



City Commission Agenda
Civic Center, 2 Park Drive South, Great Falls, MT
Commission Chambers Room 206
February 6, 2018

CALL TO ORDER 7:00 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL/STAFF INTRODUCTIONS

AGENDA APPROVAL

CONFLICT DISCLOSURE/ EX PARTE COMMUNICATIONS

PROCLAMATIONS

Career & Technical Education Month for Great Falls Public Schools

Sheila Rice Day of Community Service

Scouting Anniversary Week

Lewis and Clark Interpretive Center

PETITIONS AND COMMUNICATIONS

(Public comment on any matter that is not on the agenda of the meeting and that is within the jurisdiction of the City Commission. Please keep your remarks to a maximum of 3 minutes. When at the podium, state your name and address for the record.)

1. Miscellaneous reports and announcements.

NEIGHBORHOOD COUNCILS

2. Miscellaneous reports and announcements from Neighborhood Councils.

BOARDS AND COMMISSIONS

3. Appointment, Park and Recreation Board
4. Appointment, Great Falls Planning Advisory Board.
5. Miscellaneous reports and announcements from Boards and Commissions.

CITY MANAGER

6. Miscellaneous reports and announcements from the City Manager.

CONSENT AGENDA

The Consent Agenda is made up of routine day-to-day items that require Commission action. Items may be pulled from the Consent Agenda for separate discussion/vote by any Commissioner.

7. Minutes, January 16, 2018.

8. Total Expenditures of \$4,901,630 for the period of December 29, 2017 through January 24, 2018, to include claims over \$5,000, in the amount of \$4,552,301.
9. Contracts List.
10. Approve Final Payment for the West Bank Park Landscape & Irrigation (Base Bid), in the amount of \$20,547.47 to Boland Well Systems, Inc. and \$207.55 to the State Miscellaneous Tax Fund and authorize the City Manager to make the payments.
11. Award a contract in the amount of \$1,437,010.00 to Planned and Engineered Construction, Inc. for the NE Interceptor Rehabilitation, and authorize the City Manager to execute the construction contract documents.
12. Approve Change Order No. 1 in the amount of \$207,437.00 to Sletten Construction Company for the Water Treatment Plant Improvements Phase 1 – UV and Chemical Building, Surge Tank, and Electrical Building project and authorize the City Manager to execute the necessary documents.

Action: Approve Consent Agenda as presented or remove items for separate discussion and/or vote

PUBLIC HEARINGS

13. Ordinance 3170, Repealing and Replacing Title 12, Of The Official Code Of The City Of Great Falls (OCCGF), Pertaining To Streets And Sidewalks.

Action: Conduct a public hearing and adopt or deny Ordinance 3170. (Presented by Joseph Cik)

14. Resolution 10222, Re-Create Tourism Business Improvement District (TBID) No. 1307.

Action: Conduct Public Hearing and adopt or deny Res. 10222. (Presented by Melissa Kinzler)

15. Resolution 10223, Submit the Question of Whether the City of Great Falls Should Establish Park District Number 1 on the May 8, 2018 Ballot.

Action: Conduct public hearing and adopt or deny Res. 10223. (Presented by Steve Herring)

OLD BUSINESS

NEW BUSINESS

16. Consideration of retaining Simon, Greenstone, Panatier, Bartlett, P.C. and Montana litigation counsel, to represent the City of Great Falls in claims or litigation against various pharmaceutical manufacturers or other entities regarding marketing and selling opiate-derived painkillers and authorize the execution of a retainer agreement and/or other related documentation.

Action: retain or not retain Simon, Greenstone, Panatier, Bartlett, P.C. (SGPB), and associated Montana Litigation Counsel and authorize the City Manager to execute the attorney retainer agreement, and/or other necessary documents. (Presented by Sara Sexe)

ORDINANCES/RESOLUTIONS

17. Resolution 10228, Requesting distribution of Bridge and Road Safety and Accountability Act (BaRSAA) Funds.

Action: Adopt or deny Res. 10288 and authorize staff to request distribution of Bridge and Road Safety and Accountability Act (BaRSAA) program funds. (Presented by Jim Rearden)

18. Resolution No. 10229, Amend Resolution 10167, Establishing Training Requirements for All Members of City Boards, Committees, Commissions, and Councils.

Action: Adopt or deny Res. 10229. (Presented by Sara Sexe)

CITY COMMISSION

19. Miscellaneous reports and announcements from the City Commission.

20. Commission Initiatives.

ADJOURNMENT

(Please exit the chambers as quickly as possible. Chamber doors will be closed 5 minutes after adjournment of the meeting.) Commission meetings are televised on cable channel 190 and streamed live at <https://greatfallsmt.net>. City Commission meetings are re-aired on cable channel 190 the following Wednesday morning at 10 am, and the following Tuesday evening at 7 pm.



Item: Appointment, Park and Recreation Board

From: City Manager's Office

Initiated By: City Commission

Presented By: City Commission

Action Requested: Appoint one member to the Park and Recreation Board

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission (appoint/not appoint) _____ to the Park and Recreation Board for a three year term through December 31, 2020 ”

2. Mayor requests a second to the motion, Commission discussion, and calls for the vote.

Summary:

Patrick Carroll was appointed to the Park and Recreation Board in January 2012 and has served two full terms. His term expired on December 31, 2017. In accordance with Resolution 10059, the maximum uninterrupted length of service on any single board or commission shall be two consecutive terms, exclusive of the time served on any unexpired term. The term for the vacant position is January 1, 2018 through December 31, 2020.

Background:

Purpose

The Park and Recreation Board consists of seven members who act in an advisory capacity to the City Commission and the City Manager on all matters related to the Park and Recreation program in the City of Great Falls. Per City Ordinance, members must reside within the City.

Evaluation and Selection Process

Advertising was done on the City’s website and through the local media. One application was received.

Continuing members of this board are:

Erin Madison Granger 1/1/2016 -- 12/31/2018

June Sprout 1/1/2015 -- 12/31/2020

Lynn Ulmer Oatman	1/1/2015 -- 12/31/2020
George Geise	1/1/2016 -- 12/31/2018
Lonnie Hill	1/1/2016 -- 12/31/2018
Shirley Davis	1/2/2013 -- 12/31/2018

Concurrences:

During the January 8, 2018 Park and Recreation Board meeting the Board recommended the appointment of Kathryn Kotynski.

ATTACHMENTS:

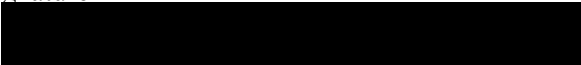
- Application and Letter



**BOARDS AND COMMISSIONS
CITIZEN INTEREST FORM**
(PLEASE PRINT OR TYPE)

Thank you for your interest. Citizen volunteers are regularly appointed to the various boards and commissions. This application subject to Montana Right to Know laws.

Board/Commission Applying For:		Date of Application:	
Name:			
Home Address:		Email address:	
Home Phone:	Work Phone:	Cell Phone:	
Occupation:		Employer:	
Would your work schedule conflict with meeting dates? Yes <input type="checkbox"/> No <input type="checkbox"/> (If yes, please explain)			
Related experiences or background:			
Educational Background:			
IF NECESSARY, ATTACH A SEPARATE SHEET FOR YOUR ANSWERS TO THE FOLLOWING:			
Previous and current service activities:			
Previous and current public experience (elective or appointive):			
Membership in other community organizations:			

Have you ever worked for or are you currently working for the City of Great Falls? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, where and when?	
Do you have any relatives working or serving in any official capacity for the City of Great Falls? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, who, which department, and relationship?	
Have you ever served on a City or County board? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, what board and when did you serve?	
Are you currently serving on a Board? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, which board?	
Please describe your interest in serving on this board/commission?	
Please describe your experience and/or background which you believe qualifies you for service on this board/commission?	
Additional comments:	
Signature 	Date:

If you are not selected for the current opening, your application may be kept active for up to one year by contacting the City Manager's office. Should a board/commission vacancy occur within 30 days from the last City Commission appointment, a replacement member may be selected from citizen interest forms submitted from the last advertisement. For more information, contact the City Manager's office at 455-8450.

Return this form to:

City Manager's Office
P.O. Box 5021
Great Falls, MT 59403

Fax:
(406) 727-0005

Email:
kartis@greatfallsmt.net



KATIE KOTYNSKI

SEEKING PARK AND RECREATION
BOARD POSITION

OBJECTIVE

To help the Park and Recreation Department in whatever way needed to help maintain and enhance activities and facilities in the city of Great Falls, MT,

SKILLS & ABILITIES

Technology, websites, newsletters, leadership, layout/design, organizing, knowledge of outdoors; park/trails user

VITALS

3440 12th Ave S
Great Falls, MT 59405

T 406.838.6747

E katiekotynski@gmail.com

INTRODUCTION

Dear Parks and Recreation Personnel and Board Members:

Thank you in advance for considering my application to be on your board. I have lived in Great Falls since 1983 and would welcome serving our community by finding ways to maintain and enhance the recreation opportunities for residents as well as finding ways to entice future residents through our many resources. My experience/skills are outlined in my application and highlighted below.

If you have any questions about my application, please do not hesitate to contact me. I would be happy to come in for an interview or answer questions via email or phone.

EXPERIENCE

Avid outdoors person, from hiking, biking, camping, swimming, kayaking, canoeing, recreating in our parks. Hike leader for Get Fit Great Falls and Montana Wilderness Association. Current and past board member for other organizations as well as neighborhood council. Leader of the Girls in Glacier hiking group. Tech and social media savvy.

EDUCATION

Bachelor's and two master's degrees in education and liberal arts. Transcripts available upon request.

COMMUNICATION

Teacher, past and present. Slideshow presentations, online courses, newsletters, website experience. Journalism educator and writer with good editing and press release skills.

LEADERSHIP

Current member of two boards; served on two other past boards, neighborhood council, leader of many committees, co-chair of Montana Institute on Educational Technology Board.

REFERENCES AND RESUME

Available upon request





Item: Appointment, Great Falls Planning Advisory Board

From: City Manager's Office

Initiated By: City Commission

Presented By: City Commission

Action Requested: Appoint one member to the Great Falls Planning Advisory Board

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission appoint _____ to the remainder of a three-year term ending on December 31, 2018, to the Great Falls Planning Advisory Board.”

2. Mayor calls for a second to the motion, Commission discussion, public comment, and calls for the vote.

Staff Recommendation:

It is recommended that the City Commission appoint one member for a partial three-year term ending on December 31, 2018, to the Great Falls Planning Advisory Board.

Summary:

There is currently one opening on the Planning Advisory Board. Sophia Sparklin was appointed to the Board in 2012 and reappointed on February 2, 2016 for a term through December 31, 2018. Ms. Sparklin resigned from the Board on November 21, 2017.

Advertisement to fill vacancies has been ongoing for various Board openings since January 2017 through the local media and the City's website. An application from Amanda Thompson was received on January 18, 2018.

During the Planning Advisory Board meeting on January 23, 2018 the Board recommended that the Commission appoint Ms. Thompson to fill the remainder of the three year term.

Purpose

The Great Falls Planning Advisory Board was created in lieu of the Great Falls City-County Planning

Board. Further, the advisory board has jurisdiction within the City limits; consists of nine citizen members appointed by the City Commission; and, performs and provides the duties, services and functions specified in Ordinance No. 2913, generally involving growth policies, subdivision applications and plats, annexation applications, zoning and rezoning petitions, conditional use permits, long range planning, transportation planning, Community Transportation Enhancement Program administration, historic preservation services, etc.

Members must reside within the city limits. City employees and elected officials are not eligible for appointment.

Alternatives:

Advertise to seek other citizen interest.

Concurrences:

Continuing members of this board are:

	Terms
Patrick Sullivan	9/19/17 – 12/31/20
Scot Davis	11/1/11 – 12/31/18
Anthony Houtz	1/21/14 – 12/31/19
Michael Wedekind	10/7/15 – 12/31/19
Charles Pankratz	6/20/17 -- 12/31/19
Peter Fontana	4/ 7/15 – 12/31/20
Dave Bertelsen	8/15/17 -- 12/31/18
Nathan (Nate) Weisenburger	11/1/11 – 12/31/17

Mr. Weisenburger has served two full terms but will remain on the Board until a qualified successor can be appointed. Advertising will continue through the City's Website.

ATTACHMENTS:

- Application - Thompson
- Recommendation Memo



**BOARDS AND COMMISSIONS
CITIZEN INTEREST FORM**
(PLEASE PRINT OR TYPE)

Thank you for your interest. Citizen volunteers are regularly appointed to the various boards and commissions. This application subject to Montana Right to Know laws.

Board/Commission Applying For: Great Falls Planning Advisory Board		Date of Application: 1/18/2018
Name: Amanda Thompson		
Home Address: 916 3rd Ave N Great Falls, MT 59401		Email address: aqualls1987@gmail.com
Home Phone:	Work Phone: 406-761-4400	Cell Phone: 406-208-8069
Occupation: Commercial Development Company Administrator		Employer: Mitchell Development & Investments
Would your work schedule conflict with meeting dates? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> (If yes, please explain)		
Related experiences or background: Working 2 years with a commercial real estate development company, I have an insight that would be beneficial to the board.		
Educational Background: Associates of Applied Science Degree - Great Falls College MSU 2016		
IF NECESSARY, ATTACH A SEPARATE SHEET FOR YOUR ANSWERS TO THE FOLLOWING:		
Previous and current service activities: None, looking forward to getting involved and helping where I can.		
Previous and current public experience (elective or appointive):		
Membership in other community organizations:		

Have you ever worked for or are you currently working for the City of Great Falls? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, where and when?	
Do you have any relatives working or serving in any official capacity for the City of Great Falls? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, who, which department, and relationship?	
Have you ever served on a City or County board? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, what board and when did you serve?	
Are you currently serving on a Board? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, which board?	
Please describe your interest in serving on this board/commission? As an employee of a commercial developer I believe that I have an insight that is beneficial. Not being in the field very long, I am looking forward to the opportunity to learn more and to become more involved in the community which I live in.	
Please describe your experience and/or background which you believe qualifies you for service on this board/commission? 2 years of working with a commercial developer has brought a wealth of knowledge in the development world and gives me a unique understanding of some of the planning processes and procedures.	
Additional comments: I really look forward to being more involved in my community and truly feel that not only will the board benefit from having me as a member but, I also see it as a great learning opportunity for myself as I grow my career in the development world.	
Signature	Date: 1/18/2018

If you are not selected for the current opening, your application may be kept active for up to one year by contacting the City Manager's office. Should a board/commission vacancy occur within 30 days from the last City Commission appointment, a replacement member may be selected from citizen interest forms submitted from the last advertisement. For more information, contact the City Manager's office at 455-8450.

Return this form to:
City Manager's Office
P.O. Box 5021
Great Falls, MT 59403

Fax:
(406) 727-0005

Email:
kartis@greatfallsmt.net

Planning & Community Development Department

MEMO

To: Krista Artis, Executive Assistant

From: Craig Raymond, Director of Planning & Community Development

Date: 1.25.18

Re: Planning Advisory Board Recommendation for Appointment

At the regular meeting of the Planning Advisory Board on Tuesday, January 23, 2018, the Board voted unanimously to recommend that the City Commission appoint Amanda Thompson to fill the position vacated by Sophia Sparklin.



Item: Minutes, January 16, 2018, Commission Meeting

From: City Clerk's Office

Presented By: City Commission

ATTACHMENTS:

- ▢ January 16, 2018 - - Commission Meeting Minutes

JOURNAL OF COMMISSION PROCEEDINGS

January 16, 2018

Regular City Commission Meeting
Commission Chambers Room 206

CALL TO ORDER 7:00 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL/STAFF INTRODUCTIONS

City Commission members present: Bob Kelly, Bill Bronson, Tracy Houck, Owen Robinson and Mary Sheehy Moe. Also present were City Manager Greg Doyon and Deputy City Manager Chuck Anderson; City Clerk Lisa Kunz; Public Works Director Jim Rearden; Planning and Community Development Director Craig Raymond; Park and Recreation Director Steve Herrig; Finance Director Melissa Kinzler; City Attorney Sara Sexe; and, Police Captain Jeff Newton.

AGENDA APPROVAL

No changes were proposed by the City Manager or City Commission. The agenda was approved as submitted.

PROCLAMATIONS

Black History Month and Catholic Schools Week.

*** Action Minutes of the Great Falls City Commission. Please refer to the [audio/video recording of the meeting](#) for additional details ***

PETITIONS AND COMMUNICATIONS

1. Miscellaneous reports and announcements.

Gerry Jennings, 317 Fox Drive, announced that a Great Falls Women's March, co-sponsored by YWCA Great Falls and Great Falls Rising, will be held January 20, 2018 at noon, beginning at the band shell in Gibson Park.

John Hubbard, 615 7th Avenue South, commented that he didn't understand ballot issue Ordinance 3162. He also spoke in opposition to rate and tax increases, and he discussed his personal court case versus a former employer.

Rhett Hulett, M&D Construction, 814 7th Street North, referred to Resolution 10220, a request for a Conditional Use Permit for a Contractor Yard Type II, that was denied at the January 2, 2018, Commission meeting, and commented that current zoning allows a Contractor Yard Type I. He noted that he purchased the property in 2011 from a business that had 40 employees, trucks and equipment. Mr. Hulett felt that approvals by the Neighborhood Council and Planning Advisory Board/Zoning Commission were because they saw the whole picture of what M&D Construction was bringing to that property. He concluded that the City will be missing out on property taxes in the downtown area, and businesses will lose out on the 36-38 employees that patronize downtown restaurants and businesses.

NEIGHBORHOOD COUNCILS

2. Miscellaneous reports and announcements from Neighborhood Councils.

None.

BOARDS AND COMMISSIONS

3. Appointments, Regional Airport Authority Board.

Commissioner Moe moved, seconded by Commissioner Houck, that the City Commission appoint Joe McKenney and Todd Timboe to be the City Representatives on the Regional Airport Authority Board.

Mayor Kelly noted that earlier this evening the Commission interviewed applicants Joe McKenney, Todd Timboe and Anthony Aretz for the Airport Authority Board. Commissioners Bronson and Robinson recused themselves from those interviews because of relationships with some of the applicants that may have been perceived as a conflict of interest.

Commissioner Moe commented that it was a hard choice amongst three well qualified candidates. She felt a greater strength of the two she recommended was their long familiarity with the City of Great Falls. Dr. Aretz has been in the community only eight months. She is convinced that a CPA on that board is a necessity.

Commissioner Houck felt that Dr. Aretz was the most knowledgeable person when it came to aviation and airport management.

Mayor Kelly expressed that this was a high talent pool of applicants to choose from. Mr. McKenney was not as well versed in airport operations as the others. Mr. Timboe is a CPA and is a needed position on the board. He considers it a strength rather than a weakness that Dr. Aretz has only been in the community for eight months.

Mayor Kelly asked if there were any comments from the public. Hearing none, Mayor Kelly asked if there was any further discussion amongst the Commissioners.

Commissioner Bronson noted that he and Commissioner Robinson will abstain from discussion and vote.

Mayor Kelly called for the vote with regard to appointing Messrs. McKenney and Timboe to the Airport Authority Board for three year terms through December 31, 2020.

Motion failed 1-2-2 (Mayor Kelly and Commissioner Houck dissenting; Commissioners Bronson and Robinson abstaining.)

Commissioner Houck moved, seconded by Commissioner Moe, that the City Commission appoint Dr. Anthony Aretz and Todd Timboe to the Airport Authority Board.

Mayor Kelly asked if there was any discussion amongst the Commissioners.

Commissioner Houck noted that Richard Swensen and Brad Talcott are the City appointees who have served their terms. She took into consideration that Mr. Swensen is a CPA and feels that this board needs someone that is proficient in reading their particular financials.

Mayor Kelly expressed appreciation to Mr. McKenney for his past significant service.

Mayor Kelly asked if there were any comments from the public. Hearing none, Mayor Kelly called for the vote with regard to appointing Dr. Aretz and Mr. Timboe to the Airport Authority Board for three year terms.

Motion carried 3-0-2 (Commissioners Bronson and Robinson abstaining.)

4. **Designate a representative to the Policy Coordinating Committee.**

Commissioner Bronson moved, seconded by Commissioner Houck, that the City Commission designate Mayor Kelly as our representative to the Policy Coordinating Committee.

Mayor Kelly asked if there was any discussion amongst the Commissioners.

Commissioner Bronson commented that if this Commission takes a particular position with respect to any issue on transportation planning policy, then Mayor Kelly, as the Commission's representative, would vote that position at all Policy Coordinating Committee meetings, and not vote contrary to the Commission's position.

Mayor Kelly asked if there were any comments from the public. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0

5. **Miscellaneous reports and announcements from Boards and Commissions.**

There were no miscellaneous reports and announcements from members of boards and commissions.

Mayor Kelly read a list of Commission member liaisons to the various boards and commissions, and noted that the liaisons are only to sit and observe, not to participate in discussion, and to bring information to this body should there be something the Commission may want additional information on:

- Commissioner Bronson - Board of Adjustment
- Commissioner Moe - Regional Airport Authority Board
- Commissioner Houck - Business Improvement District (BID)
- Mayor Kelly - Community Development Council (CDC) (if determined not to be a conflict)
- Commissioner Bronson - Design Review Board
- Commissioner Houck - Golf Advisory Board
- Commissioner Robinson - City/County Health Board
- Commissioner Bronson - Historic Preservation Advisory Commission (HPAC)
- Mayor Kelly - Advisory Commission on International Relationships (ACIR)
- Mayor Kelly - Library Board
- Commissioner Houck - Mansfield Center for the Performing Arts Advisory Council

Commissioner Houck - Park and Recreation Board
Commissioners Moe and Robinson - Parking Advisory Commission
Commissioner Bronson - Planning Advisory Board/Zoning Commission
Commissioners Moe and Robinson - Police Commission
Commissioner Houck - Tourism Business Improvement District (TBID)
Mayor Kelly - Transit District Board

CITY MANAGER

6. Miscellaneous reports and announcements from the City Manager.

City Manager Greg Doyon congratulated lieutenant appointees to Great Falls Fire Rescue: Jerry Pospisil, Mike Pancich, Trevor Johnson, Spencer Swingley, Jerry Lyon, Bryan Painter, Troy Weir and Nate Schmidt. A promotional ceremony will be held January 31st at 3 pm at Fire Station 1.

Manager Doyon further congratulated the Park and Recreation Department for its successful hosting of the Electric City Basketball Tournament consisting of 92 teams, 61 of which were from 90+ miles away, as well as for keeping up with snow removal on the trails for the public to continue to enjoy.

Planning and Community Development Department has embarked on a Long Range Transportation Plan update. He announced that the public will soon be able to participate in the update via a webpage, and a public meeting will be scheduled in February.

Manager Doyon concluded that EOC staff training is scheduled for Friday from 9 am to 11 am, and for the Commission members to let him know if they would like to attend.

CONSENT AGENDA

7. Minutes, January 2, 2018, Commission Meeting.
8. Total Expenditures of \$3,702,987 for the period of December 16, 2017 through January 3, 2018, to include claims over \$5,000, in the amount of \$3,512,804.
9. Contracts List.
10. Set a public hearing on Resolution 10227, Swimming Pool Fees for February 6, 2018.

Commissioner Moe requested that Item 10 be removed from the Consent Agenda for separate discussion.

Commissioner Bronson moved, seconded by Commissioner Houck, that the City Commission approve Consent Agenda Items 7, 8 and 9.

Mayor Kelly asked if there was any discussion amongst the Commissioners or comments from the public. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0

With regard to Item 10, Commissioner Moe disagreed with the fee structure as proposed. She would like more options for the Commission to work through before considering this particular option.

Commissioner Bronson suggested a more extensive discussion along with staff at a work session.

Manager Doyon responded that he would schedule a work session. He explained that pools are very challenging to manage because we don't want to discourage utilization by rate increases. On the other hand, it is one of the more intensive maintenance areas of the City and the pool fund has been struggling. Pools are a heavily subsidized area of the budget where general tax dollars go to support an activity.

Commissioner Houck noted there are print deadlines for summer promotional programs.

Park and Recreation Director Steve Herrig responded the information for the summer guide would need to go out by the end of February.

Commissioner Bronson moved, seconded by Commissioner Robinson, that the City Commission set a Public Hearing on Resolution 10227, Swimming Pool Fees, for February 20, 2018.

Mayor Kelly asked if there were any comments from the public.

John Hubbard, 615 7th Avenue South, commented less is more and more is less, meaning if fees were less there would be more swimmers.

There being no one further to address the Commission on Item 10, Mayor Kelly called for the vote.

Motion carried 4-1 (Commissioner Houck dissenting.)

PUBLIC HEARINGS

11. **Ordinance 3184, rezone the east approximately 12 feet wide by 132.5 feet long portion of Lions Park and sale of said property.**

Planning and Community Development Director Craig Raymond reported that this item is a request to conduct a public hearing for consideration of Ordinance 3184, rezoning a 12 feet wide by 132.5 feet long strip of City park land (Lions Park) from POS Parks and Open Space to C-2 General Commercial, as well as the sale of the subject property to PBA Properties, LLC.

The property being proposed for rezoning is located at 2815 10th Avenue South. Applicant Bob Alfred desires to build an elevator addition onto the existing professional office building. Due to the existing architectural and property line barriers, together with building and zoning code requirements, an adjustment of the property lines is necessary if the project is to be successful.

McKay Rowen Associates appraised the property for \$9,000 and said amount is the purchase price. All proceeds of the land sale shall be deposited into the City Park Trust Fund dedicated to park use.

The Park and Recreation Board reviewed the requested sale of park land during the February 13 and September 11, 2017, meetings and ultimately recommended approval. Additionally, the Zoning Commission held a public hearing on November 14, 2017, on the proposed rezoning of the subject property and recommended approval.

Mayor Kelly declared the joint public hearing open.

No one spoke in opposition to Ordinance 3184, or the sale of said property.

Speaking in support of Ordinance 3184 and the sale of said property was:

Bob Alfred, 3000 Lower River Road #16, PBA Properties, LLC, expressed appreciation to the Park Board, Zoning Commission and Neighborhood Council 9 for its support. He urged the Commission's support as well.

There being no one further to address the Commission, Mayor Kelly closed the public hearing and asked the will of the Commission.

Commissioner Houck moved, seconded by Commissioner Robinson, that the City Commission adopt Ordinance 3184 and the accompanying Basis of Decision.

Mayor Kelly asked if there was any discussion amongst the Commissioners.

In response to Commissioner Moe, Mr. Alfred clarified that the proposed elevator is for ADA accessibility. The yellow flags on the property are for a gas service line that will need to be moved a few feet.

There being no further discussion, Mayor Kelly called for the vote.

Motion carried 5-0

Commissioner Bronson moved, seconded by Commissioner Robinson, that the City Commission approve the Buy-Sell Agreement and draft Easement Agreement, and the sale of the property to PBA Properties, LLC, and authorize the City Manager to execute all documents necessary to effect the sale.

Mayor Kelly asked if there was any further discussion amongst the Commissioners or comments from the public with regard to the sale of the property. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0

12. **Resolution 10214 to annex and Ordinance 3178 to assign a zoning classification of C-2 General Commercial to the property described in Certificate of Survey 5114 located immediately north of the property addressed as 1025 NW Bypass.**

Planning and Community Development Director Craig Raymond reported that this item is a public hearing for consideration of Resolution 10214 annexing certain property located north of the intersection of the NW Bypass and 11th Street NW, and adjacent to the vacant Star Tract Addition addressed as 1025 NW Bypass, and Ordinance 3178 assigning C-2 General Commercial zoning to the same.

Applicant Steve Vick et al. requested annexation of the subject property and assignment of C-2 General Commercial zoning. Applicants desire to combine the subject property with the adjoining Star Tract Addition, also owned by the Applicant, in order to more effectively market the vacant properties for commercial development. No development is proposed at this time.

The classification of C-2 zoning is appropriate as the adjoining property that is already within the City limits is zoned C-2 and would provide for the orderly and logical extension of that district and nearby existing uses.

At the conclusion of a public hearing held on November 14, 2017, the Planning Advisory Board/Zoning Commission recommended the City Commission approve the annexation and assignment of C-2 General Commercial zoning classification upon annexation.

Mayor Kelly declared the joint public hearing open.

No one spoke in support of or in opposition to Resolution 10214 and Ordinance 3178.

Mayor Kelly closed the public hearing and asked the will of the Commission.

Commissioner Moe moved, seconded by Commissioner Bronson, that the City Commission adopt Resolution 10214 to annex the property described on Certificate of Survey 5114 as "a tract of land, being a portion of vacated railroad right-of-way located in the SE1/4, NE1/4, Section 3, Township 20 North, Range 3 East, PMM, Cascade County, Montana, and the accompanying Findings of Fact, and approve the Annexation Agreement for same.

