

TITLE 6
PUBLIC WAYS AND PROPERTY

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CHAPTER 1

SIDEWALK CONSTRUCTION¹

SECTION:

6-1-1: Construction Of Sidewalks, Curbs And Gutters Without Formation Of Special Improvement District

6-1-1: **CONSTRUCTION OF SIDEWALKS, CURBS AND GUTTERS WITHOUT FORMATION OF SPECIAL IMPROVEMENT DISTRICT²:**

- A. Power To Order: Without the formation of a special improvement district, the town council may order sidewalks, curbs, or gutters constructed in front of any lot or parcel of land and may order alley approaches constructed or replaced adjacent to any lot or parcel of land.
- B. Order Entered Into Minutes: Whenever the council orders a sidewalk, curb, or gutter constructed or an alley approach constructed or replaced, the order must be entered upon the minutes of the council and must name the street along which the sidewalk, curb, or gutter is to be constructed or along which the alley approach is to be constructed or replaced.
- C. Notice To Owner: After issuing an order, the council shall provide a written notice to the owner or agent of the owner, and to any purchaser under contract for deed of the property, or the owners or agents of all adjacent owners having access to their properties by the alley approach, as appropriate.
- D. Failure To Comply: If the owner or agent of the owner of a lot or parcel of land or if the owners or agents of all adjacent owners

1. Authority of town to regulate and provide for the construction and repair of sidewalks, see MCA § 7-14-4122.
 2. MCA § 7-14-4109.

having access to their property by the alley approach fail or neglect for a period of thirty (30) days after the date of service of the notice to cause the sidewalk, curb, or gutter to be constructed or to cause the alley approaches to be constructed or replaced, the town may construct or cause the sidewalk, curb, or gutter to be constructed or may construct or cause the alley approach to be constructed and shall assess the cost of those improvements, including engineering costs and the costs enumerated in Montana Code Annotated sections 7-12-4121 and 7-12-4169, against the property in front of which those improvements are constructed or against the lots or parcels of land having access via the constructed alley approaches. The collection of the assessed costs is provided in Montana Code Annotated sections 7-12-4181 through 7-12-4191.

E. Payment For Construction:

1. When any sidewalk, curb, or gutter or alley approach is constructed by or under direction of the town council, payment for the construction must be made by special warrants or bonds in a form that is prescribed by ordinance or resolution and drawn against a fund to be known as the special sidewalk, curb, and gutter fund or the special alley approach fund. The council may provide for the payment of interest annually or semiannually. Except as otherwise expressly provided in Montana Code Annotated section 7-14-4110 and this section, the warrants or bonds that the town council authorizes may be issued subject to the terms and security provisions provided in Montana Code Annotated title 7, chapter 12, parts 41 and 42.

2. The warrants drawn on the special alley approach fund shall bear interest at a rate pursuant to Montana Code Annotated section 17-5-102. (1975 Code § 12.24.010; amd. 2006 Code)

CHAPTER 2
EXCAVATIONS¹

SECTION:

- 6-2-1: Definitions
- 6-2-2: Permit Required
- 6-2-3: Bond
- 6-2-4: Minimum Travel Interference Required
- 6-2-5: Power To Limit Time For Open Excavation
- 6-2-6: Backfilling
- 6-2-7: Revocation Of Permit
- 6-2-8: Penalty

6-2-1: **DEFINITIONS:** As used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

EXCAVATION: Shall mean and include any ditch, trench, cut, hole or change of grade.

STREET: The entire width of a highway between the boundary lines of other public or private properties on the sides. (1975 Code § 12.04.010)

6-2-2: **PERMIT REQUIRED:**

- A. **Requirements Prior To Excavation:** No person shall open up, dig into, excavate or tunnel in any of the streets, avenues, public places or alleys of the town, whether to connect with any of the mains or pipes, to connect with any sewer, or for any other purpose, without having first:

1. Authority of town to regulate the laying down of gas, water and other mains, and excavations therefor, see MCA § 7-13-4101. Excavator required to obtain information of location of possible underground facilities before beginning excavation, see MCA § 69-4-501 et seq.

