

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2019-001

**TO:** John Engen, Mayor, City Council, Dale Bickell, Anita McNamara, Mary McCrea, Mike Haynes, Mike Brady, Scott Hoffman, Mike Colyer, Chris Odlin, Richard Stepper, Laurie Clark, Greg Amundsen, Marty Rehbein, Kirsten Hands, Kelly Elam, Tiffany Brander, Kevin Slovarp, Troy Monroe, Lori Hart, Brian Hensel, Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** January 24, 2019

**RE:** A public highway must be publicly maintained in order for general motor vehicle regulations set forth in title 61, chapter 8, MCA to be applicable or enforceable on a public highway, except when a specific statutory provision authorizes a specific traffic regulation be enforceable on public ways which include private roads.

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### FACTS:

A proposed residential development of townhouses that is pending before the city council will include three (3) lengthy private roadways; since the project is not a subdivision development; but instead is a subdivision exemption development. The private roadways will be narrower than typical subdivision streets and motor vehicle parking will only be allowed on one side of the private roadways. Discussion has arisen as to who will be responsible for enforcing motor vehicle parking violations on the private roads.

### ISSUE:

Generally, are Montana traffic parking regulations enforceable on private roadways by city law enforcement?

### CONCLUSION:

No, motor vehicle traffic parking violations are not enforceable by public law enforcement on private roadways that are not publicly maintained, except for disabled parking violations. Other traffic offenses such as DUI, reckless driving and accident reporting laws are also able to be enforced on private roadways.

**LEGAL DISCUSSION:**

Title 61, chapter 8, MCA is entitled “TRAFFIC REGULATION”. Part 1 of title 61, chapter 8 is entitled “GENERAL PROVISIONS”. Section 61-8-101 MCA is entitled “APPLICATION-EXCEPTIONS”. Pursuant to subsection 61-8-101(2) MCA Montana state law states that the provisions of the chapter entitled “TRAFFIC REGULATIONS” are applicable or “refer exclusively to the operation of vehicles upon highways” except for statutory exceptions for specified traffic offenses, such as DUI and reckless driving.

Subsection 61-8-101(1) MCA identifies “ways of the state open to the public” as meaning highways roads, alleys and lanes as well as public or private places adopted and fitted for public travel that is in common use by the public. This definition of “ways of state open to the public includes private roadways. However, as noted above subsection 61-8-101(2) MCA indicates that Montana’s general traffic regulations related to the operation of vehicles EXCLUSIVELY on highways, except for specific statutory exceptions, such as DUI and reckless driving. Other statutory provisions authorize the enforcement of accident reporting laws and disabled parking on public ways that include private roadways on private property.

The Montana traffic regulation definition of “highways” or “public highway” set forth in subsection 61-1-101(27) MCA defines the term in pertinent part as “EVERY PUBLICLY MAINTAINED WAY”. (emphasis added) To the same effect see the definition of highway reference in subsection 61-8-102(2)(i) MCA. Therefore, unless the roadway is publicly maintained by a government entity, the roadway is not a “highway” or “public highway” on which general traffic regulations may be enforced. It is important to ascertain if the roadway is publicly maintained when determining if state traffic laws may be enforced on the roadway.

Also, more specifically with respect to Montana local governments the roadway must be accepted by the city in order to be a city street, see subsection 60-1-201(2) MCA. Further, subsection 61-12-101(1)(n) MCA states that a local government traffic regulation ordinance enforcement is not to be “in conflict with state law or federal regulations”

**CONCLUSION:**

No, motor vehicle traffic parking violations are not enforceable by public law enforcement on private roadways that are not publicly maintained, except for disabled parking violations. Other traffic offenses such as DUI, reckless driving and accident reporting laws are also able to be enforced on private roadways.

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/s/

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