

OFFICE OF THE CITY ATTORNEY

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

Legal Opinion 2018-031

TO: City Council, Mayor John Engen, Dale Bickel, Mike Haynes, Mary McCrea, Denise Alexander, Anita McNamara, John Wilson, Kevin Slovarp, Troy Monroe, Mike Brady, Scott Hoffman, Mike Colyer, Chris Odlin, Richard Stepper, Laurie Clark, Department Attorney

FROM: Jim Nugent, City Attorney

DATE December 13, 2018

RE: Pursuant to Montana traffic regulations municipal law enforcement generally does not have jurisdiction to enforce traffic regulations on private property, such as private streets or roadways within a residential development.

FACTS:

Currently pending before the City Council for residential conditional use zoning approval purposes is a proposed 68 dwelling unit residential development known as Hillview Crossing townhome subdivision exemption. Since the residential development project is a subdivision exemption project, no dedication of streets is occurring and the streets are private streets. The proposed 68 dwelling unit project includes a proposal with respect to the private streets that motor vehicle parking only be allowed on one side of each of the private streets.

ISSUE:

Do municipal law enforcement staff have authority to enforce motor vehicle “No Parking” restrictions on private property, including “No Parking” restrictions on private streets?

CONCLUSION:

No, municipal law enforcement staff does not have legal authority to enforce motor vehicle “No Parking” restrictions on private property, including private streets.

LEGAL DISCUSSION:

The 2011 Montana State Legislature inserted “townhomes or townhouses” as those terms are defined in section 70-23-102 MCA, into the subdivision exemption law set forth in section 76-3-203 MCA. Pursuant to section 76-3-203 MCA condominiums, townhomes, or townhouses are exempt from subdivision review pursuant to the Montana Subdivision and Platting Act if the

condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect.

Since a subdivision review exempt “townhomes or townhouses” project is exempt from subdivision review, the streets, roadways and alleys within the project are private streets, roadways and alleys; because no subdivision involving dedication of public rights-of-way occurs. Thus, the project’s streets, alleys and roadways remain private property.

Title 61, chapter 8, MCA is entitled “TRAFFIC REGULATION”. Montana state traffic regulation law generally significantly limits the extent to which government law enforcement may enforce any traffic regulations on private property. The provisions of title 61, chapter 8 MCA pertaining to traffic regulations includes several state law provisions pertaining to the parking of vehicles. See for example sections 61-8-353 through 61-8-355 MCA. Most importantly see subsection 61-8-354(1)(n) MCA prohibits vehicle parking at any place where official traffic control devices prohibit stopping.

Section 61-8-103 MCA provides that “no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter (title 61, chapter 8 MCA) unless expressly authorized herein.

Basically the enforcement of Montana traffic regulations is limited to the public highways; except where otherwise explicitly authorized by Montana state law. Subsection 61-8-101(2) MCA states: “(2) The provisions of this chapter RELATING TO THE OPERATION OF VEHICLES REFER EXCLUSIVELY TO THE OPERATION OF VEHICLES UPON HIGHWAYS except. . . .” (Emphasis added) This state law then expressly identifies some limited instances where state traffic laws may be enforced on public ways in addition to highways within the state. Those statutorily authorized exceptions may be applied to “ways of the state open to the public” in addition to the highways.

“Ways of the state open to the public” is defined in subsection 61-8-101(1) MCA as meaning “any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public”. Subsection 61-8-101(2) MCA expressly identifies traffic regulations that may be enforced on “ways of this state open to the public”.

These statutorily identified exceptions include the following:

- (1) Provisions 61-8-301 and 61-8-401(1)(b), (1)(c), and (2) pertaining to operating a vehicle while under the influence of drugs applies anywhere within the state;
- (2) Section 61-8-301 MCA (reckless driving) applies upon all ways of the state open to the public;
- (3) Sections 61-8-401 (only some subsections), 61-8-402 through 61-8-405 and 61-8-465 MCA regarding operating a vehicle while under the influence of alcohol applies upon all ways of the state open to the public;
- (4) The provisions of the Montana Uniform accident Reporting Act in title 61, chapter 7 MCA apply “upon highways and elsewhere throughout the state”; so those state law provisions apply to private property as well as highways. See section 61-7-102 MCA as well as Montana Attorney General Opinion volume 41 attorney General Opinion # 54(3/181986)

(5) Section 49-4-302 MCA authorizes a special parking permit for persons with a disability to park in special parking spaces reserved for persons with disabilities on either public or private property, Law enforcement has authority to enforce such parking regulations on both public and private property. See Montana Attorney General Opinion 40 Attorney General opinion #34(2/17/1984)

Generally, it is unlawful and a misdemeanor for any person to do any act forbidden or to perform any act required by the provisions of title 61, chapter 8 MCA pertaining to traffic regulations. See section 61-8-104 MCA entitled "REQUIRED OBEDIENCE TO TRAFFIC LAWS".

Also, it should be noted that a public entity must be responsible for erecting official traffic control devices for regulating, warning and guiding the public with respect to operation of vehicles. Pursuant to Montana state traffic laws the term "official traffic control device" means all signs, signals, markings, and devices not inconsistent with this title (title 61 MCA) that are placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, guiding traffic. See subsection 61-8-102(2)(p) MCA.

CONCLUSION:

No, municipal law enforcement does not have legal authority to enforce motor vehicle "No Parking" restrictions on private property including private streets.

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/s/ Jim Nugent

Jim Nugent, City Attorney
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