1. Obtained a permit from the town council;
 2. Made a cash payment to the town clerk-treasurer; and
 3. Filed with the clerk-treasurer a good and sufficient surety bond.
- B. **Cash Payment; Bond Waiver:** The council shall make rules and regulations as to the amount and conditions under which such payment shall be made. The council may, in its discretion, waive the filing of bond. (1975 Code § 12.04.020)

6-2-3: **BOND:** The bond required by section 6-2-2 of this chapter shall be in the sum of twenty thousand dollars (\$20,000.00) and shall be executed by a surety company authorized to do business in the state, conditioned to save the town harmless from any damage or injury whatsoever to any person or property of any description, however owned, by reason of leaving open any excavation or tunnel or by reason of failure to properly guard any such excavation or tunnel or failure to place red lights at such excavation or tunnel at night. Any person may furnish a yearly bond conditioned as hereinabove set forth. (1975 Code § 12.04.030)

6-2-4: **MINIMUM TRAVEL INTERFERENCE REQUIRED:** Excavations in streets and alleys shall be made in such manner as to impede travel as little as possible. At no time during the progress of the work shall sidewalks be unnecessarily blocked to travel. (1975 Code § 12.04.040)

6-2-5: **POWER TO LIMIT TIME FOR OPEN EXCAVATION:** The time that any street or alley excavation is open may be limited by the engineer or another responsible official of the town. (1975 Code § 12.04.050)

6-2-6: **BACKFILLING:**

- A. **Restoration Of Street:** After the completion of the laying of any pipe, line or conduit, or the installation or repair of any facility for which the excavation was undertaken, the excavator shall cause the work to be backfilled in such a manner as to make the street in as good a condition as before the excavation.

- B. **Six Month Maintenance Period:** Any person making any excavation in any street or alley, as set forth in this chapter, shall be fully responsible for the maintenance of the excavation for a period of six (6) months after the backfill thereof. If any settlement occurs in the area that was formerly excavated, the excavator or person causing the excavation shall immediately upon notice fill in the settling and put the street, alley, or avenue, in as good condition as possible for use by the public. (1975 Code § 12.04.060)

6-2-7: REVOCATION OF PERMIT:

- A. **Grounds For Revocation:** Any permit issued under authority of this chapter may be revoked for failure of the permittee to perform the work in accordance with the specifications, methods or time limit required or approved by the town.
- B. **Request For Hearing:** Any permittee whose permit is revoked may, upon request, receive a hearing before the town council or person designated by the council. The council, after such hearing, may reinstate the permit or take any other action it deems proper. (1975 Code § 12.04.070)

- 6-2-8: PENALTY:** Any person violating a provision of this chapter shall, upon conviction thereof, be subject to penalty as provided in section 1-4-2 of this code. (1975 Code § 12.04.080; amd. 2006 Code)

CHAPTER 3
OBSTRUCTIONS¹

SECTION:

- 6-3-1: Permit Required
- 6-3-2: Removal Of Obstruction Or Litter
- 6-3-3: Signs; Fences
- 6-3-4: Structural Obstructions
- 6-3-5: Encroachments On Noncontrolled Access Highway Right Of Way
- 6-3-6: Putting Injurious Materials On Street
- 6-3-7: Exceptions
- 6-3-8: Penalty

6-3-1: **PERMIT REQUIRED:** No person shall encumber or obstruct, or cause to be encumbered or obstructed, any street, alley or other public place in the town by placing therein or thereon any building material, trash, vehicle, earth, garbage, rubbish, debris, or accumulated snow and ice removed from an adjoining private premises, without first having obtained permission, in writing, from the town clerk-treasurer or other responsible town official. (1975 Code § 12.12.010)