Mayor Kelly asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0

Commissioner Robinson moved, seconded by Commissioner Houck, that the City Commission adopt Ordinance 3178 and the accompanying Findings of Fact.

Mayor Kelly asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0

OLD BUSINESS

NEW BUSINESS

ORDINANCES/RESOLUTIONS

13. **Ordinance 3170, Repealing and Replacing Title 12, of the Official Code of the City of Great Falls (OCCGF), Pertaining to Streets and Sidewalks.**

City Attorney Sara Sexe reported that consideration of this Ordinance is staff's continuing effort to clean up and clarify the Official Code of the City of Great Falls. This Ordinance would repeal and replace Title 12 pertaining to Streets and Sidewalks. Most of the amendments are non-substantive.

Substantive changes include replacing all references to "the governing body" with "Commission" or "City Commission," designating property owners as being primarily responsible for violations, eliminating Public Works' approved transit shelters from the list of specifically recognized boulevard encroachments, and eliminating off-street parking in the boulevard areas.

There are also proposed minor changes to the encroachment permit process, exempting non-advertising benches, transit shelters and bicycle racks from the annual fee, at the discretion of City administration.

Other changes include setting fees by Resolution rather than Ordinance for consistency, mirroring insurance requirements with state statute, and a formalized appeal process for denial or revocation of excavation permits, sidewalk and curb permits, and street improvements.

The definition of "procession" has been added to include parades, motorcades, fun runs or other events.

Criteria was inserted for application review and appeal provisions to provide staff guidance in evaluating the applications.

Penalty provisions for Title 12 were established. Sidewalk code enforcement duties were reassigned from the Great Falls Police Department to the Public Works Department.

Since posting, Attorney Sexe reported that her office received comments or suggestions that will be reviewed and considered before the public hearing.

Commissioner Houck moved, seconded by Commissioner Bronson, that the City Commission accept Ordinance 3170 on first reading and set public hearing for February 6, 2018.

Mayor Kelly asked if there was any discussion amongst the Commissioners or comments from the public. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0

14. **Resolution 10223, Submit the Question of Whether the City of Great Falls Should Establish Park District Number 1 on the May 8, 2018 Ballot.**

Park and Recreation Director Steve Herrig reported that this item is a request to set Resolution 10223 for a public hearing on February 6, 2018, that would submit the question of whether the City should establish a Park District on the May 8, 2018 ballot.

The City Commission conducted a public hearing and adopted Resolution No. 10191, Intention to Create a Special District to be known as Park District Number 1, at its regular meeting on June 6, 2017. Subsequently, there was a 90-day protest period. The City received 21.6% in protest of the cost of the assessment for the proposed Park District. Because this amount was more than 10%, but less than 50%, the Commission denied Resolution 10192 which would have created the district at its August 15, 2017 meeting. In accordance with Mont. Code Ann. §7-11-1008, since the protests were more than 10% but less than 50%, the Commission could decide to proceed with proposing the district by ordering a referendum.

The Commission has decided to proceed with creating the district and has directed staff to prepare a Resolution to refer the question of creation to the Great Falls electorate. Resolution 10223 must be adopted by the Commission on February 6, 2018, to be submitted to the County Election Administrator. Pursuant to Mont. Code Ann. §13-1-504, the referendum must be held on the same day as the regular school election day, which is May 8, 2018. All registered electors of the state who are a resident of, or owner of taxable real property located in, the proposed special district are eligible to vote.

The purpose of creating the district is to provide certain maintenance, purchasing, and improvement services for City-owned facilities, land, and equipment under the responsibility and care of the City's Park and Recreation Department. Current funding does not allow for adequate maintenance of facilities and parks. There has been no funding for capital improvements or major repairs. In Fiscal Year 2018, the City's Capital Improvement Plan recommended \$654,450; however, no dollars were funded.

The cost of the proposed improvements for the district is \$1,500,000 annually for the first three years. The assessment method will be based on taxable value. The estimated 2018 assessment for a property with a 2017 Market Value of \$100,000 would be \$22.92 per year. The assessment can be adjusted annually and must be set by resolution and adopted by the City Commission.

The Park and Recreation Board voted in support of this resolution.

Commissioner Houck moved, seconded by Commissioner Robinson, that the City Commission set a public hearing on Resolution 10223 for February 6, 2018.

Mayor Kelly asked if there was any discussion amongst the Commissioners.

Commissioner Houck commented that the Commission is following the process set forth in state statutes. The proposed assessment would provide for deferred maintenance and crisis management. The proposal does not include talk about selling park land or program fees.

Mayor Kelly asked if there were any comments from the public.

John Hubbard, 615 7th Avenue South, commented the public is taxed too much already. He inquired what the current funding was for parks and was informed that the Commission currently provides \$1.8 million dollars from the general fund. That amount is inadequate to keep up with the maintenance as required.

There being no one further to address the Commission, Mayor Kelly called for the vote.

Motion carried 5-0

15. **Resolutions 10224 and 10225, Annexation of existing lots within Thaniel Addition, Phase 1, and Repeal of Resolutions 10178 and 10179.**

Planning and Community Development Director Craig Raymond reported that this item is a request to adopt Resolutions 10224 and 10225 and to repeal Resolutions 10178 and 10179.

In 2017 the City Commission adopted Resolutions 10178 and 10179 that annexed certain properties in phases. When the developer, NeighborWorks Great Falls, completed each phase of self-help program home construction, the corresponding annexation resolution was to be recorded with the Cascade County Clerk and Recorder thereby annexing the properties into the City.

Subsequently, NeighborWorks plans changed and it is now desiring to sell some of the lots it had purchased, but were not yet annexed into the City, as provided for in Resolutions 10178 and 10179.

Staff has carefully evaluated the proposal and does not have any objection to the proposal. All other terms and conditions of the Thaniel Addition will remain in place including the installation of all public utilities and street infrastructure as required.

Commissioner Bronson moved, seconded by Commissioner Moe, that the City Commission adopt Resolution 10224 and repeal Resolution 10178, annexing portions of Thaniel Addition, Phase I, into the City of Great Falls.

Mayor Kelly asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Kelly asked if there were any comments from the public.

Neil Fortier, NeighborWorks Great Falls, 509 1st Avenue South, commented his understanding was that Resolutions 10178 and 10179 were going to be amended rather than repealed.

Director Raymond clarified that Resolutions 10224 and 10225 cover all of the lots in question.

There being no one further to address the Commission, Mayor Kelly called for the vote.

Motion carried 5-0

Commissioner Moe moved, seconded by Commissioner Houck, that the City Commission adopt Resolution 10225 and repeal Resolution 10179, annexing portions of Thaniel Addition, Phase I, into the City of Great Falls.

Mayor Kelly asked if there was any discussion amongst the Commissioners or comments from

the public. Hearing none, Mayor Kelly called for the vote.

Motion carried 5-0

CITY COMMISSION

16. **Miscellaneous reports and announcements from the City Commission.**

Commissioner Bronson commented that, absent any objection, he would proceed to draft a Proclamation in Support of the Lewis and Clark Interpretive Center to submit to the Cascade County Commission. No one objected.

Commissioner Houck complimented Park and Recreation staff for the best ran Basketball Tournament in the state. There were 400 motel rooms rented Friday and 450 rooms rented Saturday, and those visitors eating and shopping in Great Falls economically benefited the entire community.

17. **Commission Initiatives.**

None.

ADJOURNMENT

There being no further business to come before the Commission, **Commissioner Bronson moved, seconded by Mayor Kelly, to adjourn the regular meeting of January 16, 2018, at 8:27 p.m.**

Mayor Bob Kelly

City Clerk Lisa Kunz

**Minutes Approved:
February 6, 2018**



Item: Total Expenditures of \$4,901,630 for the period of December 29, 2017 through January 24, 2018, to include claims over \$5,000, in the amount of \$4,552,301.

From: Fiscal Services

Initiated By: City Commission

Presented By: Melissa Kinzler, Fiscal Services Director

ATTACHMENTS:

- ▣ 5000 Report



ITEM: \$5,000 Report
 Invoices and Claims in Excess of \$5,000

PRESENTED BY: Fiscal Services Director

ACTION REQUESTED: Approval with Consent Agenda

LISTING OF ALL ACCOUNTS PAYABLE CHECKS ISSUED AVAILABLE ONLINE AT
www.greatfallsmt.net/fiscalservices/check-register-fund

TOTAL CHECKS ISSUED AND WIRE TRANSFERS MADE ARE NOTED BELOW WITH AN
ITEMIZED LISTING OF ALL TRANSACTIONS GREATER THAN \$5000:

ACCOUNTS PAYABLE CHECK RUNS FROM JANUARY 4, 2018 - JANUARY 24, 2018	4,871,755.04
MUNICIPAL COURT ACCOUNT CHECK RUN FOR DECEMBER 29, 2017 - JANUARY 12, 2018	29,875.13
TOTAL: \$	<u>4,901,630.17</u>

GENERAL FUND

MUNICIPAL COURT

DIS TECHNOLOGIES	SCANNING OF CITATIONS	9,385.75
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OTHER ADMIN

CTA ARCHITECTS ENGINEERS	PHASE I CC EXTERIOR ENVELOPE REHAB ARCHITECTURAL SERVICES	16,112.27
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POLICE

AXON ENTERPRISES, INC	TASER SUPPLIES	9,105.63
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FIRE

CDW GOVERNMENT	IPADS AND SURFACE PROS FOR FD-ZUERCHER	11,479.30
CONLIN'S FURNITURE INC	FIRE STATION FURNITURE	7,984.00

SPECIAL REVENUE FUND

SUPPORT & INNOVATION

GREAT FALLS TOURISM BUSINESS IMPROVEMENT DISTRICT	NOVEMBER 2017 TAX DISTRIBUTION	195,879.00
GREAT FALLS BUSINESS IMPROVEMENT DISTRICT	NOVEMBER 2017 TAX DISTRIBUTION	106,431.98
GREAT FALLS BUSINESS IMPROVEMENT DISTRICT	DECEMBER 2017 TAX DISTRIBUTION	18,198.87

SPECIAL REVENUE FUND (CONTINUED)

STREET DISTRICT

GERANIOS ENTERPRISES INC	OF 1666.3 MISC DRAINAGE NW SIDE ALLEYS PHASE 1 (SPLIT AMONG FUNDS)	9,315.55
CRAPO LTD	ROAD SALT	20,007.75

PARK & RECREATION SPECIAL REVENUE

MONTANA CONSERVATION CORPS INC	TRAIL CONSTRUCTION AND MAINTENANCE	5,000.00
OUTBACK CONSTRUCTION INC	WEST BANK TRAIL REPLACEMENT PH2	66,409.20

FEDERAL BLOCK GRANTS

NEIGHBORWORKS GREAT FALLS	AFFORDABLE HOUSING PROGRAM 2016/2017 2 HIGH SCHOOL HOUSES	75,000.00
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ENTERPRISE FUNDS

WATER

FERGUSON WATERWORKS INC	METERS AND SUPPLIES	28,758.12
INDUSTRIAL AUTOMATION CONSULTING	OF 1519.6 WTP IMPRV PH 1 UV/CHEM ELECTRICAL BUILDING	23,092.81
BLACK & VEATCH CORPORATION	OF 1519.6 WTP PH 1 CONSTRUCTION	88,689.94
NORTHWESTERN ENERGY	OF 1625.2 GORE HILL TANK REPL AMEND AGREEMENT APP	5,674.00
STATE OF MONTANA	1% WITHHOLDING FOR SLETTEN CONSTRUCTION	16,508.90
SLETTEN CONSTRUCTION COMPANY	OF 1519.6 WTP IMPROVEMENT PHASE 1 CONSTRUCTION	1,634,381.29
STATE OF MONTANA DEQ	PUBLIC WATER SUPPLY FEE	42,800.00

SEWER

VEOLIA WATER NORTH AMERICA	MISC CENTRIFUGE DRIVE PARTS	9,304.59
VEOLIA WATER NORTH AMERICA	REPLACED PRIMARY SCUM PUMP	15,195.64
NCI ENGINEERING CO	OF 1658.3 CMATP TIF L S 30/FORCE MAIN	12,882.95
BNSF RAILWAY COMPANY	OF 1674.3 LICENSE FEE AND INSURANCE FEE	12,346.00

STORM DRAIN

GERANIOS ENTERPRISES INC	OF 1666.3 MISC DRAINAGE NW SIDE ALLEYS PHASE 1 (SPLIT AMONG FUNDS)	41,336.61
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ENTERPRISE FUNDS (CONTINUED)

PARKING

STANDARD PARKING CORPORATION	CONTRACT SERVICES FOR DECEMBER 17	26,144.49
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RECREATION

PIERCE FLOORING & DESIGN	MATERIALS AND INSTALL OF NEW FLOOR	5,944.00
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CIVIC CENTER EVENTS

GREAT FALLS SYMPHONY	18-42 RENT CASH OUT	25,828.75
GREAT FALLS CONCERT ASSOCIATION	18-12 RINGLING 5 CASH OUT	10,006.80

INTERNAL SERVICES FUND

HEALTH & BENEFITS

MONTANA MUNICIPAL INTERLOCAL AUTHORITY	EMPLOYEE HEALTH INSURANCE PREMIUM JANUARY 2018	743,971.15
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INFORMATION TECHNOLOGY

BARCODE INC	THERMAL PRINTERS & ID SCANNERS FOR ECITATIONS ZUERCHER	22,456.35
ESRI ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE	ARCGIS SERVER	9,500.00

CENTRAL GARAGE

MOUNTAIN VIEW CO-OP	FUEL	40,716.36
NORTHWEST FUEL SYSTEMS	PIPING, DISPENSER REMOTE FILL FILTER FABRIC	30,857.24
CITY MOTOR CO INC	2-2018 CHEVROLET EQUINOX LS	47,800.00
CITY MOTOR CO INC	2015 DODGE GRAND CARAVAN	17,200.00

CC FACILITY SERVICES

CENTRAL FLOOR COVERING INC	INSTALL NEW CARPET CIVIC CENTER LOBBY, HANDICAP RAMP & BASEMENT	10,892.24
MR. GREEN LANDSCAPE SOLUTIONS	SNOW REMOVAL	17,590.00

TRUST AND AGENCY

COURT TRUST MUNICIPAL COURT

CITY OF GREAT FALLS	FINES & FORFEITURES COLLECTIONS	24,307.63
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PAYROLL CLEARING

STATE TREASURER	MONTANA TAXES	49,894.00
FIREFIGHTER RETIREMENT	FIREFIGHTER RETIREMENT EMPLOYEE & EMPLOYER CONTRIBUTIONS	50,264.24
STATEWIDE POLICE RESERVE FUND	POLICE RETIREMENT EMPLOYEE & EMPLOYER CONTRIBUTIONS	65,342.64
ICMA RETIREMENT TRUST	EMPLOYEE CONTRIBUTIONS	8,224.61
PUBLIC EMPLOYEE RETIREMENT	PUBLIC EMPLOYEE RETIREMENT EMPLOYEE & EMPLOYER CONTRIBUTIONS	136,249.15
POLICE SAVINGS & LOAN	EMPLOYEE CONTRIBUTIONS	14,111.00
US BANK	FEDERAL TAXES, FICA & MEDICARE	221,485.99
AFLAC	EMPLOYEE CONTRIBUTIONS	11,037.59
NATIONWIDE RETIREMENT SOLUTIONS	EMPLOYEE CONTRIBUTIONS	12,731.30
MONTANA MUNICIPAL INTERLOCAL AUTHORITY	4TH QUARTER WORKERS COMPENSATION	238,615.05

UTILITY BILLS

ENERGY WEST RESOURCES	DECEMBER 2017 MONTHLY CHARGES	27,754.80
TALEN TREASURE STATE	DECEMBER 2017 MONTHLY CHARGES	61,305.60
NORTHWESTERN ENERGY	NOVEMBER 2017 WATER PLANT CHARGES	6,411.36
NORTHWESTERN ENERGY	DECEMBER 2017 SLD CHARGES	74,437.04
MONTANA WASTE SYSTEMS INC	DECEMBER 2017 MONTHLY CHARGES	59,941.62

CLAIMS OVER \$5000 TOTAL:\$ 4,552,301.15



Item: Contracts List

From: City Clerk's Office

Presented By: City Commission

ATTACHMENTS:

- ▣ Contracts List

COMMUNICATION TO THE CITY COMMISSION

DATE: February 6, 2018

ITEM: CONTRACTS LIST
 Itemizing contracts not otherwise approved or ratified by City Commission Action
 (Listed contracts are available for inspection in the City Clerk’s Office.)

PRESENTED BY: Darcy Dea, City Clerk

ACTION REQUESTED: Ratification of Contracts through the Consent Agenda

MAYOR’ S SIGNATURE: _____

CONTRACTS LIST

	DEPARTMENT	OTHER PARTY (PERSON OR ENTITY)	PERIOD	AMOUNT	PURPOSE
A	Public Works	Cascade County Weed Management District	Annual	Each party responsible for their own funding	Cooperative Agreement and Noxious Weed Management Plan
B	Public Works-Engineering	TD&H Engineering	02/06/2018-12/30/2018	\$15,000	Professional Service Agreement – Amendment No. 1 for expanded research and additional engineering tasks associated with water main river crossings OF 1494.4 (CR 051716.9A)
C	Great Falls Police Department	Central Technologies	02/06/2018-06/30/2018	\$9,555	Agreement to install Fire Alarm System at the GFPD

D	Great Falls Police Department	Department of the Air Force Montana Air National Guard Headquarters 120 th Airlift Wing	02/06/2018- 01/01/2019	Each party responsible for all costs of its personnel	Memorandum of Understanding for Law Enforcement/Security Support to Montana Air National Guard Base
E	Public Works- Environmental	HDR Engineering, Inc.	02/06/2018- 12/31/2018	\$15,000	Professional Services Agreement for Task 400, Wet Weather Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) OF 1361.3
F	Public Works- Environmental	HDR Engineering, Inc.	02/06/2018- 12/31/2018	\$17,000	Professional Services Agreement for Task 100, On Call Permit Renewal Assistance; Task 200, Nutrient Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) for the Missouri River; Task 300, Metals Sampling and Analysis Plan OF 1735.0
G	Great Falls Fire Rescue	Montana Disaster and Emergency Services (MT DES)	10/01/2017- 09/30/2018	\$59,584 (Federal award) \$14,896 (required match) \$74,480 (total award)	FY 2017 Hazardous Materials Emergency Preparedness (HMEP) Grant Award Agreement for training GFFR HazMat Technicians
H	Public Works – Engineering	Outrigger Consultants, LLC	02/02/2018- 12/31/2020	\$32,090	Professional Services Agreement for easement acquisition, preliminary design, final design, bidding phase, and construction phase for the Lift Station #8 removal project in the southwest portion of Great Falls, MT OF 1722.2
I	Public Works – Engineering	NCI Engineering Co	02/06/2018- 12/31/2020	\$72, 452	Professional Services Agreement to rehabilitate Sewer Lift Station #9 at 5100 1 st Avenue South, north of Sunrise Courts OF 1722.1

J	Public Works – Engineering	Guy Tabacco Construction	02/06/2018-06/30/2018	\$12,250	Agreement to install additional structural supports for the Public Works Utilities Shop Mezzanine Retrofit OF 1733.1
K	Public Works – Engineering	A.T. Klemens, Inc.	02/06/2018-08/01/2018	\$43,382	Construction Agreement for the Civic Center IT HVAC replacement OF 1690.2



Item: Final Payment: West Bank Park Landscape & Irrigation, OF 1585.3

From: Engineering Division

Initiated By: Park and Recreation Department

Presented By: Steve Herrig, Director of Park and Recreation

Action Requested: Approve Final Pay Request for Office File 1585.3

Suggested Motion:

1. Commissioner moves:

“I move the City Commission (approve/not approve) Final Payment for the West Bank Park Landscape & Irrigation (Base Bid), in the amount of \$20,547.47 to Boland Well Systems, Inc. and \$207.55 to the State Miscellaneous Tax Fund and authorize the City Manager to make the payments.”

2. Mayor requests a second to the motion, Commission discussion, public comment, and calls for the vote.

Staff Recommendation:

Approve Final Payment Request.

Summary:

This project was initiated by the Park and Recreation Department to improve the landscaping at West Bank Park. Improvements to the southern portion of the park that were identified in the 2011 West Bank Park Master Plan were implemented under this project. The major components of the project included the installation of a new entry sign, landscaping, seeding, and the installation of an irrigation system to water approximately six acres of the park.

Background:

Citizen Participation

In 2010 the planning process for West Bank Park was developed with a strong sense of public involvement. The process was guided by a steering committee and included a site visit with the committee, a town hall meeting, a two-day design charrette, an extensive on-line survey, meetings with neighborhood councils, and various other opportunities for public comment. The construction activity required the closure of a majority of the southern portion of West Bank Park during the summer of 2017

to allow the seed to establish.

Workload Impacts

The City has a Professional Services Agreement with TD&H Engineering that provided the design and construction documents for this project. TD&H also provided construction phase services and project inspection. City staff assisted with project administration. Park and Recreation Department staff is responsible for maintaining the improvements now that construction is complete.

Purpose

The purpose of this project was to improve the overall appearance and user experience of the southern portion of West Bank Park. This project was one component of the overall improvements that included the construction of a new restroom, expanding and paving the parking lot, constructing new trails, and improving the existing trails.

Project Work Scope

The project included the installation of a new irrigation system with an Irrigation Management and Monitoring Software (IMMS) Central Control System. The project also included the following components: relocating existing trees, installing shrubs and perennials, relocating decorative rocks, drill seeding and mulching approximately six acres of the park, installing decorative concrete, and installing an entry monument sign.

Evaluation and Selection Process

Five (5) bids were received on June 8, 2016 with the base bids ranging between \$222,943.53 and \$558,495.00. Boland Well Systems, Inc. submitted the low bid and executed all the necessary bid documents. The City Commission awarded the contract on June 21, 2016.

Final Payment

The final project cost was \$215,240.32 which was \$7,703.21 less than the amount that was originally awarded and approved. The difference was largely due to the fact that the project did not encounter contaminated soil nor did the project encounter large debris.

Conclusion

City staff recommends making the Final Payment. City Staff verified that Boland Well Systems has completed all work and punch list items in accordance with the plans and the contract. The two year warranty period started at the time of substantial completion which was June 19, 2017.

Fiscal Impact:

Funding for this project will be from the West Bank Tax Increment Fund (TIF). The use of this funding was approved for this project by the City Commission on March 3, 2015.

Alternatives:

The City Commission could vote to deny Final Payment.

ATTACHMENTS:

- OF 1585.3 Final Pay Documents



City of Great Falls
 2 Park Dr S
 Great Falls, MT 59401
 Phone (406) 455-8425

Purchase Order
No. 2017-00000032

DATE 08/01/2016

Ship To
 CITY OF GREAT FALLS
 PUBLIC WORKS DEPARTMENT
 1005 25TH AVE NE
 GREAT FALLS, MT 59404

Bill To
 CITY OF GREAT FALLS
 ACCOUNTS PAYABLE
 PO BOX 5021
 GREAT FALLS, MT 59403

Vendor
Vendor No. 1720
 BOLAND WELL SYSTEMS INC
 3605 FAIRWAY DR
 GREAT FALLS, MT 59401

DELIVER BY
SHIP VIA
FREIGHT TERMS
 PAGE 1 of 1
ORIGINATOR: Kari Wambach

NOTE:

QUANTITY	UNIT	DESCRIPTION	UNIT COST	TOTAL COST
1.0000	EACH	CONTRACT SERVICES - OF 1585.3 WB PARK LANDS/IRR APP 062116 3101.00.102.49310 - IMPROVEMENTS OTHER THAN BUILDINGS 220,714.10 PW371508	220,714.1000	\$220,714.10
<i>Final Pay Close PO</i>				
PURCHASE ORDER TOTAL				\$220,714.10

Special Instructions: PURCHASE ORDER NO. MUST APPEAR ON ALL INVOICES, PACKING SLIPS, AND CORRESPONDENCE.

By accepting this purchase order contract, both the seller and the City of Great Falls agree that they will perform their obligations in accordance with all applicable laws and ordinances. All documents relative to this purchase order contract shall be interpreted and construed according to the laws of the State of Montana.

PROJECT FUNDING/EXPENDITURE SUMMARY

WEST BANK PARK LANDSCAPING AND IRRIGATION, OF 1585.3

FINAL

PREPARED BY THE CITY ENGINEERS OFFICE: JEP

DATE: 01/12/2018

PAYEE	FUND	CLAIM - NUMBER / AMOUNT / DATE					CONTRACT AMOUNT	EXPENDITURES TO DATE	BALANCE
		NO. 1	NO. 2	NO. 3	NO. 4	NO. 5			
Engineering: TD & H Engineering	Park & Rec TIFF 3101.00.102.49310	\$1,311.00	\$2,756.55	\$625.00	\$582.30	\$5,269.60	\$36,336.00	\$35,336.00	\$1,000.00
	DATE	05/13/15	06/10/15	07/10/15	08/13/15	03/14/16			
	Park & Rec TIFF 3101.00.102.49310	\$4,726.35	\$3,374.80	\$1,426.00	\$783.00	\$582.30			
	DATE	04/13/16	05/13/16	06/13/16	07/14/16	08/09/16			
	Park & Rec TIFF 3101.00.102.49310	\$1,164.60	\$4,658.40	\$4,076.10	\$500.00	\$500.00			
	DATE	09/14/16	10/13/16	11/18/16	01/12/17	05/11/17			
	Park & Rec TIFF 3101.00.102.49310	\$2,600.00	\$400.00						
	DATE	06/13/17	07/17/17						

PAYEE	FUND	CLAIM - NUMBER / AMOUNT / DATE					CONTRACT AMOUNT	EXPENDITURES TO DATE	BALANCE
		NO. 1	NO. 2	NO. 3	NO. 4	NO. 5			
Contractor: Boland Well Systems, Inc.	Park & Rec TIFF 3101.00.102.49310	\$68,631.60	\$78,796.21	\$45,112.64	\$20,547.47		\$220,714.10	\$213,087.92	\$7,626.18
	DATE	12/07/16	01/13/17	07/17/17	01/09/18				
	Park & Rec TIFF 3101.00.102.49310	\$693.25	\$795.92	\$455.68	\$207.55		\$2,229.43	\$2,152.40	\$77.03
	DATE	12/07/16	01/13/17	07/17/17	01/09/18		\$222,943.63	\$215,240.32	\$7,703.21

PAYEE	FUND	CLAIM - NUMBER / AMOUNT / DATE					CONTRACT AMOUNT	EXPENDITURES TO DATE	BALANCE
		NO. 1	NO. 2	NO. 3	NO. 4	NO. 5			
Miscellaneous	Park & Rec TIFF 3101.00.102.49310	\$200.00	\$1,820.00	\$605.04	\$122.61		\$25.29	\$2,747.65	(\$2,722.36)
	Vendor	Floodplain	Fagenstrom	Tribune	Tribune				
	DATE	04/15/16	04/29/16	05/19/16	05/23/16				

PROJECT #	ACCOUNT NUMBER	FUND DESIGNATION	FUNDING	EXPENDITURES	BALANCE
PW371508	3101.00.102.49310	West Bank Park TIFF	\$259,304.82	\$253,323.97	\$5,980.85
		TOTALS	\$259,304.82	\$253,323.97	\$5,980.85



APPLICATION FOR PAYMENT NO. 4 – FINAL PAY APPLICATION

To: City of Great Falls (OWNER)
From: Boland Well Systems, Inc. (CONTRACTOR)
Contract: West Bank Park Landscape & Irrigation (Base Bid)
Project: West Bank Park Landscape & Irrigation
OWNER's Contract No. O.F. 1585.3 ENGINEER's Project No. PW371508
For Work accomplished through the date of: September 29, 2017.

1.	Original Contract Price:	\$ <u>222,943.53</u>
2.	Net change by Change Orders and Written Amendments (+ or -):	\$ <u>0.00</u>
3.	Current Contract Price (1 plus 2):	\$ <u>222,943.53</u>
4.	Total completed and stored to date:	\$ <u>215,240.32</u>
5.	Retainage (per Agreement):	
	<u>0</u> % of Completed Work: \$ <u>0.00</u>	
	<u>0</u> % of stored material: \$ <u>0.00</u>	
	Total Retainage: \$ <u>0.00</u>	
6.	Total completed and stored to date less retainage (4 minus 5):	\$ <u>0.00</u>
7.	Less previous Applications for Payments:	\$ <u>194,485.30</u>
8.	Gross Amount Due this application: (6 minus 7):	\$ <u>20,755.02</u>
9.	Less 1% State Gross Receipts Tax:	\$ <u>207.55</u>
10.	DUE THIS APPLICATION (8 MINUS 9):	\$ <u>20,547.47</u>

Accompanying Documentation:

CONTRACTOR'S Certification:

The undersigned CONTRACTOR certifies that (1) all previous progress payments received from OWNER on account of Work done under the Contract referred to above have been applied on account to discharge CONTRACTOR'S legitimate obligations incurred in connection with Work covered by prior Applications for Payment numbered 1 through 3 inclusive; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to OWNER at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to OWNER indemnifying OWNER against any such Lien, security interest or encumbrance); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and not defective.

