

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2014-016

**TO:** Mayor John Engen, City Council, Bruce Bender, Anne Guest, Marty Rehbein, Ellen Buchanan, Mike Brady, Scott Hoffman

**CC:** Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE** April 21, 2014

**RE:** City created Municipal Parking Commission powers pursuant to Montana State Law.

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### **FACTS:**

Monday evening April 14, 2014 at the Missoula City Council during the general public comment agenda portion of the regular meeting there were citizens commenting and expressing concerns pertaining to the City of Missoula parking commission powers with respect to parking meters. The purpose of this legal opinion is to provide city elected officials with provisions of Montana municipal parking commission law general powers as well as provide current Missoula Municipal Code provisions pertaining to parking meters.

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

Generally what are the Montana state law powers granted to a municipal parking commission created by a Montana city?

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

Generally, the powers of a municipal parking commission created by a city are primarily set forth in sections 7-14-4621, 7-14-4622 and 7-14-4624 MCA of Montana's municipal parking commission laws.

### **LEGAL DISCUSSION:**

Title 7, chapter 14, part 46 MCA is entitled "PARKING COMMISSIONS". There are approximately a dozen codified pages of Montana state laws pertaining to municipal parking commissions created by a Montana city. Section 7-14-4603 MCA authorizes a Montana city to create a municipal parking commission.

The powers of a municipal parking commission created by a city are primarily set forth in sections 7-14-4621, 7-14-4622 and 7-14-4624 MCA which state as follows:

**7-14-4621. General powers of parking commission.** Each parking commission, subject to the limitations imposed by this part, shall have the following powers:

- (1) to sue and be sued, have a seal, make and execute contracts and other instruments necessary or convenient to the exercise of its powers;
- (2) to make and from time to time amend and repeal bylaws and rules, not inconsistent with this part, to carry into effect the powers and purposes thereof;
- (3) to select and appoint or remove such officers, agents, counsel, and employees, permanent and temporary, as it may require and to determine their qualifications, duties, and compensation;
- (4) to exercise all or any part or combination of the powers granted in this part;
- (5) to do and perform any and all other acts and things necessary, convenient, desirable, or appropriate to carry out the provisions of this part.

**7-14-4622. Powers of parking commission related to provision of parking services.** For the purpose of offstreet parking, each parking commission, subject to the limitations imposed by this part, may:

- (1) purchase, lease, obtain option upon, or acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest in real or personal property, together with any improvements on real property;
- (2) subject to 7-14-4626, acquire by the exercise of the power of eminent domain, as provided in Title 70, chapter 30, any property upon approval of the city council;
- (3) sell, lease, exchange, transfer, assign, or otherwise dispose of any real or personal property or any interest in real or personal property;
- (4) lay out, open, extend, widen, straighten, establish, or change the grade, in whole or in part, of public parking facilities and public rights-of-way necessary or convenient for offstreet parking;
- (5) insure or provide for the insurance of any real or personal property or operation of the parking commission against risks or hazards;
- (6) acquire, construct, rent, lease, maintain, and repair real and personal property used for parking services, either on behalf of the parking commission or as an agent of the city, including the leasing of the operation of the offstreet parking;
- (7) regulate onstreet parking when it remains in use, in coordination with offstreet parking, subject to traffic regulations imposed by the state. (emphasis added)

**7-14-4624. Powers of commission related to financial management.** Each parking commission, subject to the limitations imposed by this part, shall have the following powers:

- (1) to receive, control, and order the expenditure of any and all money and funds pertaining to parking facilities or related properties, including, without limiting the generality of this provision:
  - (a) all revenues derived from operations of the commission;
  - (b) all money appropriated or made available by the city pursuant to this section or

otherwise;

(c) the proceeds of all financial aid or assistance by the city, federal, or state governments;

(d) the proceeds of levied assessments;

(e) the proceeds of all revenue bonds issued pursuant to this part by the city for parking facilities;

(2) to invest any funds held in reserve or sinking funds or any funds not required for immediate disbursement in property or securities in which cities may legally invest funds subject to their control, but no such investment shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

Section 7-14-4633, MCA allows a municipality to collect in-lieu payments from the parking commission pursuant to City Council resolution as long as the monies to be paid do not exceed what would have been required to pay in ad valorem taxes.

