

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2016-020

**TO:** Mayor Engen, Dale Bickell, Donna Gaukler, Chris Boza, David Selvage, John Wilson, Kevin Slovarp, Mike Haynes, Don Verrue, Eric Andersen, Mickey Morin, Jane Plummer, Jolene Ellerton, Doug Harby, Marty Rehbein

**CC:** Attorney Department

**FROM:** Jim Nugent, City Attorney

**DATE** September 1, 2016

**RE:** Easements create a right to control and use another's land for a specific purpose, such as a utility easement

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### FACTS:

Several city staff have recently contacted our office concerning the utilization of utility easements on city owned lands. Generally utility easements practically include the right to install, maintain, repair, replace, etc. public utility lines and facilities. City owned lands are any lands owned by the City of Missoula as a municipal corporation. City departments are all part of the executive branch of the City of Missoula administered by the mayor as chief executive. City departments are not separate legal entities. No department individually owns City owned lands. The mayor as chief executive executes all documents necessary with respect to creating or establishing easements.

### ISSUE(S):

Do easements allow the easement holder the right to use or control land for the specific purpose of the easement?

### CONCLUSION(S):

Yes. The holder of an easement has the right to use or control land, above or below the land, for a specific purpose even though the land is owned by another person.

**LEGAL DISCUSSION:**

An easement consists of a right to use or control land, below or above the land, for a specific limited purpose even though the land is owned by another person. Easements are non-possessory interests in land owned by another person, that the easement holder is entitled to a right to use for a specific purpose in an area above or below the land area depending on the specific purpose of the easement.

Among the primary recognized easement rights are right of way and rights of entry for purposes relating to the specific purpose of the easement. An easement may last forever. An easement is distinguished from a lease or license to use a land area. Black's Law Dictionary, Eighth Edition, page 548.

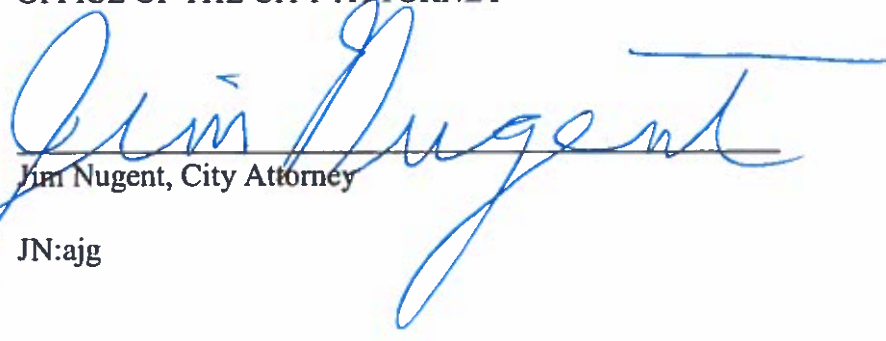
Sometimes local government responsibility for dedicated public rights-of way is referred to as a public right-of-way easement. Public easements are easements for the benefit of an entire community, such as the right to travel down a street or sidewalk. See Black's Law Dictionary, Eighth Edition, page 550.

Montana state law pursuant to section 70-17-101 MCA recognizes that easements are servitudes that burden land ownership, such as a right-of-way easement is a servitude that burdens land.

**CONCLUSION(S):**

Yes. The holder of an easement has the right to use or control land, above or below the land, for a specific purpose even though the land is owned by another person.

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Jim Nugent, City Attorney

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