Dated 1/9/18 _____
Boland Well Systems, Inc.
CONTRACTOR
By: _____

Payment of the above AMOUNT DUE THIS APPLICATION is recommended.

Dated 1/12/18 _____
City of Great Falls Engineering
By: _____

EJCDC No. 1910-8-E (1996 Edition)
Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute. **Modified by the City of Great Falls to add items 9 and 10.**

West Bank Park Landscape & Irrigation

Final Pay Request

Date: December 13, 2017

ITEM	DESCRIPTION	EST QTY	UNIT	BOLAND WELL SYSTEMS		Pay Application No 1		Pay Application No 2		Pay Application No 3		Final Pay Application No 4		Total Quantity Installed
				UNIT PRICE	TOTAL PRICE	Quantity Installed	TOTAL PRICE	Quantity Installed	TOTAL PRICE	Quantity Installed	TOTAL PRICE	Quantity Installed	TOTAL PRICE	
LANDSCAPE & IRRIGATION IMPROVEMENTS (Base Bid Area 1)														
101	Mobilization (Max 5%)	1	LS	\$14,124.53	\$14,124.53	1.00	\$14,124.53	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	1,000
102	Landscape Beds	1	LS	\$4,350.00	\$4,350.00	0.00	\$0.00	0.00	\$0.00	0.95	\$4,132.50	0.05	\$217.50	1,000
103	Tree Relocation	30	EACH	\$270.00	\$8,100.00	0.00	\$0.00	0.00	\$0.00	30.00	\$8,100.00	0.00	\$0.00	30,000
104	Seeding - Irrigated	1	LS	\$15,000.00	\$15,000.00	0.00	\$0.00	0.00	\$0.00	0.95	\$14,250.00	0.05	\$750.00	1,000
105	Seeding - Dry land	1	LS	\$2,000.00	\$2,000.00	0.00	\$0.00	0.00	\$0.00	0.95	\$1,900.00	0.05	\$100.00	1,000
106	Decorative Concrete	350	SF	\$13.40	\$4,690.00	350.00	\$4,690.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	350,000
107	Precast Concrete Stepping Stones	14	EACH	\$285.00	\$3,990.00	17.00	\$4,845.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	17,000
108	Entry Monument	1	LS	\$9,000.00	\$9,000.00	0.33	\$3,000.00	0.33	\$3,000.00	0.28	\$2,550.00	0.05	\$450.00	1,000
109	Site Grading, Excavation & Embankment	1	LS	\$37,800.00	\$37,800.00	0.00	\$0.00	0.79	\$29,862.00	0.16	\$6,048.00	0.05	\$1,890.00	1,000
110	Irrigation Point of Connection	1	LS	\$20,000.00	\$20,000.00	1.00	\$20,000.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	1,000
111	Fence - Chain link	1	LS	\$5,200.00	\$5,200.00	0.00	\$0.00	0.00	\$0.00	0.95	\$4,940.00	0.05	\$260.00	1,000
112	Irrigation System	1	LS	\$82,989.00	\$82,989.00	0.28	\$23,000.00	0.60	\$49,793.40	0.07	\$6,046.15	0.05	\$4,149.45	1,000
113	Removal & Disposal of Contaminated Soils	10	CY	\$40.00	\$400.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0,000
114	Hazmat Administration	1	LS	\$100.00	\$100.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0,000
115	Miscellaneous Field Work or Materials	15,000	EACH	\$1.00	\$15,000.00	3,314.00	\$3,314.00	1,125.79	\$1,125.79	0.00	\$0.00	2,702.00	\$2,702.00	7,141.790
116	Removal of Large Debris	10	EACH	\$20.00	\$200.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0,000
TOTAL Amount =					\$222,943.53		\$72,973.53		\$83,781.19		\$47,966.65		\$10,518.95	

Note: Work Change Directive No 1 is for \$3,314.00
 Note: Three Additional Concrete Stepping Stones for \$855
 Note: Work Change Directive No 2 is for \$1,125.79
 Note: Pay Application No 3 Miscellaneous Pay: \$640.00 for fixing damaged sprinkler heads; \$60 for pipe repair; \$2,000 PVC fitting compromise; \$2.00 per Paul's request

Pay Application No 1	Pay Application No 2	Pay Application No 3	Final Pay Application No 4
Completed	Completed	Completed	Completed
Retainage	Retainage	Retainage	Retainage
Previous Pay	Previous Pay	Previous Pay	Previous Pay
Gross Amount	Gross Amount	Gross Amount	Gross Amount
State 1%	State 1%	State 1%	State 1%
Due this App	Due this App	Due this App	Due this App
\$72,973.53	\$156,754.72	\$204,721.37	\$215,240.32
\$3,648.68	\$7,837.74	\$10,236.07	\$0.00
0	\$69,324.85	\$148,916.98	\$194,485.30
\$69,324.85	\$79,592.13	\$45,568.32	\$20,755.02
\$693.25	\$795.92	\$455.68	\$207.55
\$68,631.60	\$78,796.21	\$45,112.63	\$20,547.47



City of Great Falls
 2 Park Dr S
 Great Falls, MT 59401
 Phone (406) 455-8425

Purchase Order
No. 2017-00000033

DATE 07/29/2016

Ship To
 CITY OF GREAT FALLS
 PUBLIC WORKS DEPARTMENT
 1005 25TH AVE NE
 GREAT FALLS, MT 59404

Bill To
 CITY OF GREAT FALLS
 ACCOUNTS PAYABLE
 PO BOX 5021
 GREAT FALLS, MT 59403

Vendor
Vendor No. 1129
 STATE OF MONTANA
 DEPT OF REVENUE
 MISC TAX DIVISION - MITCHELL BLDG
 PO BOX 5835
 HELENA, MT 59604-5835

DELIVER BY
SHIP VIA
FREIGHT TERMS
 PAGE 1 of 1
ORIGINATOR: Kari Wambach

NOTE:

QUANTITY	UNIT	DESCRIPTION	UNIT COST	TOTAL COST
1.0000	EACH	CONTRACT SERVICES - 1% WITHHOLDING FOR BOLAND WELL SYS ON OF 1585.3 3101.00.102.49310 - IMPROVEMENTS OTHER THAN BUILDINGS 2,229.43 PW371508	2,229.4300	\$2,229.43
PURCHASE ORDER TOTAL				\$2,229.43

*Final Pay
 Close to*

Special Instructions: PURCHASE ORDER NO. MUST APPEAR ON ALL INVOICES, PACKING SLIPS, AND CORRESPONDENCE.

By accepting this purchase order contract, both the seller and the City of Great Falls agree that they will perform their obligations in accordance with all applicable laws and ordinances. All documents relative to this purchase order contract shall be interpreted and construed according to the laws of the State of Montana.

PROJECT FUNDING/EXPENDITURE SUMMARY

WEST BANK PARK LANDSCAPING AND IRRIGATION, OF 1585.3

FINAL

PREPARED BY THE CITY ENGINEERS OFFICE: JEP

DATE: 01/12/2018

PAYEE	FUND	CLAIM - NUMBER / AMOUNT / DATE					CONTRACT AMOUNT	EXPENDITURES TO DATE	BALANCE
		NO. 1	NO. 2	NO. 3	NO. 4	NO. 5			
Engineering: TD & H Engineering	Park & Rec TIFF 3101.00.102.49310	\$1,311.00	\$2,756.55	\$625.00	\$682.30	\$5,269.60	\$36,336.00	\$35,336.00	\$1,000.00
	DATE	05/13/15	06/10/15	07/10/15	08/13/15	03/14/16			
	Park & Rec TIFF 3101.00.102.49310	\$4,726.35	\$3,374.80	\$1,426.00	\$783.00	\$582.30			
	DATE	04/13/16	05/13/16	06/13/16	07/14/16	08/09/16			
	Park & Rec TIFF 3101.00.102.49310	\$1,164.60	\$4,658.40	\$4,076.10	\$500.00	\$500.00			
	DATE	09/14/16	10/13/16	11/18/16	01/12/17	05/11/17			
	Park & Rec TIFF 3101.00.102.49310	\$2,600.00	\$400.00						
	DATE	06/13/17	07/17/17						

PAYEE	FUND	CLAIM - NUMBER / AMOUNT / DATE					CONTRACT AMOUNT	EXPENDITURES TO DATE	BALANCE
		NO. 1	NO. 2	NO. 3	NO. 4	NO. 5			
Contractor: Boland Well Systems, Inc.	Park & Rec TIFF 3101.00.102.49310	\$68,631.60	\$78,796.21	\$45,112.64	\$20,547.47		\$220,714.10	\$213,087.92	\$7,626.18
	DATE	12/07/16	01/13/17	07/17/17	01/09/18				
	Park & Rec TIFF 3101.00.102.49310	\$693.25	\$795.92	\$455.68	\$207.55				
Contractor: MT DEPT. OF REV. 1%							\$2,229.43	\$2,152.40	\$77.03
							\$222,943.63	\$215,240.32	\$7,703.21

PAYEE	FUND	CLAIM - NUMBER / AMOUNT / DATE					CONTRACT AMOUNT	EXPENDITURES TO DATE	BALANCE
		NO. 1	NO. 2	NO. 3	NO. 4	NO. 5			
Miscellaneous	Park & Rec TIFF 3101.00.102.49310	\$200.00	\$1,820.00	\$605.04	\$122.61		\$25.29	\$2,747.65	(\$2,722.36)
	DATE	04/15/16	04/29/16	05/19/16	05/23/16				
	Vender	Floodplain	Fagenstrom	Tribune	Tribune				
							\$259,304.82	\$253,323.97	\$5,980.85

PROJECT #	ACCOUNT NUMBER	FUND DESIGNATION	FUNDING	EXPENDITURES	BALANCE
PW371508	3101.00.102.49310	West Bank Park TIFF	\$259,304.82	\$253,323.97	\$5,980.85
		TOTALS	\$259,304.82	\$253,323.97	\$5,980.85



Contractors Gross Receipts Gross Receipts Withholding Return

1. Contract Awarded by: Agency Prime Contractor

Federal Identification Number (FEIN): 81 - 6001269			
Name: City of Great Falls			
Address: PO Box 5021			
City: Great Falls	State: MT	Zip Code	59403

2. Contract Awarded to: Prime Contractor Sub Contractor

Federal Identification Number (FEIN): 81 - 0531525			
Name: Boland Well Systems			
Address: 3605 Fairway Drive			
City: Great Falls	State: MT	Zip Code	59401

3. Government Issued Contract Number	3.	OF 1585.3
4. Contract Award Date	4.	21-Jun-16
5. Month and year increment payment earned	5.	Sep-17
6. Gross amount due prime contractor or sub-contractor at the time of this report	6.	\$20,755.02
7. Amount Withheld (1% of line 6) (If payment made to prime contractor from awarding agency, remittance must accompany this report)	7.	\$207.55
8. Net amount paid prime contractor or sub-contractor at the time of this report	8.	\$20,547.47
9. Check proper box for type of return being filed:		
<input checked="" type="checkbox"/> Remittance attached for credit to prime contractor's account (amount paid)	9a.	\$207.55
<input type="checkbox"/> Sub-Contractor allocation. Authorization to transfer credit to sub-contractor Failure of prime contractor to file a distribution report within thirty (30) days of payment will result in a 10% penalty. Date payment made to sub-contractor	9b.	14-Feb-18

10. Description of work to be performed: Installation of additional landscaping and irrigation.

11. Location of work to be performed (be specific): West Bank Park in Great Falls, MT,

The agency or contractor must, in accordance with Section 15-5-206, Montana Code Annotated, withhold one percent (1%) of incremental payments due the contractor or sub-contractor. Amounts withheld from a prime contractor must be forwarded with this report to the Department of Revenue. Amounts withheld from sub-contractors must be reported on this form so that proper allocation of credit can be made from prime contractor's account to the sub-contractor.

Return Submitted by: Agency Prime Contractor Sub-Contractor

Award Authorization
Preparer's Signature: [REDACTED]

Preparer's Title: Engineering Administrative Secretary Date: 30 Jan 18
Phone: 406.771.1258 Fax: 406.771.0700

Mail this return to:
Department of Revenue, P.O. Box 5835, Helena, MT 59604-5835



Item: Construction Contract Award: NE Interceptor Rehabilitation, Office File 1674.3.

From: Engineering Division

Initiated By: Public Works Department

Presented By: Jim Rearden, Public Works Director

Action Requested: Consider Bids and Approve Contract for Office File 1674.3.

Suggested Motion:

1. Commissioner moves:

" I move that the City Commission (award/not award) a contract in the amount of \$1,437,010.00 to Planned and Engineered Construction, Inc. for the NE Interceptor Rehabilitation, and authorize the City Manager to execute the construction contract documents."

2. Mayor requests a second to the motion, Commission discussion, public comment, and calls for the vote.

Staff Recommendation:

Approve construction contract award.

Summary:

This project was initiated to rehabilitate the deteriorated NE interceptor sewer main. This main serves Malmstrom AFB and collects sewage from a large portion of the east end of town including the Great Falls Agri-tech Park. A large section of the deteriorated main between 15th Street North and 38th Street North is to be relined using trenchless technology.

Background:

Citizen Participation:

The construction activity may require a three to four day detour or other traffic control on 15th Street North between River Drive and 10th Avenue North. Construction activity will also require temporary closure of the sidewalks along 12th Avenue North. Access to residences and businesses adjacent to construction zones will be maintained.

Workload Impacts:

Design phase engineering and plans and specifications were completed by the City Engineering staff

with assistance from the City Utilities Division. City Engineering staff will provide construction phase engineering services and project inspection.

Purpose:

The primary objective of this project is to rehabilitate the North East Interceptor sewer main. At present the main is deteriorated and subject to infiltration. The lining will reinforce the main structurally and increase flow capacity while decreasing this infiltration.

Project Work Scope:

This project consists of lining approximately 10,176 lineal feet of 18 inch, 24 inch and 30 inch sewer main with Cured-in-Place-Pipe (CIPP); and internally reinstating approximately 18 service connections. The project is scheduled for substantial completion in 130 calendar days.

Evaluation and Selection Process:

The specifications were advertised two times in the Great Falls Tribune. Three bids were received on January 17, 2018. One bid was non responsive and the other two bids had associated costs of \$1,437,010.00 and \$2,359,445.70. Planned and Engineered Construction (PEC) submitted the low bid.

Conclusion:

City staff recommends awarding the contract to Planned and Engineered Construction in the amount of \$1,437,010.00.

Fiscal Impact:

The attached bid tabulation summarizes bids that were received. Funding has been budgeted through the Sewer Fund.

Alternatives:

The City Commission could vote to deny award of the construction contract and re-bid or cancel the project.

ATTACHMENTS:

- ▣ Bid Tab
- ▣ Letter from Layne Inliner

CITY OF GREAT FALLS ENGINEERING
 P.O. BOX 5021
 GREAT FALLS, MT 59403

BID TABULATION SUMMARY

OFFICE FILE 1674.3
 NE INTERCEPTOR REHAB. PH I

BIDS TAKEN AT CIVIC CENTER
 DATE: 17-JAN-18
 TABULATED BY: KARI WAMBACH

	NAME & ADDRESS OF PLANHOLDER	ACK. ADD. #1	ACK. ADD. #2	10% BID SECURITY	CERT. OF NON-SEG. FAC.	CERT. OF COMPL. W/INS. REQ.	BID PRICE SCHEDULE A	BID PRICE SCHEDULE B	BID PRICE SCHEDULE C
1	PEC 3400 CENTENNIAL DRIVE HELENA, MT 59601	√	N/A	√	√	√	\$756,070.00	\$352,900.00	\$328,040.00
2	INSITUFORM TECHNOLOGIES 580 GODDARD AVENUE CHESTERFIELD, MO 63005		N/A						DID NOT BID
3	IRON HORSE LLC PO BOX 789 FAIRVIEW, OR 97024		N/A						DID NOT BID
4	ALLIED TRENCHLESS 2131 N WENATCHEE AVENUE WENATCHEE, WA 98801		N/A						DID NOT BID
5	LAYNE INLINER 7915 CHERRYWOOD LOOP KIOWA, CO 80117		N/A						DID NOT BID
6	RIC-MAN CONSTRUCTION 3100 SW 15TH STREET DEERFIELD, FL 33442	√	N/A	√	√	√	\$1,163,524.30	\$612,599.00	\$583,322.40
7									
8									
9									
10									



January 15, 2018

City Clerk
City of Great Falls
Room 204
2 Park Drive South
Great Falls, Montana 59403

Reference: NE Interceptor Rehab, Phase I O.F. 1674.3
Bid Submittal

Gentlemen:

Layne Inliner, LLC regrets to inform of its decision to decline to submit a bid for the above-referenced project. Our current backlog poses potential conflicts with the construction period for the Great Falls project. We may not be able to provide the resources to produce the response and project delivery to which Layne Inliner, LLC is committed.

We request that you continue to keep us informed of future projects and consider Layne Inliner, LLC again.

Sincerely yours,

Layne Inliner, LLC



Mark Slack
District Manager



Item: Change Order No. 1: Water Treatment Plant Improvements Phase 1 – UV and Chemical Building, Surge Tank, and Electrical Building. O.F. 1519.6

From: Engineering Division

Initiated By: Public Works Department

Presented By: Jim Rearden, Public Works Director

Action Requested: Approve Change Order

Suggested Motion:

1. Commissioner moves:

“I move the City Commission (approve / not approve) Change Order No. 1 in the amount of \$207,437.00 to Sletten Construction Company for the Water Treatment Plant Improvements Phase 1 – UV and Chemical Building, Surge Tank, and Electrical Building project and authorize the City Manager to execute the necessary documents.”

2. Mayor requests a second to the motion, Commission discussion, public comment, and calls for the vote.

Staff Recommendation:

Approve Change Order No. 1.

Background:

Significant Impacts:

Major improvements to the Water Treatment Plant were implemented with this construction contract to replace aging electrical gear, improve the plant’s chemical feed systems, and install an Ultra Violet (UV) treatment unit required to comply with new Environmental Protection Agency (EPA) surface water treatment regulations. This Change Order addresses the additional effort required to complete construction after two sections of large diameter pipes were discovered to have a different alignment from what was shown on the existing record drawings. It also adds 19 days to the contract time.

Workload Impacts:

Black and Veatch, along with its partner firm Thomas, Dean and Hoskins (TD&H), completed the design

of upgrades required at the Water Treatment Plant to meet the EPA Long Term 2 Surface Treatment Rule requirements, and to replace aging electrical gear. City engineering and plant treatment staff are assisting with project review and administration duties.

Purpose:

This Change Order accounts for the additional funding needed to cover the labor and equipment costs associated with adding 42- inch and 54-inch diameter pipe and fittings to the project. The original design at this location was based on as-built drawings that were incorrect and indicated that more 42-inch pipe was available to tie into than what was actually present. The alignment between the 42-inch pipe and 54-inch pipe in this location was also different than show on existing records and required additional pipe and fittings to properly construct these pipes and tie them back into the existing pipes north of the treatment plant. The 42-inch pipe is the largest distribution water main that leaves the plant site and feeds the City's distribution system. The 54-inch pipe is the feed line to the Seasonal Treatment Facility.

Evaluation and Selection Process:

The City received two bids that were opened on May 18th, 2016. Sletten Construction Company provided the low base bid of \$24,860,109.00 and Swank Enterprises provided a base bid of \$29,680,000.00. The City Awarded a construction contract to Sletten.

Conclusion:

City staff recommends approving Change Order No. 1 for the Water Treatment Plant Improvements Phase 1 – UV and Chemical Building, Surge Tank, and Electrical Building, O. F. 1519.6, to Sletten Construction Company in the amount of \$207,437.00. The value of the contract will increase from \$24,860,109.00 to \$25,067,546.00, a 0.83 percent increase.

Fiscal Impact:

The attached document summarizes the costs associated with this Change Order. This increase to the project cost will be funded through the City's Water Treatment Fund.

Alternatives:

The City Commission could vote to deny this Change Order.

ATTACHMENTS:

- 1519.6 Change Order No.1

CHANGE ORDER

Change Order No. 1REV1

DATE OF ISSUANCE: January 24, 2018

EFFECTIVE DATE: January 24, 2018

Owner: City of Great Falls, MT

Contractor: Sletten Construction Comapny

Contract Name: N/A

Project: WTP Improvements Phase 1 UV and Chemical Building, Surge Tank, and Electrical Building, O.F. 1519.6

Owner's Contract No.: 1519.6

The Contract is modified as follows upon execution of this Change Order:

Description:

1. Increase the Contract Price by \$203,370.00 as provided for in Work Change Directive No. 057 – 42" and 54" Pipe Location Discrepancies. Add \$4,067.00 for bonds and insurance outside of the Contingency Allowance.
2. Increase the Contract Time by the amounts provided for in the following Work Change Directives:

Work Change Directive	Increase in Contract Times (Days)
No. 001 – Over-excavate unclassified materials	3
No. 012 – Adjust 86" Steel Casing and 64" FE Pipe Location	1
No. 020 – ERA Footing Dowels	1
No. 035 – Additional Waterstop from RFI-054 Chem Feed/UV Waterstops and PRV's	1
No. 050 – 54-inch Restraint Ring	3
No. 057 – 42" and 54" Pipe Location Discrepancies	10
Total	19

Attachments: *None*

CHANGE IN CONTRACT PRICE:

Original Contract Price

\$24,860,109.00

Increase of this Change Order:

\$203,370.00

\$ 4,067.00 (2% for Bonds and Insurance)

Contract Price incorporating this Change Order:

\$25,067,546.00

CHANGE IN CONTRACT TIMES:

Original Contract Times:

Substantial Completion: 730 days
Ready for final payment: 790 days

Increase of this Change Order:

Substantial Completion: 19 days
Ready for final payment: 19 days

Contract Times with all approved Change Orders:

Substantial Completion: 749 days
Ready for final payment: 809 days

ACCEPTED:

By: _____
Owner (Authorized Signature)

Title: _____
Date: _____

ACCEPTED:

By:  _____
Contractor (Authorized Signature)

Title: Assistant Project Manager
Date: 1/24/2018



Item: Ordinance 3170, "An Ordinance Repealing and Replacing Title 12, Of The Official Code Of The City Of Great Falls (OCCGF), Pertaining To Streets And Sidewalks."

From: City Attorney's Office

Initiated By: City Attorney's Office

Presented By: Joseph P. Cik, Assistant City Attorney

Action Requested: Conduct a public hearing and adopt Ordinance 3170.

Public Hearing:

1. Mayor opens and conducts public hearing, calling three times each for proponents and opponents.
2. Mayor closes public hearing and asks the will of the Commission.

Suggested Motion:

1. Commissioner moves:

"I move that the City Commission (adopt/deny) Ordinance 3170."

2. Mayor calls for a second to the motion, Commission discussion, and calls for the vote.
-
-

Staff Recommendation:

Staff recommends that the City Commission adopt Ordinance 3170.

Background:

Members of the City Commission and Staff have examined numerous sections of the OCCGF and have noticed various types of deficiencies throughout numerous sections of the code. In an effort to cure these issues, City staff has assembled input from the different departments to begin a comprehensive revision of the Code.

The Ordinance under consideration would repeal and replace OCCGF Title 12, pertaining to streets and sidewalks. A majority of the amendments are non-substantive. Non-substantive changes include chapter redesignation to put chapters in correct numerical order, typographical errors, and reformatting of subsections.

The first proposed substantive change is replacing all references to, "the governing body" with

“Commission” or “City Commission”. This change is appropriate because the City Commission is the City’s governing body and should be designated as such in the OCCGF.

The next substantive proposed change is designating property owners as primarily responsible for violations of the Title including boulevard encroachments. This change is part of the overall strategy with OCCGF code enforcement to require property owners to be responsible for their property, even if they are not residing on the property.

Other proposed substantive changes include eliminating Public Works approved transit shelters from the codified list of specifically recognized boulevard encroachments and eliminating off street parking in the boulevard. Transit shelters perform a valuable function and should be authorized in the boulevard. Public Works concurs with this change. Additionally, parking in the boulevard areas causes problems with utility easement access and should not be allowed.

Additionally, Ordinance 3170 proposes minor changes to the encroachment permit issuance process. The changes would include exempting non-advertising benches, non-advertising transit shelters, and non-advertising bicycle racks from the annual fee, at the discretion of the City Manager or designee. The changes would also allow the permit to be discontinued upon the written request of the property owner with good cause shown.

Changes are also proposed for setting fees and insurance requirements. Ordinance 3170 would update references to applicable fees to be set by Commission resolution, not by ordinance. Fees may need to be updated on a varying basis and staff believes this change is necessary to allow for fee adjustments to be done on a more informal resolution procedural basis. Codified insurance requirements for contractors would be revised to incorporate the statutory tort limits set by Mont. Code Ann. § 2-9-108.

The Ordinance under consideration would establish formalized appeal processes for denial or revocation of excavation permits, sidewalk and curb permits, and street improvement permits. As with other revisions to the OCCGF, it is important to formalize these procedures to eliminate any confusion and provide applicants with appropriate due process.

Language regarding street processions would be consolidated by Ordinance 3170, and street closure permits would be dictated by OCCGF Title 9; processes for fun runs, motorcade, parades and other processions are one, rather than having separate ordinances. Additionally, criteria for application review and appeal provisions are added, to provide staff guidance in evaluating applications and to provide applicants an avenue for disputing staff decisions. These changes will eliminate inconsistencies within the OCCGF, and street closure permits for public events, other than in parks, would be administered by the City Manager’s office

Finally, Ordinance 3170 would establish a clear penalty provision for Title 12 violations, reassign sidewalk code enforcement duties from the Great Falls Police Department to the Public Works Department, eliminate the special sidewalk and curb fund and construction costs assessments, clarify where bicycles may be ridden on sidewalks, and require that trees being removed from boulevards to be replaced. These substantive changes are minor, however, are necessary to eliminate inconsistencies with standard practice. The referenced fund and assessments were never implemented, and it is appropriate for Public Works to supervise sidewalk code enforcement.

Ordinance 3170 was accepted unanimously on first reading January 16, 2018. There was no Commission discussion or public comment.

After first reading, staff received public input regarding bicycles being ridden on sidewalks. Based on

that public input, the proposed provisions have been amended to allow children under 13 years of age to ride bicycles on sidewalks. An additional amendment was made to also allow bicycles to be ridden on sidewalks, if conditions render a street unsafe for bicycle travel.

Based on Commission input, additional grammatical edits were incorporated, as well as an expansion of the definition of procession. The amount of time an applicant must file an application for a procession was also expanded to forty five (45) calendar days.

Ordinance 3170 Exhibit "A" (Updated from First Reading) is a document illustrating proposed changes as compared to the existing provisions. Exhibit "B" (Updated from First Reading) attached to this agenda report, illustrates the proposed Code provisions which would replace the current provisions in a clean format.

Fiscal Impact:

None.

Concurrences:

City Manager's Office
City Clerk
Public Works
Planning and Community Development
Great Falls Police Department
Great Falls Fire Rescue
Finance Department
Parks and Recreation

ATTACHMENTS:

- ▢ Ordinance 3170
- ▢ Ord. 3170 Exhibit A
- ▢ Ord. 3170 Exhibit B

ORDINANCE 3170

**AN ORDINANCE REPEALING AND REPLACING TITLE 12 OF
THE OFFICIAL CODE OF THE CITY OF GREAT FALLS
(OCCGF), PERTAINING TO STREETS AND SIDEWALKS**

* * * * *

WHEREAS, the City Commission established Title 12 of the OCCGF outlining provisions pertaining to Streets and Sidewalks; and

WHEREAS, the City Commission has recognized deficiencies throughout OCCGF Title 12, including but not limited to, typographical, grammatical, formatting, and referencing deficiencies; and

WHEREAS, the City Commission wishes to cure the deficiencies contained in OCCGF Title 12; and

WHEREAS, the City Commission wishes to make several substantive amendments to current Streets and Sidewalks regulations; and

WHEREAS, the City Commission wishes to clarify language by removing references to “the governing body” in OCCGF Title 12; and

WHEREAS, the City Commission wishes to remove codified fee amounts from OCCGF Title 12; and

WHEREAS, the City Commission wishes to amend provisions related to Sidewalks and Streets code enforcement responsibilities to create better consistency with other provisions of the OCCGF and, where applicable, the Montana Code Annotated.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

Section 1. Title 12 of the OCCGF pertaining to Streets and Sidewalks shall be amended as depicted in Exhibit “A” attached hereto, which removes any language indicated by a ~~strikeout~~ and adds any language which is **bolded**; and

Section 2. This ordinance shall be in full force and effect thirty (30) days after second reading and final adoption by the City Commission.