Section 7-14-4628 MCA entitled “NATURE OF ON STREET PARKING REGULATIONS” provides:

**7-14-4628. Nature Of On Street Parking Regulations.** The parking regulations issued pursuant to 7-14-4622(7) may include, without limiting the generality of this provision, the determination of:

- (1) Parking locations;
- (2) Variable parking durations;
- (3) Variable parking rate schedules; and
- (4) Enforcement policies and procedures. (emphasis added)

Section 7-14-4634 MCA entitled “CHARGES FOR USE OF PARKING FACILITIES. Provides as follows:

**7-14-4634. Charges for use of parking facilities.** (1) The commission shall fix the rates, fees, and all other charges to be made for all projects, services, or facilities furnished, acquired, constructed, or completed under this part for the use thereof by any persons or public or private agencies utilizing such projects, services, or facilities. Subject to such contractual obligations as may be entered into by the commission and the holders of the revenue bonds issued under this part, the commission is authorized to change such rates, charges, and fees from time to time as conditions warrant.

(2) All rates, fees, and charges shall be at all times fixed to yield annual revenue which together with other revenue shall be equal to annual operating and maintenance expenses, including insurance costs, and all redemption payments and interest charges on the revenue bonds at any time issued and outstanding in connection with the project of which such facilities are a part as the same become due.

(3) The commission may provide that the rates, fees, and charges established are minimum rates, fees, and charges and subject to increase or decrease in accordance only

with the terms of the indenture under which the revenue bonds were issued. (emphasis added)

Section 7-14-4623 MCA authorizes a Montana city to transfer municipal parking commission property to the city. Section 7-14-4623 MCA provides:

**7-14-4623. Transfer of parking commission property to municipality.** The legislative body of a city, at any time after the activation of a parking commission, may adopt by a two-thirds vote thereof a resolution transferring the property of the commission to the city. The city may, through such department as it may determine, exercise its powers in regard thereto by virtue of the constitution or this or other general law, but no such transfer shall be made in contravention of any covenant or agreement made with the holders of any revenue bonds of the commission theretofore issued and then outstanding.

Since subsection 7-14-4622(2) MCA identifies eminent domain as a power of a municipal parking commission, it should also be noted that section 7-14-4626 MCA establishes a statutory limitation on a municipal parking commission's power of eminent domain by providing that the parking commission may not acquire property of a public entity without the public entity's consent.

The Missoula City council has adopted several ordinance provisions pertaining to parking meters. These municipal meter ordinance provisions are set forth in sections 10.24.010 through 10.24.060 Missoula Municipal Code (MMC) and two penalty sections 10.54.140 and 10.54.150 MMC which provide as follows:

**10.24.010 Definitions.** Whenever the following terms are used within any ordinance, resolution or regulation pertaining to parking meters they shall have the meanings respectively ascribed to them in this section:

- A. "Parking lot" means any area that is owned, leased by or controlled by a government entity in which the public citizens are allowed to park motor vehicles.
- B. "Parking meter zones" means portions of streets or parking lots established by the parking commission as zones within which the parking of vehicles shall be controlled, regulated and inspected with the aid of timing devices known as parking meters.
- C. "Parking time" means that amount of time indicated on each parking meter beyond which a vehicle cannot be legally parked.
- D. "Roadway" means portions of a street between regularly established curb lines.
- E. "Sidewalk" means portions of a street between the curb lines and the adjacent property lines intended for use by pedestrians.
- F. "Street" means every way set apart for public travel except alleyways, bridle paths and foot paths.

G. "Vehicle" means a conveyance propelled by motor power.

**10.24.020 Marking of spaces--Manner of parking** - The city traffic engineer shall place lines or marks on the curb or on the street alongside of each parking meter to designate the parking space for which the meter is to be used, and each vehicle parked alongside of any parking meter shall park within the lines or markings so established. No person shall park any vehicle in such a way that the same shall not be within the area so designated by such lines or markings. The bumper of any vehicle parked in a parallel parking space shall be alongside of or next to the parking meter.

**10.24.030 Unlawful parking.** Between the hours of 9:00 a.m. and 5:00 p.m., on all days except Sundays and legal holidays, it shall be unlawful for a vehicle to be parked in any space alongside of or next to which a parking meter is located, unless the meter has been placed in operation. If the vehicle remains parked in the parking space beyond the legal parking time which is designated by a sign or a signal of the parking meter showing illegal parking, the vehicle shall be considered as parked overtime and the parking of a vehicle overtime or the failure to put the meter in operation, shall be a violation of this chapter and punishable as set forth in Chapter 10.54.

