

**An ordinance amending Title 12 the Missoula Municipal Code, creating a new Chapter 12.01, titled “General Provisions”; creating a new Chapter 12.02, titled “Definitions”; creating a new Chapter 12.10, titled “Right-of-Way Improvements”; creating a new Chapter 12.17, titled “Parking Facilities”; and repealing Chapter 12.12 and Chapter 12.22, in order to provide for the creation of Administrative Rules to implement the provisions of Title 12, decriminalize violations of certain provisions in Title 12, revise terminology and create consistency throughout Title 12, and in order to update and reorganize processes and requirements to improve clarity and consistency.**

**BE IT ORDAINED THAT Chapter 12.01, Chapter 12.02, Chapter 12.10 and Chapter 12.17 are added to Title 12 of the Missoula Municipal Code as follows, and that Missoula Municipal Code Chapter 12.12 and Chapter 12.22 are hereby repealed.**

**Chapter 12.01  
GENERAL PROVISIONS**

**12.01.010 Administrative Rules Authorized.** The Public Works Director, in consultation with the City Engineer, is authorized to develop and enforce Administrative Rules that implement, interpret, or prescribe city law or policy or describes city practice or procedure with respect to the subject matter found in Title 12 of the Missoula Municipal Code. Administrative Rules developed and enforced pursuant to this section must be adopted pursuant to the provisions found in Chapter 2.03, Missoula Municipal Code.

**12.01.020 Violation of Certain Provisions in Title 12 Deemed a Municipal Infraction.** The penalty provided for by this Section shall not apply to Chapter 12.40, and shall not affect the penalty provided for in Chapter 12.40.080. After December 31, 2020, any violation of any provision in any other Chapter of Title 12, or any Administrative Rules implementing any provision of Title 12 adopted pursuant to Section 12.01.010 above, shall be considered a municipal infraction irrespective of any penalty stated in those Chapters.

- A. Municipal infractions shall be governed by the procedures and requirements found in § 7-1-4150, § 7-1-4151, and § 7-1-4152, Montana Code Annotated, as amended.
- B. The City Attorney’s Office is authorized to file citations for municipal infraction of this Title in Municipal Court, and arrange to have them served in accordance with the provisions of § 7-1-4150, Montana Code Annotated.
- C. If the person named in the citation is shown to have been served with the civil citation in the proper manner and, without good cause, fails to appear in response to the citation, judgment shall be entered against the person by the municipal court.

**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 “Driveway 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.

“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 “driveway 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 Development Services 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, 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.

"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.

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

"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 public 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, driveway approaches, alley approaches, curb ramps, landscaping, 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 driveway approaches; means the portion of a driveway 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.

“Temporary 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. Temporary 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. Temporary 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), the City of Missoula 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

"MPWSS" = Montana Public Works Standard Specifications

"MUTCD" = Manual on Uniform Traffic Control Devices

### **Chapter 12.10 RIGHT-OF-WAY IMPROVEMENTS**

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#### **12.10.010 Authority.**

This ordinance is adopted pursuant to the powers granted and limitations imposed by Montana state law; Montana Code Annotated (MCA) and the City of Missoula's self-governing power. (reference MCA 7-14-41, MCA 7-15-41 and MCA 60-1-103)

#### **12.10.020 Purpose.**

This ordinance is adopted for the purpose of setting forth design, construction and inspection requirements for Right-of-Way Improvements.

#### **12.10.030 Applicability.**

This code shall apply to rights-of-way, public easements and private property within the City of Missoula and shall define and regulate the design, construction and inspection requirements for right-of-way Improvements as defined in this ordinance, including but not limited to installation / construction / reconstruction / repair / removal / replacement of curb/gutter, sidewalk, street / alley paving, grading, drainage structures and appurtenances, bridges (vehicular and/or pedestrian), railings, retaining walls, boulevard and/or median improvements, approaches/aprons, alley approaches, curb ramps, landscaping, street lighting, traffic management signage, traffic signals, curb and pavement marking, traffic management structures and utility connections, repairs, or replacements and other appurtenances related to their construction when/where required by Missoula Municipal Code (MMC).

