state and city. This power is to include but is not limited to:

1. Parking regulation;
2. Variable parking duration;
3. Variable parking rate schedules; and
4. Enforcement procedures.

B. The Commission is further empowered to make temporary regulations to cover emergencies or special conditions.

C. All such regulations shall be enforced by the Missoula Parking Commission.

A. Any fines assessed for the violations of ordinances established by the City Council shall be managed administratively – as a civil infraction by the Parking Commission and deposited as revenue for the Parking Commission. Within 30 days of the issuance of the citation, any owner of a motor vehicle that has received a parking violation citation may request that the citation be forwarded to the Municipal Court for filing. The Parking Commission shall forward the citation to the Municipal Court within 10 days of the request. The Parking Commission shall notify the owner that the citation has been filed with the Municipal Court upon transmittal. The owner shall appear before the Municipal Court within 10 days. Fines collected by the Municipal Court shall be deposited as revenue for the Parking Commission. (Ord. 3565, 2016; Ord. 3467, 2011; Ord. 2693 §4, 1989; Ord. 2075 §6, 1979; prior code §20-118.1).

**10.22.240 Parking commission--Jurisdictional area** The Missoula parking commission, created pursuant to Resolution Nos. 2997 and 2998, shall have jurisdiction to impose and enforce its regulations and exercise its powers as delegated by Title 7, Chapter 14, MCA, and this code within the boundaries outlined in [Exhibit A](#). (Ord. 3523, 2014; Ord. 3513, 2013; Ord. 3467, 2011; Ord. 3222, 2003; Ord. 3212, 2002; Ord. 2884 §1, 1994; Ord. 2862 §1, 1993; Ord. 2512 §1, 1986; Ord. 2314 §1, 1983).

**CONCLUSION(S):**

Montana state law section 7-14-4608 MCA provides that the municipal legislative body (city council) shall clearly specify areas within the city where the parking commission is to have jurisdiction and control. In addition, the Missoula City Council has established the jurisdictional area of the parking commission pursuant to Exhibit A attached to section 10.22.240 Missoula Municipal Code.

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/s/

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Jim Nugent, City Attorney

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