

Ordinance \_\_\_\_\_

An ordinance amending Missoula Municipal Code Title 12, entitled “Streets, Sidewalks, and Public Places,” by amending and establishing definitions in Chapter 12.02 entitled “Definitions,” amending language and department references in Chapter 12.10, entitled “Right-of-Way Improvements,” amending department references in Chapter 12.14, entitled “Right-of-Way Occupancy Permit,” amending department references in Chapter 12.16, entitled “Sidewalk Maintenance,” amending language in Chapter 12.17, entitled “Parking Facilities,” amending department references in Chapter 12.18, entitled “Sidewalk Cafés,” repealing 12.24.045 A-B and moving C to 12.24.020 J, repealing 12.24.050, repealing 12.24.070, repealing 12.24.080, repealing 12.24.090 A-D and moving E-F to 12.240.020 K-L, repealing 12.24.160, and amending language and department references in Chapter 12.24, entitled “Excavations,” amending department references in Chapter 12.28, entitled “Obstructions,” amending department references in Chapter 12.31, entitled “Fences.”

Be it ordained that Chapter 12.02 and Sections 12.10.020, 12.10.060, 12.10.070, 12.10.080, 12.10.110, 12.10.130, 12.10.140, 12.10.180, 12.10.190, 12.14.020, 12.14.030, 12.14.032, 12.14.036, 12.14.038, 12.14.040, 12.14.050, 12.14.075, 12.14.090, 12.16.025, 12.17.060, 12.17.080, 12.17.090, 12.18.060, 12.18.070, 12.18.090, 12.24.010, 12.24.020, 12.24.030, 12.24.035, 12.24.036, 12.24.037, 12.24.060, 12.24.100, 12.24.120, 12.24.130, 12.24.140, 12.24.150, 12.24.170, 12.24.180, 12.24.190, 12.28.020, 12.28.060, 12.28.110, 12.28.140, 12.31.060, 12.31.110, 12.36.010 are hereby amended, and 12.24.045, 12.24.050, 12.24.070, 12.24.080, 12.24.090, 12.24.160 are hereby repealed:

**Title 12**

**STREETS, SIDEWALKS AND PUBLIC PLACES**

Chapters:

[12.01 General Provisions](#)

[12.02 Definitions](#)

[12.04 Street Vacation](#)

[12.08 Bonded Contractors](#)

[12.10 Right-of-Way Improvements](#)

[12.12 Repealed](#)

[12.14 Right-of-Way Occupancy Permit](#)

[12.16 Sidewalk Maintenance](#)

[12.17 Parking Facilities](#)

[12.18 Sidewalk Cafés](#)

[12.20 Repealed.](#)

[12.22 Repealed](#)

[12.24 Excavations](#)

[12.28 Obstructions](#)

[12.30 Repealed](#)

[12.31 Fences](#)

[12.32 Comprehensive Tree and Shrub Planting, Pruning and Maintenance Regulations](#)

[12.36 Poles and Wires](#)

[12.40 City Parks](#)

[12.41 Disposition of City Park Property](#)

[12.42 Alcoholic Beverages on Public Lands](#)

[12.44 Cemeteries](#)

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[12.56 Open Space Acquisition](#)

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**Chapter 12.02**

**DEFINITIONS**

**Definitions.** For the purposes of Title 12, the following words and phrases shall have the meanings respectively ascribed to them by this chapter:

“Accessible Parking Space” means any parking space that meets current minimum Americans with Disabilities Act (ADA) parking requirements.

“Accessible Route” means a pedestrian walkway that connects and provides ADA compliant access to accessible elements of a development(s), site(s) and / or structure(s) with other elements, including but not limited to accessible parking spaces to accessible entrances, accessible entrances to other accessible entrances, accessible entrances to public sidewalks, access to solid waste (garbage) collection area(s), long-term / short-term storage area(s) and postal services or mailboxes.

“Alley” or “Alley approach” means any subordinate right-of-way between the connected street(s) used to access private or public property.

“Alley Approach Improvements” means any millings, asphalt, concrete or other dust control improvements along any length of an alley.

“Approach” means the area from the edge of street or alley to the property line or edge of public access easement which is intended to provide access for vehicles to a parking facility. Component parts of a “approach” include and are referred to as the “curb cut” (laydown), the “apron” and the “sidewalk section”.

“Apron” means that portion of the approach extending from the back of curb to the property line excluding the sidewalk.

“Bonded Right-of-Way Contractor” shall mean any person(s), company(ies), corporation(s) who has filed the proper bond, paid necessary fee(s), and has obtained a bonded right-of-way contractor license from City of Missoula Development Services. Only bonded right-of-way contractors shall perform construction or repair right-of-way improvements (sidewalks, curb/gutter, paving, etc).

“Boulevard” means an area of right-of-way between the edge of the street, whether curbed or not, and the private property line.

“Boulevard sidewalk” means sidewalks located so as to create a boulevard between the curb/gutter or edge of the paved street and the sidewalk.

“Boulevard Tree” means any tree which exists in an area of right-of-way between the edges of the street, whether curbed or not, and the adjacent private property line; within a public easement; or more than one-half of the tree trunk at ground level is within the right-of-way.

“Construction” generally means and is synonymous with install, installation, reconstruct, reconstruction, remove and/or replace, and repair.

“Curb Cut” means the portion of curb at the “approach” or “alley approach” constructed so as to facilitate the passage of vehicles to/from the street to private property. (may also be referred to as a “laydown”)

“Director” means the Public Works Director or their designee.

“Driveway” means an area on private property where motorized and/or non-motorized vehicles are operated or allows access between a parking facility and a street.

“Parking Facility” means an area where vehicles are allowed to be parked or stored and includes pads, carports, garages, parking lots, or structures.

“Paved” means surface treatment consisting of asphalt, concrete or other City Engineer approved hard surface material

including the appropriate subsurface materials.

"Paving Construction Work" includes parking facilities, driveway, approach, street, alley and alley approach whether upon and / or within private property, right-of-way, or public easement, that is required to be performed as a result of the Paving Permit, Building Permit, or Zoning Compliance Permit process or to comply with any other Federal, State or Local Law.

"Pedestrian Connection" or "Cross-connection" means a pedestrian walkway that connects structures (on and off site), parking facilities (on and off site) and / or existing or future pedestrian facilities in the right of way or public access easement. Alleys are not considered pedestrian connections unless designed and constructed as such.

"Private Street" means a street owned and maintained by an individual(s), organization(s) or company(ies) rather than by the city of Missoula or the state of Montana.

"Property Frontage" means the boundary / property line of a parcel that abuts a street and/or other right-of-way.

"Public Access Easement" is an easement for public benefit and use. Public access easements may contain streets, curb/gutter, sidewalks, trails and other related features (these may also be designated as: public easement, public sidewalk easement, public right-of-way easement, public non-motorized easement, etc.) Public access easements shall be subject to the same specifications, fees, inspections and requirements as right-of-way.

"Repair" typically includes activities such as grinding, saw-cutting, crack sealing, mud-jacking, etc.

"Residential Dwelling" is a structure providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. The intent is to be consistent with the building code and zoning code.

"Right-of-Way" or "ROW" means land, property and / or any interest in land or property and is generally acquired, dedicated and devoted to public use.

"Right-of-Way Encroachment" shall mean any activity/object and/or obstacle occurring/placed/constructed/located upon/over/within the right-of-way or public access easement and that is owned/possessed/controlled by an entity other than a governmental body or a public utility. A right-of-way encroachment is semi-permanent in nature with a duration exceeding thirty-six (36) months/three (3) years.

"Right-of-way improvement(s)" or "ROW improvement(s)" or "Public Infrastructure improvements" includes all construction work in the right-of-way and/or public easement(s). Improvements include, but are not limited to; all materials, equipment and labor to install or repair curb/gutter, sidewalk, road/street/alley paving, grading, drainage structures, bridges (vehicular and pedestrian), railings, retaining walls, boulevard or median improvements, approaches, alley approaches, curb ramps, landscaping, boulevard trees, street lighting, traffic management signs, traffic signals, curb and pavement markings, traffic management structures, and utilities.

"Right-of-Way Occupancy" shall mean any activity/object and/or obstacle occurring/placed/constructed/located upon/over/within the right-of-way or public access easement that impedes free and safe movement of vehicular, bicycle, pedestrian travel, etc., and/or access or parking. A right-of-way occupancy is temporary in nature with a maximum duration of thirty-six (36) months/three (3) years or less.

"Sidewalk Section" in regards to approaches; means the portion of a approach lying between the apron and the driveway, within right-of-way or public access easement visually and functionally serving as the public sidewalk.

"Snow Storage Area" means a designated or specified area within private property that is reserved for the storage or stockpiling of accumulated snowfall (snow), occurring and accumulated within private property, when plowed, shoveled or removed from hardscape areas, including but not limited to driveways, parking lots, parking garages, and pedestrian facilities (sidewalks, trails, pathways, etc.). Snow storage areas shall address the seasonal storage and management of

accumulated snowfall (snow). Only snowfall (snow) occurring and accumulated upon / within the public right-of-way may be plowed or shoveled and stored within the right-of-way.

“Stacked Parking” means the parking of one vehicle directly behind another where the second vehicle blocks access to the street, alley, drive aisle, etcetera of the first vehicle.

“Traffic Control Plan” shall mean a plan for the safe management and passage of motor vehicles, bicyclists, pedestrians, etc., as well as workers, equipment and materials. Traffic control plans shall be submitted, reviewed and approved by the City Engineer or designee prior to use of the right-of-way or public access easement whether a right-of-way occupancy permit is required or not. Traffic control plans shall comply with the current revision/version of the Manual on Uniform Traffic Control Devices (MUTCD), Montana Department of Transportation (MDT), Americans with Disabilities Act (ADA), and the Missoula City Public Works Standards and Specifications.

#### **Acronyms/References.**

“ACI” = American Concrete Institute

"ADA" = Americans with Disabilities Act

"MCA" = Montana Code Annotated

“Missoula City-County Air Pollution Program”

“Missoula City Subdivision Standards”

“Missoula City Zoning Ordinance”

“MCPWSS” = Missoula City Public Works Standards and Specifications Manual

"MMC" = Missoula Municipal Code

“MPRDM” = Missoula Parks and Recreation Design Manual

"MPWSS" = Montana Public Works Standard Specifications

"MUTCD" = Manual on Uniform Traffic Control Devices

(Ord. 3670, 2020)

## **Chapter 12.10**

### **RIGHT-OF-WAY IMPROVEMENTS**

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[12.10.020 Purpose](#)

[12.10.030 Applicability](#)

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[12.10.050 Right-of-Way Improvements Permit – Required](#)

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[12.10.070 Permit Fee Refunds](#)

[12.10.080 Investigation Fee – Work Without a Permit](#)

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[12.10.130 Postponement of Required Right-of-Way Improvements](#)

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[12.10.240 Notice – Required](#)

[12.10.250 Notice – Service](#)

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[12.10.340 Assessment for Construction – When Work Completed by Private Contractor](#)

[12.10.350 Assessment for Construction – May be Paid in Full](#)

[12.10.360 Assessment for Construction – Payable in Installments](#)

### **12.10.020 Purpose.**

This ordinance is adopted for the purpose of setting forth design, construction and inspection requirements for Right-of-Way Improvements. Right-of-Way Improvements are necessary to promote public safety, create facilities and systems for public use, allow efficient and effective movement of people and goods, and seeks to improve quality of life, mobility and access through the physical improvements. (Ord. 3670, 2020)

### **12.10.060 Permit Fees for Right-of-Way Improvements.**

The City Council shall establish and amend fees for the following services by resolution after conducting a public hearing.

