

# OFFICE OF THE CITY ATTORNEY

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Megan Moore  
Lead legislative staffer  
Interim Committee on Revenue and Transportation  
State Capitol, Room 124  
Helena, Montana 59601

Jaret R. Coles  
Legislative Staff Attorney  
MT Legislative Branch  
State Capitol, Room 124  
Helena, Montana 59601

Re: ***Oversize loads traveling through densely developed city of Missoula for approximately six (6) miles on its route to enter Interstate 90***

Dear Megan and Jaret,

Thank you for the opportunity to provide you with an identification of City of Missoula statutory and Constitutional legal authority as well as factual concerns pertaining to timing and guiding of oversize loads through densely urban developed City of Missoula traffic ways for six (6) miles on the oversized load's route to access Interstate 90.

Pursuant to Montana state laws set forth in title 61 Montana Code Annotated pertaining to Montana traffic regulations, Montana local governments may adopt additional traffic regulations as long as those additional traffic regulations are not in direct conflict with a specific Montana state law traffic regulation. See sections 61-8-103 as well as 61-12-101(14) MCA. Most importantly subsection 61-12-101(3) MCA specifically authorizes Montana local governments with respect to "HIGHWAYS" under their jurisdiction to regulate and prohibit "Processions or assemblages on the 'HIGHWAYS'". (emphasis added).

Pursuant to Montana municipal government laws, title 7, chapter 14, part 41, sections 7-14-4102 through 7-14-4104 MCA empower Montana municipalities to regulate use or obstruction of traffic ways within the city limits. It must also be noted that pursuant to the CITY OF MISSOULA STATE MAINTENANCE CONTRACT with the MONTANA DEPARTMENT OF TRANSPORTATION the City of Missoula is to enforce right-of-way encroachment activities including permitting and inspection of all activities conducted within the public right of way with the State of Montana retaining final approval right for all encroachments on the National Highway System as well as it is agreed that "all City ordinances regarding public right-

of-way and all State requirements shall apply”.

In addition to these several explicit statutory authorizations of municipal power, Montana’s Constitution pursuant to Article XI, section 4 (2) establishes a Constitutional mandate that all Montana local government powers “SHALL BE LIBERALLY CONSTRUED”. (emphasis added). Several Montana Supreme Court decisions recognize this Constitutional mandate.

It is important/imperative for public safety, efficiency, and ability to provide city emergency services that oversize loads being transported through the City of Missoula be locally scheduled as well as coordinated by City services.

The currently designated oversize load route through densely developed urban City of Missoula is a six (6) mile route utilizing Brooks and Reserve streets through southwest and west Missoula in order to gain access to Interstate 90 at the north end of Missoula. Prior to adoption of its current oversize load ordinance, the city experienced some oversize loads attempting to move along this route during the day causing quite a significant adverse impact on city emergency services as well as traffic volumes on Brooks and Reserve Streets. Both of these traffic ways inside the city limits experience many thousands of motor vehicles traveling on them every day in much greater volume than Interstate-90 experiences each day.

Most importantly city municipal emergency services were not being provided advance notice warning of these day time attempts at transporting oversize loads through densely urban developed City of Missoula traffic ways for six (6) miles. Also, importantly, the oversize load processions are never adequately staffed by either the State of Montana and/or the private company moving the oversize load safely, efficiently and timely guide the oversize loads through densely developed urban City of Missoula traffic ways.

Approximately, four miles southwest of Missoula city limits there is an abandoned state weigh station which is a very convenient ideal temporary location for the oversize load procession to wait until an appropriate approved middle of the night/early morning time to move through the City of Missoula in coordination with city emergency services is able to occur. City officials assist the moving company with completing the permit application in an effort to expedite the transport. The moving company is required to contact the fire battalion chief prior to entering the city limits and the fire battalion chief coordinates with other city emergency services and city services to arrange for a guided middle of the night/early morning transport through the Missoula city limits.

Scheduling the time of transport is important for public safety purposes as well as to limit the negative impacts to providing emergency services delivery and response time during transport as well as to avoid times of heavy traffic volumes.

However, even with scheduling the timing of the transport through the City of Missoula in coordination with emergency services by requiring middle of the night/early morning oversize load transports, the oversize load procession is still inadequately staffed with state of Montana and/or moving company staffs to address the demonstrators that generally come into Missoula from out of town to demonstrate/obstruct/slow down/delay and otherwise interfere with any

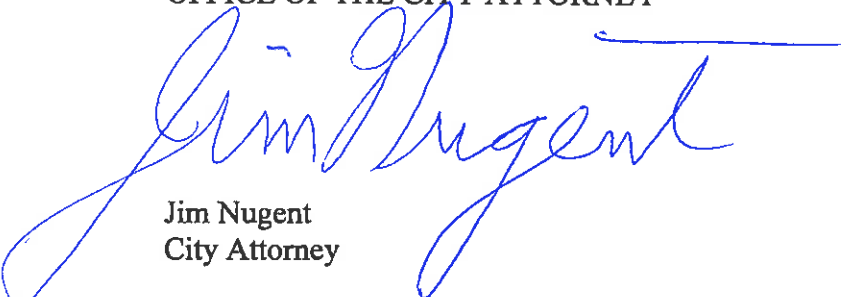
controversial transport. City services could include more than just city police if City Fire is needed to assist police in separating and removing protesters from certain obstructive contraptions. Numerous police officers were needed for the most recent oversize load transport to address crowds of protestors as well as arrest several individuals who refused to leave the roadway. Montana Highway Patrol officers do not make any arrests, nor do they assist with transporting those arrested.

The permit serves as the mechanism to be able to provide the necessary advance notice, coordination and preparation to arrange for city services to be available to guide the transport through Missoula. Generally it takes a day or two to process the permit application and to arrange for the necessary city services coordination for the oversize load transport passage through Missoula. The current nominal permit fee of \$309.00 is far less than the cost of city services to coordinate for guiding the transport through the City of Missoula and addressing the demonstrators that the oversize loads are currently generating.

Thank you again for the opportunity to provide both factual as well as legal information concerning the oversize loads passing through the City of Missoula.

Respectfully yours,

OFFICE OF THE CITY ATTORNEY



Jim Nugent  
City Attorney

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DEVELOPMENT SERVICES



Mike Haynes  
Director

cc: Mayor John Engen  
City Council  
Police Chief Mike Brady  
Fire Chief Jason Diehl  
Development Services Director Mike Haynes  
City Attorney's Office