#### **12.10.040 Conflicting Provisions.**

If the provisions of this section conflict with other provisions or regulations of federal, state or local government, then the most restrictive requirement(s) shall apply to the extent permitted by law.

#### **12.10.050 Right-of-Way Improvements Permit – Required.**

Right-of-way improvements shall be performed only after first obtaining the appropriate permit from the City and paying the necessary permit fees found in the Engineering Fee Schedule. These permits shall expire after one hundred-eighty (180) days unless an inspection is conducted or an extension is requested by the permittee and granted by the Director.

#### **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. 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.
- D. 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.)
- E. Right-of-way/paving project administration and management on city-initiated projects.

The fee for Development Services staff to review subdivision plan submittals for compliance with applicable codes shall be collected when the subdivision plan is submitted. The fee for Development Services staff to review building construction site plans for compliance with applicable codes shall be collected prior to the issuance of the building permit.

#### **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 Development Services Director.

#### **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 Development Services Director may require additional mitigation including but not limited to removal of the concrete and/or pavement. The Development Services Director may grant relief from the investigation fee upon written request from the contractor.

#### **12.10.090 Construction Specifications for Right-of-Way Improvements – Material Requirements.**

All specifications for materials and procedures used in the construction of right-of-way improvements shall meet or exceed the standards set forth in the Missoula City Public Works Standards and Specifications Manual.

#### **12.10.100 Right-of-Way Improvements Shall Only be Performed by a City Licensed and Bonded Contractor.**

Only City licensed and bonded contractors, in accordance with MMC Chapter 12.08, shall construct any right-of-way improvements in any existing or proposed right-of-way, or other property owned by or dedicated to or used by the City. All licensed and bonded contractors' concrete placing/finishing crews shall have at least one American Concrete Institute (ACI) Certified Flatwork Finisher level or above on site at all times.

#### **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.

- 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 (except for a boundary line relocation that does not create additional building sites).
- 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, including Americans With Disabilities Act (ADA) requirements 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. Substandard right-of-way improvements, as determined by the City Engineer, shall be replaced/repared or otherwise upgraded to present standards, including Americans With Disabilities Act (ADA) requirements, adjacent to the permitted on-site construction.
- D. Private Street Required. An access that serves three or more single-family residential units, two or more duplex residential units, one or more multi-family (triplex or larger) unit, or serves any non-residential use requires a private street. All private street improvements, including pavement, concrete curb/gutter, concrete sidewalks and storm water drainage / management shall be designed and constructed in accordance with Missoula City Public Works Standards and Specifications Manual and 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. Homezones/woonerfs may be considered as a design alternative for developments.
- F. All streets shall have a sidewalk on each side. The City Engineer may approve a deviation from this standard.
- I. All streets shall have curbing on both sides unless otherwise approved by City Engineer.
- J. 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 Development Services.
- K. 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 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.
- L. 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.

During Review, the City Engineer may require the following:

1. Street connections, which can include one or more of the following:
    - a. Continue existing or planned street patterns adjacent to the Development.
    - b. 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.
- M. 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.
- N. Failure to meet the above requirements shall be considered a violation of this Chapter.
- O. 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.

#### **12.10.120 Construction Locations for City Sidewalks.**

- A. All new sidewalks within the right-of-way shall be boulevard sidewalks. The Director may approve a deviation from this requirement if it is determined that one of the following criteria is met:
1. The installation of a boulevard sidewalk would significantly impact healthy mature trees, listed on the approved boulevard tree list, located in or adjacent to the right-of-way as determined by the City of Missoula Urban Forester.
  2. The topography would make the installation of boulevard sidewalks unusually expensive.
  3. Other features, including but not limited to; irrigation ditches, utility poles, traffic calming, etc..., that prevent installation of boulevard sidewalks.
- B. The following shall not be used as criteria for waiver of the boulevard sidewalk requirement:
1. Existing fences or private structures encroaching into the right-of-way.
  2. Existing landscaping and underground irrigation, other than healthy mature trees.
  3. Existing sidewalk locations adjacent to the proposed sidewalk.