- A. Inspecting right-of-way improvements related to curb and gutter construction.
- B. Inspecting right-of-way improvements related to sidewalk and approach construction.
- C. Boulevard tree planting or removal through Parks and Recreation.
- D. Inspecting other repair work on curb and gutter, sidewalk and approach; grinding, saw cutting, crack sealing and other concrete work that does not require complete removal and replacement.
- E. Inspecting areas of street or alley paving construction work within/upon the right-of-way. (Note: when both private and right-of-way paving permits are required, only a right-of-way paving permit will be issued and the higher of the two permit fees from the Engineering Fee Schedules will be applied.)
- F. Right-of-way/paving project administration and management on city-initiated projects.

The fee for Public Works and Mobility staff to review subdivision plan submittals for compliance with applicable codes shall be collected when the subdivision plan is submitted. The fee for Public Works and Mobility staff to review building construction site plans for compliance with applicable codes shall be collected prior to the issuance of the building permit. (Ord. 3670, 2020)

### **12.10.070 Permit Fee Refunds.**

Refund of permit fees shall be given when permit errors or mistakes are caused by the City. Refunds shall be approved by the Public Works Director. (Ord. 3670, 2020)

### **12.10.080 Investigation Fee – Work Without a Permit.**

Whenever any work for which a right-of-way Improvements or paving construction work permit is required by this ordinance has been commenced prior to obtaining a permit, an investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this ordinance and paid before any permit is issued. The payment of such investigation fee shall not exempt any person from compliance with all provisions of this ordinance. In addition to the investigation fee the Public Works Director may require additional mitigation including but not limited to removal of the concrete and/or pavement. The Public Works Director may grant relief from the investigation fee upon written request from the contractor. (Ord. 3670, 2020)

### **12.10.110 Requirements for Right-of-Way Improvements.**

The City Engineer shall require right-of-way improvements to be shown on all site plans required for the issuance of the appropriate permit; and further, shall require right-of-way improvements to be installed prior to the issuance of a permanent certificate of occupancy. The location and construction specifications of right-of-way improvements shall be approved by the City Engineer, who shall also be responsible for reviewing and inspecting the construction of all improvements constructed within/upon right-of-way. Right-of-way improvements may be postponed upon approval of the Director, or Director's designee. The criteria for applying for a postponement are listed in 12.10.130 below.

A. Right-of-way improvements shall be installed where none currently exist for the following:

1. New construction of residential dwelling, commercial, and/or industrial building.
2. Additions or changes to existing structures that will cause an increase in the required parking.
3. Where new construction or additions to parking facilities occur.
4. Where a Subdivision Exemption Affidavit for a boundary line relocation or family transfer is applied for and approved. Boundary line relocation that do not create additional building sites are not subject to this requirement.

B. Existing hazardous and/or deteriorated right-of-way improvements, as determined by the City Engineer, shall be replaced/repared or otherwise upgraded to present standards for the following:

1. New construction of residential dwelling, commercial, and/or industrial building.
2. When the footprint of a residential dwelling, commercial, and/or industrial building is increased by 200 square feet or more.
3. Where new approaches accessing city streets are constructed.
4. Where a Subdivision Exemption Affidavit for a boundary line relocation or family transfer is applied for and approved (except for a boundary line relocation that does not create additional building sites).

C. Non ADA compliant right-of-way improvements directly adjacent to the permitted on-site construction, as determined by the City Engineer, shall be replaced/repared or otherwise upgraded to present Americans With Disabilities Act (ADA) requirements.

D. Private Street Required. At the discretion of the City Engineer, an access that serves as the primary fire access route requires a private street and may include concrete curb/gutter, concrete sidewalks and storm water drainage / management, shall be designed and constructed in accordance with the Missoula City Public Works Standards and Specifications Manual as reviewed and approved by the City Engineer. Private street paving construction work shall be completed along the entire length of a private street starting at the existing adjacent intersecting street.

E. All streets shall have curbing and sidewalk on both sides unless otherwise approved by the City Engineer. Homezones/woonerfs may be considered as a design alternative for developments.

F. Street names for developments:

1. New streets that align with existing streets must have the same name as the existing street.
2. Street names for non-continuing streets may not duplicate nor be named so as to be confused with existing street names.
3. Street names shall be approved by City GIS Division.

G. Alleys must meet the following standards:

1. When right-of-way improvements are required under this Chapter, and vehicular access to the public street system is from the alley, the alley shall be controlled for dust (asphalt millings recommended) along the extents of the property frontage of the alley to the nearest intersecting street. If four or more parking spaces are proposed off the alley, the entire length of the alley to intersecting streets shall be controlled for dust.
2. All alleys in the Central Business District shall be paved with concrete.

3. All alleys shall be designed and constructed to the Missoula City Public Works Standard and Specifications Manual.
4. In areas where development patterns include alleys the developer is required to continue the circulation pattern inclusive of alley construction unless topographic constraints exist.
5. Alleys must not dead end.

H. Connectivity Requirements. New or proposed developments shall be reviewed by the City Engineer for the purpose of establishing connectivity. Issues to be considered with this review include the safety and wellbeing of the residents of the development and their access to a sound multimodal transportation system as well as the ability to move about within the development and access adjacent destinations.

New or proposed developments should also meet the applicable goals and policies of any relevant community plans including, but not limited to the following: Long Range Transportation Plan, Active Transportation Plan, Our Missoula Growth Policy, the Pedestrian Facilities Master Plan, The Bicycle Facilities Master Plan, and the Master Parks and Recreation Plan for the Greater Missoula Area.

During Review, the City Engineer may require the following:

1. Street connections, which can include one or more of the following:
  - i. Continue existing or planned street patterns adjacent to the Development.
  - ii. Connect internal private streets to adjacent public or private streets.
2. Internal connections in compliance with the requirements of Chapter 12.17.
3. That connections be located within a right-of-way or public access easement.

I. Exceptions to these standards: The Director or the City Engineer may grant deviations from these standards if there is documentation provided by the developer that justifies the requested changes.

J. Failure to meet the above requirements shall be considered a violation of this Chapter.

K. Property owners may finance the costs of right-of-way improvements adjacent to their property pursuant to this Chapter, payable in installments extending over a period of eight, twelve, or twenty years as specified by the property. If the property owner does not specify the number of years, the default term shall be twenty years. (Ord. 3670, 2020)

#### **12.10.130 Postponement of Required Right-of-Way Improvements.**

A. A postponement request shall be made to the Director, or Director's Designee, in writing providing reasons for the requested postponement. Single family or duplex residential units or lots are eligible for right of way improvement postponements. Note: Three or more residential units or lots on the same block, or any commercial or industrial lots will not be eligible for a postponement.

B. The Director, or the Director's designee, may approve postponement of the requirement for right-of-way improvements when any one of the following criteria is met:

1. The improvements do not provide immediate public benefit, including, but not limited to, connection to other public infrastructure, safety, not located on a priority sidewalk and/or bicycle corridor, protection of existing infrastructure, or protection of the natural environment.
2. The ultimate alignment and grade of the street has not been established by physical, on the ground, improvements or preliminary engineering plans. However, properties with large frontage, high

pedestrian need, drainage concerns, or parking and access control problems may be required to establish street alignment and construct right-of-way improvements.

3. Adverse conditions exist that prevent cost-effective construction of improvements including, but not limited to, lack of available right-of-way, adverse topography, major utility conflicts, or irrigation ditches. Existing landscaping, existing fences, or lack of existing sidewalks are not considered adverse conditions.
4. A City initiated right-of-way improvements construction project adjacent to the property is planned to be completed as identified within the current five (5) year Community Investment Program (CIP).
5. The cost of the right-of-way improvements for an existing building remodel exceeds 20% of the total project cost, subject to review and approval of cost estimates by the City Engineer.

C. Postponements are subject to future orders for right-of-way improvements by City Council. Postponements are not eligible for subsidy under the City's Right-of-Way Special Improvement Assessment Program. The Director's letter of approval for postponement shall be filed with the Missoula County Clerk and Recorder. If applicable, plans for the development shall also note that a postponement has been granted but that sidewalk and other ROW improvements may be ordered by the City Council at any time.

D. The need for temporary pedestrian facilities may be required if the conditions in this chapter have resulted in a postponement of right-of-way improvements. A corridor for future ROW improvements must be maintained. The plans for temporary pedestrian facilities, if required, as well as plans for landscaping and grading in the right-of-way shall be approved by the Director, or Director's designee prior to construction. (Ord. 3670, 2020)

E. Sidewalks and other ROW improvements deferred pursuant to subsection (A) of this section, may be initiated at any time by resolution of the City Council.

#### **12.10.140 Inspection by Public Works and Mobility**

All right-of-way improvements shall be inspected and perform to the approval of the Director. Public Works & Mobility staff may at any time, when right-of-way improvements are not being constructed in accordance with this chapter, have authority to order the contractor constructing right-of-way improvements to suspend work until construction conforms with the specifications set forth in this chapter.

Sidewalk inspections will consist of a subgrade inspection before the base material is placed and a final inspection after the concrete placement. Upon request, the City will perform courtesy inspections of concrete forms; but this is not a required inspection.

The contractor will be required to request an inspection the day before, or prior to 7:00 AM on the day of the inspection. Inspections will occur Monday through Friday during normal working hours 8:00 AM to 5:00 PM, but will not occur on city-observed holidays.

The City of Missoula reviewed, stamped and approved set of plans shall be available on all construction site(s) at all time(s).

Repair work that does not require complete removal and replacement requires an inspection.

For asphalt paving, inspections are required at (1) subgrade installation, (2) subbase/base installation, and (3) final inspection. (Ord. 3670, 2020)

#### **12.10.180 Approaches onto Right-of-Way – Locations.**

Approaches shall be located at the discretion of and by the approval of the City Engineer or designee.

A. Approaches are permitted in the following scenarios:

1. From Streets:
  - a. Existing paved approach and driveway.
  - b. Existing unpaved approach or driveway serving an existing garage or other parking facility.
  - c. Where a building permit has been submitted and approved for the construction of on-site parking facility.
  - d. To access an approved parking facility located outside the front and side street setbacks.

- e. Where the approved parking facility is at least 20 feet from the most restrictive of these elements: (1) the property line, (2) edge of access easement on public street frontages, or (3) from the edge of asphalt, back of curb, or back of sidewalk (if present or required) on private streets within a public access easement.
- f. A minimum of thirty 30 feet of distance between single or paired driveway approaches, on the same parcel, is recommended and constitutes the width of an on-street parallel parking space.
- g. Existing through lots whose backyard fronts a public right of way may have additional approach to the back yard.
- h. A minimum of 20 feet from a crosswalk or an inferred crosswalk, when the primary vehicle movement is backing towards the crosswalk.

2. From Alleys:

- a. A parking facility with a minimum 24 feet backing distance, which may include right-of-way or public access easement.
- b. An approach from the alley may be added if there is an existing approach meeting the requirements of this chapter from the public street.

B. Approaches are prohibited in the following scenarios:

- 1. To access unpaved areas such as backyards, side yards etc.
- 2. To access illegal or nonconforming parking areas such as the area within the right-of- way or in building set-backs as defined in zoning regulations.
- 3. Locations with adverse sight distance, proximity to intersections, or safety concerns as determined by City Engineer.
- 4. Where physical conditions exist, which do not allow the approach grade to be 15% or less
- 5. Approaches must be a minimum of five feet from property lines for curbside sidewalk and one foot for boulevard sidewalks unless the driveway is shared.

C. Approach locations that do not meet the requirements for sight distance, grade, proximity to intersection(s), or any other hazardous or unsafe traffic condition, as determined by the City Engineer, may be mitigated by controlling the approach configuration (i.e. right-in, right-out) if approved by the City Engineer.

D. Each single dwelling unit shall be limited to one approach unless additional approaches are approved by the City Engineer.

