

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2012-13

**TO:** John Engen, Mayor; City Council; Anne Guest, Bruce Bender, Marty Rehbein, Steve King, Kevin Slovarp, Gregg Wood, Jessica Miller, Wayne Gravatt, Mark Muir, Mike Brady, Chris Odlin, Jason Diehl, Ellen Buchanan, Chris Behan, Donna Gaukler

**CC:** Legal Staff

**FROM:** Jim Nugent, City Attorney

**DATE** September 27, 2012

**RE:** Procedure for establishing residential on-street parking permit districts pursuant to Missoula Municipal Code Sections 10.22.250 through 10.22.290 MMC.

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### **FACTS:**

There currently is some city council interest in the establishment of new additional residential on-street parking permit districts pursuant to sections 10.22.050 through 10.22.290 MMC and/or expansion of the existing University of Montana residential on-street parking permit regulation program boundaries pursuant to section 10.22.300 MMC.

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

Pursuant to existing Missoula Municipal Code (MMC) provisions what are some of the important key factors to include in any consideration of establishment of another and/or expansion of an existing residential on street parking permit regulation program?

### **CONCLUSION(S):**

Some of the important key factors for the city council to consider pursuant to its ordinance provisions with respect to establishing another and/or expanding an existing residential on-street parking permit regulation program on public streets include; but are not necessarily limited to: (1) holding a public hearing on any residential parking permit proposal, (2) times of day and days of week to establish regulations, (3) consider if the residential neighborhood(s) is experiencing conditions such as (A) predominantly residential area near a nonresidential use that attracts significant motor vehicle commuter traffic; (B) area streets are regularly congested with hazardous traffic conditions, such as motor vehicles blocking pedestrian crosswalks, driveways

and alleys, ( C ) a residential area in which a significant number of residential dwelling units lack sufficient off street parking spaces to adequately serve resident needs, and (D) on street parking regulations are necessary to preserve the safety of children and pedestrians, (E) improve traffic safety, (F) reduce hazardous traffic conditions (G) improve peace and good order, convenience for residents and (H) preserve the character of the residential district; and (4) amend section 10.22.240 MMC establishing the parking commission's jurisdictional area to include any new areas for which a residential on-street parking permit program is established, if the area is not already included within the parking commission's jurisdictional area as established by City of Missoula City Council ordinance.

### **LEGAL DISCUSSION:**

Montana state law provides Montana municipalities with the power and authority to regulate traffic on public streets pursuant to Montana state laws such as sections 7-14-4102 and 61-12-101 MCA. Section 7-14-4102 MCA of Montana municipal transportation law provides:

The city or town council may:

- (1) regulate and prevent the use or obstruction of streets, sidewalks, and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction;
- (2) regulate and prohibit traffic and sales upon the streets, sidewalks, and public grounds;
- (3) regulate or prohibit the fast driving of horses, animals, or vehicles within the city or town;
- (4) provide for and regulate street crossings, curbs, and gutters;
- (5) prevent horseracing or immoderate driving or riding in the streets of the city or town and regulate and provide for the hitching of all animals on the streets;
- (6) regulate or prohibit coasting, skating, sliding, skateboarding, rollerblading, or tobogganing on the streets or alleys or other amusements dangerous or annoying to the inhabitants or having a tendency to frighten animals. (emphasis added)

Pursuant to section 61-12-101 MCA of Montana's general motor vehicle regulation laws, section 61-12-101 MCA provides:

1. 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:
  1. regulating the standing or parking of vehicles;
  2. regulating the traffic by means of police officers or traffic control devices;
  3. regulating or prohibiting processions or assemblages on the highways;
  4. designating particular highways as one-way highways and requiring that all vehicles on those highways be moved in one specific direction;
  5. regulating the speed of vehicles in public parks;
  6. designating any highway as a through highway, as defined in 61-8-341, and requiring that all vehicles stop before entering or crossing a through highway and designating any intersection, as defined in 61-8-102, as a stop intersection and requiring all vehicles to stop at one or more entrances to stop intersections;
  7. restricting the use of highways as authorized in 61-10-128(2);
  8. regulating the operation of bicycles, as defined in 61-8-102, and requiring the

registration and licensing of bicycles, including requiring a registration fee;

9. regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

10. altering the speed limits as authorized in Title 7, chapter 14, and Title 61, chapter 8;

11. regulating the operating of a vehicle by a person who is a habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree that renders the person incapable of safely operating a vehicle within the incorporated limits of any city or town;

12. regulating or prohibiting a person who is under the influence of intoxicating liquor from operating or being in actual physical control of a vehicle within the incorporated limits of a city or town;

13. regulating or prohibiting the operation of a vehicle by a person in willful or wanton disregard for the safety of persons or property within the incorporated limits of a city or town;

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;

15. regulating the operation of motorized nonstandard vehicles on sidewalks, streets, and highways; and

16. regulating the operation of golf carts on streets and highways. (emphasis added)

These two Montana state laws clearly and unambiguously grant power and authority to municipal governments to regulate motor vehicle traffic on the streets and alleys within its jurisdiction. It should also be noted that Montana Constitution, Article XI, section 4(2) also establishes a Montana Constitution mandate that a municipal local government's powers are to be liberally construed.

Sections 10.22.250 through 10.22.300 Missoula Municipal Code (MMC) currently set forth the procedure for establishing a residential public street on-street parking permit regulation program. Section 10.22.300 MMC specifically established the University of Montana residential on-street regulation program. Historically, pursuant to city ordinance 2480 enacted February 3, 1986, the City of Missoula enacted the procedure for establishing a public street residential on-street parking permit regulation program on public streets through the enactment of sections 10.22.250 through 10.22.290 MMC. Four (4) months later the City of Missoula City Council on June 2, 1986 enacted ordinance 2505 which enacted Missoula Municipal Code provision 10.22.300 MMC establishing the University of Montana on-street parking permit regulation program as well as appropriately amended existing Missoula Municipal Code section 10.22.240 MMC that establishes the City of Missoula parking commission jurisdictional area boundaries.

It should also be noted that the City of Missoula's on street residential permit parking program for the University of Montana area neighborhoods was upheld by the Montana Supreme Court. Associated Students of the University of Montana, et al. v. City of Missoula 261 Mont. 231, 86202d 380, 1993 Mont. LEXIS 304.

Section 10.22.250 MMC entitled “PROCEDURE FOR THE ESTABLISHMENT OF A RESIDENTIAL ON-STREET PARKING PERMIT REGULATION PROGRAM” sets forth several conditions that the residential area is experiencing that the city council is to consider when considering whether or not to establish a residential on-street parking permit regulation program for a geographical area. Section 10.22.250 MMC provides:

- A. Pursuant to the powers granted to local governments pursuant to Montana state law to regulate the standing or parking of vehicles on public streets, the city council may, after holding a public hearing on any residential parking permit proposal, create pursuant to ordinance areas of the city to be designated as residential parking permit areas during specified times of the day and week if the city council finds that the residential area under consideration for such a designation is experiencing some of the following conditions:
  1. Predominately residential in character near a nonresidential use that attracts significant volume motor vehicle commuter traffic;
  2. An area the streets of which, without motor vehicle regulation, are regularly congested with hazardous traffic conditions, with vehicles blocking pedestrian crosswalk areas, driveways and alleys as well as obstructing visibility of pedestrians and motorists at intersections;
  3. An area in which a significant number of residential dwelling units structures in the area lack sufficient off street parking spaces to adequately serve the motor vehicle parking needs of the residents of many of the residential dwelling units structures in the residential area who without the motor vehicle parking regulation may have unreasonable burdens in gaining access to their residences.
  4. An area where limiting the parking of vehicles along the public streets in the residential area to vehicles registered or controlled and exclusively used by persons residing in the residential area is necessary in order to preserve the safety of children and other pedestrians, improve traffic safety, reduce hazardous traffic conditions and better provide adequate motor vehicle parking for residents of the area as well as improve the peace, good order, comfort, convenience and welfare of the inhabitants and preserve the character of their residential district through control and reduction of litter, noise and air pollution.
- B. Any ordinance designating an area of the city as a residential permit parking area shall describe:
  1. The designated public street area along which parking will be limited to vehicles registered to or controlled and exclusively used by persons residing in the area;
  2. Hours of each day and days of each week that the residential parking permit regulations shall be in effect;
  3. How the regulation will primarily be enforced;