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



- A. A postponement request shall be made to the Director in writing providing reasons for the requested postponement. The Director may approve postponement of the requirement for right-of-way improvements when any one of the following criteria is met:
1. The ultimate alignment and grade of the street has not been established. Properties with large frontage, high pedestrian need, drainage concerns, or parking and access control problems may be required to establish ultimate street alignment.
  2. Where adverse conditions, including lack of right-of-way, adverse topography, major utility conflicts, or irrigation ditches exist. Existing landscaping, fences, or lack of existing curbs and sidewalks are not considered adverse conditions.
  3. A City initiated right-of-way improvements construction project adjacent to the property is planned to be completed within two years of the postponement recordation.
- B. The Director's letter of approval for postponement shall be filed with the Missoula County Clerk and Recorder by the person(s) requesting the postponement. Proof of filing shall be provided to the Director.
- C. 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. Landscaping and grading in the right-of-way shall be constructed so as to facilitate the future installation of right-of-way improvements with a minimum of disruption to the right-of-way. 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 prior to construction.

#### **12.10.140 Inspection by Development Services.**

All right-of-way improvements shall be inspected and perform to the approval of the Director. Development Services 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.

#### **12.10.150 Right-of-Way/ Public Easement Paving Construction Work – Application, Approval, and Permit Required.**

- A. Application for permit(s) for paving construction work improvements specified in this chapter shall be made to the City Engineer on permit application form(s) provided for such permitting purposes.

- B. City staff shall review and determine whether the proposed improvements are in conformance with the provisions and standards set forth in Missoula Municipal Code and all other applicable federal, state and local regulations and requirements.

**12.10.160 Right-of-Way/Public Easement Paving Construction Work -- Standards Compliance Required.**

- A. All paving construction work for parking facilities, sidewalks, curb and gutter, driveway and alley approaches, that are placed in the right-of-way shall be constructed in accordance with the most current published version of:
  - 1. Americans with Disabilities Act (ADA) Accessibility Standards
  - 2. Manual on Uniform Traffic Control Devices (MUTCD)
  - 3. Montana Pollutant Discharge Elimination System (MPDES)
  - 4. Montana Public Works Standard Specifications (MPWSS)
  - 5. Missoula City – County Air Pollution Control Program requirements.
    - a. All contractors, engineers, architects and designers shall specifically examine and closely observe the requirements of the Missoula City – County Air Pollution Control Program, Chapter 8 - Fugitive Particulate during all phases of paving construction work.
  - 6. Missoula City Public Works Standards and Specifications Manual including Standard Drawings.
- B. In the event of conflict or discrepancy between the MUTCD, MPDES, MPWSS and any Missoula City Public Works Standards and Specifications Manual, documentation and / or related specifications, the most stringent requirement shall prevail and govern.

**12.10.170 Approaches onto Right-of-Way – Approval.**

- A. All new approaches onto right-of-way shall be referred to the City Engineer for approval.
- B. Upon approval by the City Engineer, a right-of-way permit shall be required before construction can begin.
- C. Approaches shall conform to the City of Missoula Public Works Standards and Specifications and MMC Title 20 – Zoning. Any deviation from this section must be approved by the City Engineer.

**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 is required 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.