E. Approaches shall be located per the following:

- 1. Mid-block parcels shall prioritize approaches in the following order:
  - a. Alley access
  - b. Fronting street access
- 2. Corner parcels shall prioritize approaches in the following order:
  - a. Alley access
  - b. Side street or lowest traffic volume street access
  - c. Fronting street or highest traffic volume street access
- 3. Through lots shall prioritize approaches in the following order:
  - a. Side street or lowest traffic volume street access
  - b. Fronting street or highest traffic volume street access

F. Approaches onto Collector or Arterial streets shall be avoided when other options are available especially for driveways where vehicles enter the street with a backing movement.

G. An existing curb cut and approach shall be removed, the curb restored to full height, and the previous parking area shall be landscaped if the parking facility is or has been removed. Whenever the use of any existing approach is planned to or will be discontinued by reason of a change in the use or design of the private property, the owner of the property

shall repair the sidewalk, curb/gutter and boulevard affected by the abandoned approach as directed by the City Engineer unless the existing driveway meets the requirements set forth in MMC Chapter 12.17 Parking Facilities. If the owner of the property fails to repair the sidewalk or curb/gutter, and boulevard, the City Engineer may order the repair and the cost thereof be assessed against the private property.

H. Existing approaches impacted by city-initiated right-of-way improvement projects shall be reviewed and approved by City Engineering. (Ord. 3670, 2020)

#### **12.10.190 Approaches onto Right-of-way – Approach Width.**

Approach construction specifications are detailed in the Missoula City Public Works Standards and Specifications Manual. (Ord. 3670, 2020)

### **Chapter 12.14**

#### **RIGHT-OF-WAY OCCUPANCY/ENCROACHMENT PERMITS**

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#### **Section 7**

##### **12.14.020 Right-of-Way Occupancy Permit Required.**

The occupation of any public right-of-way and/or public easement for the purpose of performing the following, including but not limited to; building maintenance, construction and/or repairs, tree removal/installation or pruning, landscaping, utility work, temporary placement of a dumpster, or any other activity as determined by the City Engineer that impedes the safe passage of vehicular, bicyclist and/or pedestrian traffic, requires a right-of-way occupancy permit from Public Works and Mobility and payment of the necessary fees. Fees for the occupation of any public right-of-way shall be established and amended by City Council resolution after conducting a public hearing.

A right-of-way occupancy permit shall be required for the following:

A. The use or closure of one (1) or more lanes of traffic on a public roadway/street for a period of one (1) hour or more (Other than activities authorized by Missoula Municipal Code (MMC) Chapter 12.58 Special Events Permits). Note: the guidelines from the Manual on Uniform Traffic Control Devices (MUTCD) and the City of Missoula Standard Drawings of traffic control plans shall be followed for any/all lane closure(s).

B. The use or closure of a public alley for a period of one (1) hour or more.

C. The use or closure of the shoulder, parking lane or parking space(s) located on public right-of-way for four (4) hours or more. Permission from the Parking Commission shall be obtained for occupancy of a metered/leased parking space and/or signed loading zone that is located within the jurisdiction of the Parking Commission. (see 10.22.240 MMC)

D. The use or closure of a public sidewalk/trail in the Central Business District (CBD) for a period of one hour (1) or more. Note: the guidelines from the Manual on Uniform Traffic Control Devices (MUTCD), Americans with Disabilities Act (ADA) and the City of Missoula standard traffic control plans shall apply to any/all public sidewalk/trail closure. Any/all trail use or closure shall be reviewed and approved by the City of Missoula Parks and Recreation Department prior to issuance of the permit by Public Works and Mobility.

E. The use or closure of all other public sidewalks/trails for a period of four (4) hours or more. Note: the guidelines from the Manual on Uniform Traffic Control Devices (MUTCD), Americans with Disabilities Act (ADA) and the City of Missoula standard traffic control plans shall apply to any/all public sidewalk/trail closure. Any/all trail use or closure shall be reviewed and approved by the City of Missoula Parks and Recreation Department prior to issuance of the permit by Public Works and Mobility.

F. The use or placement of a garbage receptacle(s), including but not limited to; garbage cans, dumpsters, recycling containers and/or other waste receptacles used for the collection of garbage/refuse/waste located/placed upon/within a public roadway/street or parking lane for a period of four (4) hours or more.

All right-of-way occupancy permits shall be submitted for review and approval; install and maintain a temporary traffic control plan in compliance with the current revision/version of the Manual on Uniform Traffic Control Devices (MUTCD), Montana Department of Transportation (MDT), Americans with Disabilities Act (ADA) and the City of Missoula Public Works Standard Specifications. Temporary traffic control plans shall provide for safe management and passage of motor vehicles, bicyclists, and pedestrians as well as workers, equipment and materials.

**Exceptions:** Public federal, state, local government employees and contractors working under contract to a public agency, engaged in authorized work duties shall be exempt from obtaining a right-of-way occupancy permit, however shall be required to install and maintain any/all temporary traffic control as outlined and/or required above.

The following items/objects are exempt from this permit requirement:

Mail boxes, newspaper dispensers, public garbage receptacles (located/placed upon/within a public roadway/street or parking lane for less than four (4) hours), approved/permitted sandwich-board signs, permanent public benches, bus stop shelters, bicycle racks, public utility structures, and other items/objects which the City Engineer may determine are exempt.

**Prohibitions:** Construction/landscape materials (including but not limited to; bark/wood chips, dirt, gravel, rock/stone) and/or any other items/matter/material that may block, inhibit, obstruct or otherwise deteriorate the free drainage of the public right-of-way shall not be permitted upon/over/within the public right-of-way and/or a public easement.

Placement of shipping/storage containers (on any kind/type; reusable, multi-purpose, steel/wood, intermodal freight containers) shall not be located/placed upon/within the public right-of-way and/or public easement for any period/time; these objects shall not be permitted upon/within the public right-of-way and/or public easement.

Right-of-way occupancy, whether required to be permitted or not, shall not violate MMC Chapter 12.28—Obstructions and/or any other portion of Missoula Municipal Code (MMC) (Ord. 3541, 2015; Ord. 3492, 2013; Ord. 3244, 2004)

## **Section 9**

### **12.14.030 Permit Application Fee.**

A. Any applicant wishing to occupy any right-of-way for a permit for the purposes set forth in Section 12.14.020 shall obtain the permit before proceeding with any occupation of the site. All applications must include an approved traffic

and/or pedestrian control plan which conforms to the Manual on Uniform Traffic Control Devices as well as the City of Missoula specifications and policies for traffic control in work zones. All applications must include a schedule of work including dates and hours of occupancy. All applications are subject to approval by the Director or their designee.

B. The fee for the permit for the purposes set forth in Section 12.14.020 shall be established and amended by City Council resolution after conducting a public hearing.

C. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for the work. The Director may order the site vacated until the investigation is completed and the required permit is issued. An investigation fee, in addition to the permit fee shall be collected prior to issuance of the permit. The investigation fee shall be equal to the permit fee required by this code. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law. If the investigated activity is found not to require a permit under the requirements of this code the investigation fee will be waived.

(Ord. 3526, 2014; Ord. 3541, 2015; Ord. 3501 §2; 2013; Ord. 3492, 2013; Ord. 3476 §4, 2012; Ord. 3462 §4, 2011; Ord. 3244, 2004)

## **Section 10**

### **12.14.032 Right-of-Way Encroachment Permit Required.**

The encroachment upon, over, or within any public right-of-way and/or public easement by any object(s)/use(s) for a semi-permanent period and for the specific benefit or use of the adjacent property owner, including but not limited to; awnings, eaves, balconies, structure extension, or overhang of any kind/form, signs, hand railing, landing, steps, or stairs, or any other physical object as determined by Public Works and Mobility that extends/exists off of the adjacent property and is upon, over, or within the public right-of-way and/or public easement shall require a right-of-way encroachment permit from Public Works and Mobility and shall require payment of the necessary fees.

The City of Missoula City Council shall review all encroachments that may impact existing multimodal traffic patterns including but not limited to: significant interruption or redirection of pedestrian, bicycle, and vehicle travel, and/or removal or relocation of parking spaces. The City Council must approve said encroachment by resolution. Encroachments for Sidewalk Cafes are considered under Title 12.18.

Encroachments may also require a Building Permit, Electrical Permit, Sign Permit, Zoning Compliance Permit, or other City required permit(s). A right-of-way occupancy permit may be required for the construction activities associated with an encroachment permit.

Issuance of a right-of-way encroachment permit shall not convey any ownership interest in the public right-of-way and/or public easement regardless of the right-of-way encroachment privileges the permit provides.

Right-of-way encroachments, whether required to be permitted or not, shall not violate MMC Chapter 12.28 – Obstructions or any other portion of Missoula Municipal Code (MMC.)  
(Ord. 3553, 2015; Ord. 3541, 2015)

## **Section 12**

### **12.14.036 Right-of-Way Encroachment Permit Liability and Limitation.**

Issuance of a right-of-way encroachment permit includes the responsibility of the permittee(s) to maintain the approved encroachment in such a manner so as to eliminate any/all hazard(s) and to prevent injury to any/all citizens occupying or using the public right-of-way and/or public easement adjacent to the right-of-way encroachment. By signing the right-of-way encroachment permit the permittee agrees to release, defend, indemnify and hold harmless the City of Missoula from any/all claims of any form or kind, including but not limited to; any/all damage, loss, injury to person(s) and/or property, and/or death to any person(s) that results from or are caused by the encroachment.

Public Works and Mobility may require an additional/special insurance policy from the permittee(s) to be issued in the name of the City of Missoula, protecting the public and the City of Missoula from liability and/or any insurable claim(s).

Issuance of a right-of-way encroachment permit shall be limited exclusively and explicitly to the object(s) or use(s) described in the approved permit. No additional object(s) or use(s) of any kind shall be provided for, constructed, erected and/or placed upon, over, or within the public right-of-way and/or public easement.

(Ord. 3541, 2015)

## **Section 13**

### **12.14.038 Right-of-Way Encroachment Permit Application Fee.**

A. Any applicant wishing to place an encroachment or obtain a permit for an existing encroachment upon, over, or within the public right-of-way and/or public easement as set forth in this Chapter shall apply for and obtain a right-of-way encroachment permit from Public Works and Mobility prior to proceeding with any encroachment activity. All applications shall include a detailed plan for the right-of-way encroachment including safety specifications, Building Permits (as applicable), Zoning Permits (as applicable) and shall comply with any/all other Federal, State and Local requirements and specifications. All right-of-way encroachment permit applications shall be subject to review and approval by Public Works and Mobility.

The permit application shall include plans that contain the following information:

1. Scale of no greater than 1 inch equals 20 feet
2. Location of all permittee and adjacent property lines
3. Location of existing features such as building lines, curbs, sidewalks etc.
4. Location of the proposed encroachment(s)
5. Elevation drawings of the proposed encroachment, as applicable/required
6. Artists rendition and/or architectural/engineering drawing(s) of the proposed encroachment, as applicable/required

B. The fee for an approved right-of-way encroachment permit shall be established and amended by City Council resolution after conducting a public hearing.

C. Whenever any work for which a right-of-way encroachment permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for the work. Public Works and Mobility may order the site vacated until the investigation is completed and the required permit is issued. An investigation fee, in addition to the permit fee shall be collected prior to issuance of the permit. The investigation fee shall be equal to the permit fee required by this code. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law. If the investigated activity is found not to require an encroachment permit under the requirements of this code the investigation and encroachment permit fee shall be waived.

D. A Memorandum of Understanding (MOU) shall be prepared by the City of Missoula, Public Works and Mobility and signed by the applicant(s) and/or property owner(s) for filing with the Missoula County Clerk and Records Office. The MOU shall list any/all conditions, limitations, restrictions, terms and other information pertinent to the issuance of the right-of-way (encroachment) permit.

