

# OFFICE OF THE CITY ATTORNEY

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435 Ryman • Missoula MT 59802  
(406) 552-6020 • Fax: (406) 327-2105  
[attorney@ci.missoula.mt.us](mailto:attorney@ci.missoula.mt.us)

## Legal Opinion 2014-018

**TO:** Mayor John Engen, City Council, Bruce Bender, Ginny Merriam, Dale Bickell, Mike Brady, Scott Hoffman, Chris Odlin, Mike Colyer, Rich Stepper, Ellen Buchanan, Anne Guest, Kevin Slovarp, Mike Haynes, Doug Harby, Donna Gaukler, Kathy Mehring, Andy Roy, Rob Scheben

**CC:** Legal Department Staff

**FROM:** Jim Nugent, City Attorney

**DATE** May 28, 2014

**RE:** Montana state law regarding criminal law failure of disorderly persons to disperse.

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

Is there an existing Montana state law addressing disorderly conduct pursuant to which a person may be cited for failure to obey an order of a peace officer?

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

Yes, pursuant to section 45-8-102 MCA where two or more persons are engaged in disorderly conduct if they fail to obey a lawful order of a peace officer they may be cited pursuant to section 45-8-102 MCA for the criminal offense of failure of disorderly persons to disperse. Pursuant to section 45-8-101 MCA quite a variety of conduct may constitute disorderly that disturbs the peace. For examples the following types of conduct may constitute disorderly conduct if it is determined to disturb the peace: (1) quarreling, challenging to fight, or fighting; (2) making loud or unusual noises; (3) using threatening, profane, or abusive language; (4) rendering vehicular or pedestrian traffic impassable; (5) rendering the free ingress or egress to public or private places impassable; (6) disturbing or disrupting any lawful assembly or public meeting; (7) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence would endanger human life; (8) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or (9) transmitting a false report or warning of an impending explosion in a place where its occurrence would endanger human life.

## **LEGAL DISCUSSION:**

**45-8-102. Failure of disorderly persons to disperse.** (1) Where two or more persons are engaged in disorderly conduct, a peace officer, judge, or mayor may order the participants to disperse. A person who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.

(2) A person convicted of the offense of failure to disperse shall be fined not to exceed \$100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

Section 45-8-102 MCA pertains to instances or incidents where two or more persons are engaged in disorderly conduct and the persons fail to obey a peace officer, judge's or mayor's lawful order to disperse. Disorderly conduct is addressed in section 45-8-101 MCA and sets forth what conduct constitutes disorderly conduct if it disturbs the peace. Section 45-8-101 MCA provides as follows:

**45-8-101. Disorderly conduct.** (1) A person commits the offense of disorderly conduct if the person knowingly disturbs the peace by:

- (a) quarreling, challenging to fight, or fighting;
- (b) making loud or unusual noises;
- (c) using threatening, profane, or abusive language;
- (d) rendering vehicular or pedestrian traffic impassable;
- (e) rendering the free ingress or egress to public or private places impassable;
- (f) disturbing or disrupting any lawful assembly or public meeting;
- (g) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence would endanger human life;
- (h) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or
- (i) transmitting a false report or warning of an impending explosion in a place where its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined an amount not to exceed \$100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

(3) A person convicted of a violation of subsection (1)(i) shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

Also, a person who hinders enforcement of the criminal law or preservation of the peace may be cited for "obstructing a peace officer or other public servant" pursuant to section 45-7-302, MCA. Section 45-7-302, MCA provides:

**45-7-302. Obstructing peace officer or other public servant.** (1) A person commits the offense of obstructing a peace officer or public servant if the person knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function, including service of process.

(2) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, provided that the peace officer was acting under the peace officer's official authority.

(3) A person convicted of the offense of obstructing a peace officer or other public servant, including a person serving process, shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

**CONCLUSION(S):**

Yes, pursuant to section 45-8-102 MCA where two or more persons are engaged in disorderly conduct if they fail to obey a lawful order of a peace officer they may be cited pursuant to section 45-8-102 MCA for the criminal offense of failure of disorderly persons to disperse. Pursuant to section 45-8-101 MCA quite a variety of conduct may constitute disorderly that disturbs the peace. For examples the following types of conduct may constitute disorderly conduct if it is determined to disturb the peace: (1) quarreling, challenging to fight, or fighting; (2) making loud or unusual noises; (3) using threatening, profane, or abusive language; (4) rendering vehicular or pedestrian traffic impassable; (5) rendering the free ingress or egress to public or private places impassable; (6) disturbing or disrupting any lawful assembly or public meeting; (7) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence would endanger human life; (8) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or (9) transmitting a false report or warning of an impending explosion in a place where its occurrence would endanger human life.

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/s/

Jim Nugent, City Attorney

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