ACCEPTED by the City Commission of the City of Great Falls, Montana on first reading January 16, 2018.

ADOPTED by the City Commission of the City of Great Falls, Montana on second reading February 6, 2018.

Bob Kelly, Mayor

ATTEST:

(CITY SEAL)

Darcy Dea, Deputy City Clerk

APPROVED FOR LEGAL CONTENT:

Joseph P. Cik, Assistant City Attorney

State of Montana)
County of Cascade : ss
City of Great Falls)

I, Darcy Dea, Deputy City Clerk of the City of Great Falls, Montana, do certify that I did post as required by law and as prescribed and directed by the Commission, Ordinance 3170 on the Great Falls Civic Center posting board and the Great Falls City website.

Darcy Dea, Deputy City Clerk

(CITY SEAL)

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, ~~AND~~ SIDEWALKS, TREES, AND SHRUBBERY

Title 12 STREETS, ~~AND~~ SIDEWALKS, TREES, AND SHRUBBERY
Chapter

Chapter ~~4~~ **1**- BOULEVARDS

Chapter ~~6~~ **2**- DISCOVERY GALLERY

Chapter ~~8~~ **3**- OBSTRUCTIONS IN STREETS AND PUBLIC PLACES

Chapter ~~12~~ **4**- EXCAVATIONS

Chapter ~~14~~ **5**- PARADES, PROCESSIONS, FUN RUNS AND STREET CLOSURES

Chapter ~~16~~ **6**- STREET MAINTENANCE

Chapter ~~18~~ **7**- VEHICLE REMOVAL

Chapter ~~20~~ **8**- RIGHT-OF-WAY VACATION FEES

Chapter ~~24~~ **9**- STREET NAMES

Chapter ~~28~~ **10**- SIDEWALKS AND CURBS

Chapter ~~32~~ **11**- SIDEWALK MAINTENANCE

Chapter ~~33~~ **12**- EMERGENCY SNOW ROUTE

Chapter ~~36~~ **13**- PRIVATE DRIVEWAYS AND CROSSWALKS

Chapter ~~40~~ **14**- TREES AND SHRUBBERY

Chapter ~~44~~ **15**- TREE REMOVAL

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

Chapter 41 BOULEVARDS

Sections:

- ~~12.4.010 Definitions and responsibility.~~
- ~~12.4.020 Clear vision triangle – defined – responsibility.~~
- ~~12.4.030 Vehicle parking – prohibited where – exception.~~
- ~~12.4.040 Boulevard encroachment permit – issuance conditions.~~
- ~~12.4.060 Violation – penalty.~~

- 12.1.010 Definitions.**
- 12.1.020 Adjoining owners' responsibility.**
- 12.1.030 Clear vision triangle – defined – responsibility.**
- 12.1.040 Vehicle parking – prohibited where – exception.**
- 12.1.050 Boulevard encroachment permit – issuance conditions.**
- 12.1.060 Exceptions.**
- 12.1.070 Violation – penalty.**

~~12.4.010 – Definitions and responsibility.~~

12.1.010 Definitions.

Unless otherwise specified in this chapter the following definitions shall apply:

- A. ~~Definitions.~~ "Boulevard" ~~within the City~~ is that area within any **City** street, avenue, or highway right-of-way, not occupied by street paving, curb and gutter, and sidewalks.
- B. ~~An "Inside Boulevard"~~ is the boulevard area on the property line side of the sidewalk.
- C. ~~An "Outside Boulevard"~~ is the boulevard area on the street side of the sidewalk. Except as permitted under Section 12.4.040**1.050**, no boulevard area may be encumbered by any obstacle whatsoever.
- D. "Obstacle" means any strung wire or netting, any fence or railing, or any barrier or structure of any kind whatsoever, ~~but~~ **Obstacle** does not include trees, **or the following:**
 - 1. ~~Ornamental lamp-posts;~~
 - 2. ~~Telephone or electric light poles;~~
 - 3. United States government mailboxes;

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(Updated from First Reading)

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4. ~~s~~Signage for structures on the National Historical Register provided by the Montana Historical Society,;

5. ~~or e~~Other structures erected by permit to aid owners in caring for the boulevards adjoining their property. The Director of Public Works may grant a special permit for a temporary barrier to protect newly sown grass on boulevard areas if such barrier will not endanger passers by.

(Ord. 2785, 2000)

12.1.020 Adjoining Owners' Responsibility.

- A. It shall be the duty of the owners ~~and tenants~~ of any premises within the **City** limits ~~of the City~~ to maintain the boulevard section in front of, and adjoining, their premises in a safe ~~and substantial~~ condition **and in compliance with Official Code of the City of Great Falls (OCCGF) Title 12..**
- B. Any portion of the right-of-way which is not occupied by roadway section, curb and gutter, driveway, sidewalk, or crosswalk shall be maintained as required by the **OCCGF. Section 17.44 Landscaping.** ~~It is also the responsibility of corner lot owners/tenants to maintain the clear vision triangle as described in Section 12.4.020.~~
- C. **It is also the responsibility of corner lot owners to maintain the clear vision triangle as described in OCCGF 12.1.030.**
- D. **The Public Works Director or designee may grant a special permit for a temporary barrier to protect newly sown grass on boulevard areas, if such barrier will not create a safety hazard.**

(Ord. 2549 § 1(part), 1989).

(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)

~~12.4.020~~ **12.1.030 Clear vision triangle—defined—responsibility.**

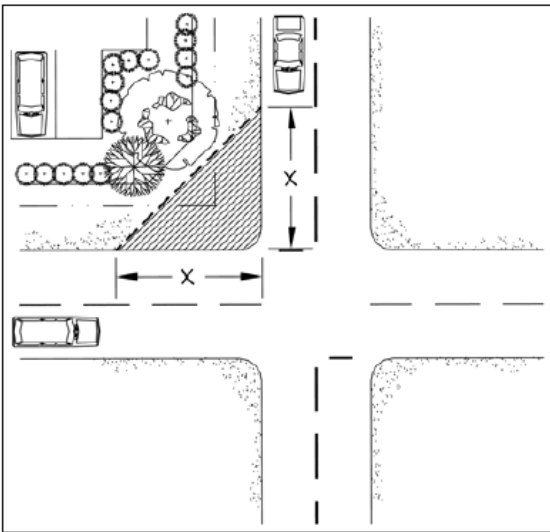
The clear vision triangle is the isosceles triangle having sides of forty-five (45) feet as measured along the back of the curb section of each intersecting roadway. The triangle ~~thus~~ begins at the point where the intersecting back of each curb line would meet, ~~thence~~ forty-five (45) feet along the back of each curb and diagonally across connecting the curb lines-, ~~See drawing.~~ **and is depicted as set forth in Exhibit 12.1.030.**

Exhibit 12.1.030 Clear vision triangle

Exhibit "A"

(Updated from First Reading)

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- A. Any signs, fences, plant material, or other items placed in this area shall provide an unobstructed cross-visibility at a level between three (3) feet and eight (8) feet above street surface elevation. Trees having over eight (8) feet of clear trunk, as measured from the surface elevation with limbs and foliage trimmed in such a manner as not to extend into the cross-visibility, are permitted in the clear vision triangle.
- B. It is the responsibility of the owner or tenant of a corner lot to maintain the clear vision triangle by trimming or removing the cause of any sight obstruction within the area described above.
- C. No obstruction to cross-visibility shall be exempted or excluded from the application of this section because of the obstruction's existence.

~~(Ord. 2549 §1(part), 1989).~~

12.4.030 12.1.040 Vehicle parking—prohibited where—exception.

No vehicle shall be parked upon any boulevard area in the City except in the following instances:

- A. Upon any lawfully constructed driveway, although no vehicle may be parked upon any sidewalk or sidewalk area; **or**
- ~~B. Upon any boulevard area in a residential area if the boulevard area has no curbing or has a curb cut access to the boulevard area;~~
- C. B.** By permit issued under ~~Section~~ **OCCGF 12.4.0401.050**, boulevard encroachment permit.

~~(Ord. 2549 § 1(part), 1989).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

~~12.4.040~~ **12.1.050 Boulevard encroachment permit—issuance conditions.**

A temporary and revocable permit to allow encroachments upon any inside boulevard area or other public grounds within any area of the City, may be granted to the owner or lessee of the adjoining property, **or a permitted owner or operator of bench signs or transit shelters**, by the City Manager or designee. Any such Boulevard Encroachment permit must comply with **all of** the following conditions:

- A. The encroachment, as proposed, must not be detrimental to the health, safety, or welfare of the public as a whole.;
- B. Payment to the City of a one ~~(1)~~ -time application fee **set by City Commission resolution** to defray administrative costs **must be paid prior to construction**.~~The fee shall be established by City Commission resolution.;~~
- C. Payment to the City of an annual encroachment rental fee **set by City Commission resolution** based upon the square footage of encroachment. ~~The annual rental fee amount shall be established by City Commission resolution.~~ **Non-advertising transit shelters and non-advertising bicycle racks may be exempted from this annual fee, at the discretion of the City Manager or designee.**
- D. No encroachment permit may be granted to allow parking necessary to fulfill the **off-street parking** requirements of the off-street parking code as set forth in **OCCGF** Title 17.~~36~~.;
- ~~E. In all locations where the sidewalk is constructed adjacent to the street curbing and in all locations where no sidewalk has been constructed, no permit may be granted for any encroachment within seven (7) feet from the back of the curb except in cases where artwork has been approved by the City and placed within the Business Improvement District as part of the Discovery Gallery.~~

~~(Ord. 2766; 2000)~~

- ~~FE.~~ Parking blocks shall be placed in the boulevard area for any permit issued for vehicle parking under this section, and **blocks** must be placed sufficiently back from the sidewalk area to keep parked vehicles at least two (2) feet from the sidewalk ~~or beyond the seven-foot sidewalk area provided in subsection E of this section.~~;
- ~~GF.~~ The Boulevard Encroachment permit may be issued by the City Manager or designee, at the permit holder's risk, upon receipt of a completed application and the processing fee. ~~Should~~ **Subject to the provisions of subsection (K) of this part, should** the City deem it necessary, the Boulevard Encroachment permit may be revoked upon giving thirty (30) days' notice in writing to the permit **holder**.;
- ~~HG.~~ The City Manager or designee shall have authority to deny or immediately revoke any such permit wherever the public safety may be jeopardized or other traffic, utility or other **public** concerns are paramount.;
- ~~H.~~ Any permits issued for fencing part of the boulevard area shall ensure that no fence is installed within two (2) feet of any sidewalk, ~~or where and if a sidewalk does not exist, within seven (7) feet~~ **the Public Works Director or designee shall determine the location of the back curb section fence**;
- ~~J.~~ The requirements of ~~Section~~ **OCCGF 12.4.0201.030**, clear vision triangle, must be met for any permit involving a corner lot.;

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- ~~KJ.~~ Any violation of the terms of ~~this~~ **the boulevard encroachment** permit shall be cause for immediate revocation at the time of the violation. If the permit holder chooses to reapply for a new permit, the entire permit process including any charges, must be repeated-;
- K. Upon written request by the property owner, and good cause shown, a boulevard encroachment permit may be discontinued and removed from the property file maintained by the County Clerk and Recorder;**
- L. Upon notice of revocation of a Boulevard Encroachment permit, the permit holder, **at the permit holder's expense**, shall remove or correct any encroachments affected by the revocation within ~~ten (10)~~ **thirty (30) calendar** days. The City shall not be held liable for any costs as a result of the revocation, removal, or corrections-;
- M. Once a permit has been revoked, should the ~~responsible party~~ **permit holder** fail to remove or correct the ~~situation~~ **condition causing the violation**, the City shall have the structure removed and the cost of the removal **shall be** assessed to the permit holder-; **and**
- N. In any case where it is ~~contended that~~ **a party objects to** the decision of the City Manager or designee, regarding an application, ~~was unfair, inequitable, or unreasonable,~~ the **objecting** party ~~objecting thereto may~~ **must** appeal in writing **within fifteen (15) calendar days of the date of the decision** to the Board of Adjustment ~~and submitted for review by the City Commission.~~

~~(Ord. 2549 §1(part), 1989).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

12.1.060 Exceptions.

The provisions of this chapter do not apply to the following:

- A. Transit shelters servicing designated routes as approved by the Public Works Director or designee, which do not unduly interfere with vehicle or pedestrian traffic and access to utilities and abutting properties in the immediate vicinity. A transit shelter shall be defined as a structure occupying no more than one hundred twenty (120) square feet in floor area and designed for the temporary shelter of transit passengers.**
- B. Pushcarts or any other non-motorized wheeled device may be moved or used on the City sidewalks under the following conditions:**
- 1. No pushcart or other device shall exceed thirty-six (36) inches in width, five (5) feet in length and seven (7) feet in height; and**
 - 2. No vendor selling from a pushcart, or such device, shall conduct business in such a way as would restrict or interfere with the ingress or egress of abutting property owners or tenants or create or become a public nuisance, increase traffic or pedestrian congestion, or delay or constitute a traffic hazard, pedestrians or property, or obstruct adequate access for emergency services.**

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- C. Statues, as approved by the Public Works Director, or designee, upon review of a traffic study and located in accordance therewith so as not to unduly interfere with vehicular or pedestrian traffic and access to utilities and abutting property in the immediate vicinity.
- D. As permitted under this chapter, boulevard encroachment permits.
- E. Handicap ramps, railing, and related improvements which comply with Americans With Disabilities Act requirements. Such improvements shall be approved by the Public Works Director or designee prior to construction. Prior to approval, the owner of the property shall make reasonable efforts to locate handicap ramps outside of the boulevard.
- F. Where setbacks do not allow adequate space for steps to access doorways, steps placed in the boulevard if no other reasonable option exists.

~~12.4.060~~ 12.1.070 Violation—penalty.

- A. Any violation of the provisions of this chapter shall be considered a public offense punishable under the general penalty of the official code of the City set forth in Chapter OCCGF 1.4.070 of this Code.
- B. A violation of the provisions of this chapter is hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.

~~(Ord. 2549 § 1(part), 1989).~~

Chapter 62 DISCOVERY GALLERY

Sections:

[12.62.010 Intent.](#)

[12.62.020 Responsibilities.](#)

[12.62.030 Allowable boundaries—placement-approval process.](#)

[12.62.040 Clear Vision Triangle—comply with compliance.](#)

12.62.010 Intent.

The designation of a sidewalk gallery to display art works in downtown Great Falls is a continuation of the City's recognition and support of the Arts as a major economic and social base in the community. In addition, the involvement of the Business Improvement District in developing the proposal and project guidelines reflects ~~their~~ its own efforts to enhance the downtown as a vital community and commercial center.

12.62.020 Responsibilities.

- A. The artwork accepted by the City for placement in the Discovery Gallery ~~may~~ becomes the property of the City and will be positioned, relocated, or removed at the City's discretion, **unless the City allows**

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(Updated from First Reading)

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in writing. ~~In some instances, the artist will be permitted to retain ownership of the artwork. Regardless of ownership, the City shall approve all plans to affix and place each piece of art. Nothing in this chapter shall diminish or be considered an exception to the principles of public safety and access as defined in this Title 12.~~

- B. The City shall be responsible for the repair and maintenance of the artwork unless ownership of the artwork is retained by the artist. In that event, the artist shall be responsible for the repair and maintenance of ~~their~~ **his or her** art.
- C. The artwork will be durable ~~in order~~ to minimize the threat of vandalism and the amount of maintenance.
- D. The Business Improvement District shall develop guidelines for the Discovery Gallery. At a minimum the guidelines shall address:
 - 1. Size of the art objects-;
 - 2. Materials-;
 - 3. Construction-;
 - 4. Spacing-;
 - 5. Textures and sounds-;
 - 6. Mechanical and other powered devices-;
 - 7. General accessibility to the art-;
 - 8. Themes-;
 - 9. Sight lines to commercial property-;
 - 10. Rights-of-way-;
 - 11. Costs, fees, **and** insurance-; **and**
 - 12. Application process and review.
- E. The Business Improvement District shall also establish a review panel consisting of at least one (1) member of the Business Improvement District Board, ~~one~~ downtown retailer, one (1) artist, ~~one~~ City staff **member**, and one (1) architect/ ~~or~~ engineer.

12.62.030 Allowable boundaries—placement-approval process.

- A. The Discovery Gallery shall be within the boundaries of the Business Improvement District.
- B. The Discovery Gallery's width will be from the back of the curb to a maximum of seven (7) feet ~~in ward~~ **inward**. The Discovery Gallery shall extend to the second parking space at each end of the block or one (1) space away at alleys.
- C. The Business Improvement District shall appoint a committee as described in ~~12.6.020.D~~ **12.2.020** to review all proposals submitted for the artwork which shall include a process for public comment. Said Committee shall forward a recommendation for the City Commission to accept or not-accept the proposed artwork. The Commission may hold a public hearing on the artwork proposals submitted for consideration.

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12.62.040 Clear Vision Triangle—~~comply with~~ compliance.

All artwork in the Discovery Gallery shall ~~meet~~ **be displayed in a manner meeting** the requirements of OCCGF ~~42-4-020-12.1.030~~, the clear vision triangle.

Chapter 8 3 OBSTRUCTIONS IN STREETS AND PUBLIC PLACES

Section:

[12.83.010 Prohibited—applicability.](#)

[12.3.020 Penalty.](#)

12.83.010 Prohibited—applicability.

- A. Except as provided in ~~subsection C~~ of this ~~section~~**Title**, it is unlawful for any person, ~~or persons, or~~ corporations, **or other entities** to erect, place, ~~or locate, or~~ cause to be erected, placed, or located, any building, fence or obstruction of any kind ~~whatsoever~~, in whole or in part, upon any street, **right-of-way (developed or undeveloped)**, avenue, alley, or other public grounds within the City. ~~Any person or persons or corporation who is convicted of a violation of any of the provisions of this chapter, shall be deemed guilty of a separate violation of this chapter for every twenty-four (24) hours the same remains un-removed.~~
- B. In the interest of the public health, welfare and safety, the City may remove **any** such obstruction **violating this chapter** and assess the costs of removal to the property owner; or where circumstances permit, and the public interest is not greatly jeopardized, notice may be given to the violator for removal of the obstruction, **subject to the following conditions:-**
1. Such notice shall provide the time allowed for removal, include the Public Works Director's address and telephone number for information or hearing thereon, briefly describe the nature of the violation and the possible sanctions; **and**
 2. ~~The~~ **If removal is not completed in compliance with the notice, the** City's costs of removal shall be assessed against the property.
- ~~C. Exceptions.~~
- ~~1. Transit shelters as approved by the City Commission and located so as to not unduly interfere with vehicle or pedestrian traffic and access to utilities and abutting properties in the immediate vicinity.~~
 - ~~a. A transit shelter shall be defined as a structure occupying no more than one hundred twenty (120) square feet in floor area and designed for the temporary shelter of transit passengers.~~
 - ~~2. Pushcarts or any other non-motorized wheeled device may be moved or used on the City sidewalks under the following conditions:-~~
 - ~~a. No pushcart or other device shall exceed thirty-six (36) inches in width, five (5) feet in length and seven (7) feet in height.~~
 - ~~b. No vendor selling from a pushcart or such device shall conduct business in such a way as would restrict or interfere with the ingress or egress of abutting property owners or tenants or create or become a public nuisance, increase traffic or pedestrian congestion, or delay or~~

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~~constitute a hazard to traffic, pedestrians or property or obstruct adequate access for fire or police.~~

- ~~3. Statuary as approved by the City Commission upon review of a traffic study and located in accordance therewith so as not to unduly interfere with vehicular or pedestrian traffic and access to utilities and abutting property in the immediate vicinity.~~
- ~~4. As permitted under Section 12.4.040, boulevard encroachment permit and Section 12.4.020, permitted structures.~~
- ~~5. Handicap ramps, railing and related improvements which comply with Americans With Disabilities Act requirements. Such improvements shall be approved by the Director of Public Works or designee prior to construction. Reasonable efforts shall be made to locate handicap ramps outside of the boulevard prior to approval.~~
- ~~6. Where setbacks do not allow adequate space for steps to access doorways, steps may be placed in the boulevard if no other reasonable option exists.~~

~~(Ord. 2549 § 1(part), 1989).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

FOOTNOTE(S):

~~---(1)---~~

~~Prior ordinance history: Prior code §§6-1-3(B) and (F) and Ordinances 2314, 2338, 2409 and 2460.~~

12.3.020 Penalty.

- A. Any violation of the provisions of this chapter shall be considered a public offense punishable under OCCGF 1.4.070.**
- B. A violation of the provisions of this chapter is hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.**

Chapter 12 4 EXCAVATIONS

Sections:

[12.424.010 Application—required.](#)

[12.424.020 Application—fee.](#)

[12.424.030 Application—refusal—issuance.](#)

[12.424.040 Bond.](#)

[12.424.050 Insurance required.](#)

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(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

[12.424.060 Permittee responsibility.](#)

[12.424.070 License—suspension—revocation—limitation.](#)

12.424.010 Application—required.

- A. Excepting where **when** such person is operating under a contract with the City involving the opening of a public way, any person **properly licensed pursuant to OCCGF Title 5** desiring to excavate in, or cut through, **access**, or tear open the surface of any street, avenue, alley, sidewalk, or other public way within the City shall first file written application with the **Planning and Community Development Department (P&CD) Director of Public Works**. ~~The application shall state the object sought, the purpose for which the public way is to be excavated in, cut through, or broken open, the proposed area of such opening and the exact location thereof.~~

~~(Prior code §9-10-1).~~

B. The application shall state the following:

1. **The object sought;**
2. **The purpose for which the public way is to be excavated in, accessed, cut through, or broken open;**
3. **The proposed area of such opening; and**
4. **The exact location of the proposed opening.**

12.424.020 Application—fee.

The application shall be accompanied by the applicable ~~following~~ fee, **set by City Commission resolution**, payable to the City.:

- A. ~~For an opening not exceeding one hundred (100) square feet, there shall be and is a minimum fee of twenty dollars (\$20.00).~~
- B. ~~For an opening greater than one hundred (100) square feet, the fee shall be twenty dollars (\$20.00) plus ten cents (\$0.10) per square foot in excess of one hundred (100) square feet.~~

~~(Ord. 2485 §1, 1987; Ord. 2462 §2, 1987).~~

12.424.030 Application—refusal—issuance.

- A. The **Planning and Community Development (P&CD) Director of Public Works or designee** may, in his/ or her discretion, grant or refuse to grant such application. **Justification for refusal includes, but is not limited to, the applicant's outstanding debt or obligation to the City.**

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(Updated from First Reading)

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- B. The refusal of the director ~~to grant any such application is subject to review by the City Commission. may be appealed, in writing, to the City Manager's office within fifteen (15) calendar days of the director's refusal. If the City Manager or designee affirms the refusal, the applicant may appeal the decision in writing to the City Commission within fifteen (15) calendar days of the City Manager's affirmation.~~
- C. ~~Where~~ If the application is granted, whether by the **P&CD Director, the City Manager,** or the City Commission, the applicant shall accomplish the proposed work within the time allowed by the **Public Works** Director and under the ~~D~~director's supervision.; ~~and,~~
- D. **All excavation shall be conducted** in accordance with rules, regulations and specifications on file in the Department of Public Works.;
- E. **All excavation shall be thoroughly backfilled, and any such excavation or opening and shall be restored to the surface thereof to the condition it was prior to such excavation or opening, or better,** except that the City will replace all asphaltic surfacing in paved streets, **with costs to be paid by the applicant, unless the Public Works Director or designee authorizes the applicant to replace the asphaltic surfacing.**
- F. **Flowable fill shall be used to backfill trench excavation on arterial and collector streets when deemed necessary by the Street Division Supervisor or designee on local streets and alleys.**
- G. **Flowable fill shall be used to cap street openings during the winter and whenever hot mix asphaltic surfacing is not available. The surface shall be maintained, by the permittee, until hot mix asphaltic surfacing becomes available.**

(Ord. 2476, 1987: prior code §9-10-3).

12.424.040 Bond.

Any applicant ~~for permission~~ **desiring** to excavate in, **access,** cut through, or tear open any City street, avenue, alley, sidewalk, boulevard, or any other public way must file with the City Clerk **P&CD Department** a bond in the penal sum that shall be established by City Commission resolution.; **The bond shall:**

- A. **Be** payable to the City ~~and/or the s~~State as their interests appear with respect to the expenditure of funds toward the construction of the street, avenue, alley, sidewalk, boulevard, or public way within the City;;
- B. **Be** conditioned for the protection of the City ~~and/or s~~State from and against any liability of any kind or character whatsoever which may arise as a result of the applicant's excavating in, cutting through, or opening up any such street, avenue, alley, sidewalk, boulevard, or other public way or which may in any way or manner be connected with or related thereto, **payable by the applicant; and**
- C. **Be** further conditioned that the permittee shall properly backfill and restore the surface of any and all excavations, openings, or cuttings made or dug in the public ways of the City, and shall do and complete all work in connection therewith in a good, competent, and workmanlike manner and in compliance with the specifications required therefore by the City ~~and/or s~~State; ~~and provided, that where any applicant has at the time of the application for permit under the terms of this chapter, on file with the City Clerk, and in force, a water service line layer's license bond under the provisions of Chapter 13.04 of this Code, or a drain layer's license bond under the provisions of Chapter 13.20 of this Code, and the conditions of either of such bonds is amended by endorsement to protect the state as set forth above and to include the condition as required in~~

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(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

~~this section, then such drain layer's license bonds or water service line layer's license bond shall stand in lieu of the bond required in this section.~~

~~(Ord. 2801, 2001; Prior code §9-10-4).~~

- D. Remain on file with the P&CD Department; or
- E. Include a water service line layer's license bond under the provisions of OCCGF Title 13, or a drain layer's license bond under the provisions of OCCGF Title 13, and the conditions of either of such bonds shall be amended to include the conditions as required by this section.

12.424.050 Insurance required.

Before any application to **excavate, cut, access or tear** open any public way is granted, such applicant shall furnish satisfactory evidence ~~that there has been issued to the applicant, and is in full force and effect,~~ **applicant's activities are properly covered by applicable liability insurance coverage, auto insurance and workers' compensation insurance** in an amounts that shall be set by City Commission resolution.

~~(Ord. 2801, 2001; Prior code §9-10-5).~~

12.424.060 Permittee responsibility.

- A. The permittee, in accepting and acting under a street opening permit granted under the provisions of this ~~section~~ **chapter**, agrees to assume full responsibility for injury to persons or losses or damage to property incurred by reason of or arising out of any act or omission of ~~such said~~ permittee in making ~~such said~~ excavation, cut, or opening or in failing to properly barricade, guard and warn the public of such excavation or trench, and further agrees to assume full responsibility for injury to persons and losses or damage to property incurred by reason of or arising out of any settlement of a restored area occurring within two (2) years of the date of completion of the permanent resurfacing.
- B. ~~If a~~Any settlement in a restored area **which** occurs within two (2) years of the date of completion of the permanent surfacing, ~~it~~ shall be considered as conclusive evidence of defective backfill. Upon failure or refusal of such permittee to correct such settlement within five (5) days after notice by the **Public Works Director or designee of Public Works** to do so, **the City may correct such settlement and** any expense incurred by the City in correcting such settlement shall be paid by the permittee.

~~(Prior code §9-10-6).~~

- C. **To the fullest extent permitted by law, the permittee shall fully indemnify, defend, and save the City, its agents, representatives, employees, and officers harmless from and against any and all claims, actions, costs, fees, losses, liabilities or damages of whatever kind or nature arising from or related to the permittee's performance of the permitted excavation and the permittee's work, or work of any subcontractor or supplier to applicant.**

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

12.124.070 License—suspension—revocation—limitation.

The provisions of this chapter are in no way intended, nor shall they be construed, ~~so as~~ to limit or in any way repeal any of the provisions of ~~Chapters OCCGF Title 13.04 and 13.20 of this code~~ with respect to the right of the City Commission to suspend or revoke the licenses, provided for in ~~Chapters OCCGF Title 13.04 and 13.20~~, upon failure or refusal of any such licensee to refill properly any trench or excavation and to restore the surface thereof.