A. It shall be unlawful to extend the parking time for a vehicle beyond the maximum parking time indicated on the meter in either of the following ways:

1. Placing money or tokens in the meter;
2. Wiping off chalk marks placed on the vehicle tire by authorized personnel.

B. Each time period a vehicle remains parked beyond the legal parking time shall constitute a separate offense.

**10.24.040 Citation for violation--Form.** It shall be the duty of the parking commission to enforce and to issue citations for violations of the provisions of the city's parking meter violations. Citations issued for violations of parking meter regulations shall show:

A. The number of each parking meter which indicates that the vehicle occupying the parking space adjacent to such parking meter is or has been parked in violation of any of the provisions of the city's parking meter regulations;

B. The state and license number of the vehicle;

C. Any other facts, a knowledge of which is necessary to a thorough understanding of the circumstances attending such violation; further, it shall be the duty of the parking commission to cause to be attached to any vehicle parked in violation of this chapter a notice that it has been parked in violation of this chapter and instruct the owner or operator to report to the parking commission in regard to such violation within thirty

days. The citation shall contain sufficient information to inform the owner of their rights under 10.22.230.

**10.24.050 Depositing slugs--Tampering with parking meter.**

A. No person shall deposit or cause to be deposited in any parking meter any slug, device or other substitute for the five cent, ten cent or twenty-five cent coin and legal tender of the United States unless the parking commission has approved a token to be used in the meters.

B. No person shall open, deface, injure, tamper with or willfully break, destroy or impair the usefulness of any parking meter or tie, hitch, chain or otherwise affix any animals thereto or chain or otherwise affix any bicycle thereto.

**10.24.060 Disposition of meter revenue.**

A. The coins required to be deposited in parking meters as provided in this chapter are levied and assessed as fees to provide for the proper regulation and control of traffic upon the public streets and to cover the cost of the supervision, inspection, installation, operation, maintenance, control and use of the parking space and parking meters described in this chapter, and also the cost of supervision and regulating the parking of vehicles in the parking meter zones created by the ordinances codified in this chapter and to be hereafter created.

B. The parking commission director, or their duly authorized agent, shall collect from time to time, all coins from all parking meters installed pursuant to this chapter, and place the same in the appropriate account of the Missoula parking commission for as long as the parking commission exists; otherwise, the city shall collect the coins and place them in a city general fund account.

**10.54.140 Penalties--Parking violations.**

A. For any person pleading guilty to or convicted of Meter Violations, Improper Parking Violations or Disabled Parking Violations, the fines shall be as follows:

1. The fine for Meter Violations and Overtime Violations shall be determined by the number of Meter Violations or Overtime Violations against a license plate number within the previous 180 days. Fines shall escalate as follows:
  - a. Notwithstanding Section 10.54.140 (A) (1) (b), fines shall not escalate against a single license plate within a single day.
  - b.

	Number of violations in previous 180 days				
	0	1	2	3	4 or more
Meter Violation	\$0	\$5	\$10	\$15	\$20

Overtime Violation	\$0	\$5	\$10	\$15	\$20
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2. Improper Parking Violations:
  - a. Each offense, twenty dollars (\$20.00)
3. Disabled Parking Violations on public or private property:
  - a. Each offense, one hundred dollars (\$100.00)

B. Whenever the Parking Commission has mailed a summons or notice to the registered owner of any vehicle with an unpaid parking tickets and the registered owner fails to pay the parking fine within the time specified within the summons or the notice, a formal complaint may be filed in municipal court.

**10.54.150 Penalties -- Transitional Provision.** The Parking Commission may implement the fine structure outlined in Section 10.54.140 on a date at its discretion no later than January 1, 2012. Prior to the implementation date of Section 10.54.140, any person pleading guilty to or convicted of a Meter Violation shall be fined two dollars (\$2.00) or an Overtime violation shall be fined five dollars (\$5.00).

**CONCLUSION(S):**

Generally, the powers of a municipal parking commission created by a city are primarily set forth in sections 7-14-4621, 7-14-4622 and 7-14-4624 MCA of Montana's municipal parking commission laws.

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/s/

Jim Nugent, City Attorney

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