6-3-2: **REMOVAL OF OBSTRUCTION OR LITTER:** The town engineer or chief of police is authorized to order any article or thing of the kind mentioned in section 6-3-1 of this chapter, which encumbers, litters or obstructs any street, alley or other public place within the town, to be removed. If such removal shall not be made within six (6) hours after notice to the owner or person in charge thereof, or if the owner cannot be readily found for the purpose of such notice, the town shall cause

1. Authority of town to regulate and prevent the obstruction of streets, sidewalks and public grounds, see MCA § 7-14-4102. Town may prevent the encumbering of streets, sidewalks, alleys and public grounds, see MCA § 7-14-4104. Local authorities may regulate or suppress the erection of poles and the stringing of wires, rods or cables in streets or alleys or within their limits, see MCA § 7-13-4106.

the same to be removed to some suitable place to be designated by such official, at the expense of the person responsible therefor. (1975 Code § 12.12.020)

6-3-3: **SIGNS; FENCES:** No person shall place or maintain any shafts of wood, iron or other material, billboards, signs, fences, poles, rods, cables, or wires in any of the streets, public places or alleys of the town without having first obtained a permit from the town council. (1975 Code § 12.12.030)

6-3-4: **STRUCTURAL OBSTRUCTIONS:**

- A. Prohibited: No person shall maintain any building, fence, porch, steps, gallery, or other structure upon any street or alley within the town.
- B. Permit To Allow For Limited Time: The town council may, in its discretion, grant permits to persons which will allow them to maintain such structures for a limited time to be specified in the permit. (1975 Code § 12.12.040)
- C. Order To Remove: Any building, fence, porch, steps, gallery, or other structural obstruction now upon or hereafter placed or erected upon any street or alley within the town, or which may be upon any new street or alley which may hereafter be opened or created within the town, shall be removed therefrom within a reasonable time, not exceeding thirty (30) days and not less than three (3) days after an order to remove, in writing, has been given to the owner or person responsible for such obstruction.
- D. Owner Not Readily Found: If the owner or person responsible for such obstruction cannot be readily found for the purpose of such notice, it shall be the duty of the town engineer or chief of police to cause the obstruction to be removed, in his discretion. The expense of such removal shall be recoverable from the owner or person responsible for the obstruction.
- E. Interfere, Resist Or Obstruct Removal: Any person who interferes with, resists or obstructs by acts or threats, the removal of any such obstruction shall be deemed guilty of a violation of this chapter. (1975 Code § 12.12.050)

F. **Notice To Remove:** Notice to remove obstructions described in section 6-3-3 of this chapter and subsections C, D and E of this section, specifying same, and the place and extent of same, shall be given to the occupant or owner of the land involved, or to the person owning or causing such obstruction. Notice shall be given by leaving it at the place of residence of the person to be served, if he resides in the town, or by posting it on the obstruction, if such person does not reside in the town. (1975 Code § 12.12.060)

G. **Action To Remove Obstruction; Removal Without Action:**

1. **Action To Remove Obstruction:** If the obstruction required to be removed by the notice of subsection F of this section is denied, and the owner, occupant, or person controlling the matter or thing charged with being an obstruction, refuses either to remove or permit the removal thereof, the town shall commence in the proper court an action to abate the same as a nuisance; and if the town recovers judgment, it may, in addition to having the same abated, recover one hundred dollars (\$100.00) for every day such nuisance remained after such notice, and also costs in said action.

2. **Removal Without Action:** The town council may, at any time, order the chief of police to forthwith remove any such obstruction without commencing an action. (1975 Code § 12.12.070; amd. 2006 Code)

6-3-5: **ENCROACHMENTS ON NONCONTROLLED ACCESS HIGHWAY RIGHT OF WAY:** No private use of noncontrolled access highway right of way shall be allowed except that private advertising signs, eaves, marquees, and similar devices may overhang the right of way, provided:

- A. **Conflict Or Interfere With Use:** The overhanging device does not conflict with, or interfere with, traffic control signs, signals or other devices, or with highway construction or maintenance operations, or with the public's use of the right of way.
- B. **Ground Mounted Support Structure:** Ground mounted structures supporting the overhanging device must be located entirely off the public right of way.
- C. **Location:** The outermost portion of the overhanging device must be at least two feet (2') behind the curb or curb line in horizontal distance, and at least seven and one-half feet (7¹/₂') above the top of

the curb, sidewalk, or roadway shoulder elevation in vertical distance. (Ord., 2-11-1991)

6-3-6: PUTTING INJURIOUS MATERIALS ON STREET¹:

- A. **Prohibited:** No person shall throw or deposit upon any street, any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal, or vehicle upon such street.
- B. **Removal Required:** Any person who drops, or permits to be dropped or thrown, upon any street, any destructive or injurious material shall immediately remove the same or cause it to be removed.
- C. **Wrecked Or Damaged Vehicle:** Any person removing a wrecked or damaged vehicle from a street shall remove any glass or other injurious substance dropped upon the street from such vehicle. (1975 Code § 12.12.080)

6-3-7: EXCEPTIONS: The placing or maintaining of encroachments by the permission of the council, for which an encroachment tax is paid, or the erecting or maintaining of poles by telephone, telegraph or electric light companies for which permits have been granted by the town are excepted from the provisions of this chapter. There is also excepted from the provisions of this chapter the maintenance of light poles and bus benches placed by the authority of the town. (1975 Code § 23.23.090)

6-3-8: PENALTY: Any person violating a provision of this chapter shall, upon conviction thereof, be subject to penalty as provided in section 1-4-2 of this code. (1975 Code § 12.12.100; amd. 2006 Code)

1. MCA § 61-8-365.

CHAPTER 4

**PROTECTION OF STREET AND TRAFFIC
DURING CONSTRUCTION¹**

SECTION:

- 6-4-1: Barricades And Warning Lights
- 6-4-2: Traveling Upon Streets With Barricades
- 6-4-3: Marking Wet Concrete
- 6-4-4: Chipping Concrete
- 6-4-5: Penalty

6-4-1: BARRICADES AND WARNING LIGHTS:

- A. **Required:** Whenever excavation work² in any street in the town is in progress, efficient barricades shall be erected by the contractor, or other person in control, around all trenches or embankments made by him within the limits of any street or sidewalk. Red lights shall be maintained thereon from dusk to daylight until the street or sidewalk shall be restored to a safe and passable condition.
- B. **Failure To Protect:** Failure or omission to protect against accident, in the manner required by this chapter, shall cause a forfeiture of any permit which may have been granted with reference thereto. (1975 Code § 12.16.010)
- C. **Removal Prohibited:** Whenever any barricade, red light or other warning device shall have been placed upon the streets, alleys or sidewalks of the town by any official or employee of the town in the course of his duty, or by any contractor working on any street, alley or sidewalk, no person shall move or remove such red light, barricade or other warning device. (1975 Code § 12.16.030)

1. Authority of town to prevent traffic on sidewalks or the doing of damage of any kind to sidewalks, see MCA § 7-14-4123.

2. See subsection 8-3-4K of this code.

- D. **Removal After Completion:** Following completion of the construction work and restoration of the street or sidewalk to a safe and passable condition, the contractor or person in charge of the work shall promptly remove all barricades, warning lights and other safety devices from the street or sidewalk. (1975 Code § 12.16.010)

6-4-2: **TRAVELING UPON STREETS WITH BARRICADES:** No person shall walk upon or drive upon a street, alley or sidewalk barricaded as stated in this chapter. (1975 Code § 12.16.020)

6-4-3: **MARKING WET CONCRETE:** Where lights, signs, barricades or obstructions have been placed and maintained to protect concrete, no person shall walk, run, drive, ride or step, upon the newly laid concrete so as to mark, mar, or in any way injure the same. (1975 Code § 12.16.040)