2. From Alleys:

- a. A parking facility with a minimum 26 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. Multiple approaches connected by a driveway (e.g. loop driveways, through lot approaches)
- 4. Locations with adverse sight distance, proximity to intersections, or safety concerns as determined by City Engineer.
- 5. Within 'no parking' areas (typically within 30 feet of a controlled intersection, 20 feet of an uncontrolled intersection, 20 feet of a crosswalk)
- 6. Where physical conditions exist, which do not allow the approach grade to be 8% or less, but may be a maximum of ten percent 10% with approval of the City Engineer and Fire Marshall.
- 7. 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. 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.

- G. Existing approaches impacted by city-initiated right-of-way improvement projects shall be reviewed and approved by City Engineering.

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

Approach width specifications are detailed in the Missoula City Standards and Specifications.

#### **12.10.200 Rights-of-Way – Vehicles to be Parked within Private Property Lines.**

Rights-of-way shall not be used for private or commercial purposes unless the use is specifically authorized by this Title or the Director. A permit for the construction of new approach(es) shall not be issued unless vehicles to be served or serviced can be parked entirely within the private property lines and meets all applicable requirements of MMC Title 12 and/or MMC Title 20 - Zoning.

#### **12.10.210 Condemnation by City Engineer.**

All right-of-way improvements which, by reason of natural deterioration or decay, or by reason of unevenness, steps, rapid slopes, or from any cause whatsoever, has or will in the near future become hazardous/dangerous to the public safety, may be condemned by the City Engineer, and may be immediately removed/replaced or otherwise repaired, and the cost thereof shall be assessed to the adjacent property.

Any property whose access adversely effects the public use or public infrastructure shall be required to mitigate the adverse effects by taking measures to prevent accelerated deterioration of the public infrastructure in order to maintain the current level of use.

#### **12.10.220 Defective Sidewalks – Failure of Owner to Repair.**

Upon the failure of the owner of any property to make repairs to the sidewalk adjacent their property after notice is provided pursuant to this Chapter, and when, in the opinion of the City Engineer, immediate repairs are necessary to prevent accidents, the City Engineer may immediately proceed with the same, and the full cost of such repairs shall be assessed against the property, as provided in MMC Chapter 12.10.

#### **12.10.230 City Council to Order Construction and/or Repair.**

Whenever it is deemed necessary to construct any right-of-way improvements in the City, the City Council may, by resolution duly passed and approved, order the construction of such right-of-way improvements, specifying in the order the name of the street along which and the number of the lot or lots, and blocks in front of which, the right-of-way improvements are to be constructed or repaired.

#### **12.10.240 Notice – Required.**

Upon the City Council ordering the construction of any right-of-way improvements, the City Engineer shall give written notice thereof within 60 days to the holder of the record title of the property adjacent to which the right-of-way improvements have been ordered constructed or repaired.

#### **12.10.250 Notice – Service.**

Service of the written notice provided in Chapter 12.10 must be made either by certified or registered letter directed to the owner at his/her last known place of residence and deposited in the United States post office within the City, with all necessary postage and registry fees prepaid thereon, or by publication thereof once a week for two successive weeks in a newspaper of general circulation in the city.

**12.10.260 Notice – Service by Publication.**

If service of notice be made by publication, all right-of-way improvements ordered constructed or repaired by the City Council on the same date may be included in one notice, and the notice when published shall not be directed to any person but shall be entitled "Notice to Construct Right-of-Way Improvements."

**12.10.270 Notice – Contents.**

The notice shall refer to the order or date of the City Council meeting ordering the construction or repair of right-of-way improvements and shall describe the nature of work ordered constructed or repaired, designating the name of the street along which and the number of the lot or lots and blocks in front of or along which the right-of-way improvements have been ordered constructed or repaired

**12.10.280 Notice – To Contain Statement as to Noncompliance.**

The notice shall further state that if the holder of the record title of the property adjacent to which the right-of-way improvements have been ordered constructed or repaired fails to construct such right-of-way improvements for a period of 30 days from the date of the mailing of such notice, if service of the notice shall be made by mail, or for a period of 30 days from the date of the first publication of the notice, if service thereof be made by publication, the right-of-way improvements will be constructed or repaired by a City sidewalk and curb contractor, and the cost of the construction/repair of the same, together with all associated expenses connected therewith, will be assessed against the property adjacent to which the same has been ordered constructed or repaired and will become an assessment thereon.