4. The number of street parking signs to be installed on each side of the street in each block to give notice to the vehicle motoring public of the existence of a residential parking permit regulation during certain hours of each day on certain days of the week;
5. The basis that will be used to determine the annual cost for purchasing a permit and the date by which a permit must be renewed each year;
6. The individuals eligible to purchase a permit;
7. Any special provisions or exceptions applicable to schools, churches, businesses, public park use, etc. within the residential area; and
8. Visitor permit or special gathering provisions for the residential area.

C. Upon adoption of any ordinance by the city council designating an area for residential parking permit only, the city public works department shall cause appropriate signs to be erected along the streets identified in the ordinance prior to any enforcement of the residential parking permit regulation. The street signs erected shall give notice of the nature of the parking limitation and shall indicate the hours and days when such parking limitations shall be in effect. (emphasis added)

Section 10.22.260 MMC entitled “LIMITATIONS ON PARKING IN A RESIDENTIAL PARKING PERMIT ONLY AREA “ provides as follows:

- A. It is unlawful for any person to stop, stand or park a vehicle on any street identified in an ordinance adopted by the city council designating an area a residential permit only parking area during the hours and on the days set forth in such ordinance, except in the following circumstances:
  1. Those vehicles displaying a valid residential parking permit for the area; or
  2. An emergency vehicle, including, but not limited to, an ambulance, fire engine or police vehicle; or
  3. A clearly marked business vehicle which is under the control of a person providing a service to persons or property located in the designated residential permit only parking area, including but not limited to a delivery vehicle.
- B. Anyone violating this section shall be subject to a twenty dollar fine. A ticket for a violation may be written every four hours. Imprisonment may not be a part of any penalty imposed for a violation of this section.

Sections 10.22.270 and 10.22.280 MMC pertain to the residential parking permit application procedure and parking permit form and issuance of the permit. Section 10.22.290 MMC entitled “DISPLAY OF RESIDENTIAL PARKING PERMITS REQUIRED” provides as follows:

Residential parking permits shall be displayed on vehicle in the place and in the manner prescribed by the parking commission director. It is unlawful to either fail to display or improperly display a residential parking permit, or to attempt to use a residential parking permit

from another area in a designated residential area. Anyone violating this section shall be subject to a twenty dollar fine. A ticket for a violation may be written every four hours. Imprisonment may not be a part of any penalty imposed for a violation of this section.

**CONCLUSION(S):**

Some of the important key factors for the city council to consider pursuant to its ordinance provisions with respect to establishing another and/or expanding an existing residential on-street parking permit regulation program on public streets include; but are not necessarily limited to: (1) holding a public hearing on any residential parking permit proposal, (2) times of day and days of week to establish regulations, (3) consider if the residential neighborhood(s) is experiencing conditions such as (A) predominantly residential area near a nonresidential use that attracts significant motor vehicle commuter traffic; (B) area streets are regularly congested with hazardous traffic conditions, such as motor vehicles blocking pedestrian crosswalks, driveways and alleys, (C) a residential area in which a significant number of residential dwelling units lack sufficient off street parking spaces to adequately serve resident needs, and (D) on street parking regulations are necessary to preserve the safety of children and pedestrians, (E) improve traffic safety, (F) reduce hazardous traffic conditions (G) improve peace and good order, convenience for residents and (H) preserve the character of the residential district; and (4) amend section 10.22.240 MMC establishing the parking commission's jurisdictional area to include any new areas for which a residential on-street parking permit program is established, if the area is not already included within the parking commission's jurisdictional area as established by City of Missoula City Council ordinance.

OFFICE OF THE CITY ATTORNEY

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