~~(Prior code §9-10-7).~~

Chapter 14 5 PARADES, PROCESSIONS, FUN RUNS AND STREET CLOSURES

Sections:

[12.445.010 Definitions.](#)

[12.445.020 Established and designated ~~parade~~ procession routes.](#)

[12.445.030 Public conduct during ~~parades, processions and fun runs.~~](#)

[12.445.040 Participants' conduct during ~~parades, processions and fun runs.~~](#)

[12.445.050 Application - contents.](#)

[12.445.060 Street closure permits for public events and block parties.](#)

12.445.010 Definitions.

The following words and phrases, when used in this chapter, shall have the **following** meanings respectively ascribed to them.:

- A. "~~Parade~~ "**Procession**" means any march, **parade, motorcade, fun run, assembly to support a cause**, or ~~procession~~ **other event**, consisting of people, animals, ~~or~~ vehicles, or combination thereof, except funeral processions, upon any public street, sidewalk or alley, which does not comply with normal and usual traffic regulations and controls and is expressly designed for the ~~enjoyment~~ **safety and involvement** of the public as well as the participants, **which is approved by the City under the provisions of this chapter.**
- B. "Motorcade" means an organized procession containing twenty-five (25) or more vehicles, except funeral processions, upon any public street, sidewalk or alley.
- C. "~~Parade~~ **Procession Route**" means the route of travel of any parade, **march**, motorcade, ~~or~~ fun run, **or other procession**, to include the assembly, staging and disbanding areas.
- D. "Street" includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of the State.

~~(Ord. 2734, 1998).~~

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

12.145.020 Established and designated parade procession routes.

Processions are to proceed as follows:

- A1. **Parade Procession** to stage on Park Drive South, in **designated areas**, and proceed north past the east side of the Police Department onto 1st Avenue South, then east to Park Drive, then North to Central, then east to 8th Street, disbanding on the north and/or south side of Central Avenue;
- B2. **Parade Procession** to stage on the north and/or south side of Central Avenue at 8th Street and proceed west on Central Avenue to Park Drive, then south to 1st Avenue South, then west until disbanding. ~~Any alternate route must be approved by the City;~~ **or**
- C3. ~~Routes for other parades, processions or fun runs not requiring street closures can be~~ **Any alternate route approved and** designated at the discretion of the City **Manager or designee.**

(Ord. 2734, 1998).

12.145.030 Public conduct during parades, processions and fun runs.

- A. ~~Joining the parade.~~ No person shall knowingly ~~join~~ or **purposely:**
 - 1. ~~participate in any parade, procession or fun run conducted in violation of any of the terms of the permit;~~ **nor knowingly**
 - 2. ~~join or participate in any permitted parade or procession without the consent and over the objection of the permittee;~~ **and/or, nor**
 - 3. **Interfere** in any manner ~~interfere~~ with ~~it's~~ **the procession's** progress or orderly conduct.
- B. ~~Interference.~~ No person shall hamper, obstruct, impede, or interfere with any ~~parade or procession or with any person, vehicle or animal participation~~ **participating** or used in a ~~parade or procession.~~
- C. ~~Driving through parades or processions.~~ No driver of a vehicle shall drive between the vehicles or persons comprising a ~~parade or motorcade~~ **procession** when such vehicles or persons are in motion and are ~~conspicuously designated as~~ **traveling along** a ~~parade or procession~~ **route**. Nothing in this section shall prohibit an emergency vehicle from interrupting a ~~parade or procession for the purpose of responding to an emergency.~~
- D. ~~Viewing the Parade or Procession.~~ No person shall view, watch or observe the ~~parade or procession from the street or beyond the sidewalk curb or beyond the imaginary curb line that, if it existed, would extend through the intersection from corner to corner of any street perpendicular to the~~ **parade procession** route.
- E. ~~Parking on parade route.~~ 1.—No vehicle larger than an automobile or pickup truck shall park along the ~~parade~~ **procession** route during the ~~parade~~ **procession**.
- 2F. The City Manager, or designee, shall have the authority, when reasonably necessary, to prohibit parking of vehicles along a ~~parade~~ **procession** route. Signs shall be posted to such effect and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. **The applicant shall be responsible for posting and removing of signs.**

(Ord. 2734, 1998).

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

12.145.040 Participants' conduct during ~~parades, processions and fun runs.~~

- A. It is unlawful for any persons in a ~~parade or procession~~ to deviate from the established or approved ~~parade~~ **procession** route.
- B. No participant in a ~~parade or procession~~ shall throw, cast, or drop candy, trinkets, or any other articles. A violation of this provision shall be a misdemeanor punishable by a fine; ~~as set forth OCCGF 1.04.070~~ **not to exceed five hundred dollars (\$500.00)**. This does not prohibit a ~~parade~~ **walking procession** participant from handing the candy or other articles directly to the spectators ~~providing the parade participant is walking.~~
- C. No participant in a ~~parade or procession~~ shall entice, or lure, or attempt to entice or lure, any spectator to leave the designated viewing area. **A violation of this provision shall be a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00).**
- D. No participant in a ~~parade or procession~~ shall operate any vehicle in a careless manner ~~so~~ as to endanger the safety and welfare of other ~~parade~~ **procession** participants or spectators.
- E. ~~Each~~ **As a condition to the permit, each** permittee shall provide ~~a persons, or a horses with a riders, to walk or a persons~~ in a small motorized vehicles, such as a golf cart, **to travel** on both sides of any ~~parade procession~~ vehicle **which is** larger than an automobile or pickup ~~as a condition to the permit.~~
- F. Any person operating a motor vehicle in a ~~parade or procession~~ shall ~~be possess~~ a licensed **valid driver's license**. All **participants in the procession shall follow all** applicable ~~seat belt motor vehicle laws and/or helmet laws must be complied with by all participants~~ **regulations**.

12.145.050 Application - contents.

- A. Any person, **firm, corporation, or other entity desiring** ~~who wants to~~ conduct a ~~parade, procession, band practice, or fun run,~~ **as defined in OCCGF 12.5.010**, shall apply to the Park and Recreation Department for a permit at least ~~one (1) month~~ **forty-five (45) calendar days** in advance of the event date ~~and comply with the provisions set forth in such permit.~~ The application shall designate the intended route, date and time of the event. **In the City Manager or designee's discretion, and for good cause shown, applications may be accepted less than forty-five (45) calendar days in advance of the event date.**
- B. Park and Recreation Department may approve, revise, or deny the application in consideration of the following factors:
 - 1. **Promotion of the community as a whole;**
 - 2. **Provision of positive civic and economic benefit;**
 - 3. **Impact on neighboring business and properties;**
 - 4. **Impact on public uses, safety, and services;**
 - 5. **Consideration of frequency of closures;**
 - 6. **Consideration of the event's financial impact; and**
 - 7. **The applicant's performance under prior issued permits.**
- BC. Following approval from the City, the ~~requesting organization~~ **applicant** will be responsible for ~~notifying~~ **notification of news media, in and the associated costs of said notice, in** order to inform the public of the date, time and ~~parade procession~~ route.

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

- ~~CD.~~ The ~~organization sponsoring the parade~~ **applicant** will designate a person who can be contacted by the City to coordinate plans for the ~~parade or band practice~~ **procession**.
- ~~DE.~~ The ~~parade or band practice~~ **procession** shall not deviate from the designated route, time, or date approved in the permit. If, for any reason, the event is postponed, or canceled, the ~~City~~ **applicant** shall immediately ~~be notified~~ **notify the City**.
- ~~EF.~~ ~~Parades~~ **Processions** shall be scheduled between the hours of 9:00 a.m. and ~~noon~~. ~~When parades cannot be held in the mornings and during this time period,~~ **12:00 p.m.** ~~s~~Special requests will be considered **for processions at other times**, provided arrangements can be made which, **in the City's determination**, will not impede normal traffic conditions or inhibit business in the downtown area.
- ~~FG.~~ ~~Organizations sponsoring parades~~ **The applicant** will be responsible for placing and removing barricades on the ~~parade~~ **designated procession** route side of the nearest designated alleys/~~and streets~~ no earlier than thirty (30) minutes prior to the start of the ~~parade~~ **procession** and, in no case, longer than fifteen (15) minutes following the end of the ~~parade~~ **procession**. Barricades ~~are~~ **may be** available at the Park and Recreation Department: ~~and may be rented~~ **subject to a fee set by City Commission resolution**. It will be the responsibility of the ~~sponsoring organization~~ **applicant** to pick up from and return to the Park and Recreation Department all barricades used, and to contact the **Park and Recreation Director or designee, Supervisor** at least ~~two (2) weeks~~ **fourteen (14) calendar days** in advance to discuss a barricading plan acceptable to the City.
- ~~GH.~~ No sales/~~or~~ solicitations will be permitted by ~~parade~~ **procession** participants without proper licensing **in advance**.
- ~~HI.~~ ~~Applicants or~~ ~~Organizations sponsoring parades or band practices~~ **processions** will be required to remove all trash, paper and litter from the streets and sidewalks. Street cleaning arrangements must be made with the Public Works Street Division ~~within two (2) weeks~~ **at least fourteen (14) calendar days before** of the event date.
- ~~IJ.~~ The Police Department will provide one (1) vehicle to escort the ~~parade~~ **procession**. All other traffic and crowd control must be provided by the sponsoring organizations and, in no case, be less than two (2) people for each block of ~~parade or band practice~~ **procession** length.
- ~~JK.~~ ~~Sponsoring organizations will~~ **The applicant shall indemnify, defend and hold harmless** the City ~~harmless~~ from any and all claims, damages, losses and expenses arising from the ~~parade or band practice~~ **procession** or created by any of the participants. The ~~sponsoring organization~~ **applicant** shall be required to carry insurance for comprehensive general liability, automobile liability and designated premises in the amount of one million dollars (\$1,000,000.00) per occurrence and ~~one~~ **two** million dollars (\$~~2,000,000.00~~ **2,000,000.00**) aggregate, and list the City as an additional **named insured under the policy**. **Documentation of such insurance must be provided to the City at least 72 hours prior to the event.**
- ~~KL.~~ If determined necessary **by the City, considering the factors listed in B. above, or** due to the type, length, time or date of the ~~parade or band practice~~ **procession**, the ~~City may require~~ additional provisions and safeguards ~~may be deemed in the public interest~~ **required as conditions of the permit**.
- ~~LM.~~ Failure to comply with ~~these~~ **the provisions of this chapter** and other permit requirements will be cause for rejection of future ~~parade or band practice~~ **procession** permits requested by the **applicant**.
- ~~M.~~ ~~Any organization requesting a permit for other events such as motorcades, processions or fun runs will comply with any and all specific rules and requirements promulgated by the City.~~

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

~~(Ord. 2734, 1998).~~

- N. The ~~parade~~ **procession** organizer must submit with the permit request information as to how property owners, tenants, and/or business owners along the ~~parade~~ **procession** route ~~were~~ **will be notified of parade, the procession, and provide verification of such notice to the City,** ~~band practice or fun run.~~
- O. **If the application for a procession permit is denied or revised in a way which is unacceptable to the applicant, the applicant may appeal the decision in writing to the City Manager within fifteen (15) calendar days of the denial or reversal. The City Manager or designee shall review the application and uphold, reverse, or revise the decision on the application within ten (10) calendar days. If applicant makes no such appeal, the Park and Recreation Department's determination will stand.**
- P. **If the City Manager affirms or revises the determination of the application for a procession permit, the applicant may appeal the decision in writing within fifteen (15) calendar days of the date of affirmation or revision to the City Commission, which shall review the application in a public meeting and uphold, reverse, or revise the decision on the application within ten (10) calendar days of the hearing. If applicant makes no such appeal, the City Manager's determination will stand.**
- Q. **Unless otherwise specified in this chapter, appeals to the City Commission of the denial, revocation, or suspension of licenses or permits under this chapter shall comply with the provisions of OCCGF 1.2.040.**

12.445.060 Street closure permits for public events and block parties.

Persons or entities who organize events which require the temporary closure of a public street must comply with the provisions of OCCGF Title 9.

- ~~A. Events encouraging community and neighborhood involvement are encouraged and may require the temporary closure of city streets.~~
- ~~B. Organizers of an event that require the temporary closure of a public street must obtain a street closure permit. The application for the permit shall contain the name and contact information of the person or entity requesting the permit, the location of the proposed event, the day(s), times(s) and duration of the event. Applications must be turned in for review a minimum of fourteen (14) days prior to the event.~~
- ~~C. During the review, city staff will develop a street closure plan the applicant must follow. Staff will also make available the necessary street closure equipment and charge a fee set by Commission resolution.~~
- ~~D. If the event involves the sale, possession and/or consumption of alcohol, the event organizer must also obtain a special event permit as stipulated in 9.20.040.~~
- ~~E. The City Manager, or designee, shall review, approve or deny the permit application and has the authority to require additional information from the applicant.~~
- ~~F. The event organizer must submit with the permit application information as to how property owners, business owners and tenants adjacent to the temporary street closure were notified of special event or activity that required a temporary street closure.~~

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

- ~~G. A fee for the street closure permit shall be set by Commission resolution to cover administrative time and any additional costs incurred by the City to ensure the event is safe and the area returned back into the same condition it was prior to the event.~~
- ~~H. If the event involves more than seventy five (75) people, the person or organization must provide liability insurance, including liquor liability if applicable, providing coverage for their organization and naming the City as an additional insured. To the extent reasonably possible, liability insurance coverage shall be in the minimum amounts of seven hundred fifty thousand dollars (\$750,000.00) per claimant and one million five hundred thousand dollars (\$1,500,000.00) per occurrence. The City Manager has the authority to waive this requirement or due to the type of event, require insurance for events with fewer than seventy five (75) people should he determine it necessary due to the type of event.~~
- ~~I. Applicants for a temporary street closure permit shall agree in writing to defend, hold the City and its employees harmless and indemnify the City for any and all claims, lawsuits or liability including attorneys' fees and costs allegedly arising out of loss, damage or injury to person or person's property occurring during the course of or pertaining to the special event caused by the conduct of employees or agents of applicants.~~
- ~~J. Permit Denial Appeal. If an applicant is denied a temporary street closure permit, the applicant may appeal to the City Commission.~~

Chapter 12.6 STREET MAINTENANCE

Sections:

[12.46.010 District designation authority.](#)

[12.46.020 Cost—assessment.](#)

[12.46.030 Cost—assessment—levy—resolution.](#)

12.6.040 Assessment alternatives.

12.46.010 District designation authority.

Whenever any portion of the City has been designated as a street maintenance district, the streets, avenues and alleys **in the district** may be maintained for such time and in such manner as the City Commission may direct under the supervision of the Public Works Director.

~~(Ord. 2584 (part), 1991).~~

12.46.020 Cost—assessment.

The cost assessed for maintaining streets, avenues, and alleys **in the district** shall be charged to the property bordering on **all the streets and avenues so maintained properties within the Street Maintenance District** by one (4) or a combination of the following methods **to be determined by the City:**

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

1. ~~e~~Each lot or parcel of land bearing its share of the cost according to the part of the whole cost which its area bears to the area of the entire district; or, by that part of the whole cost which each lot or parcel's street frontage bears to the street frontage of the entire district; ~~or,~~
2. ~~i~~f the City Commission determines that the benefits derived from the maintenance by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the assessable area of the lot or parcel; or,
3. ~~e~~Each lot or parcel of land, including the improvements thereon, may be assessed for that part of the cost of the district which its taxable valuation bears to the total taxable valuation of the property of the district. The assessment for the same shall be certified by the City Clerk to the ~~Fiscal Services~~ **Finance** Director, to be extended on the tax roll in the same manner as other special assessments.

~~(Ord. 2584 (part), 1991).~~

12.46.030 Cost—assessment—levy—resolution.

~~Not~~**No** later than the second Monday in August of each year the Public Works Director shall estimate the annual maintenance cost and the City Commission shall pass and ~~finally~~ adopt a resolution levying and assessing all the property within the ~~s~~**Street m**~~Maintenance d~~**District** with an amount equal to ~~not less than~~ seventy-five (75) percent of the entire cost of the work.

~~(Ord. 2584 (part) 1991).~~

FOOTNOTE(S):

~~(2)~~

Prior history: ~~Prior code Sections 9-14-1 through 9-14-4, Ord. 2301.~~ [\(Back\)](#)

12.6.040 Assessment Alternatives.

A property owner may, after providing good cause acceptable to the City Manager or designee, enter into an alternative agreement, in the best interest of the City, to satisfy an assessment pursuant to this chapter.

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, ~~AND~~ SIDEWALKS, TREES, AND SHRUBBERY

Chapter 18 7 VEHICLE REMOVAL

Sections:

[12.487.010 Notification of designated areas.](#)

[12.487.020 Vehicle parking restrictions.](#)

[12.487.030 Vehicle removal.](#)

12.487.010 Notification of designated areas.

- A. The Public Works Director or designated representatives ~~are~~ **is** authorized to prohibit parking in areas where street cleaning operations are scheduled.
- B. Notice of such street cleaning shall be given to local radio, television, ~~and to the news press,~~ **and published on the City Website**. In addition, **signs notifying which** streets to be swept will be posted twenty-four (24) hours in advance of street cleaning operations.

~~(Ord. 2393 (part), 1985).~~

12.487.020 Vehicle parking restrictions.

- A. Upon notification of street cleaning operations, ~~a designated area~~ pursuant to Section 12.487.010(B), it shall be unlawful for any person to stop, stand, park or leave unattended any motor vehicle or trailer, **in a designated area**, between the hours of 8:00 a.m. and 4:00 p.m. or until such time as designated street cleaning is completed.
- B. This provision shall not prohibit the stopping of commercial passenger vehicles, **school buses, or Great Falls Transit District vehicles** for periods sufficient to load or discharge passengers from vehicles.

~~(Ord. 2393 (part), 1985).~~

12.487.030 Vehicle removal.

Whenever a motor vehicle or trailer has been stopped, parked or left unattended after notification of street cleaning operation pursuant to ~~subsection 12.18.010(B)~~ **this chapter**, such vehicle shall be declared a ~~public nuisance~~ **as defined in OCCGF Title 8, Chapter 49**, and the Director of Public Works or designee shall order it to be removed at the owner's expense.

~~(Ord. 2393 (part), 1985).~~

Chapter 20 8 RIGHT-OF-WAY VACATION FEES

Section:

[12.208.010 Schedule of costs.](#)

~~12.208.010~~ Schedule of costs.

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

Any person petitioning for a right-of-way vacation shall, prior to the passage of the resolution of intention to vacate, pay to the City fees according to the following schedule: **appropriate fees set by City Commission resolution.**

- A. ~~Administrative costs including the preparation of the resolution of intention to vacate, legal publication in a newspaper, the preparation of the vacation ordinance(s) material review by the City Attorney, placement of material on the commissions agenda, and filing and recording legal documents shall be two hundred dollars (\$200.00).~~
- B. ~~Preparation and service of notice to property owners abutting the right of way to be vacated shall be twenty five dollars (\$25.00) per notice served by the Great Falls Police Department; and thirty five dollars (\$35.00) per notice served by authority other than the Great Falls Police Department.~~
- C. ~~Compensation to the Public Works Department and other departments for review and examination of existing or proposed utility and transportation or other facilities affected by the proposed right of way vacation including the preparation of any necessary easements shall be based upon the existing prevailing man-hour costs plus fifty (50) percent.~~

~~In the event the right of way requested to be vacated was originally established by an official subdivision plat and the City determines it is appropriate and necessary to formulate an amended plat or replat in accordance with the State Subdivision and Platting Act, then the petitioner shall incur all costs associated with the preparation and review of the amended plat or replat.~~

~~(Prior code §9-15-1).~~

Chapter 24 9 STREET NAMES

Section:

[12.249.010 Renaming.](#)

12.249.010 Renaming.

In order to eliminate the duplication of street names and addresses within the City, ~~and to provide for~~ **uniformity, and** to alleviate the presently existing situation in these areas, the street names as designated on the plats of the following named additions shall be changed as follows:

A.	North Riverview Terrace Addition.		
	From 18th Avenue N.E.		to 21st Avenue N.E.
	From 19th Avenue N.E.		to 22nd Avenue N.E.
	From 20th Avenue N.E.		to 23rd Avenue N.E.
	From 6 "A" Street Northeast		to 6th Street Northeast

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

	From 7 "A" Street Northeast	to 7th Street Northeast
	From 34 "A" Street Northeast	to 34th Avenue Northeast
	From Riverview 1 West	to Riverview "A"
B.	Twilite Terrace Addition.	
	From 21st Avenue N.E.	to 24th Avenue N.E.
	From 22nd Avenue N.E.	to 25th Avenue N.E.
	From 23rd Avenue N.E.	to 26th Avenue N.E.
C.	Montana Addition.	
	From Gosman Drive	to Treasure State Drive (north to Aronson Drive)
	From Gosman Drive	to 10th Street S.W. (south of Aronson Drive)
	From Aronson Drive	to Treasure State Drive
	From Hinman Avenue	to 17th Avenue Southwest
	From Montana Avenue	to 18th Avenue Southwest
	From 13 A Street S.W.	connecting Treasure State Drive and 24th Avenue S.W. to Sundance Drive
D.	Lincoln Height Addition.	
	From Wilson Avenue	to 11th Avenue South
	From Washington Avenue	to 12th Avenue South
	From Madison Avenue	to 13th Avenue South

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

E.	Sunrise Terrace Addition.	
	From 4th Avenue South	to Carol Drive
F.	Tynes Addition	
	From 3rd Street South	to 2 "A" Street South
	From 3 "A" Street South	to 2 "B" Street South
G.	Horizon Addition.	
	From Grandview Road	to 3rd Street Northwest
H.	Yeoman-Tynes Addition.	
	From Cactus Court	to Palm Court
I.	BN Car Shop Addition.	
	From Burlington Northern Bay Drive	to Bay Drive
J.	Bel-View Palisade Addition.	
	From Ivy Drive (portion located in Centennial Ridge PUD) to Centennial Court	
K.	Valeria Way	
	From ½ Avenue South	
L.	Chowen Springs Loop	
	From Parkdale	
M.	Stone Meadows Addition	

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

	Phase II.	
	From Choteau Avenue	To Choteau Avenue Northeast

(Ord. 3143, 2016; Ord. 2798, 2001; Ord. 2564 §1, 1990; Ord. 2489 §1, 1988; Ord. 2435 §1, 1986; Ord. 2022, §1, 1977; prior code §9-11-1).

Chapter 28 10 SIDEWALKS AND CURBS

Sections:

- [12.2810.010 Improvements—permit required—appeal.](#)
- [12.2810.020 Construction—compliance with City specifications.](#)
- [12.2810.030 Construction—grade conformance required.](#)
- [12.2810.040 Construction—width and slope designations.](#)
- [12.2810.050 Construction—materials.](#)
- [12.28.060 Construction—order—notice to owner.](#)
- [12.28.070 Construction—failure to perform—notice—cost assessment.](#)
- [12.28.080 Construction—notice—form.](#)
- [12.28.090 Construction—annual contract—bid.](#)
- [12.28.100 Construction—cost—assessment—payment.](#)
- [12.28.110 Construction—payment—delinquency.](#)
- [12.2810.120060 Condemnation.](#)
- [12.2810.130070 Repair—owner's duty.](#)
- [12.28.140 Repairs required when—enforcement—injunction.](#)
- [12.28.150 Special fund created.](#)
- [12.10.080 Enforcement.](#)
- [12.10.090 Inspection.](#)
- [12.10.100 Violation - penalty.](#)

12.2810.010 Improvements—permit required—appeal.

- A. ~~No improvement mentioned in~~ **Any person or entity who will perform construction pursuant to this chapter, shall be made without first obtain a permit first having been obtained from the Planning and Community Development (P&CD) Director by the person actually before performing the**

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

construction. All **such** applications ~~therefore~~ shall be made in duplicate on the form prepared by the ~~Planning and Community Development~~ **P&CD Director** who shall ~~fix~~ **assess a reasonable schedule of fees as set by City Commission resolution** for services provided by the City.

- B. Any ~~applicant deeming himself aggrieved may appeal the decision~~ **denial of a permit pursuant to this section by the Department of Planning and Community Development P&CD Director may be appealed, in writing, to the City Manager's office within fifteen (15) calendar days of the denial. The City Manager shall render a written decision on the appeal within ten (10) calendar days. Such decision may then be appealed, in writing, to the City Commission. However, within fifteen (15) calendar days of said decision or become final. The City Commission shall conduct a hearing on the matter and issue a final written decision within ten (10) calendar days of the hearing.**
- C. ~~†The applicant shall do no such applied-for improvement work pending the any appeal, except in strict accordance with the directions of the Planning and Community Development Director until a final decision is made.~~

~~(Ord. 2549 §1 (part), 1989; code §9-1-2).~~

~~(Ord. No. 3057, § 1, 8-17-2010)~~

12.2810.020 Construction—compliance with City specifications.

- A. It is unlawful for any person to build or construct any sidewalk, private work, or curb in any street, avenue, alley or boulevard or to build or construct any parking or any improvement of any nature whatsoever in any street, avenue, alley or boulevard, unless the same is constructed strictly in accordance with the current standard specifications and plans for such work and under the supervision of the ~~Director of Public Works~~ **Director or designee.**

~~(Ord. 2549 § 1(part), 1989; code § 9-1-1).~~

~~(Ord. No. 3057, § 1, 8-17-2010; Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

12.2810.030 Construction—grade conformance required.

- A. Sidewalk construction on improved or graded streets must conform with the established grade and sidewalk line;
- B. ~~o~~**On all other streets, sidewalks must be laid to the proper sidewalk line, and otherwise to the satisfaction of the Director of Public Works. Driveway crossings into private grounds shall be of form and construction as specified by the Director of Public Works Director or designee.**

~~(Ord. 2549 §1(part), 1989; code §9-1-3).~~

- C. **Driveway crossings into private properties shall be of form and construction as specified by the Public Works Director or designee.**

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

12.2810.040 Construction—width and slope designations.

- A. All sidewalks hereafter ~~to be~~ built or constructed in the City shall be of the following width, except where otherwise ordered by the ~~governing body~~ **City Commission**: ~~on~~
1. First Avenue North from Park Drive East to Ninth Street, fifteen (15) feet; on Central Avenue, from Park Drive East to Ninth Street, fifteen (15) feet; ~~on~~
 2. First Avenue South from Park Drive East to Sixth Street, fifteen (15) feet; ~~on~~
 3. Second Avenue South from Second Street East to Fifth Street, fifteen (15) feet; ~~on~~
 4. ~~The east side of Park Drive from First Avenue North to First Avenue South, fifteen (15) feet; on~~
 5. Second Street from Second Avenue North to First Avenue South and on the east side from First Avenue South to Second Avenue South, fifteen (15) feet; ~~on~~
 6. Third Street from Second Avenue North to Second Avenue South, fifteen (15) feet; ~~on~~
 7. Fourth Street from Second Avenue North to Second Avenue South, fifteen (15) feet; ~~on~~
 8. Fifth Street from Second Alley North to First Avenue South, fifteen (15) feet; ~~on~~
 9. Sixth Street from First Avenue North to First Avenue South, fifteen (15) feet.; **and**
 10. Sidewalks on all other streets and avenues, **not classified as arterials**, shall be five (5) feet wide, and in alleys a two-foot walk may be constructed and laid in such manner that it will not interfere with traffic of any kind or be ~~injured there~~ **damaged by traffic**.
- B. All sidewalks shall rise three sixteenth (3/16) inch to the foot or one and one-half (1.5) percent from the curb grade to the property line ~~and shall slope toward the street~~. **Boulevards shall generally slope at two (2) percent from the top back-of-curb elevation to the property line to ensure positive drainage towards the street.**

~~(Prior code § 9-1-4).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

12.2810.050 Construction—materials.

- A. Hereafter all sidewalks shall be constructed only of solid **Portland asphaltic** cement concrete, or ~~upon permission from the Director of Public Works may be constructed of a dense clay brick with a non-slip surface and having an average saturation coefficient of 0.78 or less and meeting ASTM specifications C216 and C62 grade SW placed on a concrete base and grouted with a Portland cement grout all~~ **other material** conforming to current specifications established by the ~~Director of Public Works~~ **Director or designee**; ~~provided,~~ **except** that the ~~governing body~~ **City Commission** may order temporary sidewalks of other material to be constructed.
- B. Hereafter all curbing shall be constructed only of solid **Portland asphaltic** cement concrete, ~~provided~~ **except** that the ~~governing body~~ **City Commission** may order temporary curbing of other material.