**12.10.290 Notice – Filing of Copies to be Conclusive Proof of Service.**

Copies of all notices mailed with the registry or certified mail receipts attached thereto, and copies of all notices published with the publisher's affidavit of publication attached thereto shall be filed by the City Engineer in his/her office and shall be conclusive proof of the service thereof.

**12.10.300 Construction by City – After Noncompliance with Notice.**

If the owner of any property adjacent to which any right-of-way improvement has been ordered constructed or repaired in the manner provided by this chapter, fails to construct the same for a period of 30 days after the date of the first publication of such notice, or for a period of 30 days after the date of the mailing of the notice, the City Engineer shall let a contract for the construction of all right-of-way improvements ordered to be constructed or repaired. The cost of the construction or repairs, together with all expenses in connection therewith, shall be assessed against the property adjacent to which the right-of-way improvements is constructed or repaired and shall be collected in the manner now or hereafter to be provided by the provisions of this code or other City ordinance.

**12.10.310 Construction by City – Regulations Generally.**

The City shall let a contract or contracts for the construction of all right-of-way improvements which shall be ordered constructed during the ensuing year and which the owners of the property, adjacent to which the right-of-way improvements have been ordered constructed or repaired, fail to construct, or where the property owner petitions the City Engineer to have the right-of-way improvements installed adjacent to

their property, or where the City Engineer may order the construction or repair of any right-of-way improvements.

**12.10.320 Payment to be Made by City Check.**

Payment for right-of-way improvements construction or repair shall be made by check drawn upon the appropriate City accounts as determined by the City Finance Officer. Prior to final payment or the releasing of any retainage or holdback of funds due, the contractor shall satisfy the City Engineer that all bills incurred for the labor and materials are fully paid.

**12.10.330 Assessment for Construction – When Work Completed by City Contractor.**

The total cost of all work associated with right-of-way improvements constructed or repaired by the City contractor, in accordance with the orders of the City Council, (which total cost shall include that of the sidewalk, approach, curb or alley approach, asphalt repairs, as well as that of any notice, publication, inspection, grade, engineering, contract administration, fill, retaining walls, hand-railing, manholes, manhole covers, trap doors, private crossings, traffic control devices, pavement markings or striping, utility connections, repairs or replacements which are located within the limits of the construction installations, and all other necessary expenditures), shall be assessed against the property adjacent to the right-of-way improvements thereto, are installed lying within the right-of-way.

**12.10.340 Assessment for Construction – When Work Completed by Private Contractor.**

The cost of any right-of-way improvements constructed or repaired by a City licensed and bonded contractor, initiated by any property owner and not included within the provisions of Section 12.10.330, may be assessed to the property adjacent to which any right-of-way improvements are constructed or repaired, lying within the right-of-way; provided, that such contractor shall, within 30 days after the completion of such right-of-way improvements, file with the City Engineer an itemized statement of such work, accompanied with a written request of the property owner that the cost of such right-of-way improvements be assessed against his/her property. Such City licensed and bonded contractor shall be paid as provided in Section 12.10.320.

**12.10.350 Assessment for Construction – May be Paid in Full.**

Assessments may be paid in full at any time following the first tax notice by payment of the whole amount thereof remaining unpaid, together with the interest thereon to the first day of January following.

**12.10.360 Assessment for Construction – Payable in Installments.**

Assessments are payable in installments extending over a period of years, and become due and payable each year when City taxes become due and payable. The following table shows the principal amount due annually:

<b>Period of Years Financed</b>	<b>Principal Amount Due</b>
Twenty (20) years (default if no other period is selected by the property owner)	1/20 (one twentieth)
Twelve (12) years	1/12 (one twelfth)
Eight (8) years	1/8 (one eighth)

## **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

### **12.17.010 Purpose.**

This Parking Facility Ordinance is adopted for the purpose of setting forth design and construction requirements for driveways and parking facilities.