(Ord. 3541, 2015)

## **Section 14**

### **12.14.040 Right-of-Way Occupancy/Encroachment Permit Inspection.**

A. Public Works and Mobility shall inspect all temporary traffic control and vehicular, bicycle and pedestrian etc., safety devices. If the traffic control/public safety requirements set forth in the right-of-way occupancy or encroachment permit are not in compliance, then a correction notice in the form of a Stop Work Order shall be issued to the permittee and all activities/work terminated until corrections are made by the permittee and approved by the City Engineer. In situations

where a public roadway/street and/or alley is to be closed, the City Engineer may require advance notice to affected property owners and that the traffic control, once in place, shall be approved before the permitted activity/work commences. (Ord. 3541, 2015; Ord. 3492, 2013; Ord. 3244, 2004)

B. Public Works and Mobility shall inspect right-of-way occupancy and encroachment permit applications, activities, work, and locations/sites for compliance with MMC Chapter 12.28 – Obstructions.

C. Public Works and Mobility shall inspect right-of-way occupancy and encroachment permit locations/sites to evaluate the condition of public infrastructure (including but not limited to; curb/gutter, sidewalk, roadway/street and alley paving, grading, drainage structures, bridges [vehicular and pedestrian], railings, retaining walls, boulevard or median improvements, driveway approaches, alley approaches, curb ramps, landscaping, street lighting, traffic management signs, traffic signals, curb and pavement markings, traffic management structures, public utility connections and other related appurtenances) to determine if any harm, damage, degradation, or other adverse condition to the public infrastructure has occurred. Any/all resultant harm, damage, degradation, or other adverse condition to the public infrastructure shall be fully restored to prior condition or better, as determined feasible and/or appropriate by Public Works and Mobility. The permittee accepts full responsibility, including any/all resultant costs, for restoration of the public infrastructure. Failure to comply with restoration requirements may result in the City of Missoula completing the restoration work and;

1. Assessing the adjacent property owner and/or
2. Drawing against the bonds posted by one or more licensed contractors and/or
3. Suspension or revocation of the City of Missoula Business License for the contractor(s) and/or adjacent business entity(ies).

D. Public Works and Mobility shall inspect a right-of-way encroachment work;

1. After placement and/or construction of the permitted encroachment for compliance with the approved right-of-way encroachment permit for the following, including but not limited to; size, location, amount of encroachment and visibility obstruction.
2. Right-of-way encroachments that require an architectural or structural engineering stamp shall be inspected and verified after completion by the appropriate professional prior to approval by the Public Works and Mobility.
3. After removal/abandonment of the permitted encroachment for compliance with restoration of the public right-of-way and/or public access easement and public infrastructure located upon/over/within, as detailed in this Chapter.

(Ord. 3541, 2015)

## **Section 15**

### **12.14.050 Revocation of Right-of-Way Occupancy or Encroachment Permits.**

A. All right-of-way occupancy or encroachment permits issued pursuant to this code are subject to revocation at any time by Public Works and Mobility whenever the public interest, welfare, or safety would be best served by the permit revocation. Revocation of the permit shall require the permittee to immediately remove the occupancy or encroachment and restore the public right-of-way/public easement to the original condition or better.

B. The right-of-way occupancy or encroachment permittee(s) shall be issued a notice of revocation in the form of a Stop Work Order and/or a letter delivered by the U.S. Postal Service Certified Mail stating the reasons, date, and time, that the

permit is/was revoked. The permittee(s) shall have the right to appeal the revocation to Public Works and Mobility and to correct or modify the noted discrepancies to meet requirements set forth by Public Works and Mobility if such is deemed feasible and/or appropriate.

(Ord. 3541, 2015; Ord. 3492, 2013; Ord. 3244, 2004)

## **Section 18**

### **12.14.075 Notice of Violation; Failure to Comply.**

Upon determination by Public Works and Mobility that a permittee has violated one (1) or more of the provisions of this Chapter, Public Works and Mobility shall provide either a Stop Work order or written notice by U.S. Postal Service Certified Mail to the permittee to correct such violation. In the event that the permittee fails or refuses to correct such violation within twenty-four (24) hours of receiving the notice of violation, the permittees' right-of-way (occupancy/encroachment) permit and/ or City Business License may be suspended or revoked. Any permittee cited for three (3) or more violations of this Chapter over a one (1) year period, even if corrected, may have their right-of-way (occupancy/encroachment) permit and/or City Business License revoked and/or not reinstated at time of renewal. (Ord. 3541, 2015)

## **Section 21**

### **12.14.090 Appeal Process**

The permit applicant may appeal Public Works and Mobility decision to deny a right-of-way encroachment permit to the Missoula City Council by submitting a formal letter to Public Works and Mobility requesting that his issue be referred to the City Council citing justification as to why the Public Works and Mobility denial should be overruled. (Ord. 3541, 2015)

## **Chapter 12.16**

### **SIDEWALK MAINTENANCE**

Sections:

[12.16.010 Duties of property owners to keep sidewalks repaired.](#)

[12.16.020 Legislative intent and purpose.](#)

[12.16.025 Definitions.](#)

[12.16.030 Snow and ice to be removed from sidewalks](#)

[12.16.035 Depositing of snow and ice restricted](#)

[12.16.040 Violations: work done, liability therefore, civil penalty and collection](#)

[12.16.045 Criminal penalties](#)

[12.16.050 Defective sidewalks—Accidents—Police report.](#)

[12.16.060 Defective sidewalks—Failure of owner to repair.](#)

[12.16.070 Absence of notice to repair not a defense against fines or assessments.](#)

[12.16.080 Unlawful to drive over or deface or destroy sidewalks.](#)

**12.16.025 Definitions.** The following definitions shall apply in the interpretation and enforcement of this ordinance:

- A. "City" is the City of Missoula.
- B. "Director" is the Director of Public Works and Mobility or his/her duly designated and acting representative.
- C. "Lot" or "parcel" means a parcel of land occupied or intended for occupancy by one main building together with its accessory buildings and which may include more than one platted lot.
- D. "Person" means any individual, business association, partnership, corporation or other legal entity, to include owner, tenant, occupant, lessee, or otherwise.
- E. "Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel or parking, exclusive of the berm or shoulder.

- A. "Sidewalk" means a paved, concrete, or cement pathway intended for public pedestrian use and located parallel to a street or road, on either public right-of-way or a public use easement.  
(Ord. 3492, 2013; Ord. 3040, 1997)

## Chapter 12.17

### PARKING FACILITIES

[12.17.010 Purpose](#)

[12.17.020 Applicability](#)

[12.17.030 Conflicting Provisions](#)

[12.17.040 Paving Construction Work – Application, Approval, and Permit Required](#)

[12.17.050 Paving Construction Work – Standards Compliance Required](#)

[12.17.060 General Requirements](#)

[12.17.070 Private Property Parking Facility Maintenance](#)

[12.17.080 Construction Requirements for Driveways](#)

[12.17.090 Construction Requirements for Parking Facilities](#)

[12.17.100 Private Property Paving Construction Work – Inspection by City](#)

#### **12.17.060 General Requirements.**

A. Driveways and parking facilities shall be laid out, designed and constructed in accordance with Missoula Municipal Code requirements, City Fire Department and Missoula City Public Works Standards and Specifications.

B. Accessible parking facilities shall be provided in accordance with current ADA regulations and Missoula Municipal Code requirements, and Missoula City Public Works Standards and Specifications.

C. All driveways and parking facilities shall be paved in the following scenarios:

1. New construction or change of use for residential dwelling, commercial, or industrial structures.
2. Additions or changes to existing structures that cause an increase in the parking requirement.
3. Where construction, reconstruction, or additions to parking facilities, driveways, or driveway approaches occur.
4. Where a Subdivision Exemption Affidavit for a boundary line relocation or family transfer is applied for and approved (except for a boundary line relocation that does not create additional building sites).

D. Sidewalks/walkways next to paved areas used for driving or parking shall be grade separated by a minimum of four (4) inches or separated by bollards or "B" curb. Pin-down curbs or wheel stops shall not be used to separate vehicular passages or parking areas from an at grade sidewalk/walkway.

E. Vehicular access is prohibited to unpaved areas, including but not limited to front, back or side yards, boulevards, secondary unpaved areas, and unimproved areas. Refer to the Missoula City-County Air Pollution Program Chapter 8 for specific exemptions from this requirement. These exemptions must also meet City of Missoula Small Municipal Separate Storm Sewer System requirements.

F. Driveways serving as an approved fire apparatus access road shall meet the requirements of the International Fire Code, Appendix D as adopted by the City.

G. Parking facilities may include the street and/or alley for minimum backing distance. See City of Missoula Standard Drawings for reference.

H. Existing parking facilities shall not be altered to violate the requirements of this chapter including allowing vehicles to park in areas not designated for parking per the approved site plan.

I. All parking facilities shall provide a snow removal plan. The snow removal plan shall include the removal or storage of accumulated snowfall (snow) within the site.

1. The snow removal plan may include:
  - a. Storage areas located on-site within landscape, lawn or turf areas,
  - b. Storage areas located on site within excess parking areas i.e. parking areas exceeding the minimum required parking as required by Missoula Municipal Code (MMC) Title 20,
  - c. Storage areas located off-site where snow may be legally disposed of.
2. Storage of snow is prohibited in the following locations that:
  - a. Are within the right-of-way.
  - b. Create a visibility obstruction as per Missoula Municipal Code (MMC) Title 12.
  - c. Block fire hydrants or fire apparatus access roads.
  - d. Reduce the quantity of parking spaces below minimum required.
  - e. Inhibit vehicular movements.
  - f. Adversely affects vehicular, pedestrian, or cyclist safety.
  - g. Obstruct accessible parking spaces, routes, aisles, or other accessible site amenities.
  - h. Obstruct entrances, fire exits, mailboxes, storage areas, trash enclosures or other accessible site amenities.
  - i. Block Bike parking locations.
  - j. Adversely affects an access easement.
  - k. Obstruct storm water facilities.
  - l. Is within a riparian zone, wetlands, floodplain, levee, irrigation or other open waterway.
  - m. Is within a private, public or community wellhead isolation or protection zone
  - n. Violates the Clean Water Act (CWA) and / or the Montana Pollutant Discharge Elimination System (MPDES) and / or any other federal, state or local law / statute.

J. At the discretion of the City Engineer, when a building or development permit is needed, pedestrian Connections (sidewalks and/or trails) may be required to connect various facilities, including but not limited to:

1. Parking facilities with entrances to structures.
2. Multiple structures on the same site.
3. Structures to parking facilities, mailboxes, and garbage collection points.
4. Structures and/or parking facilities on adjacent parcels.

5. Existing or future pedestrian facilities (such as sidewalk or trails) in the right-of-way or a public access easement.

These connections, when required, shall meet all accessibility requirements when required by other local, state, or federal regulations.

K. At the discretion of the City Engineer, when a building or development permit is needed, Vehicular Connections (driveways or other drive lanes) may be required, including at, but not limited to, the following locations:

1. Adjacent destinations.
2. Internal roads to adjacent public or private roads.
3. Internal roads to each other.
4. For external connectivity requirements, refer to Chapter 12.10.

L. Exceptions to these standards: The Director or the City Engineer may grant deviations from these standards if there is documentation provided by the developer that justifies the requested changes. (Ord. 3670, 2020)

#### **12.17.080 Construction Requirements for Driveways.**

A. Right of way improvements, including but not limited to curb and gutter, curb cuts, driveway approaches, sidewalk, etc..., shall be installed and maintained in accordance with Missoula Municipal Code Chapter 12.10.

B. Driveways less than a 150 feet in length or not used as a fire access route, shall substantially follow natural contours and not exceed a maximum grade of 15% percent within 15 feet of a sidewalk or edge of pavement and a minimum of 20% beyond

C. Driveways that provide for fire access shall not exceed a maximum grade of 10%.

D. Driveway minimum paved width shall be 8 feet – 6 inches, or 12 feet if the driveway is greater than 150 feet in length. Fire code may require additional unobstructed width and turnouts.