~~(Prior code § 9-1-5).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

~~12.28.060 — Construction — order — notice to owner.~~

~~A. Whenever the governing body orders any sidewalk or curb to be constructed, it shall be the duty of the City Clerk to enter such order upon the minutes of the governing body and shall name the street along which the sidewalk or curb is to be constructed.~~

~~B. Whenever the governing body orders any sidewalk or curb to be constructed and after the making of such order, it shall be the duty of the City Clerk to give written notice thereof to the owner or agent of such property in front of which lot or parcel of land the governing body orders the sidewalk or curb to be constructed, which written notice must be published for five (5) days in a daily newspaper published in the City and by mailing a copy of such notice to every person or the agent of such person having property in front of which such sidewalk or curb is to be constructed at their last known address upon the same day such notice is first published; the service of such notice to construct such sidewalk or curb to be constructed shall be deemed complete on the date of first publication and mailing.~~

~~(Prior code §9-1-9).~~

~~12.28.070 — Construction — failure to perform — notice — cost assessment.~~

~~If the owner or agent of such lot or parcel of land fails or neglects for a period of thirty (30) days after the date of the service of such notice to construct or cause such sidewalk or curb to be constructed, the City shall construct or cause such sidewalk or curb to be constructed and shall assess the cost thereof against the property in front of which the same are constructed.~~

~~(Prior code §9-1-9).~~

~~12.28.080 — Construction — notice — form.~~

~~The written notice to be so published and mailed shall be in substantially the following form:~~

NOTICE FOR CONCRETE SIDEWALK AND CURB CONSTRUCTION
—Department of Public Works—Great Falls, Montana
—"Notice is hereby given that the Governing Body of the City of Great Falls, Montana, at its regular meeting on _____ / _____ / _____, ordered concrete sidewalk and curb to be constructed as follows:
—"The names of the streets along which said sidewalk and curb is ordered constructed appears upon the minutes of the Governing Body of the above date to which reference is hereby made.

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

"All walk and curb remaining un built at the expiration of thirty (30) days will be built by the City and all costs assessed as a special tax to the abutting property in accordance with the provisions of City law.
Director of Public Works
First publication _____ / _____ / _____"
(Prior code §9-1-11).

~~12.28.090 Construction—annual contract—bid.~~

- ~~A. The governing body shall annually let to the lowest responsible bidder a contract for the construction of all cement or concrete sidewalks in accordance with the specifications prepared therefore by the Director of Public Works and approved by the governing body, which specifications shall provide for the method of construction and the material contemplated during the period of such contract.~~
- ~~B. The governing body shall, at the same time when it lets its contract as provided for in subsection A for the construction of concrete cement sidewalks, also let its contract for the construction of concrete cement curbs, and the contract for the concrete sidewalks and concrete cement curbs shall be let at the same time and for the same period to the same contractor.~~

~~(Prior code §9-1-12).~~

~~12.28.100 Construction—cost—assessment—payment.~~

- ~~A. The total cost of all cement or concrete sidewalks constructed by the City cement or concrete sidewalk contractor in accordance with the orders of the governing body which total costs shall include that of the sidewalk proper as well as that of any notice, grading, hand railing, private crossing and all other necessary expenses, shall be assessed as a special assessment against the property in front of which such cement or concrete sidewalk is built or constructed. The property occupying street corners shall be assessed for that part of such sidewalk thereon which is within the street intersection.~~
- ~~B. Such special assessments shall be payable in installments extending over a period of eight (8) years, and the governing body for such sidewalk improvements may issue special improvement warrants and levy and collect assessments to pay the same. When any such installment payment becomes delinquent, that installment payment, plus the interest due thereon, shall become a lien against the property subject to such assessment, and the property shall be subject to sale for delinquent payment of such special assessment the same as other property is sold for delinquent special assessments.~~

~~(Prior code §9-1-13).~~

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

~~12.28.110 Construction—payment—delinquency.~~

~~Upon the payments after the first, the Controller shall collect simple interest per annum at the maximum rate allowed on judgments under state law (§25-9-205, MCA) from the date when the first payment becomes delinquent, and shall receive payment in full and give receipts therefore for the entire special assessment of any property with interest to the date of payment, at any time the same may be tendered by the owner or agent.~~

~~(Prior code §9-1-13).~~

~~12.2810.120060~~ **Condemnation.**

- ~~A. Any sidewalks may be condemned by the Public Works Director or designee, which are now, or which may become, by reason of because of natural deterioration or decay, or by reason of unevenness, steps, rapid slopes or from any cause whatsoever, become dangerous to the public safety, may be condemned by the Director of Public Works.~~
- ~~B. Condemned sidewalks shall and may be immediately removed and replaced, repaired, remodeled, or rebuilt, repaired or newly built, as may be most expedient, and the cost thereof shall be a lien upon the lot abutting upon such sidewalk at the discretion of the Public Works Director or designee. Construction shall be arranged and paid for by the adjoining property owner and shall be performed by a contractor properly licensed and insured to perform this type of work within the City.~~
- ~~C. Any costs incurred by the City pursuant to this section shall be paid by the adjoining property owner within thirty (30) calendar days of invoice, and if not, be recorded as a lien upon the adjoining lot and may be enforced or the amount may be recovered against the owner by a suit before any court of competent jurisdiction or may be assessed and collected as a special tax against such lot.~~

~~(Prior code § 9-1-7).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

- ~~D. The condemnation by the director may be appealed, in writing, to the City Manager's office, within fifteen (15) calendar days of the director's notice of condemnation. If the City Manager or designee affirms the decision, the applicant may appeal, in writing, the decision to the City Commission within fifteen (15) calendar days of the City Manager's affirmation. The City Commission shall conduct a meeting and hear testimony on the Condemnation within ten (10) calendar days of receipt of the appeal. The City Commission shall by written finding affirm or reverse the decision within ten (10) calendar days of the hearing.~~

~~12.2810.130070~~ **Repair—owner's duty.**

- ~~A. It shall be the duty of the owners and tenants owner(s) of any premises within the limits of the City to keep the sidewalk in front of and adjoining their premises in good, safe and substantial functional condition., and the~~

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

- B. ~~owners~~**Owner(s)** shall see that all breaks or unsoundness of any character resulting from natural deterioration, or from any cause whatsoever, is repaired with all possible dispatch and **diligence**.
- C. ~~w~~**When** by reason of the construction or repairs of sidewalks from any cause whatsoever, any sidewalk or section thereof is removed or rendered dangerous or impassable to the public, such spaces or openings shall be securely fenced, and from ~~dark~~ **sunset** until sunrise ~~red~~ lights shall be maintained thereon, while such dangerous condition exists, and a plank walk not less than two (2) inches in thickness and not less than three (3) feet in width shall be constructed around such construction or dangerous walk, the same to extend from sidewalk to sidewalk on each side of the opening or obstruction.

(Prior code §9-1-6).

~~12.28.140 — Repairs required when — enforcement — injunction.~~

~~It shall be the duty of the Chief of Police and members of the Police Department to enforce the provisions of this chapter, and Police Officers shall immediately report any broken, defective or unsafe sidewalk to the owner of the premises in front of which such defect exists and shall notify the owner to repair the same forthwith. Police Officers shall also report all such defective walks and crossings as well as the particulars of any accidents that may occur, the names of witnesses, and persons injured thereby, to the Chief of Police, specifying the hour at which the owner as aforesaid was notified to repair the walk, and the Chief of Police shall in turn notify the street commissioner or Director of Public Works thereof. Upon the refusal or neglect of the owner of any premises to remove obstructions from or to make necessary repairs to the walks in front of the same, and when in the opinion of the street commissioner or Director immediate repairs or removal of the obstructions is necessary to prevent accidents, the street commissioner or Director may forthwith proceed with same, and the full costs of the repairs or the removal of such obstructions shall be collected or assessed as provided in Section 12.28.120. Absence of notice to owners to repair or remedy a dangerous walk or to remove obstructions therefrom shall not constitute a valid excuse against the payment of any fine or damages by such owners or occupants, and nothing contained in any of the preceding sections shall be so construed as to release the owners or occupants of real estate from the duty of keeping the sidewalks in front or adjoining their respective premises at all times in a safe and passable condition, and in good and thorough state of repair, but such duty is hereby expressly enjoined and imposed upon all such owners and occupants.~~

(Prior code §9-1-8).

~~12.28.150 — Special fund created.~~

- A. ~~There is created a fund to be known as the "special sidewalk and curb fund." All monies hereafter collected from assessments made for the construction of sidewalks and curbs ordered by the governing body shall be placed to the credit of the special sidewalk and curb fund.~~
- B. ~~Warrant Form. When any sidewalk or curb is constructed by or under the direction of the governing body, payment for the construction thereof shall be made by special warrants, which shall be in substantially the following form (regular City warrant form to be used):~~

<p>"THE TREASURER OF THE CITY OF GREAT FALLS, MONTANA No.</p>
--

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

DATE	WILL PAY TO	FUND	WARRANT NO.	AMOUNT
				\$—
	Mayor			
	Clerk			

~~C. Denomination. The special sidewalk and curb warrants shall be issued in a denomination of no more than one thousand dollars (\$1,000.00) each.~~

~~(Prior code §9-1-15).~~

12.10.080 Enforcement.

It shall be the duty of the Public Works Director or designee, upon receipt of a written complaint, to enforce the provisions of this chapter.

12.10.090 Inspection.

Any improvements made pursuant to this chapter are subject to inspection or approval, at any reasonable time, by the Public Works Director or designee, before, during, and after construction is performed.

12.10.100 Violation - penalty.

A. Any violation of the provisions of this chapter shall be considered a public offense punishable under the general penalty OCCGF 1.4.070.

B. A violation of the provisions of this chapter in hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.

Chapter ~~32~~ 11 SIDEWALK MAINTENANCE

Sections:

[12.~~32~~11.010 Obstruction—defined—prohibited.](#)

[12.~~32~~11.020 Sidewalk—restricted use.](#)

[12.~~32~~11.030 Snow and ice removal—owner's duty.](#)

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

~~12.3211.040 Snow and ice removal—hours designated for completion.~~

~~12.3211.050 Snow and ice removal—depository prohibited where.~~

~~12.3211.060 Sanding required when—owner's duty.~~

~~12.3211.070 Wet cement—trespassing prohibited.~~

~~12.32.080 Failure to comply—City performs work—cost—assessment.~~

~~12.3211.090~~**080** Violation—penalty.

12.3211.010 Obstruction—defined—prohibited.

- A. "Obstruction," as used in this chapter, ~~is intended to mean~~ **means** clothing, fruit, or any kind of merchandise, boxes, crates, trunks, racks and stands of every nature and description, **or any other object that may hinder and/or impede pedestrian or other traffic.**
- B. It is unlawful for any person or persons, firm, or corporation, **or other entity** to place, cause to be placed, or to permit any obstruction to be placed or remain upon any of the sidewalks of the City, except in cases where artwork has been approved by the City and placed within the Business Improvement District as part of the Discovery Gallery.

~~(Ord. 2766, 2000; Prior code §9-3-1).~~

12.3211.020 Sidewalk—restricted use.

- A. Except as otherwise specified in the OCCGF, it is unlawful hereafter** for any person or persons to ride, or drive, **or park** any horse, mule, or other animal-**driven**, buggy, wagon, bicycle or other vehicle along, over or on any of the sidewalks within the City, or ~~to push any pushcart or wheelbarrow thereon or do damage in any way to the sidewalks.~~

~~(Prior code §9-3-2).~~

- B. Unless otherwise allowed by designated City approved signage, or conditions render bicycle travel on a street unsafe, bicycles may only be ridden on those portions of the sidewalk that are a portion of the River's Edge Trail System, as depicted on the most currently published River's Edge Trail Map available at the City Computer Mapping and Addressing Department.**
- C. Children under the age of thirteen (13) are exempted from the provisions of this Section.**
- D. Law enforcement and other emergency services personnel are exempted from the provisions of this Section.**

12.3211.030 Snow and ice removal—owner's duty.

It shall be the duty of the owner~~(s) and tenant~~ of any premises within the limits of the City to keep the sidewalk in front of and adjoining the premises free from obstructions **or accumulation** subject to the special conditions set out in ~~Sections 12.32.040 through 12.32.060~~**this chapter.**

~~(Prior code §9-3-3(part)).~~

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, ~~AND~~ SIDEWALKS, TREES, AND SHRUBBERY

12.3211.040 Snow and ice removal—hours designated for completion.

Snow, ice, and similar material that has accumulated during the preceding hours shall be removed from sidewalks in commercial areas before 11:00 a.m. each day and shall be removed from residential areas within twenty-four (24) hours after the snowfall. Once cleared, all sidewalks shall be kept clear of snow, ice, and similar material.

~~(Prior code §9-3-3(A)).~~

12.3211.050 Snow and ice removal—depository prohibited where.

Snow, ice, and similar material removed from sidewalks ~~in commercial areas~~ **and driveways** shall not be deposited on the adjoining streets, avenues, **separately owned properties**, or alleys ~~within two (2) feet of the curbline.~~

~~(Prior code §9-3-3(B)).~~

12.3211.060 Sanding required when—owner's duty.

Polish or smoothness resulting from any cause which renders a sidewalk dangerous and unsafe shall be sanded and where there is permanent polish or smoothness on a sidewalk, the surface of the sidewalk shall be repaired in accordance with the directions of the **Public Works** Director ~~of Public Works.~~

~~(Prior code §9-3-3(C)).~~

12.3211.070 Wet cement—trespassing prohibited.

It is unlawful for any person to **deface**, tramp, step or trespass ~~unnecessarily~~ upon any cement or concrete sidewalk in course of construction before such sidewalk becomes set and firm.

~~(Prior code §9-3-4).~~

~~**12.32.080 Failure to comply—City performs work—cost—assessment.**~~

~~If the owners or tenants of property adjoining a sidewalk fail to comply with the provisions of this chapter, the City shall cause any and all obstructions to be removed and shall bill the cost thereof, together with a reasonable charge for the administration and supervision, to the parties. If the charges are not paid within sixty (60) days, the commission shall pass a resolution assessing the charges as a special tax against the premises.~~

~~(Prior code §9-3-3 (D)).~~

12.3211.090080 Violation—penalty.

- ~~A. Violation of this chapter shall be deemed a misdemeanor and any person violating the provisions of this chapter may be fined in an amount not exceeding five hundred dollars (\$500.00) or~~

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

~~imprisonment not to exceed six (6) months for any one (1) offense. Any violation of the provisions of this chapter shall be considered a public offense punishable under the general penalty OCCGF 1.4.070.~~

~~(Prior code §9-3-3(E)).~~

B. A violation of the provisions of this chapter is hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.

Chapter ~~33~~ 12 EMERGENCY SNOW ROUTE

Sections:

[~~12.33~~12.010 Declaration of snow emergency.](#)

[~~12.33~~12.020 Emergency snow routes—designation.](#)

[~~12.33~~12.030 Emergency snow routes—signing.](#)

[~~12.33~~12.040 Removal—vehicles.](#)

[~~12.33~~12.050 Snow emergency—notice.](#)

~~12.33~~12.010 Declaration of snow emergency.

The City Manager, or designated representative, ~~are~~ **is** authorized to declare a snow emergency ~~when in their opinion~~ an emergency exists in the City or in a section or sections thereof because of snow, freezing rain, sleet, snow drifts or other natural phenomenon which creates ~~or are~~ **is** likely to create hazardous road conditions or impede the free movement of fire, health, police, emergency or other vehicular traffic or otherwise endangers the safety and welfare of the community and shall remain in effect until the snow has been plowed to the curb lines or removed from the street.

~~(Ord. 2526 §1(part), 1989).~~

~~12.33~~12.020 Emergency snow routes—designation.

A. To facilitate the removal **of snow** and to assure the regular flow of traffic during a snow emergency, the following streets and public thoroughfares are designated as emergency snow routes:

Central Avenue	9th Street Park Dr. to 46 th Street
Central Avenue West	20 th Street S.W. South West to 29th Street S.W. 30th Street S.W. South West
Division Road	Skyline Dr. to Smelter Avenue

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, ~~AND~~ SIDEWALKS, TREES, AND SHRUBBERY

Fox Farm Road	10 th Avenue South to East Fiesta
Park Garden Road	Riverview Court to Ivy Drive Big Ranch Road
Smelter Avenue	3 rd Street N.W. North West to 9 th Street N.W. North West
1 st Westhill Drive	3 rd Westhill Drive to Sun River Road
3 rd Avenue South	38 th Street South to 57 th Street South
4 th Street South	10 th Avenue South to 17 th Avenue South
6 th Street N.W. North West	Smelter Avenue to Central Avenue West
8 th Avenue North	Park Drive to 38 th Street North
8 th Street N.E. North East	Smelter Avenue to Skyline Drive
9 th Street	River Drive to 17 th Avenue South
9 th Street N.W. North West	Smelter Avenue to Central Avenue West
9 th Street N.E. North East	Skyline Drive to 36 th Avenue N.E. North East
17 th Avenue South	4 th Street South to 9 th Street South
20 th Street S.W. South West	Central Avenue West to 5 th Avenue S.W. South West
25 th Street	River Drive North to 13th 10th Avenue South
26 th Street	8 th Avenue North to 18th 22nd Avenue South
33 rd Street South	10 th Avenue South to 17 th Avenue South
38 th Street	River Drive North to 10 th Avenue South

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

46 th Avenue N.E. North East	Bootlegger Trail to 9 th Street N.E. North East
Park Drive	1 st Avenue North to 2 nd Avenue South
2 nd Street South	2 nd Avenue South to 10 th Avenue South
13 th Street South	10 th Avenue South to 30 th Avenue South
24 th Avenue	13 th Street South to 15 th Street South
2 nd Street North East	Division Road to 36 th Avenue North East
Skyline Drive	8 th Street North East to 9 th Street North East
Watson Coulee Road	North West Bypass to 9 th Street North East
3 rd Street South West	Central Avenue West to 6 th Street South West
18 th Avenue South West	Fox Farm Road to Treasure State Drive
Big Ranch Road	Park Garden Road to Huckleberry Drive
Huckleberry Drive	Big Ranch Road to Acacia Way
Acacia Way	Huckleberry Drive to Park Garden
Sun River Road	14 th Street South West to 4 th West Hill Road
14 th Street South West	Exit 0 Ramp to 13 th Avenue South, and Exit 0 Ramp to Park Garden Road
3 rd West Hill Drive	1 st West Hill Drive to 4 th West Hill Drive
4 th West Hill Drive	3 rd West Hill Drive to Sun River Road

~~(Ord. 2526 § 1(part), 1989).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, ~~AND~~ SIDEWALKS, TREES, AND SHRUBBERY

- B. Any routes included in the most current agreement between the City of Great Falls and Cascade County for snow and ice control may also, with proper notice, be included as emergency snow routes.**

12.3312.030 Emergency snow routes—signing.

- A.** When signs have been erected giving notice thereof, it shall be unlawful for any person to stop, stand, park or leave unattended any motor vehicle upon a designated snow route within the City, during a snow emergency.
- B.** Parking may be resumed on individual streets as soon as the snow has been plowed or removed. This provision shall not prohibit the stopping or commercial passenger vehicles for periods sufficient to load or discharge passengers from such vehicles.

~~(Ord. 2526 §1 (part), 1989).~~

12.3312.040 Removal—vehicles.

Whenever a motor vehicle has been stopped, parked or left unattended after the inception of a snow emergency, upon a designated emergency snow route within the City, said vehicle is declared to be a traffic hazard and the ~~Chief of Police~~ **City Manager, or designee**, shall order said motor vehicle removed at the owner's expense.

~~(Ord. 2526 §1(part), 1989).~~

12.3312.050 Snow emergency—notice.

Notice of such emergency shall be given by press, radio, ~~and~~ television, and **the City website**. ~~the news media shall be requested to cooperate with City officials and, w~~When given, such notice shall constitute due and proper notice.

~~(Ord. 2526 §1(part), 1989; Ord. 2187, 1980).~~

Chapter 36 13 PRIVATE DRIVEWAYS AND CROSSWALKS

Sections:

[12.3613.010 Construction—supervision.](#)

[12.3613.020 Construction—permit—application—fee.](#)

[12.3613.030 Construction—barricades required.](#)

[12.3613.040 Construction—sidewalk—materials.](#)

[12.3613.050 Construction—driveway—location.](#)

[12.3613.060 Construction—driveway—drainage structures.](#)

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

~~12.3613.070~~ Construction—driveway—transition design.

~~12.36.080~~ Construction—driveway—adjoining.

~~12.3613.090~~**080** Construction—right-of-way distances.

~~12.3613.400~~**090** Construction—intersection clearances.

~~12.3613.440~~**100** Construction—conformance with national regulations.

~~12.3613.420~~**110** Use discontinuance—sidewalk restoration.

12.13.120 Violation - penalty.

~~12.3613.010~~ **Construction—supervision.**

A. The construction of concrete driveways and concrete crosswalks used for private purposes, within the street lines of the City, shall be under the supervision and direction of the **Public Works Director or designee**. ~~Director of Planning and Community Development, authorized assistant or duly appointed inspector. The design and concrete mixture shall conform to standard specifications on file in the Department of Public Works office of the City for concrete sidewalks and concrete crossings.~~

~~(Ord. 2568 §1(part), 1990; prior code §9-2-1).~~

~~(Ord. No. 3057, § 1, 8-17-2010)~~

B. ~~The design and concrete mixture shall conform to standard specifications on file in the City Public Works Department for concrete sidewalks and concrete crossings.~~

~~12.3613.020~~ **Construction—permit—application—fee.**

A. All applications for permits for concrete driveways or concrete crosswalks must give a description of the property to be served and such other information as may be required by the **Public Works** ~~Director~~, for the proper direction of the work, and must be signed by the **property owner(s)** or authorized agent.

B. Before commencing the construction, modification or repair of any concrete driveway or concrete crosswalk, the contractor shall first obtain a written permit from the Department of Planning and Community Development, and such permit shall be **available** upon the ~~ground~~ **work site** at all times during the progress of the work and must be shown to any **designated City representative**~~office in authority~~, on demand.

C. For each and every permit a fee will be charged and collected by the **Public Works** ~~Director~~. **The amount of said fee shall be established by City Commission resolution.**

~~(Ord. 2568 §1(part), 1990; prior code §9-2-2).~~

~~(Ord. No. 3057, § 1, 8-17-2010)~~

Exhibit "A"

(Updated from First Reading)

Title 12 STREETS, AND SIDEWALKS, TREES, AND SHRUBBERY

12.3613.030 Construction—barricades required.

- A. Excavations in streets and avenues shall be made in such manner as to impede travel as little as possible, and the time that such excavation is open may be limited by the **Public Works Director, or designee.** ~~his assistant or inspector.~~
- B. Efficient barricades shall be erected by the ~~contractor~~ **permittee** around all trenches or embankments made within the limits of any street or avenue, and ~~red~~ lights shall be maintained thereon from dark to daylight until the street or avenue has been restored to a safe and passable condition. ~~At no time during the progress of the work shall sidewalks be unnecessarily blocked to travel.~~

~~(Prior code §9-2-3).~~

- C. **At no time during the progress of the work shall sidewalks be unnecessarily blocked to travel.**

12.3613.040 Construction—sidewalk—materials.

- A. After the governing body orders any cement concrete sidewalk to be built in any boulevard district, no private walk shall be built therein from the curb-line to the property line or from the sidewalk to either line, unless the same is made of cement concrete, **or other Public Works approved material.**
- B. Cement concrete private walks shall be of uniform width and shall be built upon the established grade from the curb-line to the property line, and shall be not less than thirty-six (36) inches in width or more than sixty (60) inches in width; provided, that in front of churches, schoolhouses, nursing homes, long term care facilities, medical facilities, ~~the~~ court houses, and other public buildings, the cement concrete private walks may be of greater width than above mentioned.

~~(Prior code §9-2-4(A)).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

12.3613.050 Construction—driveway—location.

Driveways shall be so located at the discretion of, and by the approval of, the **Public Works Director or designee,** ~~of Public Works~~ as to result in no undue interference with, or hazard to, the free movement of normal traffic or interfere with the placement and proper functioning of highway signs, signals, lighting, or other devices that affect traffic operation.

~~(Prior code §9-2-4(B)).~~

12.3613.060 Construction—driveway—drainage structures.

All driveways shall be ~~so~~ constructed so as not to impair drainage within the street or highway right-of-way nor alter the stability of the roadway sub-grade and ~~at the same time~~ not impair or materially alter drainage of the adjacent areas. All drainage structures required within the public right-of-way and under the

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driveways, as a result of the property being developed, shall be installed in accordance with the standards of approved by the **Public Works** Director or **designee** of ~~Public Works~~.

~~(Prior code § 9-2-4(D)).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

Editor's note — Formerly § 12.36.070.

12.3613.070 Construction—driveway—transition design.

- A. All driveways shall have the back of curb dropped a minimum of four (4) inches for the width of the driveway. The minimum driveway transition distance shall be from the back of the curb to the property line and shall occur in a uniform manner.
- B. Curb fillets constructed by filling in the curb and gutter are prohibited as a means of transition from the street to the driveway. This prohibition of curb fillets is retroactive to all existing curb fillets within the City and all future annexations to the City. Exceptions for cause must be approved by the **Public Works** Director or **designee** of ~~Public Works~~.

~~(Ord. 2490, 1988).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

Editor's note — Formerly § 12.36.071.

12.36.080 Construction—driveway—adjoining.

~~The distance between two (2) adjacent driveways to the same frontage shall be not less than thirty (30) feet.~~

~~(Prior code § 9-2-4(F)).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

Editor's note — Formerly § 12.36.090.

12.3613.090080 Construction—right-of-way distances.

Gasoline pump islands or other installations with parking parallel to the right-of-way line shall be at least ten (10) feet outside of the right-of-way line. Buildings or other installations with an angle of ninety (90) degrees parking between **the building or other installation** # and the right-of-way line shall be at least thirty (30) feet outside the right-of-way line.

~~(Prior code § 9-2-4(G)).~~

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~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

~~**Editor's note**—Formerly § 12.36.100.~~

12.3613.400090 Construction—intersection clearances.

At an intersecting street or highway, the dimension measured along the edge of the traveled way to provide adequate corner clearance shall be measured a minimum distance of ten (10) feet from the intersecting property line, except at intersections where there are traffic signals, the nearside clearance shall be two (2) or more times this distance.

~~(Prior code § 9-2-4(H)).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

~~**Editor's note**—Formerly § 12.36.110.~~

12.3613.440100 Construction—conformance with national regulations.

Specific controls, not defined in this chapter, shall be in accordance with the standards for private driveway regulations established by the American Association of State Highway Officials and as applied by at the discretion of the **Public Works** Director or ~~designee of Public Works~~.

~~(Prior code § 9-2-4(I)).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

~~**Editor's note**—Formerly § 12.36.120.~~

12.3613.420110 Use discontinuance—sidewalk restoration.

A. Whenever the use of any existing or future driveway is discontinued by reason of change in the use, or design of the private property served thereby, the owner of the private property shall remove that portion of the driveway located within the City right-of-way, and shall restore the sidewalk and curbing affected by the driveway to their normal levels, all under the direction, supervision and standards required by the **Public Works** Director or ~~designee of Public Works~~.

B. This section shall be applicable to any existing driveway, the use of which is presently discontinued. ~~Upon the failure or refusal of the owner to restore the sidewalk and curbing as provided in this section, the City Commission may order the restoration of the sidewalk and curbing under the provision of Sections 12.28.060 through 12.28.110 and 12.28.150.~~

~~(Prior code § 9-2-4(J)).~~

~~(Ord. No. 3086, § 1(Exh. A), 6-19-2012, eff. 7-19-2012)~~

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~~Editor's note~~ — Formerly § 12.36.130.

12.13.120 Violation - penalty.

- A. Any violation of the provisions of this chapter shall be considered a public offense punishable under the general penalty OCCGF 1.4.070.
- B. A violation of the provisions of this chapter in hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.

Chapter 4014 TREES AND SHRUBBERY

Sections:

[12.4014.010 Trimming required.](#)

[12.4014.020 Hedge and shrubbery maintenance.](#)

[12.4014.030 Injuring trees and shrubbery unlawful.](#)

[12.14.040 Violation - penalty.](#)

12.4014.010 Trimming required.

Any owner or occupant of any real property shall ~~trim~~ **be responsible for trimming** all trees on property ~~owned or occupied by him/her,~~ overhanging any public thoroughfare **or boulevard district**, so that the branches thereon will not interfere with pedestrians or public travel.

~~(Prior code §9-4-1).~~

12.4014.020 Hedge and shrubbery maintenance.

Any owner or occupant of any real property shall maintain all hedges and shrubbery adjacent to public sidewalks so that no part of the hedges and/or shrubbery shall extend over any part of a public sidewalk in the municipality.

~~(Prior code §9-4-2).~~

12.4014.030 Injuring trees and shrubbery unlawful.

It is unlawful for any person, not the owner thereof, or without lawful authority to do so, to injure willfully, deface, disfigure or destroy any tree or shrub, or to injure, destroy, cut or pick any flower or plant located ~~either on private ground or on any public place or thoroughfare~~ **or boulevard district**.