6-4-4: **CHIPPING CONCRETE:** No person other than the town engineer, a member of his force or a concrete inspector, shall intentionally or wilfully chip, break, cut, or in any manner, deface or injure any concrete in any sidewalk, curb, gutter or pavement. (1975 Code § 12.16.050)

6-4-5: **PENALTY:** Any person violating a provision of this chapter shall, upon conviction thereof, be subject to penalty as provided in section 1-4-2 of this code. (1975 Code § 12.16.060; amd. 2006 Code)

CHAPTER 5

DRIVEWAY CONSTRUCTION

SECTION:

- 6-5-1: Permit Required
- 6-5-2: Application For Permit
- 6-5-3: Granting Of Permit
- 6-5-4: Construction Standards
- 6-5-5: Revocation Of Permit
- 6-5-6: Penalty

6-5-1: PERMIT REQUIRED:

- A. **Permit, Bond Required:** No person shall break any curb or make any opening or excavation for the purpose of constructing a driveway on any of the paved areas of any of the streets, avenues or alleys of the town, without first making application, filing suitable bond, and obtaining a permit from the town council therefor.
- B. **Waiver Of Bond:** The council shall make rules and regulations as to the amount and conditions under which such payment shall be made. The council may, in its discretion, waive the filing of bond. (1975 Code § 12.08.010)

6-5-2: APPLICATION FOR PERMIT: All applications for permits for driveways must give a description of the property to be served and such other information as may be required by the town clerk-treasurer, and must be signed by the property owner or his authorized agent. (1975 Code § 12.08.020)

6-5-3: GRANTING OF PERMIT: Plans for the proposed driveway shall be submitted by the applicant to the town clerk-treasurer, or other responsible town official designated by the council for that purpose. No permit for the construction of a driveway shall be

denied where it is shown by the applicant that the proposed work conforms to the standards and specifications prescribed by the town. (1975 Code § 12.08.030)

6-5-4: CONSTRUCTION STANDARDS:

- A. Declared By Council; Copy On File: Standards and required specifications for the construction of driveways shall be declared by the town council, and a copy of same shall be on file in the office of the town clerk-treasurer.
- B. Variance From Standards: Whenever a proposed driveway construction plan varies from the town standards and specifications, the council may grant a permit to the applicant where, in its opinion, the variance will not cause damage to the surrounding street and sidewalk area. (1975 Code § 12.08.030)

6-5-5: REVOCATION OF PERMIT:

- A. Grounds For Revocation: Any permit issued under authority of this chapter may be revoked for failure of the permittee to perform the work in accordance with the specifications, methods, or time limit required or approved by the town.
- B. Request For Hearing: Any permittee whose permit is revoked may, upon request, receive a hearing before the town council or person designated by the council. The council, after such hearing, may reinstate the permit or take any other action that it deems proper. (1975 Code § 12.08.040)

6-5-6: PENALTY: Any person violating a provision of this chapter shall, upon conviction thereof, be subject to penalty as provided in section 1-4-2 of this code. (1975 Code § 12.08.050; amd. 2006 Code)

CHAPTER 6

MOVING BUILDINGS

SECTION:

- 6-6-1: Permit Required
- 6-6-2: Application For Permit
- 6-6-3: Restrictions On Issuance Of Permit
- 6-6-4: Duties Of Permittee
- 6-6-5: Revocation Of Permit
- 6-6-6: Penalty

6-6-1: **PERMIT REQUIRED:** No person shall move, remove or relocate any building or structure within or into the town without first having obtained a moving permit from the town. (1975 Code § 12.20.010)

6-6-2: **APPLICATION FOR PERMIT:**

- A. Form; Required Information: Every application for a permit to move, remove or relocate any building or structure in the town shall be made to the town clerk-treasurer, in writing, upon forms furnished by the town and shall set forth the following information:
1. Address of present location of the structure;
 2. Address of new location;
 3. Type of construction (frame, masonry, masonry veneer, etc.);
 4. Length, width and height of building or structure;
 5. Specific route over which the building or structure is to be moved;
 6. Type of occupancy (dwelling, garage, office, etc.) for both old and new location;