E. Driveways exceeding 150 feet in length require an additional approval from the City Fire Marshall.

- a. Proposals for driveways designs more than 150 feet in length must be approved and accompanied by written comments from the City Fire Marshall.
- b. Dead-end driveways in excess of 150 feet shall have fire apparatus turnarounds, per IFC Appendix D, located within 150 feet of the building
- c. Driveways over 150 feet must have an unobstructed vertical clearance of 13.5 feet and an unobstructed width of not less than 20 feet.

F. Driveways may use self-draining solid surface materials, such as interlocking block pavers, as long as the requirements of Rule 8.204 of the Missoula City-County Air Pollution Control Program and fire code are met.

G. Driveway paving construction work shall be completed along the entire length of a driveway starting at the existing adjacent intersecting street, alley or driveway approach

H. Stacked Parking and back out egress is only permitted for single family & duplex dwelling units.

- I. Driveway shall be removed and landscaped if the existing adjacent parking space(s) are removed.
- J. All existing and new parking shall comply with current standards when changes or alterations to the existing parking and/or approaches are made.
- K. Curb and gutter are not required adjacent to driveways and/or parking facilities for any single family & duplex dwelling units.
- L. Exceptions to these standards: The Director or the City Engineer may grant deviations from these standards if there is documentation provided by the developer that justifies the requested changes. (Ord. 3670, 2020)

**12.17.090 Construction Requirements for Parking Facilities.**

- A. Right-of-way improvements, including but not limited to, curb and gutter, curb cuts, driveway approaches, sidewalk, etc... shall be installed and maintained in accordance with Missoula Municipal Code Title 12.10.
- B. For parking facilities with four (4) or more parking spaces, ADA accessible features and facilities, pedestrian routes, right-of-way infrastructure improvements and facilities (at grade, above grade and below grade) shall be designed by a licensed professional civil engineer or licensed professional architect and submitted plans shall be stamped by said licensed professional and included with the building permit application, zoning compliance permit application and / or any other permit application.
- C. Parking facilities with four (4) or more parking spaces shall be constrained by poured-in-place concrete curbing, fencing, bollards, or other means to physically prevent access to unpaved areas. Adequate storm water management is required in all cases. Pin-down curbs shall not be permitted as a substitute for poured-in-place sidewalk or curb and gutter.
- D. Parking facilities with five (5) or more parking spaces shall be designed so that ingress and egress from the public street from and to a parking facility shall do so by driving forward except for parking spaces served directly off of an alley.
- E. In certain situations, areas not designated and approved for parking shall be clearly marked by applying yellow epoxy paint to the curb or asphalt and signed appropriately and as required by the City Engineer as such i.e. "NO PARKING." Parking facilities shall have the most restrictive ADA compliance requirements applicable, based on each sites' use.
- F. If utilizing an adjacent transit stop for a parking reduction per zoning 20.60.080, it shall be required to provide an ADA-compliant accessible route between the referenced transit stop and all on-site accessible routes.
- G. Where a total of four (4) or fewer parking spaces, including accessible parking spaces, are provided on a site, identification of accessible parking spaces shall not be required. This rule also applies to each separate parking facility of four or fewer parking spaces on a site. However, all other requirements for accessible parking spaces, including access aisles, still apply. The combined total of all parking facilities on a site determines the number of accessible spaces to be signed.
- H. For new facilities, loading and unloading of goods from vehicles shall occur on-site and shall not be accessed by backing into the private property from streets. All maneuvering, backing and turning movements shall be limited to on-site areas only and shall comply with the Missoula City Public Works Standards and Specifications. (Ord. 3670, 2020)

## Chapter 12.18

### Sidewalk Cafés

#### Sections:

- [12.18.010 Purpose](#)
- [12.18.020 Definitions](#)
- [12.18.030 Liability of license holder and indemnification of the City of Missoula](#)
- [12.18.040 Insurance](#)
- [12.18.050 Rules, regulations, and specifications](#)
- [12.18.060 Sidewalk Café Alcohol Addendum Required to Serve Alcoholic Beverages](#)
- [12.18.070 License application required](#)
- [12.18.080 Fees for sidewalk café licenses](#)
- [12.18.090 Notice of violation; failure to comply](#)
- [12.18.100. Violations and penalties](#)

#### **Section 6**

##### **12.18.060 Sidewalk Café Alcohol Addendum Required to Serve Alcoholic Beverages**

In order to serve alcoholic beverages in a sidewalk café the applicant must have an existing liquor license or have an application pending for a liquor license with the Montana Department of Revenue (MDOR) that meets the following requirements throughout the term of the sidewalk café alcohol addendum.

- A. The MDOR must approve the application prior to final approval by the City.
  - 1. The application must be submitted to the City of Missoula Public Works and Mobility for preliminary review.
  - 2. The City will then submit the preliminarily approved application to the MDOR for review.
  - 3. MDOR will review the application and if it meets their requirements will conditionally approve the floor plan so long as the City will grant the applicant conditional use or possessory interests in the sidewalk
  - 4. Final approval of the application by the City will constitute a conditional use/possessory interest of the sidewalk
  - 5. The City's final approval will be forwarded to the MDOR prior to MDOR issuance of its final approval
- B. The MDOR will issue a final approval of the sidewalk service area if the area meets all State requirements and the license has been approved by the City. The applicant shall maintain the sidewalk café area to the requirements within Illustration 1 below. This ordinance amends 12.30.050 and is only applicable to the standards set forth herein.
  - 1. Prior to the issuance of this addendum by the MDOR, the applicant shall provide proof that he/she has obtained all necessary licenses required by the State of Montana, the county of Missoula as well as the City of Missoula. Further, the applicant shall show that he/she will comply with all the rules and regulations pertaining to alcoholic beverages as promulgated by all governing bodies; state, county and city.
  - 2. The applicant shall be in conformity with all MDOR requirements. The applicant shall have specific approval from the Montana Department of Revenue to extend their licensed premises into the sidewalk café.
  - 3. When in a sidewalk café with an alcohol addendum, customers may consume alcohol provided to them by the retail food establishment. Customers may not consume alcohol they have carried into the service area, even if in a sidewalk café with a sidewalk café alcohol addendum.
- C. Requirements for a sidewalk café to be permitted to serve alcoholic beverages
  - 1. Contains readily removable tables and chairs of a type used for outdoor use, temporary railings and/or planters;
  - 2. If two service areas are separated by the required pedestrian passageway, they shall have a temporary connecting link such as marks in the sidewalk or a floor mat to identify the area used by persons engaged or employed for the purpose of providing services to the patrons and
  - 3. The boundaries of the sidewalk café shall be demarcated through the use of a temporary barrier, such as a balustrade, cordon, railing, planter or other means acceptable to the MDOR. Any such temporary demarcation options must be easily removed and clearly set the boundary of the area of the right-of-way where a licensee may serve alcohol.
  - 4. The temporary barrier shall include way-finding at each end to direct visually impaired pedestrians in to the required pedestrian passage way and.

5. Meet all ADA requirements per the most recent adopted guidelines and
6. Is not enclosed by fixed walls or ceilings. (Ord. 3543, 2015)

### SIDEWALK CAFE REQUIREMENTS

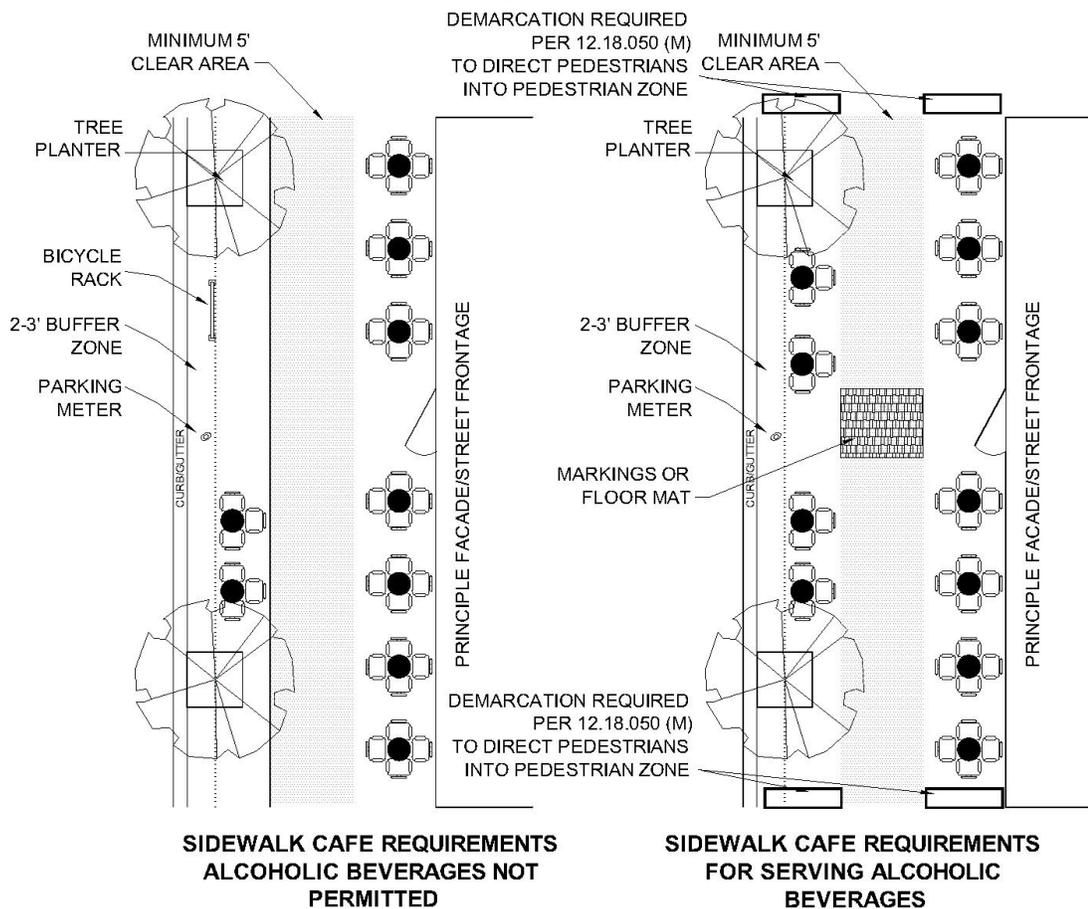


Illustration 1

### Section 7

#### 12.18.070 License application required

The applicant shall submit a license application to The City of Missoula Public Works and Mobility that includes the following:

- A. Name of business
- B. Address of business
- C. Owner and tenant if applicable
- D. Contact telephone number of owner and business
- E. A site plan showing the following information:
  1. Drawn to a scale and not greater than 1"=20'
  2. Plan showing the floor plan within the structure and the proposed sidewalk serving area if the applicant wishes to serve alcoholic beverages in the area of the sidewalk café.
  3. Building façade and dimension (width facing sidewalk)
  4. All access, ingresses and egresses, to the building
  5. Sidewalk location and width
  6. Curb location
  7. Any / all existing obstructions on public sidewalk such as parking meters, trees and tree planters, bike racks, signs, utility poles, fire hydrants, etc.
  8. Proposed location of furniture, demarcation and delineation of the service area (if applicable for serving alcohol), garbage collection, signs etc.
  9. Storage area for furniture per fire code

F. Proof of general liability insurance (Ord. 3543, 2015)

## **Section 9**

### **12.18.090 Notice of violation; failure to comply**

Upon determination by City of Missoula Public Works and Mobility or Police Department that a licensee has violated one or more of the provisions of this chapter one of the following corrective measures must be taken:

- A. If the violation is regarding Public Safety or Americans with Disabilities Act (ADA) including but not limited to: completely or partially blocking the pedestrian clear zone, restricting emergency access and egress from doorways or parked cars, etc. corrective activity must be done immediately upon verbal notice. In the event the licensee fails or refuses to correct such violation immediately after receiving the notice of violation, the licensee's sidewalk café license may be revoked.
- B. If the violation is not considered a public safety or ADA issue then Public Works and Mobility staff shall give written notice, by Certified Letter, to the licensee to correct such violation. In the event the licensee fails or refuses to correct such violation within seventy-two (72) hours of receiving the notice of violation, the licensee's sidewalk café license may be revoked.
- C. Any licensee cited for three (3) or more violations of this chapter over a one (1) year period, even if corrected, may have his or her license revoked and / or not reinstated at renewal time. (Ord. 3543, 2015)

## **Chapter 12.24**

### **EXCAVATIONS**

Sections:

[12.24.005 Definitions.](#)

[12.24.010 Permit--Required.](#)

[12.24.020 Permit--Application.](#)

[12.24.030 Permit--Application--Fee.](#)

[12.24.035 Permit fee exceptions.](#)

[12.24.036 Investigation Fees; Work without a Permit.](#)

[12.24.037 Permit Fee Refunds.](#)

[12.24.040 Construction Specifications.](#)

[12.24.045 Repealed](#)

[12.24.050 Repealed](#)

[12.24.060 Contractor Responsibility and Public Safety.](#)

[12.24.070 Repealed](#)

[12.24.080 Repealed](#)

[12.24.090 Repealed](#)

[12.24.100 Failure to complete excavation and repair surface --Inspection and completion of repair by city.](#)

[12.24.110 Business license and liability insurance requirement.](#)

[12.24.120 Surety bond requirements.](#)

[12.24.130 Liability of city.](#)

[12.24.140 Assessments for damaging or opening pavement.](#)

[12.24.150 Requirements for non-municipal utilities](#)

[12.24.160 Repealed](#)

[12.24.170 Cleaning up of excavation site.](#)

[12.24.180 Requirements for special projects](#)

[12.24.190 Violation--Penalty.](#)

**12.24.010 Permit--Required.** It shall be unlawful for any person, firm or corporation to make an excavation without being a licensed and bonded excavator, and first obtaining an excavation permit from Public Works and Mobility. Permits shall be required for the following:

- A. Installing, maintaining, replacing, removing, repairing or investigating water or sewer lines currently connected or proposing connection to a public utility in the streets, alleys, public rights-of-way, easements, and private property.
  - B. Excavating in any street, alley, public utility easement or public right-of-way.
  - C. Installing, maintaining, replacing, removing, repairing or investigating water or sewer lines owned or operated by the City of Missoula. Exceptions:
    - 1. Landscaping sprinklers and irrigation systems shall only require an excavation permit if the installation is in a State Route right-of-way or if excavation is at point of source, such as curbstop. Repair of landscaping sprinkler and irrigation system does not require an excavation permit.
    - 2. The installation, maintenance, removal, repair or replacement of utility poles shall only require an excavation permit if the owner of the pole does not have a written agreement with the City of Missoula for the relocation of their utility poles.
- (Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2043 §11, 1979; prior code §28-32).

#### **12.24.020 Permit--Application.**

- A. Application shall be made to Public Works and Mobility by the excavator stating the purpose for which the excavation is to be made, including locations, depth, width, length and amount of time such excavation is to remain open or unfilled.
- B. Applicant shall file, upon request, with Public Works and Mobility for approval, one drawing of all proposed improvements before permit is issued.
- C. Before issuance of a permit the excavator shall contact all underground facilities for their locations as stated in M.C.A. 69-4-502. The excavator shall have a location number from the Underground Location Center before a permit is issued. In addition to public utility lines, the excavator shall locate and protect private utility lines such as water and sewer services and private irrigation lines.
- D. Before issuance of an excavation permit all fees, except the fees specified in Section 12.24.140 shall be paid. The fees to be paid may include but not limited to a: General Obligation Bond, contract for sewer, sewer development, Special Improvement District, and rebate fees.
- E. Permits shall expire by limitation and become null and void if work authorized is not commenced within one hundred and eighty (180) calendar days after date of issuance. Also, permits shall expire by limitation and become null and void if work authorized by the permit is suspended or abandoned by the excavator for more than 180 calendar days. Extension of time on permits may be granted by the Public Works and Mobility Director, or a designated agent.
- F. Excavations shall be inspected and perform to the approval of the Director. Public Works and Mobility staff may at any time, when excavations are not performed in accordance with this chapter, have authority to order the excavation contractor to suspend work until excavation conforms with the specifications set forth in this chapter. Inspections shall be required to meet all federal, state, and local requirements.
- G. No excavation shall extend over half the width of any traveled portion of the street right-of-way section at any time, except under written authorization of the Public Works and Mobility Director, or a designated agent.
- H. All excavators installing Septic Tank Effluent Pump (STEP) systems shall be required to be certified by the Public Works and Mobility Director a designated agent to do work on STEP systems.
- I. Issuance of a permit will require that the excavator shall have a competent person, as defined by the Federal Occupational Safety and Health Administration (OSHA), on site during all work associated with this permit. (Ord. 3679, 2021; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2043 §12, 1979; prior code §28-33).
- J. Whenever an excavator is required to remove curb or sidewalk when reinstalling, replacing, or repairing utility lines, they shall be allowed to, and required to reinstall such curbs and sidewalks as provided in this chapter:
  - 1. The concrete curb and sidewalk work shall conform to all city regulations
  - 2. The excavator shall indicate on the excavation permit application their intention to perform any concrete curb or

sidewalk replacement in the public right-of-way.

The excavation permit shall serve as a permit to remove and replace concrete curb and sidewalk within the limits of the excavation work authorized by the excavation permit (Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997)

K. Pavement Marking. All pavement marking removed or damaged by excavation work shall be replaced with the same type of material used in the original markings, or those approved by Public Works and Mobility staff. The work must meet the installation and material specifications commensurate with the type of marking used. Thermoplastic pavement marking may be replaced with plastic inlay tape or an approved equal.

L. Warranty. The holder of the permit shall warrant the work in the public right-of-way to be free from backfill settlement and surface condition for two years following the completed, accepted work. Warranty starts on date project is accepted by Public Works and Mobility staff. (Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §2840).

#### **12.24.030 Permit--Application--Fee.**

Permit fees are based on the average direct and indirect costs to provide plan checking, permit administration, field inspection, record management, warranty inspection, and Public Works and Mobility for excavations. The fees for the following excavation permits shall be established and amended by City Council resolution after conducting a public hearing.

- A. Excavation permits for sanitary sewer
- B. Excavation permits for water
- C. Excavation permits for storm water
- D. Excavation permits for miscellaneous excavations including sewer, water, storm drain, gas, electric, phone, and cable television.

Revenue from these fees shall be credited to the general fund.

(Ord. 3679, 2021; Ord. 3526, 2014; Ord. 3501 §4, 2013; Ord. 3492, 2013; Ord. 3476 §6, 2012; Ord. 3462 §6, 2011; Ord. 3433 §4, 2010; Ord. 3384 §4, 2008; Ord. 3350 §4 2007; Ord. 3323 §4, 2006; Ord. 3298, 2005; Ord. 3259 §3, 2004; Ord. 3244, 2004; Ord. 3227, 2003; 3014, 1997; Ord. 2380 (part), 1984; Ord. 1846, 1977; prior code §28-34).

#### **12.24.035 Permit fee exceptions:**

- A. Any excavator doing work for the City may be exempted from permit fees when authorized by the Public Works and Mobility Director.
- B. Work performed by the City is exempt from permit fees. (Ord. 3492, 2013; Ord. 3244, 2004)

**12.24.036 Investigation Fees; Work without a Permit.** Whenever any work for which a permit is required by this ordinance has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this ordinance. The payment of such investigation fee shall not exempt any person from compliance with all provisions of this ordinance nor from penalty prescribed by Section 12.24.190.

Exception: During the period of time when city offices are closed, emergency repairs may be performed by the excavator before obtaining a permit. The permit shall be obtained by the excavator within eight working hours after city offices are open. (Ord. 3244, 2004; Ord. 3014, 1997)

**12.24.037 Permit Fee Refunds.** Refunds or credits of excavation permit fees will be given with Public Works and Mobility Director or designee approval as long as no work has commenced. The refund process will be consistent with city policy. (Ord. 3628, 2019; Ord. 3244, 2004; Ord. 3014, 1997)

#### **12.24.060 Contractor Responsibility and Public Safety.**

A. Responsibility: The Excavator in accepting and acting under the excavation permit granted under the provisions hereof agrees to assume full responsibility for injury to persons or losses or damage to property incurred by reason of, or arising out of, any act or omission of such excavation or to properly barricade, guard, and warn the public of such excavation.

B. Traffic Control: Prior to the issuance of a permit the excavator shall provide a traffic control plan (as defined in the Manual on Uniform Traffic Control Devices Part VI of the U.S. Department of Transportation Federal Highway Administration, latest edition) or a traffic control plan number from the *City of Missoula Guidelines for Traffic Control* if applicable, and gain approval of the traffic control plan from Public Works and Mobility staff. The excavator shall be responsible for maintaining safe travel corridors for all vehicle, bicycle and pedestrian traffic as part of the approved traffic control plan. Traffic control devices shall be installed in accordance with the approved traffic control plan before construction or maintenance operations, and shall be properly maintained and operated during the time such special conditions exist. They shall remain in place only as long as they are needed and shall be immediately removed thereafter. Where operations are performed in stages, there shall be in place only those devices that apply to the conditions present. Devices or signs that do not apply to existing conditions shall be removed, covered or turned so as to not be readable by oncoming traffic. Barricade and sign supports shall be constructed and erected in a proper manner. Weeds, trees shrubbery, construction materials, equipment, spoil piles etc., shall not obscure any traffic control device. Excavated material that is stockpiled on city right-of-way shall be safeguarded by means of flashing barricades and proper traffic regulatory signing. All safeguarding of excavation projects must conform to the Manual on Uniform Traffic Control Devices for Streets and Highways, U.S. Department of Transportation Federal Highway Administration.

C. Excavation Safety: All work covered in this ordinance shall meet current OSHA Safety and Health Standards. Failure to comply with OSHA rules may result in an immediate loss of the excavation permit. The excavator shall take all necessary precaution to prevent injury to workers and others, and to protect any and all adjacent private and public property. This shall include protecting sumps, storm drains, sidewalks, curbs, sprinkler systems, traffic loops, traffic signals, etc. The excavator shall be required to have a competent person, as defined by OSHA, on site during all work associated with the Excavation Permit. The excavator shall be solely responsible for all safety related to the excavation. (Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-37).

#### **12.24.100 Failure to complete excavation and repair surface --inspection and completion of repair by city.**

If inspection of excavation, once commenced, finds methods being practiced not conforming to this chapter, a correction notice will be issued by Public Works and Mobility staff listing items or procedures not meeting requirements of this chapter. If corrections listed on notice are not brought to conformity with this chapter, a stop work order for the project will be issued. Work on the project shall only resume after a meeting with the excavator, Public Works and Mobility Director or designee, and the Public Works and Mobility staff member who issued the stop work order. If the project is not brought into conformity with this chapter, the Public Works and Mobility Director shall cause the excavation to be placed in a condition that does meet the requirements of this chapter. Costs shall be assessed to the excavator's bond under Section 12.24.120, with action against the excavator's city business license, under Section 5.08.120. (Ord. 3679, 2021, Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-41).

#### **12.24.120 Surety bond requirements.**

A. An applicant for a permit must also file a surety bond as required in Section 5.08.140 in the principal amount of not less than the contract amount, but in no case, less than twenty thousand dollars. In addition to the requirements of Section 5.08.140, the bond shall also be conditioned upon the proper backfill of the excavation, proper installation of any utility service or main line and restoration of surface in accordance with the provision of this chapter. Such bond shall be required of all applicants for permits without exception.