### **12.17.020 Applicability.**

This code shall apply to the design and construction of driveways and parking facilities as required by:

- A. Application and issuance of a Building Permit
- B. Application and issuance of a Zoning Compliance Permit
- C. Application and issuance of a Private Property Paving Permit.
- D. Subdivision development
- E. Townhome Exemption Development

### **12.17.030 Conflicting Provisions.**

If any provisions of this Parking Facilities Ordinance conflict with any provisions or regulations of Federal, State or Local Government, then the most restrictive requirement(s) shall apply, to the extent permitted by law. Presence of conflict within any portion of this ordinance shall apply and exist only within the portion in conflict and shall not nullify the entire ordinance.

### **12.17.040 Paving Construction Work -- Application, Approval, and Permit Required.**

- A. Application for permit(s) for private property paving construction work improvements specified in this chapter shall be made to the City Engineer on permit application form(s) provided for such permitting purposes.
- B. Prior to approval of private property paving construction work improvements and issuance of permit(s) and payment of fee(s) as required by Missoula Municipal Code (MMC) Title 12 and established by resolution, staff shall review and determine that the proposed improvement are in conformance with the provisions and standards set forth in Missoula Municipal Code (MMC) and all other applicable federal, state and local regulations and requirements.
- C. Upon approval of private property paving construction work, all applicable permits including but not limited to a Private Property Paving Permit and Storm Water Pollution Prevention Plan (SWPPP) Permit, shall be issued before paving construction work shall begin.

- D. Private property paving construction work performed without required permit(s) shall be subject to an investigation fee which shall be equal to the fee amount for the required un-purchased permit(s) and in addition to the required permit(s) fee.
- E. Paving construction work performed for driveways or parking facilities shall conform to this section and any deviation from this section shall be reviewed and approved by the City Engineer prior to any paving construction work activities.

**12.17.050 Paving Construction Work – Standards Compliance Required.**

- A. All private property paving construction work for driveways and parking facilities shall be constructed in accordance with the most current published version of:
  - 1. Missoula Municipal Code Title 20 - Zoning
  - 2. Montana Pollutant Discharge Elimination System (MPDES)
  - 3. Missoula City-County Air Pollution Control Program regulations. All contractors, engineers, architects and designers shall specifically examine and closely observe the requirements of the Missoula City-County Air Pollution Control Program Regulations, Chapter 8 - Fugitive Particulate during all phases of paving construction work.
- B. In the event of conflict or discrepancy in the above documentation and related specifications, the most stringent shall prevail and govern.

**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 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.

### **12.17.070 Private Property Parking Facility Maintenance.**

- A. Purpose: Many parking facilities are altered to a different configuration which does not comply with the original approved plans and may result in conflicts with zoning and engineering standards. Parking facility maintenance work, for the purpose of this chapter, shall include all work listed below on private or public parking facilities.
1. Paving Work: Any surface material used in previously unpaved areas where vehicles may drive, park or be stored, and includes but is not be limited to; hot mix asphalt, Portland cement concrete, or any other material approved by the City Engineer.
  2. Repaving Work: The removal of any layer of existing asphalt, concrete or other surface material and the subsequent installation of a new paved surface.
  3. Reconstruction Work: One or more of the following work activities: installation or removal of existing parking facility surface and/or re-grading of the parking facility, storm water drainage improvements, installation or maintenance of curb and gutter or the installation or maintenance of pedestrian access routes (including sidewalks).
- B. Permit Requirements for Paving, Repaving or Reconstruction of Parking Facilities.
1. A Parking Facility Paving Permit (see Title 15) is required for paving, repaving or reconstruction of a parking facility. The fee for this permit is set by resolution. The following is required for permit review:
    - a. A site plan(s) drawn to a scale not greater than 1'=20'.
    - b. If re-striping is to exactly match the existing layout then the applicant may submit copies of the original site plan(s) provided that the existing layout meets current standards.
    - c. Show property lines.
    - d. Show all existing structures and entrances.
    - e. Show existing and proposed storm water drainage, snow storage area(s), landscaping, lighting, etcetera.
    - f. Show existing and proposed pedestrian access routes (sidewalks) and driveways on private property, adjacent right-of-way, and easements.
    - g. Show parking space dimensions, layout, quantity, and configuration.  
Show ADA accessible parking facilities on the site plan including signing, striping, ramps, access, etcetera.
- C. Upon approval of a Parking Facility Paving Permit, all applicable additional permits, including but not limited to: Zoning Compliance Permit, Right-of-Way Permit, Accessibility Permit or Storm Water Permit, shall be issued prior to parking facility maintenance work commencement.

