

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2010-014

**TO:** John Engen, Mayor; City Council; Bruce Bender, Chief Administrative Officer; Steve King, Public Works Director; Kevin Slovarp, City Engineer; Gregg Wood, Project Development Coordinator; Phil Smith, Bicycle Pedestrian Program Manager; Mark Muir, Police Chief; Chris Odlin, Police Captain; Gregg Willoughby, Police Captain; Scott Hoffman, Police Captain; Laurie Clark, Administrative Services Manager; Anne Guest, Missoula Parking Commission Director; Donna Gaukler, Missoula Parks & Recreation Director

**CC:** Legal Staff

**FROM:** Jim Nugent, City Attorney

**DATE** December 7, 2010

**RE:** Montana state law pertaining to operating a bicycle on public sidewalks

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### **FACTS:**

There is again discussion in the community, including news media, regarding bicyclists riding on public sidewalks. It is important for city officials to be aware of state traffic regulations pertinent to bicycles on public sidewalks.

### **ISSUES:**

1. Do state traffic regulations allow the operation of a bicycle on public sidewalks?
2. What requirements or standards exist with respect to official traffic control signage?
3. May a local government adopt a local ordinance that directly conflicts with state traffic regulations?

### **CONCLUSIONS:**

1. Yes, Mont. Code Ann. § 61-8-608 entitled *Bicycles on sidewalks* allows bicyclists to operate a bicycle upon a public sidewalk except where “prohibited by official traffic control devices.”

2. Pursuant to Mont. Code Ann. § 61-8-201(2), traffic control device violations may not be enforced if the traffic control device “is not in proper position and sufficiently legible or visible to be seen by an ordinarily observant person.” Pursuant to § 61-8-102(2)(l) *official traffic control devices* means: “all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.”
3. No, Mont. Code Ann. § 61-12-101(14) provides that local authorities may not enact ordinances regulating vehicles “in conflict with state law or federal regulations.”

#### **LEGAL DISCUSSION:**

Title 61, chapter 8, part 6, Montana Code Annotated is entitled *Bicycle Traffic*. Mont. Code Ann. § 61-8-608 entitled *Bicycles on sidewalks*, provides:

**61-8-608. Bicycles on sidewalks.** (1) A person operating a bicycle upon and along a sidewalk or across a roadway upon and along a crosswalk shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing any pedestrian.

(2) A person may not ride a bicycle upon and along a sidewalk or across a roadway upon and along a crosswalk where the use of a bicycle is prohibited by official traffic control devices.

(3) Except as provided in subsections (1) and (2), a person operating a vehicle by human power upon and along a sidewalk or across a roadway upon and along a crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances. (Emphasis added.)

Title 61, chapter 8, part 2, Montana Code Annotated is entitled *Traffic control devices*. Mont. Code Ann. § 61-8-201 entitled *Obedience to traffic control devices*, provides:

**61-8-201. Obedience to traffic control devices -- exception for certain vehicles and funeral processions.** (1) Unless otherwise directed by a peace officer, flag person, crossing guard, or public safety worker, the driver of a vehicle shall obey the instructions of an official traffic control device applicable to the driver's vehicle and placed in accordance with the provisions of this chapter. The driver of an authorized emergency vehicle, a police vehicle, or a highway patrol vehicle and the driver of a motor vehicle in a funeral procession are exempt from obedience to official traffic control devices and flag persons as provided in this chapter.

(2) A provision of this chapter for which traffic control devices or flag persons are required may not be enforced against an alleged violator if at the time and place of the alleged violation an official traffic control device or flag person is not in proper position and sufficiently legible or visible to be seen by an ordinarily observant person. Whenever a particular section of this chapter does not state that

official traffic control devices or flag persons are required, the section is effective even though traffic control devices are not erected or in place.

(3) Official traffic control devices or flag persons that are placed or held in position substantially conforming to the requirements of this chapter and the requirements of the uniform system adopted by the department of transportation pursuant to 61-8-202 are presumed to have been placed by an official act or at the discretion of a lawful authority. (Emphasis added.)

This statute ensures and provides for basic due process notice being afforded to anyone accused of violating a traffic regulation for which there should be traffic signage such as § 61-8-608(2) providing “a person may not ride a bicycle upon and along a sidewalk . . . where the use of a bicycle is prohibited by official traffic control devices.” It is basic elementary fairness that reasonable public notice, legible and visible, readily able to be seen by an ordinarily observant person, be in existence at the site of the alleged traffic regulation offense. Mont. Code Ann. § 61-8-102(2)(1) defines *official traffic control devices* as “all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.”

Mont. Code Ann. § 61-8-102(2)(1) defines *official traffic control devices* as: “all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.”

Title 61, chapter 12, part 1, Montana Code Annotated is entitled *Powers of local authorities*. Mont. Code Ann. § 61-12-101(14) provides:

**61-12-101. Powers of local authorities to regulate traffic.** The provisions of chapters 8 and 9 do not prevent local authorities with respect to sidewalks, streets, and highways under their jurisdiction and within the reasonable exercise of the police power from: . . .

(14) enacting as ordinances any provisions of chapter 8 or 9 and any other law regulating traffic, pedestrians, vehicles, and operators of vehicles that are not in conflict with state law or federal regulations and enforcing the ordinances; (Emphasis added.)

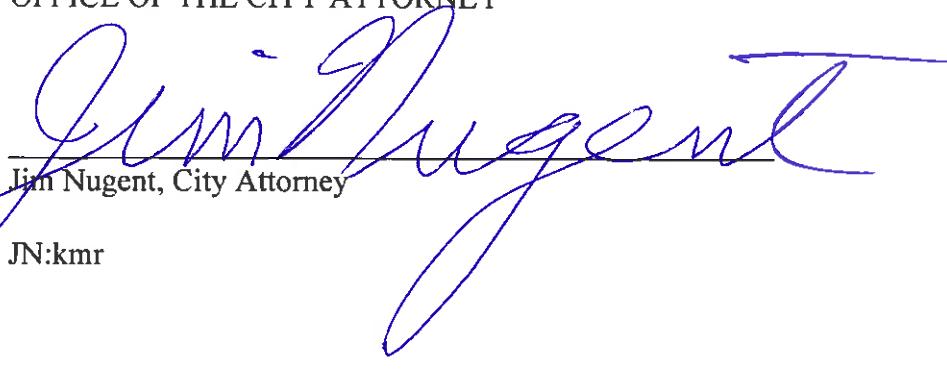
Pursuant to § 61-12-101(14), a local government may not enact ordinances that conflict with the provisions of state traffic regulation law such as Mont. Code Ann. § 61-8-608 *Bicycles on sidewalks*.

## **CONCLUSIONS:**

1. Yes, Mont. Code Ann. § 61-8-608 entitled *Bicycles on sidewalks* allows bicyclists to operate a bicycle upon a public sidewalk except where “prohibited by official traffic control devices.”

2. Pursuant to Mont. Code Ann. § 61-8-201(2), traffic control device violations may not be enforced if the traffic control device “is not in proper position and sufficiently legible or visible to be seen by an ordinarily observant person.” Pursuant to § 61-8-102(2)(l) official traffic control devices means: “all signs, signals, markings, and devices not inconsistent with this title that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.”
3. No, Mont. Code Ann. § 61-12-101(14) provides that local authorities may not enact ordinances regulating vehicles “in conflict with state law or federal regulations.”

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