B. Any evidence of settlement of backfill or deterioration or failure of excavator's patch applied to the surface in the public right-of-way within two years after completion and acceptance of the work shall be deemed conclusive evidence of defective backfill or surface restoration by the permittee, excavator and in such event, after three days' notice to the excavator and their bondsman, the Public Works and Mobility Director or a designated agent may elect to re-excavate and backfill properly or to repair defective surface restorations, or both, in accordance with the provisions of this chapter, and the costs thereof shall be assessed against the bond provided for by this section and bond filed under this section

must so recite the right of the city to do so. (Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2043 §14, 1979; prior code §28-44).

**12.24.130 Liability of city.** The city shall assume no responsibility for excavator's surface patches or for any backfills. The Public Works and Mobility Director's or his/her designee's report upon failure of any excavator's backfill substance or upon any surface failure shall be conclusive. (Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-45).

**12.24.140 Assessments for damaging or opening pavement.**

- A. A charge separate from the excavation permit fee must be paid by the excavator for each square foot of pavement to be removed or damaged. Pavement may be considered damaged if it is gauged, scraped, cracked, or has wheel or tread marks as a result of excavation operations.
- B. The asphalt cut assessment rate shall be established and amended by City Council after conducting a public hearing.
- C. The Public Works and Mobility Director may, in their judgment, waive the assessment if the pavement is in poor condition. Monies obtained by these assessments shall be credited to the general fund and earmarked for street construction and repairs.
- D. Asphalt cut assessments shall be charged prior to construction at the time of permit issuance. Square footage shall be based on the linear feet of a project along with standard trench widths as determined in the Missoula City Public Works Standards and Specifications Manual.
- E. The following exceptions apply to pavement assessments:
- F. When the excavation is performed at the request of the City for street reconstruction that requires utility improvements, no pavement assessment will be required of the utility making the improvements.
- G. When an excavation is performed to replace or repair an existing water or sewer service, no paving assessment will be required of the property owner.

(Ord. 3526, 2014; Ord. 3492, 2013; Ord. 3462 §7, 2011; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2254 §1, 1982; prior code §28-46).

**12.24.150 Requirements for Non-Municipal Utilities**

- A. Applicability. The following section of code applies to all non-municipal utilities with buried or above ground infrastructure within right of way or public easements.
- B. Registration, Permits, Construction Codes, and Cooperation
  - 1. With the exception of routine, minor maintenance work, non-municipal utilities shall obtain a permit where required by the City's rules or regulations prior to constructing, removing, abandoning, relocating, or reconstructing, if necessary, any portion of its facilities. Notwithstanding the foregoing, City understands and acknowledges there may be instances when it is in their interest for a non-municipal utility to make repairs that are of an emergency nature without first obtaining a permit. In the event a non-municipal utility undertakes such emergency repairs without first obtaining a permit, the non-municipal utility will notify City as soon as practicable after discovering the need for repairs and will apply for such required permits in a reasonable time after notification to City.
    - i. Failure to obtain permits or comply with permit requirements shall subject the non-municipal utility to all enforcement remedies available to City.
  - 2. License. Any non-municipal utility owning or operating underground facilities shall annually apply for an excavation business license to cover all excavations to be made by or on behalf of such company during each fiscal year.
  - 3. Non-municipal utilities shall file a surety bond in the principal sum of fifty thousand dollars concerning all of the excavation or above groundwork made by or on behalf of the company. Such bond shall be filed with the City Treasurer prior to issuance of excavation business licenses.
  - 4. Insurance. Public utility and cable television companies shall file with the City Treasurer evidence of public liability insurance that conforms to Section 12.24.110.
  - 5. Inspections. Non-municipal Utility companies shall request inspections as specified in Section 12.24.020 (F).

6. Comprehensive Development Plan. Each non-municipal utility company operating within the city shall provide a comprehensive development plan for the use of rights-of-way or public utility easements for their utilities. The plan shall be a five-year type plan plus information regarding long-range plans. Supplemental updates of the plan shall be provided each year prior to January 1. The plan and yearly supplements shall contain but shall not be limited to the following:

- i. Master plan of the utility in rights-of-way and public utility easements;
- ii. Reconstruction, extension or replacement plans;
- iii. Yearly program for construction planned;
- iv. Schedules of overall improvements;
- v. Location of the proposed improvement within rights-of-way and public utility easements.

C. Utility Locations and Plan Review. Locations of utilities placed in rights-of-way and public utility easements shall be approved by the Public Works and Mobility Director or designee. The construction plans shall be drawn as per the requirements of the City of Missoula Public Works Standards and Specifications Manual. (Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2560, 1987; Ord. 2043 §15, 1979; prior code §28-47)

D. Minimum Interference.

1. All transmission and distribution structures, lines and equipment erected by a non-municipal utility shall be located so as to cause minimum interference with the unencumbered use of rights-of-way, public utility easements, and other public places and minimum interference with the rights and reasonable convenience of property owners who adjoin any of the rights-of-way, public utility easements, and public places.
2. Non-municipal utilities shall provide advance notice to any private property owner and shall obtain authorization prior to commencing work on private property.

E. Disturbance or damage: Any and all rights-of-way, or public or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, expansion, extension, or reconstruction of non-municipal utility work shall be promptly and fully restored by the non-municipal utility, at its expense, to a condition as good as that prevailing prior to the non-municipal utility's work. A non-municipal utility's obligation under this paragraph will extend to the removal, disturbance, or damage to existing trees, shrubs and related City owned plantings located on public property absent the City's prior approval.

F. Relocation: Non-municipal utilities shall, at their own expense, protect, relocate, support, temporarily disconnect any of its facilities when a City project or activity makes disconnection, removal, or relocation necessary for benefit of the public.

G. Emergency: Whenever, in case of fire or other emergency, it becomes necessary in the judgment of the City Clerk, police chief, fire chief, public works director or their delegates, to remove or damage any of non-municipal utility facilities, no charge shall be made by the non-municipal utility against City for restoration, repair, or damages.

H. Tree Trimming: Non-municipal utilities shall trim trees in accordance with Title 5, Chapter 5.80.090 of the Missoula Municipal Code and Chapter 12.32 of the Missoula Municipal Code and any other provisions of Applicable Law.

I. Protection of facilities: Nothing contained in this section shall relieve any entity from liability arising out of the failure to exercise reasonable care to avoid damaging non-municipal utility facilities while performing any work connected with grading, regrading, or changing the line of any rights-of-way, public utility easements, or public place or the construction or reconstruction of any sewer or water system.

J. Installation records: Each non-municipal utility shall keep accurate installation records of the location of all facilities in the rights-of-way, public utility easements, and other public places and furnish them to City upon request. Non-municipal utilities shall cooperate with City to furnish such information in an electronic mapping format, if possible compatible with the then-current City electronic mapping format. Upon completion of new or relocation construction of underground facilities in the rights-of-way, public utility easements, and other public places, non-municipal utilities

shall provide City with installation records in an electronic format, if possible compatible with the then-current City electronic mapping format showing the location of the underground and above ground facilities.

- K. Locating facilities: Non-municipal utilities shall comply with the State of Montana's One-call system for locating facilities in the right-of-way as set forth in MCA Sections 69-4-501 through 69-4-530. Non-municipal utilities are obligated to furnish location information to the City in a timely manner, but in no case longer than thirty (30) days.
- L. Relocation delays.
1. If a non-municipal utility's relocation effort so delays construction of a City project causing City to be liable for delay damages, the non-municipal utility shall reimburse City for those damages attributable to the delay created by the non-municipal utility. In the event the non-municipal utility should dispute the amount of damages, the matter shall be referred to the City Engineer for a decision. In the event that the non-municipal utility disagrees with the City Engineer's decision, the matter shall be submitted to the City Public Works & Mobility Director for determination, whose decision shall be final and binding upon the non-municipal utility as a matter of City review, but nothing herein waives any right of appeal to the courts.
  2. In the event City becomes aware of a potential relocation delay involving non-municipal utility facilities, City shall promptly notify non-municipal utility and place them on notice of potential delay damages.
- M. Interference with City Facilities: The installation, use, and maintenance of the non-municipal utility facilities within the rights-of-way, public utility easements, and public places authorized herein shall be in such a manner as not to interfere with City's placement, construction, use and maintenance of its rights-of-way, public utility easement, and public ways, street lighting, water pipes, drains, sewers, traffic signal systems or other City systems that have been, or may be, installed, maintained, used, or authorized by City.
- N. Interference with Utility Facilities: The non-municipal utility shall exercise reasonable care in installing, maintaining or using any of its facilities in such a manner that will not damage or interfere with any existing facilities of another utility located within the rights-of-way, public utility easements, and public places and shall relocate its facilities, if determined to be necessary by the City Engineer, to accommodate another facilities' relocation. Nothing in this section is meant to limit any rights a non-municipal utility may have under Applicable Laws to be compensated for the cost of relocating its facilities from the utility that is requesting the relocation.
- O. Colocation: To maximize public and employee safety, to minimize visual clutter of aerial plant, and to minimize the amount of trenching and excavation in and along rights-of-way, public utility easements, and public places, non-municipal utilities shall make every commercially reasonable effort to colocate compatible facilities within rights-of-way, public utility easements, and public spaces, subject to the engineering requirements of the owners of utility poles and other facilities.
- P. Safety Requirements. Non-municipal utilities shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries.
1. Non-municipal utilities shall install and maintain its system and other equipment in accordance with City's codes and the requirements of the National Electric Safety Code and all other applicable FCC, state, and local regulations, and in such manner that they will not interfere with City communications technology related to health, safety and welfare of the residents.

**12.24.170 Cleaning up of excavation site.** The excavator shall prevent all mud, rocks, or debris from being spilled or dragged onto rights-of-way outside the excavation site. Upon completion of excavation work, the entire area in all directions shall be cleared of all debris, boulders and all other excess materials from excavation, backfill and resurfacing operations to the satisfaction of the Public Works and Mobility staff . This clean up requirement shall include private property, as well as public rights-of-way. (Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-50.3).

**12.24.180 Requirements for special projects.** The following shall apply to special projects as determined by the Public Works and Mobility Director or a designated agent. Contractor and subcontractors performing excavations for special improvement districts shall conform to the specifications and contract documents for that special improvement district in

lieu of the Engineering construction requirements of this chapter. (Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Prior code §28-50.5)

**12.24.190 Violation--Penalty.** It shall be unlawful for any person to fail to perform any of the conditions set out in this chapter. Upon conviction, a minimum fine of five hundred dollars will be levied. Any excavator convicted of a violation of this chapter may have their city business license revoked as per Section 5.08.120 M.M.C. Further, any person convicted of a violation of this chapter shall be required to post with the City Treasurer a cash bond in the amount of five thousand dollars before they may perform any further excavating work within the city. The cash bond shall be used on order of the Public Works and Mobility Director to repair and maintain any further excavations made by such person. (Ord. 3492, 2013; Ord. 3244, 2004; Ord. 3014, 1997; Ord. 2043 §16, 1979; prior code §28-50.4).

## Chapter 12.28

### OBSTRUCTIONS

Sections:

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[12.28.050 Boxes, crates and barrels.](#)

[12.28.060 Building materials.](#)

[12.28.070 Passage on streets and sidewalks not to be obstructed.](#)

[12.28.080 Awnings.](#)

[12.28.090 Materials from defective vehicles.](#)

[12.28.100 Obstructions caused by railway cars.](#)

[12.28.110 Visibility obstructions.](#)

[12.28.120 Visibility obstructions--Exceptions.](#)

[12.28.130 Visibility obstructions--Existing obstructions.](#)

[12.28.140 Visibility obstructions--Misdemeanor and penalty.](#)

[12.28.150 Visibility obstructions--Removal of obstructions by city.](#)

**12.28.020 Signs--Generally.** No person shall place, erect, or maintain, or cause to be placed, erected, or maintained, upon, over, or across any street, sidewalk, or alley any hanging or swinging sign or signs, or post or posts, or any obstruction of any kind or character as will in any degree interrupt or hinder the free use of the street, sidewalk, or alley by the public, or that will in any manner endanger the safety of any person passing or traveling along, upon, or over such streets, alleys, and sidewalks, except small sidewalk commercial signs may be used provided that:

1. No such sign may obstruct pedestrian or other traffic;
2. No such sign may be lighted or use electricity;
3. No such sign may be larger than five feet in height or three feet in width;
4. No such sign may hang, but must rest on the ground or on supports placed on the ground;
5. The business establishment using the sign has no other feasible means of advertising;
6. The sign is approved by the Public Works and Mobility staff.

