

	<p><b>PW&amp;M - Surface Transportation Engineering: Administrative Rule No. 410</b></p> <p><b>Right-of-Way Special Improvement Assessment Program Procedures</b></p>
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Adopted: March 3, 2008

Revised: September 8, 2021

## PURPOSE:

To provide guidelines for property owner notification and public participation with regard to ordering right-of-way improvement projects and paying for improvements through the Special Improvement Assessment Program.

## DEFINITIONS:

Right-of-Way Improvement Project refers to a project to install, repair, or replace curb, sidewalks, approaches or alley approaches and associated infrastructure improvements within City right-of-way. PW&M Surface Transportation Engineering is responsible for taking an active role or the lead in project design, identification of parcels and property owners within the planned project, generating cost estimates and corresponding with property owners, conducting neighborhood meetings, preparing resolutions and documentation required by City Council to consider the merits of the project, preparing construction project manual and bidding documents, and overseeing construction and payments to contractor. Additionally, post-construction responsibilities include follow-up correspondence, invoicing property owners and determining Special Improvement Assessments for each parcel.

Public Process means active involvement on the part of the general citizenry in the governing process. The City right-of-way improvement project process includes: notification of neighborhood associations, public meetings with neighborhood councils, notifications to affected property owners, invitations to property owners and the general public to participate in meetings with PW&M Transportation Planning and Surface Transportation Engineering staff and meetings of the City Council and Council Committees where proposed right-of-way improvement projects and contract bid awards are discussed and decided upon.

Notification refers to correspondence informing affected property owners of a proposed action to be considered by the City Council and invites their participation.

Order is the process by which City Council passes a resolution that requires public infrastructure improvements to City right-of-way and requires property owners of adjacent parcels to pay for a portion of those improvements.

Resolution to Order with Exhibit A. The Public Works Committee discusses a proposed right-of-way improvement project, but the Resolution to Order is the actual document that accomplishes the Council action. Exhibit A to the resolution lists the parcels in the improvement project by address and legal description with identification of ownership and estimated cost of public infrastructure improvements they are responsible for.

Resolution to Confirm Final Order with Revised Exhibit A. Property owners are allowed 30 days to hire a contractor and construct the public infrastructure improvements that the Council "Ordered." When the Council awards the contract to construct the work, a Resolution to Confirm Final Order is also passed with a Revised Exhibit A that reflects new cost estimates based on the lowest responsive and responsible bidder unit prices. Any parcels where the owner has already constructed the improvements are removed from the Revised Exhibit A. A "Revised Exhibit A with Schedule 1" is attached to the Resolution to Confirm Final Order. (Schedule 1 is a list of those parcels that have

been removed from the project and are thus not “Ordered.”) The City Clerk sends the Final Resolution to Confirm Order with the Revised Exhibit A (and Schedule 1 if appropriate) to the Missoula County Clerk and Recorder for recording as a prospective lien on the properties listed.

Deferred Loan refers to the City’s program that enables property owners to defer payment of right-of-way improvement project costs until the property has a change in ownership or the existing owner no longer qualifies. The “deferred” amount is secured with a Promissory Note with the rate of interest determined annually by calculating the City of Missoula’s average interest earnings rate from the preceding fiscal year audit. The Deferred Loan program is authorized by Missoula Municipal Code Chapter 3.16 and offers two qualifying criteria categories, as follows:

Total Deferred Payment is available for Low Income Households (defers the entire cost). Qualifying low income must fall below the 80<sup>th</sup> percentile of the Federal HUD Median Household Income for the Missoula Metropolitan Statistical Area for the most recent year published. Income for all household members is included. Only owner-occupied residential parcels are eligible.

Partial Deferred Payment is available for property owners of any income level that allows deferment of any portion of a High Assessment amount, which is defined as a total assessment on any single parcel Tax ID in excess of \$6,000. Only owner-occupied residential parcels are eligible.

Assessment and Special Improvement Assessment Program refer to the City’s program that enables property owners to finance the costs of right-of-way improvements over a period of years, payable in semiannual installments billed with their semiannual property tax bill. The Assessment program is authorized by Montana Code Annotated 7-14-4110. Currently, the City of Missoula authorizes terms of 8, 12 and 20 years.

Voluntary right-of-way assessments refer to property owner-initiated public infrastructure improvements to adjacent right-of-way. These improvements are not initiated by the City, but the City allows property owners to utilize City financing terms of 8, 12, and 20 years.. The voluntary parcels are classified as a “Miscellaneous Project” and are grouped together for the City Council to Order with a “Resolution to Order with Exhibit A” periodically during the construction season. There is no “Resolution to Confirm Order” required since the work on the parcels is voluntary, no deletions or amended estimates are necessary, and each parcel’s lien is secured with an Assessment Agreement.

Assessment Agreement refers to a notarized agreement by which a property owner, who has hired a private contractor to construct public infrastructure improvements on adjacent right-of-way, agrees to have the costs of those improvements “assessed” to this property over a term of 8, 12, or 20 years. The Assessment Agreement becomes a tax lien on the property. The City pays the right-of-way contractor’s invoice for the property owner once the Assessment Agreement has been notarized and the work has been inspected. To pay the contractors, the City utilizes the annual construction fund code that is used for all other City right-of-way improvement projects, which is then reimbursed from proceeds of the Pooled Municipal Bond Sale.