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(Updated from First Reading)

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~~(Prior code §9-4-3).~~

12.14.040 Violation - penalty.

- A. Any violation of the provisions of this chapter shall be considered a public offense punishable under the general penalty OCCGF 1.4.070.**
- B. A violation of the provisions of this chapter in hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.**

Chapter 44- 15 TREE REMOVAL

Sections:

[12.4415.010 Application.](#)

[12.4415.020 New location.](#)

[12.44.030 Construction—obstruction to growth—prohibited.](#)

[12.4415.940030 City Forester to remove or supervise.](#)

[12.15.040 Trees interfering with right-of-way.](#)

[12.15.050 Violation - penalty.](#)

12.4415.010 Application.

- A. Any person, firm, or corporation, or other entity** desiring to cut down any of the trees located the boulevards of the City, shall submit an application to the City ~~p~~Park and ~~r~~Recreation ~~d~~Department for its review.
- B. The application shall state the following:**
 - 1. **The** lot, block, and street number adjacent to the affected boulevard area;
 - 2. ~~t~~The reason for the request;
 - 3. ~~a~~A plan showing the location of the tree or trees; **and**
 - 4. ~~t~~The distance the tree or trees will be moved; or
 - 5. ~~t~~The tree or trees to be cut down.
- C. The p**Park and **r**Recreation **d**Department shall review the application and within ten (10) days of the receipt thereof, submit its recommendation to the City Manager, ~~Whereupon the City Manager~~ **who** shall approve or reject the application and immediately notify the applicant of the decision.
- D. The applicant may appeal the decision of the City Manager by filing a written notice of appeal with the office of the City Clerk within ~~ten (10)~~ fifteen (15) calendar days of the receipt date of the decision. The appeal shall be heard at the next regularly scheduled meeting of the City Commission, unless another date is mutually agreed upon by the applicant and the City. The Commission shall, by written finding, affirm or reverse the decision within fifteen (15) calendar days after the hearing.**

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~~(Ord. 2065 (Part 1), 1979; prior code §6-1-3(E)).~~

- E. Any tree removed pursuant to an approved application, shall be replaced with a two-inch balled and burlapped tree. The Park and Recreation Director or designee shall designate permissible replacement tree species. Care and maintenance of replacement trees shall be the responsibility of the applicant for two consecutive calendar years from the date of replacement.**

12.4415.020 New location.

No tree or trees shall be moved to a place where the conditions will hinder their growth or the growth of others, and the new location must conform as nearly as possible to the regular spacing and alignment of the trees in the locality to which it is moved.

~~(Prior code §6-1-3 (E-1)).~~

~~**12.15.030 Construction—obstruction to growth—prohibited.**~~

~~It is unlawful for any person, firm or corporation to build or construct anything around the base or about any part of a tree that may hinder its growth or disfigure its appearance.~~

~~(Prior code §6-1-3 (E-2)).~~

12.4415.040030 City Forester to remove or supervise.

Upon the permission of the City Manager, the City Forester may cut down or remove any tree or trees which have been petitioned to be cut down or removed from the public boulevards of the City, provided, however, that all expenses of cutting or removal and transplant shall be paid by the petitioning party and such cutting, removal and transplanting shall be supervised by the City Forester.

~~(Ord. 2065 (Part 2), 1979; prior code §6-1-3 (E-3)).~~

12.15.040 Trees interfering with right-of-way.

The City Manager or designee may order the City Forester to remove any tree, subject to the provisions of this chapter, that in judgment of the Public Works Director is either interfering with, or damaging, a City street or public right-of-way.

12.15.050 Violation - penalty.

- A. Any violation of the provisions of this chapter shall be considered a public offense punishable under the general penalty OCCGF 1.4.070.**
- B. A violation of the provisions of this chapter in hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.**

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(Ord. 3170, 2018; Ord. 3143, 2016; Ord. 3086, 2012; Ord. 3057, 2010; Ord. 2801, 2001; Ord. 2798, 2001; Ord. 2785, 2000; Ord. 2766, 2000; Ord. 2734, 1998; Ord. 2584, 1991; Ord. 2568, 1990; Ord. 2564, 1990; Ord. 2549, 1989; Ord. 2526, 1989; Ord. 2490, 1988; Ord. 2489, 1988; Ord. 2485, 1987; Ord. 2476, 1987; Ord. 2462, 1987; Ord. 2460, 1987; Ord. 2435, 1986; Ord. 2409, 1985; Ord. 2393, 1985; Ord. 2338, 1983; Ord. 2314, 1983; Ord. 2312, 1982; Ord. 2301, 1982; Ord. 2187, 1980; Ord. 2065, 1979; Ord. 2022, 1977)
(Prior Codes: §§ 9-15-1, 9-14-4, 9-14-3, 9-14-2, 9-14-1, 9-11-1, 9-10-7, 9-10-6, 9-10-5, 9-10-4, 9-10-3, 9-10-1, 9-4-3, 9-4-2, 9-4-1, 9-3-4, 9-3-3, 9-3-2, 9-3-1, 9-2-4, 9-2-3, 9-2-2, 9-2-1, 9-1-15, 9-1-14, 9-1-13, 9-1-12, 9-1-11, 9-1-10, 9-1-9, 9-1-8, 9-1-7, 9-1-6, 9-1-5, 9-1-4, 9-1-3, 9-1-2, 9-1-1, 6-1-3)

Exhibit "B"

(Updated from First Reading)

Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY

Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY
Chapter

Chapter 1- BOULEVARDS

Chapter 2- DISCOVERY GALLERY

Chapter 3- OBSTRUCTIONS IN STREETS AND PUBLIC PLACES

Chapter 4- EXCAVATIONS

Chapter 5- PARADES, PROCESSIONS, FUN RUNS AND STREET CLOSURES

Chapter 6- STREET MAINTENANCE

Chapter 7- VEHICLE REMOVAL

Chapter 8- RIGHT-OF-WAY VACATION FEES

Chapter 9- STREET NAMES

Chapter 10- SIDEWALKS AND CURBS

Chapter 11- SIDEWALK MAINTENANCE

Chapter 12- EMERGENCY SNOW ROUTE

Chapter 13- PRIVATE DRIVEWAYS AND CROSSWALKS

Chapter 14- TREES AND SHRUBBERY

Chapter 15- TREE REMOVAL

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Chapter 1 BOULEVARDS

Sections:

- 12.1.010 Definitions.
- 12.1.020 Adjoining owners' responsibility.
- 12.1.030 Clear vision triangle – defined – responsibility.
- 12.1.040 Vehicle parking – prohibited where – exception.
- 12.1.050 Boulevard encroachment permit – issuance conditions.
- 12.1.060 Exceptions.
- 12.1.070 Violation – penalty.

12.1.010 Definitions.

Unless otherwise specified in this chapter the following definitions shall apply:

- A. "Boulevard" is that area within any City street, avenue, or highway right-of-way not occupied by street paving, curb and gutter, and sidewalks.
- B. "Inside Boulevard" is the boulevard area on the property line side of the sidewalk.
- C. "Outside Boulevard" is the boulevard area on the street side of the sidewalk. Except as permitted under Section 12.1.050, no boulevard area may be encumbered by any obstacle whatsoever.
- D. "Obstacle" means any strung wire or netting, any fence or railing, or any barrier or structure of any kind whatsoever. Obstacle does not include trees, or the following:
 - 1. Ornamental lamp-posts;
 - 2. Telephone or electric light poles;
 - 3. United States government mailboxes;
 - 4. Signage for structures on the National Historical Register provided by the Montana Historical Society;
 - 5. Other structures erected by permit to aid owners in caring for the boulevards adjoining their property.

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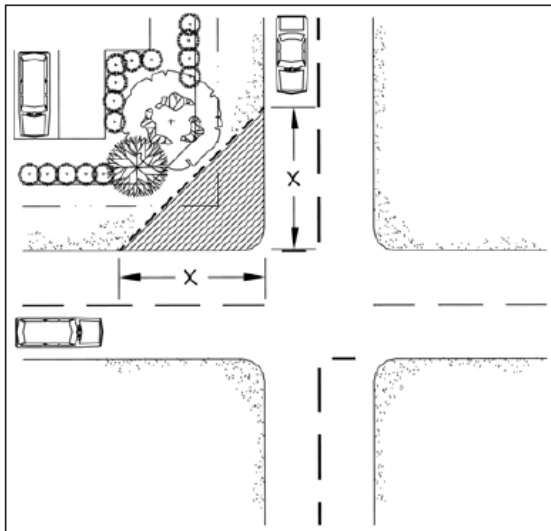
12.1.020 Adjoining Owners' Responsibility.

- A. It shall be the duty of the owners of any premises within the City limits to maintain the boulevard section in front of, and adjoining, their premises in a safe condition and in compliance with Official Code of the City of Great Falls (OCCGF) Title 12.
- B. Any portion of the right-of-way which is not occupied by roadway section, curb and gutter, driveway, sidewalk, or crosswalk shall be maintained as required by the OCCGF.
- C. It is also the responsibility of corner lot owners to maintain the clear vision triangle as described in OCCGF 12.1.030.
- D. The Public Works Director or designee may grant a special permit for a temporary barrier to protect newly sown grass on boulevard areas, if such barrier will not create a safety hazard.

12.1.030 Clear vision triangle—defined—responsibility.

The clear vision triangle is the isosceles triangle having sides of forty-five (45) feet as measured along the back of the curb section of each intersecting roadway. The triangle begins at the point where the intersecting back of each curb line would meet, then forty-five (45) feet along the back of each curb and diagonally across connecting the curb lines, and is depicted as set forth in Exhibit 12.1.030.

Exhibit 12.1.030 Clear vision triangle



- A. Any signs, fences, plant material, or other items placed in this area shall provide an unobstructed cross-visibility at a level between three (3) feet and eight (8) feet above street surface elevation. Trees having over eight (8) feet of clear trunk, as measured from the surface elevation with limbs

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and foliage trimmed in such a manner as not to extend into the cross-visibility, are permitted in the clear vision triangle.

- B. It is the responsibility of the owner of a corner lot to maintain the clear vision triangle by trimming or removing the cause of any sight obstruction within the area described above.
- C. No obstruction to cross-visibility shall be exempted or excluded from the application of this section because of the obstruction's existence.

12.1.040 Vehicle parking—prohibited where—exception.

No vehicle shall be parked upon any boulevard area in the City except:

- A. Upon any lawfully constructed driveway, although no vehicle may be parked upon any sidewalk or sidewalk area; or
- B. By permit issued under OCCGF 12.1.050, boulevard encroachment permit.

12.1.050 Boulevard encroachment permit—issuance conditions.

A temporary and revocable permit to allow encroachments upon any inside boulevard area or other public grounds within any area of the City may be granted to the owner or lessee of the adjoining property, or a permitted owner or operator of bench signs or transit shelters, by the City Manager or designee. Any such Boulevard Encroachment permit must comply with all of the following conditions:

- A. The encroachment, as proposed, must not be detrimental to the health, safety, or welfare of the public as a whole;
- B. Payment to the City of a one-time application fee set by City Commission resolution to defray administrative costs must be paid prior to construction;
- C. Payment to the City of an annual encroachment rental fee set by City Commission resolution based upon the square footage of encroachment. Non-advertising transit shelters and non-advertising bicycle racks may be exempted from this annual fee, at the discretion of the City Manager or designee.
- D. No encroachment permit may be granted to allow parking necessary to fulfill the off-street parking requirements of the off-street parking code as set forth in OCCGF Title 17;
- E. Parking blocks shall be placed in the boulevard area for any permit issued for vehicle parking under this section, and blocks must be placed sufficiently back from the sidewalk area to keep parked vehicles at least two (2) feet from the sidewalk;
- F. The Boulevard Encroachment permit may be issued by the City Manager or designee, at the permit holder's risk, upon receipt of a completed application and the processing fee. Subject to the provisions of subsection (K) of this part, should the City deem it necessary, the Boulevard Encroachment permit may be revoked upon giving thirty (30) days' notice in writing to the permit holder;

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- G. The City Manager or designee shall have authority to deny or immediately revoke any such permit wherever the public safety may be jeopardized or other traffic, utility or other public concerns are paramount;
- H. Any permits issued for fencing part of the boulevard area shall ensure that no fence is installed within two (2) feet of any sidewalk, and if a sidewalk does not exist, the Public Works Director or designee shall determine the location of the fence;
- I. The requirements of OCCGF 12.1.030, clear vision triangle, must be met for any permit involving a corner lot;
- J. Any violation of the terms of the boulevard encroachment permit shall be cause for immediate revocation at the time of the violation. If the permit holder chooses to reapply for a new permit, the entire permit process including any charges, must be repeated;
- K. Upon written request by the property owner, and good cause shown, a boulevard encroachment permit may be discontinued and removed from the property file maintained by the County Clerk and Recorder;
- L. Upon notice of revocation of a Boulevard Encroachment permit, the permit holder, at the permit holder's expense, shall remove or correct any encroachments affected by the revocation within thirty (30) calendar days. The City shall not be liable for any costs as a result of the revocation, removal, or corrections;
- M. Once a permit has been revoked, should the permit holder fail to remove or correct the condition causing the violation, the City shall have the structure removed and the cost of the removal shall be assessed to the permit holder; and
- N. In any case where a party objects to the decision of the City Manager or designee regarding an application, the objecting party must appeal in writing within fifteen (15) calendar days of the date of the decision to the Board of Adjustment.

12.1.060 Exceptions.

The provisions of this chapter do not apply to the following:

- A. Transit shelters servicing designated routes, as approved by the Public Works Director or designee, which do not unduly interfere with vehicle or pedestrian traffic and access to utilities and abutting properties in the immediate vicinity. A transit shelter shall be defined as a structure occupying no more than one hundred twenty (120) square feet in floor area and designed for the temporary shelter of transit passengers.
- B. Pushcarts or any other non-motorized wheeled device may be moved or used on the City sidewalks under the following conditions:
 - 1. No pushcart or other device shall exceed thirty-six (36) inches in width, five (5) feet in length and seven (7) feet in height; and
 - 2. No vendor selling from a pushcart, or such device, shall conduct business in such a way as would restrict or interfere with the ingress or egress of abutting property

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owners or tenants or create or become a public nuisance, increase traffic or pedestrian congestion, or delay or constitute a traffic hazard, pedestrians or property, or obstruct adequate access for emergency services.

- C. Statues as approved by the Public Works Director, or designee, upon review of a traffic study and located in accordance therewith so as not to unduly interfere with vehicular or pedestrian traffic and access to utilities and abutting property in the immediate vicinity.
- D. As permitted under this chapter, boulevard encroachment permits.
- E. Handicap ramps, railing, and related improvements which comply with Americans With Disabilities Act requirements. Such improvements shall be approved by the Public Works Director or designee prior to construction. Prior to approval, the owner of the property shall make reasonable efforts to locate handicap ramps outside of the boulevard.
- F. Where setbacks do not allow adequate space for steps to access doorways, steps placed in the boulevard if no other reasonable option exists.

12.1.070 Violation—penalty.

- A. Any violation of the provisions of this chapter shall be considered a public offense punishable under the general penalty of OCCGF 1.4.070.
- B. A violation of the provisions of this chapter is hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.

Chapter 2 DISCOVERY GALLERY

Sections:

12.2.010 Intent.

12.2.020 Responsibilities.

12.2.030 Allowable boundaries—placement-approval process.

12.2.040 Clear Vision Triangle compliance.

12.2.010 Intent.

The designation of a sidewalk gallery to display art works in downtown Great Falls is a continuation of the City's recognition and support of the Arts as a major economic and social base in the community. In addition, the involvement of the Business Improvement District in developing the proposal and project guidelines reflects its own efforts to enhance the downtown as a vital community and commercial center.

12.2.020 Responsibilities.

- A. The artwork accepted by the City for placement in the Discovery Gallery becomes the property of the City and will be positioned, relocated, or removed at the City's discretion, unless the City allows, in

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writing, the artist to retain ownership of the artwork. Regardless of ownership, the City shall approve all plans to affix and place each piece of art. Nothing in this chapter shall diminish or be considered an exception to the principles of public safety and access as defined in this Title.

- B. The City shall be responsible for the repair and maintenance of the artwork unless ownership of the artwork is retained by the artist. In that event, the artist shall be responsible for the repair and maintenance of his or her art.
- C. The artwork will be durable to minimize the threat of vandalism and the amount of maintenance.
- D. The Business Improvement District shall develop guidelines for the Discovery Gallery. At a minimum the guidelines shall address:
 - 1. Size of the art objects;
 - 2. Materials;
 - 3. Construction;
 - 4. Spacing;
 - 5. Textures and sounds;
 - 6. Mechanical and other powered devices;
 - 7. General accessibility to the art;
 - 8. Themes;
 - 9. Sight lines to commercial property;
 - 10. Rights-of-way;
 - 11. Costs, fees, and insurance; and
 - 12. Application process and review.
- E. The Business Improvement District shall also establish a review panel consisting of at least one member of the Business Improvement District Board, one downtown retailer, one artist, one City staff member, and one architect or engineer.

12.2.030 Allowable boundaries—placement-approval process.

- A. The Discovery Gallery shall be within the boundaries of the Business Improvement District.
- B. The Discovery Gallery's width will be from the back of the curb to a maximum of seven (7) feet inward. The Discovery Gallery shall extend to the second parking space at each end of the block or one space away at alleys.
- C. The Business Improvement District shall appoint a committee as described in 12.2.020 to review all proposals submitted for the artwork which shall include a process for public comment. Said Committee shall forward a recommendation for the City Commission to accept or not accept the proposed artwork. The Commission may hold a public hearing on the artwork proposals submitted for consideration.

12.2.040 Clear Vision Triangle— compliance.

All artwork in the Discovery Gallery shall be displayed in a manner meeting the requirements of OCCGF 12.1.030, the clear vision triangle.

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Chapter 3 OBSTRUCTIONS IN STREETS AND PUBLIC PLACES

Section:

12.3.010 Prohibited—applicability.

12.3.020 Penalty.

12.3.010 Prohibited—applicability.

- A. Except as provided in this Title, it is unlawful for any person, persons, corporations, or other entities to erect, place, locate, or cause to be erected, placed, or located, any building, fence or obstruction of any kind, in whole or in part, upon any street, right-of-way (developed or undeveloped), avenue, alley, or other public grounds within the City.
- B. In the interest of the public health, welfare and safety, the City may remove any such obstruction violating this chapter and assess the costs of removal to the property owner; or where circumstances permit, and the public interest is not greatly jeopardized, notice may be given to the violator for removal of the obstruction, subject to the following conditions:
 - 1. Such notice shall provide the time allowed for removal, include the Public Works Director's address and telephone number for information or hearing thereon, briefly describe the nature of the violation and the possible sanctions; and
 - 2. If removal is not completed in compliance with the notice, the City's costs of removal shall be assessed against the property.

12.3.020 Penalty.

- A. Any violation of the provisions of this chapter shall be considered a public offense punishable under OCCGF 1.4.070.
- B. A violation of the provisions of this chapter is hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.

Chapter 4 EXCAVATIONS

Sections:

12.4.010 Application—required.

12.4.020 Application—fee.

12.4.030 Application—refusal—issuance.

12.4.040 Bond.

12.4.050 Insurance required.

12.4.060 Permittee responsibility.

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12.4.070 License—suspension—revocation—limitation.

12.4.010 Application—required.

- A. Except when such person is operating under a contract with the City involving the opening of a public way, any person properly licensed pursuant to OCCGF Title 5 desiring to excavate in, cut through, access, or tear open the surface of any street, avenue, alley, sidewalk, or other public way within the City shall first file written application with the Planning and Community Development Department (P&CD).

- B. The application shall state the following:
 - 1. The object sought;
 - 2. The purpose for which the public way is to be excavated in, accessed, cut through, or broken open;
 - 3. The proposed area of such opening; and
 - 4. The exact location of the proposed opening.

12.4.020 Application—fee.

The application shall be accompanied by the applicable fee, set by City Commission resolution, payable to the City.

12.4.030 Application—refusal—issuance.

- A. The Planning and Community Development (P&CD) Director or designee may, in his or her discretion, grant or refuse to grant such application. Justification for refusal includes, but is not limited to, the applicant's outstanding debt or obligation to the City.
- B. The refusal of the director may be appealed, in writing, to the City Manager's office within fifteen (15) calendar days of the director's refusal. If the City Manager or designee affirms the refusal, the applicant may appeal the decision, in writing, to the City Commission within fifteen (15) calendar days of the City Manager's affirmation.
- C. If the application is granted, whether by the P&CD Director, the City Manager, or the City Commission, the applicant shall accomplish the proposed work within the time allowed by the Public Works Director and under the director's supervision.
- D. All excavation shall be conducted in accordance with rules, regulations and specifications on file in the Department of Public Works.
- E. All excavation shall be thoroughly backfilled, and any such excavation or opening shall be restored to the condition it was prior to such excavation or opening, or better, except that the City

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will replace all asphaltic surfacing in paved streets, with costs to be paid by the applicant, unless the Public Works Director or designee authorizes the applicant to replace the asphaltic surfacing.

- F. Flowable fill shall be used to backfill trench excavation on arterial and collector streets when deemed necessary by the Street Division Supervisor or designee on local streets and alleys.
- G. Flowable fill shall be used to cap street openings during the winter and whenever hot mix asphaltic surfacing is not available. The surface shall be maintained, by the permittee, until hot mix asphaltic surfacing becomes available.

12.4.040 Bond.

Any applicant desiring to excavate in, access, cut through, or tear open any City street, avenue, alley, sidewalk, boulevard, or any other public way must file with the P&CD Department a bond in the penal sum that shall be established by City Commission resolution. The bond shall:

- A. Be payable to the City and/or State as their interests appear with respect to the expenditure of funds toward the construction of the street, avenue, alley, sidewalk, boulevard, or public way within the City;
- B. Be conditioned for the protection of the City and/or State from and against any liability of any kind or character whatsoever which may arise as a result of the applicant's excavating in, cutting through, or opening up any such street, avenue, alley, sidewalk, boulevard, or other public way or which may in any way or manner be connected with or related thereto, payable by the applicant;
- C. Be further conditioned that the permittee shall properly backfill and restore the surface of any and all excavations, openings, or cuttings made or dug in the public ways of the City, and shall do and complete all work in connection therewith in a good, competent, and workmanlike manner and in compliance with the specifications required therefore by the City and/or State; and
- D. Remain on file with the P&CD Department; or
- E. Include a water service line layer's license bond under the provisions of OCCGF Title 13, or a drain layer's license bond under the provisions of OCCGF Title 13, and the conditions of either of such bonds shall be amended to include the conditions as required by this section.

12.4.050 Insurance required.

Before any application to excavate, cut, access or tear open any public way is granted, such applicant shall furnish satisfactory evidence the applicant's activities are properly covered by applicable insurance coverage in amounts that shall be set by City Commission resolution.

12.4.060 Permittee responsibility.

- A. The permittee, in accepting and acting under a street opening permit granted under the provisions of this chapter, agrees to assume full responsibility for injury to persons or losses or damage to property incurred by reason of or arising out of any act or omission of said permittee in making

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said excavation, cut, or opening or in failing to properly barricade, guard and warn the public of such excavation or trench, and further agrees to assume full responsibility for injury to persons and losses or damage to property incurred by reason of or arising out of any settlement of a restored area occurring within two (2) years of the date of completion of the permanent resurfacing.

- B. Any settlement in a restored area which occurs within two (2) years of the date of completion of the permanent surfacing, shall be considered as conclusive evidence of defective backfill. Upon failure or refusal of such permittee to correct such settlement within five (5) days after notice by the Public Works Director or designee to do so, the City may correct such settlement and any expense incurred by the City in correcting such settlement shall be paid by the permittee.
- C. To the fullest extent permitted by law, the permittee shall fully indemnify, defend, and save the City, its agents, representatives, employees, and officers harmless from and against any and all claims, actions, costs, fees, losses, liabilities or damages of whatever kind or nature arising from or related to the permittee's performance of the permitted excavation and the permittee's work, or work of any subcontractor or supplier to applicant.

12.4.070 License—suspension—revocation—limitation.

The provisions of this chapter are in no way intended, nor shall they be construed, to limit or in any way repeal any of the provisions of OCCGF Title 13 with respect to the right of the City Commission to suspend or revoke the licenses, provided for in OCCGF Title 13, upon failure or refusal of any such licensee to refill properly any trench or excavation and to restore the surface thereof.

Chapter 5 PARADES, PROCESSIONS, FUN RUNS AND STREET CLOSURES

Sections:

12.5.010 Definitions.

12.5.020 Established and designated procession routes.

12.5.030 Public conduct during processions.

12.5.040 Participants' conduct during processions.

12.5.050 Application - contents.

12.5.060 Street closure permits for public events and block parties.

12.5.010 Definitions.

The following words and phrases, when used in this chapter, shall have the following meanings:

- A. "Procession" means any march, parade, motorcade, fun run, assembly to support a cause, or other event, consisting of people, animals, vehicles, or combination thereof, except funeral processions, upon any public street, sidewalk or alley, which does not comply with normal and

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usual traffic regulations and controls and is expressly designed for the safety and involvement of the public as well as the participants, which is approved by the City under the provisions of this chapter.

- B. "Motorcade" means an organized procession containing twenty-five (25) or more vehicles, except funeral processions, upon any public street, sidewalk or alley.
- C. "Procession Route" means the route of travel of any parade, march, motorcade, fun run, or other procession, to include the assembly, staging and disbanding areas.
- D. "Street" includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of the State.

12.5.020 Established and designated parade procession routes.

Processions are to proceed as follows:

- 1. Procession to stage on Park Drive South, in designated areas, and proceed north past the east side of the Police Department onto 1st Avenue South, then east to Park Drive, then North to Central, then east to 8th Street, disbanding on the north and/or south side of Central Avenue;
- 2. Procession to stage on the north and/or south side of Central Avenue at 8th Street and proceed west on Central Avenue to Park Drive, then south to 1st Avenue South, then west until disbanding; or
- 3. Any alternate route approved and designated at the discretion of the City Manager or designee.

12.5.030 Public conduct during processions.

- A. No person shall knowingly or purposely:
 - 1. Participate in any procession conducted in violation of any of the terms of the permit;
 - 2. Join or participate in any permitted procession without the consent of the permittee; and/or
 - 3. Interfere in any manner with the procession's progress or orderly conduct.
- B. No person shall hamper, obstruct, impede, or interfere with any procession or with any person, vehicle or animal participating or used in a procession.
- C. No driver of a vehicle shall drive between the vehicles or persons comprising a procession when such vehicles or persons are in motion and are traveling along a procession route. Nothing in this section shall prohibit an emergency vehicle from interrupting a procession for the purpose of responding to an emergency.
- D. No person shall view, watch or observe the procession from the street or beyond the sidewalk curb or beyond the imaginary curb line that, if it existed, would extend through the intersection from corner to corner of any street perpendicular to the procession route.

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- E. No vehicle larger than an automobile or pickup truck shall park along the procession route during the procession.
- F. The City Manager, or designee, shall have the authority, when reasonably necessary, to prohibit parking of vehicles along a procession route. Signs shall be posted to such effect and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. The applicant shall be responsible for posting and removing of signs.

12.5.040 Participants' conduct during processions.

- A. It is unlawful for any persons in a procession to deviate from the established or approved procession route.
- B. No participant in a procession shall throw, cast, or drop candy, trinkets, or any other articles. A violation of this provision shall be a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00). This does not prohibit a walking procession participant from handing the candy or other articles directly to the spectators.
- C. No participant in a procession shall entice, lure, or attempt to entice or lure, any spectator to leave the designated viewing area. A violation of this provision shall be a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00).
- D. No participant in a procession shall operate any vehicle in a careless manner as to endanger the safety and welfare of other procession participants or spectators.
- E. As a condition to the permit, each permittee shall provide persons, horses with riders, or persons in small motorized vehicles, such as a golf cart, to travel on both sides of any procession vehicle which is larger than an automobile or pickup.
- F. Any person operating a motor vehicle in a procession shall possess a valid driver's license. All participants in the procession shall follow all applicable motor vehicle laws and/or regulations.