The use of any sign authorized by this section is a privilege granted by the city and shall not constitute a nonconforming use in the event such signs are prohibited in the future.

(Ord. 3492, 2013; Ord. 2598 §1, 1987; Ord. 1930, 1978; Ord. 1869, 1977; prior code §28-102).

**12.28.060 Building materials.** It is unlawful for any person to place or leave upon any street, avenue or alley any rock, stone, lumber, brick or other building material, unless permission to do so shall be first obtained from the Public Works and Mobility staff or unless the person shall be entitled to do so under a building permit issued by Public Works and Mobility staff. (Ord. 3492, 2013; Ord. 2043 §30, 1979; prior code §28-107).

**12.28.110 Visibility obstructions.** Signs, fences, hedges, walls, shrubbery, natural growth, or other obstructions to the view, whether movable or stationary exclusive of motor vehicles, located on private property or public right-of-way that are

higher than thirty inches above the level of the established top-of-street curb grade or level of the adjacent street intersection and are located within:

- A. Sight visibility triangles as documented in Chapter 9.5 Intersection Sight Distance, in the American Association of State Highway and Transportation Officials (AASHTO) *A Policy on Geometric Design of Highways and Streets*.
- B. The isosceles triangle having sides of ten feet along the right-of-way line of an alley or along the edge line of a private drive, for pedestrian purposes, and along:
  - 1. The outside edge of the sidewalk, or
  - 2. If there is no sidewalk, the curb line; or
- C. Regardless of other provision of this section fences, walls, trees, or hedges erected or maintained in any area which materially impedes vision of vehicles entering an abutting street as determined by Public Works and Mobility staff; are obstructions to visibility of pedestrians and persons operating vehicles and are public nuisances.

It is the duty of the owner or tenant of any premises within the city to abate such public nuisances in front of and adjoining their premises within the public right-of-way or upon their premises by destroying, removing, or trimming the cause of the public nuisance.

(Ord. 3676, 2021; Ord. 3492, 2013; Ord. 2598 §2, 1987).

#### **12.28.140 Visibility obstructions--Misdemeanor and penalty.**

A. It shall be a misdemeanor for any person or persons or corporations owning real property or tenants of any real property to install, set out, or maintain or to allow the installation, setting out, or maintenance of any private signs, hedge, fence, shrubbery, natural growth, or other obstruction to the view, whether movable or stationary, higher than thirty inches above the level of the street curb or the level of the adjacent roadway on any private property or public right-of-way that is located in the areas described in Section 12.28.110, subsections A, B, and C.

B. Any person or persons or corporations violating Section 12.18.110 of this code after thirty days' notice by the Public Works and Mobility Director, shall be guilty of a misdemeanor and on conviction shall be fined any sum not less than fifty dollars nor more than one hundred dollars, and each day that the violation shall continue shall constitute a separate offense. (Ord. 3676, 2021; Ord. 3492, 2013; Ord. 2598 §5, 1987).

## **Chapter 12.31**

### **FENCES**

Sections:

[12.31.010 Authority.](#)

[12.31.020 Purpose.](#)

[12.31.030 Applicability.](#)

[12.31.040 Conflicting Provisions.](#)

[12.31.050 Definitions.](#)

[12.31.060 Fences – General Conditions.](#)

[12.31.070 Fence Standards and Restrictions – Residential Uses.](#)

[12.31.080 Fence Standards and Restrictions – Commercial/Industrial/Agricultural Uses.](#)

[12.31.090 Fence Gates and Arbors.](#)

[12.31.100 Fence Encroachments – Permits and Provisions.](#)

[12.31.110 Construction Site Fences.](#)

[12.31.120 Investigate Fee – Work without a Permit.](#)

[12.31.130 Penalty.](#)

[12.31.140 Appeal Process.](#)

[12.31.150 Severability.](#)

### **12.31.060 Fences – General Conditions.**

A. Fence Permit Required. Any property owner or contractor constructing a new fence or any time twenty-five (25') feet or more of any portion of an existing fence (front or rear) is replaced, reconstructed, or repaired by a property owner or contractor, a fence permit shall be obtained from the City, prior to the construction or reconstruction of said fence. Fence permit fees are established by Resolution. One (1) fence permit is required per physical location, parcel, lot, or address. One (1) permit shall not be issued for multiple locations or addresses unless one (1) physical location, parcel, or lot has multiple addresses (such as a multi-family parcel). All work under this permit shall be completed within one hundred eighty (180) days of issuance. Any work to be done after one hundred eighty (180) days of the date of the permit shall require a new permit.

B. Fence Maintenance. The property owner shall assume, by way of an approved fence permit application, all responsibility to maintain approved fence in good repair at all times at their sole expense. The fence that is approved to be constructed shall always be maintained in a condition that is deemed safe and satisfactory, as determined by Public Works and Mobility Inspectors.

C. Fence Liability. The property owner shall assume, by way of an approved fence permit application, all liability resulting from any incident involving the approved fence installation and maintenance and shall hold the City harmless from all damages resulting from such incident.

D. Fence Responsibilities. The property owner shall assume, by way of an approved fence permit application, all responsibility to install the fence on the property owners' property. All fences shall be installed inside the property line so that no component; post, footing/base, or any other portion of the fence extends beyond the property line. If the location of the property line is unknown or unclear, it is recommended that, at minimum, a retracement survey be performed by a Montana licensed professional land surveyor, prior to fence installation. A dispute over property line location between neighbors is a civil matter and shall be directed to the civil court system.

E. Fence Permit Revocation. The property owner acknowledges, by way of an approved fence permit application, that if the fence is not constructed in accordance with the approved plans or is constructed so to encroach into the public right-of-way, the issued fence permit may be revoked. If the fence permit is revoked, the property owner agrees to immediately take corrective action and/or remove the fence and restore the premises to its original condition.

F. Covenants, Conditions, and Restrictions. Homeowners are encouraged to check Covenants, Conditions, and Restrictions that may apply to construction of fences in their subdivision before applying for fence permits.

G. Building Permits. Any fence exceeding eighty-four (84") inches or seven (7') feet in height shall be designed and engineered for safety, structural soundness, and lateral/wind load analysis and require a City Building Permit in addition to the required City Fence Permit.

H. Determining Yards. For irregular-shaped lots and in other instances where yards are not clearly defined in this section, the Zoning Officer is authorized to establish Front and Rear Yards for the purposes of fence location and construction.

I. Maximum Fence Heights Exception. Requests to exceed the maximum height standards provided in this Chapter may be approved if the Development Services Director finds that there are unusual circumstances that warrant the additional height, the proposed fence is sensitive to neighborhood character, and it will not have a negative impact on residential neighbors. The property owner shall provide comment from the adjacent property owners to be included with the exception request.

J. Fence installation relative to public sidewalks.

1. Where public sidewalks do not exist, fences shall be installed no closer than twenty-four (24") inches or two (2') feet to the back of any future public sidewalk as determined by the City Engineer. This is to facilitate the installation of the future sidewalk without disturbance to the fence.
2. Where public sidewalks do exist, no fence shall be installed closer than twelve (12") inches or one (1') foot to the back of the sidewalk. This is to facilitate the maintenance and/or replacement of the existing sidewalk without disturbance to the fence.
3. The fence must still be located on private property, regardless of existing or future sidewalk location, unless an encroachment permit has been approved per Section 12.31.100.

K. Fences within an Easement or Levee. The property owner acknowledges, by way of an approved fence permit application, that certain types of fences may be permitted to encroach into certain types of easements. Property owner(s), fence permittee(s), or fence contractors shall review the plat or any separate easement document(s) for the subject property prior to submitting for an application for a Fence Permit. Fences constructed over, upon, or within an easement may be removed without notice. Property owner(s)/fence permittee(s) accept any and all liability for damage, maintenance, or repair to the easement as a result of the fence. For properties located through, upon, or within a levee, no fence of any kind shall be constructed through, upon, or within the levee. No flood control device shall be altered, damaged, impeded, or removed as a result of fence installation.

(Ord. 3577, 2016)

#### **12.31.110 Construction Site Fences.**

A. No construction site fence shall be constructed or installed which restricts or obstructs sight visibility as described in Section 12.28.110 of this code.

B. Construction fencing on private property does not require a fence permit.

C. Construction fencing may be up to seventy-two (72") inches or six (6') feet in height on all sides of the worksite.

D. A construction fencing base shall not obstruct any pedestrian or vehicular traffic on sidewalks, streets, alleys, or any public right-of-way.

E. Construction fencing shall not be permitted in the public right-of-way without prior issuance of a Right-Of-Way Occupancy Permit.

F. Construction fencing shall be maintained in a safe condition for the duration of the construction project, as determined by Public Works and Mobility Inspectors.

G. Construction fencing is subject to all other fence restrictions identified in this chapter.

(Ord. 3577, 2016)

## **Chapter 12.36**

### **POLES AND WIRES**

Sections:

[12.36.010 Prohibited over paved streets--Underground conduits--Removal.](#)

[12.36.020 Construction of telephone and telegraph lines--Notice required.](#)

[12.36.030 Construction of telephone and telegraph lines--Map requirement.](#)

[12.36.040 Location of poles.](#)

[12.36.050 Location of wires.](#)

[12.36.060 Construction of conduits, manholes and laterals.](#)

[12.36.070 Overhead wires--Insulation and supports.](#)

[12.36.080 Overhead wires--Joints, flux and wrapping.](#)

[12.36.090 Overhead wires--Location generally.](#)

[12.36.100 Overhead wires--Separation and glass insulators.](#)

[12.36.110 Overhead wires--Specifications for entering buildings.](#)

[12.36.120 Outside service wires.](#)

[12.36.130 Stringing wires from poles to buildings.](#)

[12.36.140 Location of outside conductors and cable--Supports--Support structures on roofs.](#)

[12.36.150 Transformers and secondaries grounding requirement.](#)

[12.36.160 Insulation of guy wires.](#)

[12.36.170 Electric light or power wires--Not to cross fire alarm wires.](#)

[12.36.180 Electric light or power wires--Not to interfere by contact or induction with fire alarm wires.](#)

[12.36.190 Electric light or power wires--Procedure in event of interference with fire alarm wires.](#)

[12.36.200 Disposition of dead wires and unused poles --Removal notice.](#)

**12.36.010 Prohibited over paved streets--Underground conduits--Removal.** No poles shall be placed on paved streets and no wires shall be placed along such streets above the ground, but the same shall be placed in underground conduits on the street. In the event that the city shall hereafter determine to pave any street upon which poles have been

erected in accordance with the provisions of this chapter, the city council may require the removal of such poles and that the wires strung thereon be placed in underground conduits, at the utility owners' expense. (Prior code §28-110).

**Severability.** If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

First reading and preliminary adoption on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by a vote of \_\_  
Ayes, \_\_\_\_\_; \_\_ Nays, \_\_\_\_; \_\_\_\_\_  
Abstain, \_\_\_\_\_; and \_\_ Absent, \_\_\_\_\_

Second and final reading and on the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by a vote of \_\_  
Ayes, \_\_\_\_\_; \_\_ Nays, \_\_\_\_; \_\_\_\_\_  
Abstain, \_\_\_\_\_; and \_\_ Absent, \_\_\_\_\_

ATTEST:

APPROVED:

\_\_\_\_\_  
Martha L. Rehbein, CMC  
City Clerk

\_\_\_\_\_  
Jordan Hess  
Mayor