Pooled Municipal Bond Sale refers to the annual issue of municipal bonds to finance the previous construction season right-of-way improvement projects. The City Finance Officer uses the proceeds of the sale of bonds to reimburse the City for the amounts paid to right-of-way contractors the previous year. The Assessment paid by property owners is used to “retire” a portion of the bonds each six-month period.

## **RESPONSIBILITIES:**

The Surface Transportation Engineering’s Construction Project Manager is responsible for initiating right-of-way improvement projects, and for supervising the notification, ordering, and for most of the public participation process. The Construction Project Manager shall ensure that all correspondence is prepared and mailed in accordance with this Administrative Rule, and that guidelines are followed.

The Public Works & Mobility Business Operations Manager is responsible for ensuring that the referrals of Resolutions to Order with Exhibits are properly prepared for City Council Public Works

Committee and provided to the City Clerk in a timely manner. The Public Works & Mobility Business Operations Manager shall also coordinate the preparation and mailing of merged Notification and Order Letters 1 through 5 as outlined below under Actions and Procedures. The Public Works & Mobility Business Operations Manager is also responsible for the Public Works Committee minutes and for electronically linking any supporting documentation to the formal agenda. Additionally, the Public Works & Mobility Business Operations Manager will ensure that the affected Division Managers as well as the Public Works Director, City Engineers, and the Public Works Committee Chair are informed of all agenda items. The Public Works & Mobility Administrative staff serves as the back-up for all of the Public Works & Mobility Business Operations Manager's functions related to this rule.

The City Clerk is responsible to the City Council for referring the annual assessment tax levy to the City Council and for preparing and mailing the legal notification correspondence to affected property owners. In executing the City Clerk responsibilities, the City Clerk complies with schedules and deadlines set forth in Montana Code Annotated Title 7-12- 41 and 42, and 7-14-41.

Should we say what Finance is responsible for here?

### **ACTIONS AND PROCEDURES:**

A right-of-way improvement project is initiated and discussed by Surface Transportation Engineering staff, Transportation Planning staff, and/or neighborhood property owners.

An Informational Letter/postcard/mailing shall be sent to property owners and Neighborhood Council and City Council Ward Representatives. This letter outlines the proposed project in general terms. The Transportation Planning staff with assistance from Surface Transportation Engineering staff shall determine the number and nature of the Informational Letters/postcards/mailings.

A neighborhood meeting may be scheduled to discuss the proposed improvement project and its scope of work. The Transportation Planning Manager in conjunction with the Surface Transportation Engineering Construction Project Manager shall determine the number and nature of the neighborhood meetings, which may coincide with a Neighborhood Council meeting.

Letter 1 (Notification): Advises property owners of the proposed project, provides estimated work quantities and costs, and invites participation in meetings with Surface Transportation Engineering Staff, and in City Council and Public Works Committee meetings on dates scheduled. This letter will be sent approximately 12 days before the scheduled Public Works Committee meeting date. The letter may include drawings or photographs to help explain the proposed improvements.

Letter 2 (Order): Provides property owners of official notification that the City Council has ordered the project work to go forward. An Owner Reply Form is provided to allow property owners to elect to "Hire own Contractor" and to elect a payment method, (Full Payment or Assessment for 8, 12, or 20 years). Information on requesting Deferred Loans (low income) or High Assessment Deferrals (over \$6,000) is provided. This letter will be sent by Certified Mail approximately one week after the City Council's decision to Order the project.

Letter 3 (Bid award consideration): Informs property owners of the unit prices submitted by the lowest responsive and responsible bidder and provides a revised cost estimate for the work. Invites owners to participate in meetings with Surface Transportation Engineering staff, and in City Council and Public Works Committee meetings to consider award of the public infrastructure improvements to a contractor. This letter shall be sent within five days of the bid opening and allow ten days advance notice of the Public Works Committee meeting date.

Letter 4 (Revised Order Letter): Provides property owners with results of the Contract Award, identifies the award contractor, estimated start-up date and length of project work. Provides property owners with a revised cost estimate and advises property owners of procedures to voluntarily add on additional work. This letter shall be sent within one week of the City Council's Contract Award decision and shall be sent via Certified Mail.

Letter 5 (Construction Completed): Advises property owners of final amount of actual construction cost. Reminds owners of current Payment Method election on file with the City. A method to estimate

semiannual assessment payments is provided for terms of 8, 12, or 20 years. A Final Owner Reply form is provided to allow owners to change Payment Method (to Payment in Full) or Term of Assessment (8, 12, or 20 years). An invoice will accompany Letter 5 for property owners who previously elected the Full Payment Option. This letter shall be sent within two weeks of project completion.

Letter 6 is the City Clerk's official notice of Tax Levy for assessed improvements, mailed in September in advance of the City Council public hearing to assess the tax levies.

*Suggestions for amending and updating this Administrative Rule may be submitted to the City Engineer for Surface Transportation.*

**Drafted by:**

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Katie Emery, Business Operations Manager

**Recommended by:**

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Monte Sipe, Construction Project Manager

**Prepared by:**

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Monte Sipe, Construction Project Manager

**Approved by:**

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Kevin J. Slovarp, P.E., City Engineer for  
Surface Transportation