7. Proposed moving date and time of day.

- B. Additional Information: The town may require any additional information which it shall find necessary to make a fair determination of whether a permit should issue. (1975 Code § 12.20.020)

6-6-3: **RESTRICTIONS ON ISSUANCE OF PERMIT:** The following restrictions and conditions shall be observed before the issuance of a permit as required by this chapter:

- A. **Compliance With Zoning And Building Requirements:** No permit shall be issued to any person to move or relocate any building or structure upon another building site unless such use, building or proposed conversion thereof conforms to zoning and building requirements of the town.
- B. **Dangerous Or Unsafe; Infested With Pests Or Unsanitary:** No permit shall be issued to any person to move, remove or locate any building or structure which is so constructed or in such condition as to be dangerous or unsafe, or which is infested with pests or is unsanitary or which, if it be a dwelling for habitation, is unfit for human habitation, or which is so dilapidated, defective, or in such a condition of deterioration or disrepair that its relocation at the proposed site would create a safety or health hazard or would cause substantial damage or material detriment to the property in the immediate vicinity of the proposed site.
- C. **Consent Of Chiefs Of Fire And Police Departments:** Every such application shall be accompanied by the written consent of the chiefs of the fire and police departments, who shall be notified of the route to be taken and when the removal or relocation shall be made.
- D. **Route:** The town clerk-treasurer shall specify in the permit the route to be taken in the moving of a building, such means to be used to prevent the street pavement from being subjected to abnormal stresses, and the limit of time which such building or structure shall be upon the streets or alleys.
- E. **Disturbance Of Circuit Or Box Of Town Fire Alarm:** No circuit or box of the town fire alarm shall be disturbed in any manner except with the permission of the chief of the fire department.
- F. **Occupied As Living Quarters:** No building or structure which is being moved upon or over any street, alley or property of the town shall be

occupied as living quarters while such building or structure is in transit.

- G. **Equipment Used For Moving:** No permit, as required by this chapter, shall be issued unless the applicant shows that he has adequate machinery, appliances and equipment to safely complete the proposed moving. (1975 Code § 12.12.030)

6-6-4: **DUTIES OF PERMITTEE:** Every permittee under this chapter shall:

- A. **Use Of Designated Streets:** Move a building only over streets designated for such use in the written permit;
- B. **Notify Of Change In Date And Hours:** Notify the town clerk-treasurer, in writing, of a desired change in moving date and hours as proposed in the application;
- C. **Notify Of Damage To Town Property:** Notify the town clerk-treasurer, in writing, of any and all damage done to property belonging to the town within twenty four (24) hours after the damage or injury has occurred;
- D. **Display Warning Lights:** Cause warning lights to be displayed during the hours of darkness on every side of the building, while standing on a street, in such manner as to warn the public of the obstruction, and shall at all times erect and maintain barricades across the streets in such manner as to protect the public from damage or injury by reason of the moving or removal of the building;
- E. **Removal From Town Streets:** Remove the building from the town streets after four (4) days of such occupancy, unless an extension is granted by the town;
- F. **Original Building Site:** Remove all rubbish and materials and fill all excavations to existing grade at the original building site so that the premises are left in a safe and sanitary condition;
- G. **Utilities:** Properly disconnect all utilities, plug the sanitary sewer with a concrete plug and have the water department disconnect the water service. (1975 Code § 12.20.040)

6-6-5: **REVOCATION OF PERMIT:** The building official of the town or the chief of police is authorized and empowered to revoke any permit granted under the terms of this chapter if it shall become known to him that the permittee is, in any manner, failing to comply with the terms of the permit or this chapter or, when in the opinion of the official, public convenience and safety require such revocation. (1975 Code § 12.20.050)

6-6-6: **PENALTY:** Any person violating a provision of this chapter shall, upon conviction thereof, be subject to penalty as provided in section 1-4-2 of this code. (1975 Code § 12.20.060; amd. 2006 Code)