### **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 shall substantially follow natural contours and not exceed a maximum grade of 8% percent.
1. Where physical conditions exist that do not allow the driveway approach grade to be 8% or less, driveway approaches may be a maximum of 10% with approval of the City Engineer and City Fire Marshall.
  2. A maximum driveway grade up to 10% may be allowed for a distance of up to 50 feet, when approved by the City Engineer and City Fire Marshall.

3. Where barriers exist which do not allow a driveway, parking lot, parking garage, approach, or apron grade to meet this requirement, no improvements shall be permitted.
- B. Driveway minimum paved width shall be 9 feet, or 12 feet if the driveway is greater than 150 feet in length. Fire code may require additional unobstructed width and turnouts.
  - C. Driveways exceeding 150 feet in length require an additional approval from the City Fire Marshall.
    1. Proposals for driveway designs more than 150 feet in length must be approved and accompanied by written comments from the City Fire Marshall.
    2. Dead-end driveways in excess of 150 feet shall have fire apparatus turnarounds, per IFC Appendix D, located within 150 feet of the building
    3. Driveways over 150 feet must have an unobstructed vertical clearance of 13.5 feet and an unobstructed width of not less than 20 feet.
  - D. 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.
  - E. 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
  - F. Stacked Parking and back out egress is only permitted for single family & duplex dwelling units.
  - G. Driveway shall be removed and landscaped if the existing adjacent parking space(s) are removed.
  - H. All existing and new parking shall comply with current standards when changes or alterations to the existing parking and/or approaches are made.
  - I. Curb and gutter are not required adjacent to driveways and/or parking facilities for any single family & duplex dwelling units.

#### **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 (5) 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 five (5) 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. Multi-dwelling parcel paved parking 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." Multi-dwelling parcel(s) utilizing permitted, shared, paved 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 Missoula City Public Works Standards and Specifications.

**12.17.100 Private Property Paving Construction Work – Inspection by City.**

All private property paving construction work shall be inspected by a City inspector. All driveway and parking facility work shall be executed and completed to the satisfaction of the City inspector. All inspections are required to be scheduled no later than 7:00 AM the day of the inspection. The City of Missoula reviewed, stamped and approved set of plans shall be available on all construction site(s) at the time of any inspection(s).

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.

Effective Date. This ordinance will be effective 30 days after passage.

First reading and preliminary adoption on the \_\_\_\_ day of \_\_\_\_\_, 2020, by a vote of \_\_\_\_ ayes ; \_\_\_\_ nays; \_\_\_\_ abstaining; and \_\_\_\_ absent.

Second and final reading and adoption on the \_\_ day of \_\_\_\_\_, 2020 by a vote of \_\_ ayes; \_\_ nays; \_\_ abstentions; and \_\_\_\_ absent.

ATTEST:

APPROVED:

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

\_\_\_\_\_  
John Engen

City Clerk

Mayor