12.5.050 Application - contents.

- A. Any person, firm, corporation, or other entity desiring to conduct a procession, as defined in OCCGF 12.5.010, shall apply to the Park and Recreation Department for a permit at least forty-five (45) calendar days in advance of the event date and comply with the provisions set forth in such permit. The application shall designate the intended route, date and time of the event. In the City Manager or designee's discretion, and for good cause shown, applications may be accepted less than forty-five (45) calendar days in advance of the event date.
- B. Park and Recreation Department may approve, revise, or deny the application in consideration of the following factors:
 - 1. Promotion of the community as a whole;
 - 2. Provision of positive civic and economic benefit;
 - 3. Impact on neighboring business and properties;
 - 4. Impact on public uses, safety, and services;
 - 5. Consideration of frequency of closures;

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6. Consideration of the event's financial impact; and
7. The applicant's performance under prior issued permits.
- C. Following approval from the City, the applicant will be responsible for notification of news media, and the associated costs of said notice, in order to inform the public of the date, time and procession route.
- D. The applicant will designate a person who can be contacted by the City to coordinate plans for the procession.
- E. The procession shall not deviate from the designated route, time, or date approved in the permit. If, for any reason, the event is postponed or canceled, the applicant shall immediately notify the City.
- F. Processions shall be scheduled between the hours of 9:00 a.m. and 12:00 p.m. Special requests will be considered for processions at other times, provided arrangements can be made which, in the City's determination, will not impede normal traffic conditions or inhibit business in the downtown area.
- G. The applicant will be responsible for placing and removing barricades on the designated procession route side of the nearest designated alleys and streets no earlier than thirty (30) minutes prior to the start of the procession and, in no case, longer than fifteen (15) minutes following the end of the procession. Barricades may be available at the Park and Recreation Department and may be rented subject to a fee set by City Commission resolution. It will be the responsibility of the applicant to pick up from and return to the Park and Recreation Department all barricades used, and to contact the Park and Recreation Director or designee, at least fourteen (14) calendar days in advance to discuss a barricading plan acceptable to the City.
- H. No sales or solicitations will be permitted by procession participants without proper licensing in advance.
- I. Applicants or organizations sponsoring processions will be required to remove all trash, paper and litter from the streets and sidewalks. Street cleaning arrangements must be made with the Public Works Street Division at least fourteen (14) calendar days before the event date.
- J. The Police Department will provide one (1) vehicle to escort the procession. All other traffic and crowd control must be provided by the sponsoring organizations and, in no case, be less than two (2) people for each block of procession length.
- K. The applicant shall indemnify, defend and hold harmless the City from any and all claims, damages, losses and expenses arising from the procession or created by any of the participants. The applicant shall be required to carry insurance for comprehensive general liability, automobile liability and designated premises in the amount of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate, and list the City as an additional named insured under the policy. Documentation of such insurance must be provided to the City at least 72 hours prior to the event.
- L. If determined necessary by the City, considering the factors listed in B. above, or due to the type, length, time or date of the procession, additional provisions and/or safeguards may be required as conditions of the permit.
- M. Failure to comply with the provisions of this chapter and other permit requirements will be cause for rejection of future procession permits requested by the applicant.
- N. The procession organizer must submit with the permit request information as to how property owners, tenants, and/or business owners along the procession route will be notified of the procession, and provide verification of such notice to the City.

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- O. If the application for a procession permit is denied or revised in a way which is unacceptable to the applicant, the applicant may appeal the decision in writing to the City Manager within fifteen (15) calendar days of the denial or reversal. The City Manager or designee shall review the application and uphold, reverse, or revise the decision on the application within ten (10) calendar days. If applicant makes no such appeal, the Park and Recreation Department's determination will stand.
- P. If the City Manager affirms or revises the determination of the application for a procession permit, the applicant may appeal the decision in writing within fifteen (15) calendar days of the date of affirmation or revision to the City Commission, which shall review the application in a public meeting and uphold, reverse, or revise the decision on the application within ten (10) calendar days of the hearing. If applicant makes no such appeal, the City Manager's determination will stand.
- Q. Unless otherwise specified in this chapter, appeals to the City Commission of the denial, revocation, or suspension of licenses or permits under this chapter shall comply with the provisions of OCCGF 1.2.040.

12.5.060 Street closure permits for public events and block parties.

Persons or entities who organize events which require the temporary closure of a public street must comply with the provisions of OCCGF Title 9.

Chapter 6 STREET MAINTENANCE

Sections:

12.6.010 District designation authority.

12.6.020 Cost—assessment.

12.6.030 Cost—assessment—levy—resolution.

12.6.040 Assessment alternatives.

12.6.010 District designation authority.

Whenever any portion of the City has been designated as a street maintenance district, the streets, avenues and alleys in the district may be maintained for such time and in such manner as the City Commission may direct under the supervision of the Public Works Director.

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12.6.020 Cost—assessment.

The cost assessed for maintaining streets, avenues, and alleys in the district shall be charged to all the properties within the Street Maintenance District by one or a combination of the following methods to be determined by the City:

1. Each lot or parcel of land bearing its share of the cost according to the part of the whole cost which its area bears to the area of the entire district; or, by that part of the whole cost which each lot or parcel's street frontage bears to the street frontage of the entire district;
2. If the City Commission determines that the benefits derived from the maintenance by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the assessable area of the lot or parcel; or
3. Each lot or parcel of land, including the improvements thereon, may be assessed for that part of the cost of the district which its taxable valuation bears to the total taxable valuation of the property of the district. The assessment for the same shall be certified by the City Clerk to the Finance Director, to be extended on the tax roll in the same manner as other special assessments.

12.6.030 Cost—assessment—levy—resolution.

No later than the second Monday in August of each year the Public Works Director shall estimate the annual maintenance cost and the City Commission shall pass and adopt a resolution levying and assessing all the property within the Street Maintenance District with an amount equal to seventy-five (75) percent of the entire cost of the work.

12.6.040 Assessment Alternatives.

A property owner may, after providing good cause acceptable to the City Manager or designee, enter into an alternative agreement, in the best interest of the City, to satisfy an assessment pursuant to this chapter.

Chapter 7 VEHICLE REMOVAL

Sections:

12.7.010 Notification of designated areas.

12.7.020 Vehicle parking restrictions.

12.7.030 Vehicle removal.

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12.7.010 Notification of designated areas.

- A. The Public Works Director or designated representative is authorized to prohibit parking in areas where street cleaning operations are scheduled.
- B. Notice of such street cleaning shall be given to local radio, television, the news press, and published on the City Website. In addition, signs notifying which streets to be swept will be posted twenty-four (24) hours in advance of street cleaning operations.

12.7.020 Vehicle parking restrictions.

- A. Upon notification of street cleaning operations pursuant to Section 12.7.010(B), it shall be unlawful for any person to stop, stand, park or leave unattended any motor vehicle or trailer, in a designated area, between the hours of 8:00 a.m. and 4:00 p.m. or until such time as designated street cleaning is completed.
- B. This provision shall not prohibit the stopping of commercial passenger vehicles, school buses, or Great Falls Transit District vehicles for periods sufficient to load or discharge passengers from vehicles.

12.7.030 Vehicle removal.

Whenever a motor vehicle or trailer has been stopped, parked or left unattended after notification of street cleaning operation pursuant to this chapter, such vehicle shall be declared a nuisance as defined in OCCGF Title 8, Chapter 49, and the Director of Public Works or designee shall order it to be removed at the owner's expense.

Chapter 8 RIGHT-OF-WAY VACATION FEES

Section:

12.8.010 Schedule of costs.

12.8.010 Schedule of costs.

Any person petitioning for a right-of-way vacation shall, prior to the passage of the resolution of intention to vacate, pay to the City appropriate fees set by City Commission resolution.

Chapter 9 STREET NAMES

Section:

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12.9.010 Renaming.

12.9.010 Renaming.

In order to eliminate the duplication of street names and addresses within the City, provide for uniformity, and to alleviate the presently existing situation in these areas, the street names as designated on the plats of the following named additions shall be changed as follows:

A.	North Riverview Terrace Addition.	
	From 18th Avenue N.E.	to 21st Avenue N.E.
	From 19th Avenue N.E.	to 22nd Avenue N.E.
	From 20th Avenue N.E.	to 23rd Avenue N.E.
	From 6 "A" Street Northeast	to 6th Street Northeast
	From 7 "A" Street Northeast	to 7th Street Northeast
	From 34 "A" Street Northeast	to 34th Avenue Northeast
	From Riverview 1 West	to Riverview "A"
B.	Twilite Terrace Addition.	
	From 21st Avenue N.E.	to 24th Avenue N.E.
	From 22nd Avenue N.E.	to 25th Avenue N.E.
	From 23rd Avenue N.E.	to 26th Avenue N.E.
C.	Montana Addition.	
	From Gosman Drive	to Treasure State Drive (north to Aronson Drive)
	From Gosman Drive	to 10th Street S.W. (south of Aronson Drive)

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	From Aronson Drive	to Treasure State Drive
	From Hinman Avenue	to 17th Avenue Southwest
	From Montana Avenue	to 18th Avenue Southwest
	From 13 A Street S.W.	connecting Treasure State Drive and 24th Avenue S.W. to Sundance Drive
D.	Lincoln Height Addition.	
	From Wilson Avenue	to 11th Avenue South
	From Washington Avenue	to 12th Avenue South
	From Madison Avenue	to 13th Avenue South
E.	Sunrise Terrace Addition.	
	From 4th Avenue South	to Carol Drive
F.	Tynes Addition	
	From 3rd Street South	to 2 "A" Street South
	From 3 "A" Street South	to 2 "B" Street South
G.	Horizon Addition.	
	From Grandview Road	to 3rd Street Northwest
H.	Yeoman-Tynes Addition.	
	From Cactus Court	to Palm Court
I.	BN Car Shop Addition.	

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	From Burlington Northern Bay Drive	to Bay Drive
J.	Bel-View Palisade Addition.	
	From Ivy Drive (portion located in Centennial Ridge PUD) to Centennial Court	
K.	Valeria Way	
	From ½ Avenue South	
L.	Chowen Springs Loop	
	From Parkdale	
M.	Stone Meadows Addition	
	Phase II.	
	From Choteau Avenue	To Choteau Avenue Northeast

Chapter 10 SIDEWALKS AND CURBS

Sections:

- 12.10.010 Improvements—permit required—appeal.
- 12.10.020 Construction—compliance with City specifications.
- 12.10.030 Construction—grade conformance required.
- 12.10.040 Construction—width and slope designations.
- 12.10.050 Construction—materials.
- 12.10.060 Condemnation.
- 12.10.070 Repair—owner's duty.
- 12.10.080 Enforcement.
- 12.10.090 Inspection.

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Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY

12.10.100 Violation - penalty.

12.10.010 Improvements—permit required—appeal.

- A. Any person or entity who will perform construction pursuant to this chapter, shall first obtain a permit from the Planning and Community Development (P&CD) Director before performing the construction. All such applications shall be made in duplicate on the form prepared by the P&CD Director who shall assess fees as set by City Commission resolution for services provided by the City.
- B. Any denial of a permit pursuant to this section by the P&CD Director may be appealed, in writing, to the City Manager's office within fifteen (15) calendar days of the denial. The City Manager shall render a written decision on the appeal within ten (10) calendar days. Such decision may then be appealed, in writing, to the City Commission within fifteen (15) calendar days of said decision or become final. The City Commission shall conduct a hearing on the matter and issue a final written decision within ten (10) calendar days of the hearing.
- C. The applicant shall do no applied-for improvement work pending any appeal until a final decision is made.

12.10.020 Construction—compliance with City specifications.

- A. It is unlawful for any person to build or construct any sidewalk, private work, or curb in any street, avenue, alley or boulevard or to build or construct any parking or any improvement of any nature whatsoever in any street, avenue, alley or boulevard, unless the same is constructed strictly in accordance with the current standard specifications and plans for such work and under the supervision of the Public Works Director or designee.

12. 10.030 Construction—grade conformance required.

- A. Sidewalk construction on improved or graded streets must conform with the established grade and sidewalk line;
- B. On all other streets, sidewalks must be laid to the proper sidewalk line, and otherwise to the satisfaction of the Public Works Director or designee.
- C. Driveway crossings into private properties shall be of form and construction as specified by the Public Works Director or designee.

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12.10.040 Construction—width and slope designations.

- A. All sidewalks hereafter built or constructed in the City shall be of the following width, except where otherwise ordered by the City Commission:
 - 1. First Avenue North from Park Drive East to Ninth Street, fifteen (15) feet; on Central Avenue, from Park Drive East to Ninth Street, fifteen (15) feet;
 - 2. First Avenue South from Park Drive East to Sixth Street, fifteen (15) feet;
 - 3. Second Avenue South from Second Street East to Fifth Street, fifteen (15) feet;
 - 4. The east side of Park Drive from First Avenue North to First Avenue South, fifteen (15) feet;
 - 5. Second Street from Second Avenue North to First Avenue South and on the east side from First Avenue South to Second Avenue South, fifteen (15) feet;
 - 6. Third Street from Second Avenue North to Second Avenue South, fifteen (15) feet;
 - 7. Fourth Street from Second Avenue North to Second Avenue South, fifteen (15) feet;
 - 8. Fifth Street from Second Alley North to First Avenue South, fifteen (15) feet;
 - 9. Sixth Street from First Avenue North to First Avenue South, fifteen (15) feet; and
 - 10. Sidewalks on all other streets and avenues, not classified as arterials, shall be five (5) feet wide, and in alleys a two-foot walk may be constructed and laid in such manner that it will not interfere with traffic of any kind or be damaged by traffic.
- B. All sidewalks shall rise three sixteenth ($3/16$) inch to the foot or one and one-half (1.5) percent from the curb grade to the property line and shall slope toward the street. Boulevards shall generally slope at two (2) percent from the top back-of-curb elevation to the property line to ensure positive drainage towards the street.

12.10.050 Construction—materials.

- A. Hereafter all sidewalks shall be constructed only of solid Portland asphaltic cement concrete, or other material conforming to current specifications established by the Public Works Director or designee, except, that the City Commission may order temporary sidewalks of other material to be constructed.
- B. Hereafter all curbing shall be constructed only of solid Portland asphaltic cement concrete except that the City Commission may order temporary curbing of other material.

12.10.060 Condemnation.

- A. Any sidewalks may be condemned by the Public Works Director or designee, which are or may become because of natural deterioration or decay, or by unevenness, steps, rapid slopes or from any cause whatsoever, dangerous to public safety.
- B. Condemned sidewalks shall be immediately removed and replaced, repaired, remodeled, or rebuilt, as may be most expedient, at the discretion of the Public Works Director or designee. Construction

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shall be arranged and paid for by the adjoining property owner and shall be performed by a contractor properly licensed and insured to perform this type of work within the City.

- C. Any costs incurred by the City pursuant to this section shall be paid by the adjoining property owner within thirty (30) calendar days of invoice, and if not, be recorded as a lien upon the adjoining lot and may be enforced or recovered against the owner by a suit before any court of competent jurisdiction or may be assessed and collected as a special tax against such lot.
- D. The condemnation by the director may be appealed, in writing, to the City Manager's office, within fifteen (15) calendar days of the director's notice of condemnation. If the City Manager or designee affirms the decision, the applicant may appeal, in writing, the decision to the City Commission within fifteen (15) calendar days of the City Manager's affirmation. The City Commission shall conduct a meeting and hear testimony on the Condemnation within ten (10) calendar days of receipt of the appeal. The City Commission shall by written finding affirm or reverse the decision within ten (10) calendar days of the hearing.

12.10.070 Repair—owner's duty.

- A. It shall be the duty of the owner(s) of any premises within the limits of the City to keep the sidewalk in front of and adjoining their premises in safe and functional condition.
- B. Owner(s) shall see that all breaks or unsoundness of any character resulting from natural deterioration, or from any cause whatsoever, is repaired with all possible dispatch and diligence.
- C. When by reason of the construction or repairs of sidewalks from any cause whatsoever, any sidewalk or section thereof is removed or rendered dangerous or impassable to the public, such spaces or openings shall be securely fenced, and from sunset until sunrise lights shall be maintained thereon, while such dangerous condition exists, and a plank walk not less than two (2) inches in thickness and not less than three (3) feet in width shall be constructed around such construction or dangerous walk, the same to extend from sidewalk to sidewalk on each side of the opening or obstruction.

12.10.080 Enforcement.

It shall be the duty of the Public Works Director or designee, upon receipt of a written complaint, to enforce the provisions of this chapter.

12.10.090 Inspection.

Any improvements made pursuant to this chapter are subject to inspection or approval, at any reasonable time, by the Public Works Director or designee, before, during, and after construction is performed.

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12.10.100 Violation - penalty.

- A. Any violation of the provisions of this chapter shall be considered a public offense punishable under the general penalty OCCGF 1.4.070.
- B. A violation of the provisions of this chapter in hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.

Chapter 11 SIDEWALK MAINTENANCE

Sections:

- 12.11.010 Obstruction—defined—prohibited.
- 12.11.020 Sidewalk—restricted use.
- 12.11.030 Snow and ice removal—owner's duty.
- 12.11.040 Snow and ice removal—hours designated for completion.
- 12.11.050 Snow and ice removal—depository prohibited where.
- 12.11.060 Sanding required when—owner's duty.
- 12.11.070 Wet cement—trespassing prohibited.
- 12.11.080 Violation—penalty.

12.11.010 Obstruction—defined—prohibited.

- A. "Obstruction," as used in this chapter, means clothing, fruit, any kind of merchandise, boxes, crates, trunks, racks and stands, or any other object that may hinder and/or impede pedestrian or other traffic.
- B. It is unlawful for any person or persons, firm, corporation, or other entity to place, cause to be placed, or to permit any obstruction to be placed or remain upon any of the sidewalks of the City, except in cases where artwork has been approved by the City and placed within the Business Improvement District as part of the Discovery Gallery.

12.11.020 Sidewalk—restricted use.

- A. Except as otherwise specified in the OCCGF, it is unlawful for any person or persons to ride, drive, or park any horse, mule, other animal-driven buggy, wagon, or other vehicle along, over or on any of the sidewalks within the City, or do damage in any way to the sidewalks.
- B. Unless otherwise allowed by designated City approved signage, or conditions render bicycle travel on a street unsafe, bicycles may only be ridden on those portions of the sidewalk that are a portion of the River's Edge Trail System, as depicted on the most currently published River's Edge Trail Map available at the City Computer Mapping and Addressing Department.

Exhibit "B"

(Updated from First Reading)

Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY

- C. Children under the age of thirteen (13) are exempted from the provisions of this Section.
- D. Law enforcement and other emergency services personnel are exempted from the provisions of this Section.

12.11.030 Snow and ice removal—owner's duty.

It shall be the duty of the owner(s) of any premises within the limits of the City to keep the sidewalk in front of and adjoining the premises free from obstructions or accumulation subject to the special conditions set out in this chapter.

12.11.040 Snow and ice removal—hours designated for completion.

Snow, ice, and similar material that has accumulated during the preceding hours shall be removed from sidewalks in commercial areas before 11:00 a.m. each day and shall be removed from residential areas within twenty-four (24) hours after the snowfall. Once cleared, all sidewalks shall be kept clear of snow, ice, and similar material.

12.11.050 Snow and ice removal—depository prohibited where.

Snow, ice, and similar material removed from sidewalks and driveways shall not be deposited on the adjoining streets, avenues, separately owned properties, or alleys.

12.11.060 Sanding required when—owner's duty.

Polish or smoothness resulting from any cause which renders a sidewalk dangerous and unsafe shall be sanded and where there is permanent polish or smoothness on a sidewalk, the surface of the sidewalk shall be repaired in accordance with the direction of the Public Works Director.

12.11.070 Wet cement—trespassing prohibited.

It is unlawful for any person to deface, tramp, step or trespass upon any cement or concrete sidewalk in course of construction before such sidewalk becomes set and firm.

Exhibit "B"

(Updated from First Reading)

Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY

12. 11. 080 Violation—penalty.

- A. Any violation of the provisions of this chapter shall be considered a public offense punishable under the general penalty OCCGF 1.4.070.
- B. A violation of the provisions of this chapter is hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.

Chapter 12 EMERGENCY SNOW ROUTE

Sections:

- 12.12.010 Declaration of snow emergency.
- 12.12.020 Emergency snow routes—designation.
- 12.12.030 Emergency snow routes—signing.
- 12.12.040 Removal—vehicles.
- 12.12.050 Snow emergency—notice.

12.12.010 Declaration of snow emergency.

The City Manager, or designated representative, is authorized to declare a snow emergency an emergency exists in the City or in a section or sections thereof because of snow, freezing rain, sleet, snow drifts or other natural phenomenon which creates or is likely to create hazardous road conditions or impede the free movement of fire, health, police, emergency or other vehicular traffic or otherwise endanger the safety and welfare of the community and shall remain in effect until the snow has been plowed to the curb lines or removed from the street.

12.12.020 Emergency snow routes—designation.

- A. To facilitate the removal of snow and to assure the regular flow of traffic during a snow emergency, the following streets and public thoroughfares are designated as emergency snow routes:

Central Avenue	Park Dr. to 46 th Street
Central Avenue West	20 th Street South West to 30 th Street South West
Division Road	Skyline Dr. to Smelter Avenue

Exhibit "B"

(Updated from First Reading)

Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY

Fox Farm Road	10 th Avenue South to East Fiesta
Park Garden Road	Riverview Court to Big Ranch Road
Smelter Avenue	3 rd Street North West to 9 th Street North West
1 st Westhill Drive	3 rd Westhill Drive to Sun River Road
3 rd Avenue South	38 th Street South to 57 th Street South
4 th Street South	10 th Avenue South to 17 th Avenue South
6 th Street North West	Smelter Avenue to Central Avenue West
8 th Avenue North	Park Drive to 38 th Street North
8 th Street North East	Smelter Avenue to Skyline Drive
9 th Street	River Drive to 17 th Avenue South
9 th Street North West	Smelter Avenue to Central Avenue West
9 th Street North East	Skyline Drive to 36 th Avenue North East
17 th Avenue South	4 th Street South to 9 th Street South
20 th Street South West	Central Avenue West to 5 th Avenue South West
25 th Street	River Drive North to 10 th Avenue South
26 th Street	8 th Avenue North to 22 nd Avenue South
33 rd Street South	10 th Avenue South to 17 th Avenue South
38th Street	River Drive North to 10 th Avenue South

Exhibit "B"

(Updated from First Reading)

Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY

46 th Avenue North East	Bootlegger Trail to 9 th Street North East
Park Drive	1 st Avenue North to 2 nd Avenue South
2 nd Street South	2 nd Avenue South to 10 th Avenue South
13 th Street South	10 th Avenue South to 30 th Avenue South
24 th Avenue	13 th Street South to 15 th Street South
2 nd Street North East	Division Road to 36 th Avenue North East
Skyline Drive	8 th Street North East to 9 th Street North East
Watson Coulee Road	North West Bypass to 9 th Street North East
3 rd Street South West	Central Avenue West to 6 th Street South West
18 th Avenue South West	Fox Farm Road to Treasure State Drive
Big Ranch Road	Park Garden Road to Huckleberry Drive
Huckleberry Drive	Big Ranch Road to Acacia Way
Acacia Way	Huckleberry Drive to Park Garden
Sun River Road	14 th Street South West to 4 th West Hill Road
14 th Street South West	Exit 0 Ramp to 13 th Avenue South, and Exit 0 Ramp to Park Garden Road
3 rd West Hill Drive	1 st West Hill Drive to 4 th West Hill Drive
4 th West Hill Drive	3 rd West Hill Drive to Sun River Road

Exhibit "B"

(Updated from First Reading)

Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY

- B. Any routes included in the most current agreement between the City of Great Falls and Cascade County for snow and ice control may also, with proper notice, be included as emergency snow routes.

12.12.030 Emergency snow routes—signing.

- A. When signs have been erected giving notice thereof, it shall be unlawful for any person to stop, stand, park or leave unattended any motor vehicle upon a designated snow route within the City, during a snow emergency.
- B. Parking may be resumed on individual streets as soon as the snow has been plowed or removed. This provision shall not prohibit the stopping or commercial passenger vehicles for periods sufficient to load or discharge passengers from such vehicles.

12.12.040 Removal—vehicles.

Whenever a motor vehicle has been stopped, parked or left unattended after the inception of a snow emergency, upon a designated emergency snow route within the City, said vehicle is declared to be a traffic hazard and the City Manager, or designee, shall order said motor vehicle removed at the owner's expense.

12.12.050 Snow emergency—notice.

Notice of such emergency shall be given by press, radio, television, and the City website. When given, such notice shall constitute due and proper notice.

Chapter 13 PRIVATE DRIVEWAYS AND CROSSWALKS

Sections:

- 12.13.010 Construction—supervision.
- 12.13.020 Construction—permit—application—fee.
- 12.13.030 Construction—barricades required.
- 12.13.040 Construction—sidewalk—materials.
- 12.13.050 Construction—driveway—location.
- 12.13.060 Construction—driveway—drainage structures.
- 12.13.070 Construction—driveway—transition design.
- 12.13.080 Construction—right-of-way distances.

Exhibit "B"

(Updated from First Reading)

Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY

12.13.090 Construction—intersection clearances.

12.13.100 Construction—conformance with national regulations.

12.13.110 Use discontinuance—sidewalk restoration.

12.13.120 Violation - penalty.

12.13.010 Construction—supervision.

- A. The construction of concrete driveways and concrete crosswalks used for private purposes, within the street lines of the City, shall be under the supervision and direction of the Public Works Director or designee.
- B. The design and concrete mixture shall conform to standard specifications on file in the City Public Works Department for concrete sidewalks and concrete crossings.

12.13.020 Construction—permit—application—fee.

- A. All applications for permits for concrete driveways or concrete crosswalks must give a description of the property to be served and such other information as may be required by the Public Works Director, for the proper direction of the work, and must be signed by the property owner(s) or authorized agent.
- B. Before commencing the construction, modification or repair of any concrete driveway or concrete crosswalk, the contractor shall first obtain a written permit from the Department of Planning and Community Development, and such permit shall be available upon the work site at all times during the progress of the work and must be shown to any designated City representative, on demand.
- C. For each and every permit, a fee will be charged and collected by the Public Works Director. The amount of said fee shall be established by City Commission resolution.

12.13.030 Construction—barricades required.

- A. Excavations in streets and avenues shall be made in such manner as to impede travel as little as possible, and the time that such excavation is open may be limited by the Public Works Director or designee.
- B. Efficient barricades shall be erected by the permittee around all trenches or embankments made within the limits of any street or avenue, and lights shall be maintained thereon from dark to daylight until the street or avenue has been restored to a safe and passable condition.
- C. At no time during the progress of the work shall sidewalks be unnecessarily blocked to travel.

Exhibit "B"

(Updated from First Reading)

Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY

12.13.040 Construction—sidewalk—materials.

- A. After the governing body orders any cement concrete sidewalk to be built in any boulevard district, no private walk shall be built therein from the curb-line to the property line or from the sidewalk to either line, unless the same is made of cement concrete, or other Public Works approved material.
- B. Cement concrete private walks shall be of uniform width and shall be built upon the established grade from the curb-line to the property line, and shall be not less than thirty-six (36) inches in width or more than sixty (60) inches in width; provided, that in front of churches, schoolhouses, nursing homes, long term care facilities, medical facilities, court houses, and other public buildings, the cement concrete private walks may be of greater width than above mentioned.

12.13.050 Construction—driveway—location.

Driveways shall be so located at the discretion of, and by the approval of, the Public Works Director or designee, as to result in no undue interference with, or hazard to, the free movement of normal traffic or interfere with the placement and proper functioning of highway signs, signals, lighting, or other devices that affect traffic operation.

12.13.060 Construction—driveway—drainage structures.

All driveways shall be constructed so as not to impair drainage within the street or highway right-of-way nor alter the stability of the roadway sub-grade and not impair or materially alter drainage of the adjacent areas. All drainage structures required within the public right-of-way and under the driveways, as a result of the property being developed, shall be installed in accordance with the standards approved by the Public Works Director or designee.

12.13.070 Construction—driveway—transition design.

- A. All driveways shall have the back of curb dropped a minimum of four (4) inches for the width of the driveway. The minimum driveway transition distance shall be from the back of the curb to the property line and shall occur in a uniform manner.
- B. Curb fillets constructed by filling in the curb and gutter are prohibited as a means of transition from the street to the driveway. This prohibition of curb fillets is retroactive to all existing curb fillets within the City and all future annexations to the City. Exceptions for cause must be approved by the Public Works Director or designee.

Exhibit "B"

(Updated from First Reading)

Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY

12.13.080 Construction—right-of-way distances.

Gasoline pump islands or other installations with parking parallel to the right-of-way line shall be at least ten (10) feet outside of the right-of-way line. Buildings or other installations with an angle of ninety (90) degrees parking between the building or other installation and the right-of-way line shall be at least thirty (30) feet outside the right-of-way line.

12.13.090 Construction—intersection clearances.

At an intersecting street or highway, the dimension measured along the edge of the traveled way to provide adequate corner clearance shall be measured a minimum distance of ten (10) feet from the intersecting property line, except at intersections where there are traffic signals, the nearside clearance shall be two (2) or more times this distance.

12.13.100 Construction—conformance with national regulations.

Specific controls, not defined in this chapter, shall be in accordance with the standards for private driveway regulations established by the American Association of State Highway Officials and as applied at the discretion of the Public Works Director or designee.

12.13.110 Use discontinuance—sidewalk restoration.

- A. Whenever the use of any existing or future driveway is discontinued by reason of change in the use or design of the private property served thereby, the owner of the private property shall remove that portion of the driveway located within the City right-of-way, and shall restore the sidewalk and curbing affected by the driveway to their normal levels, all under the direction, supervision and standards required by the Public Works Director or designee.
- B. This section shall be applicable to any existing driveway, the use of which is presently discontinued.

12.13.120 Violation - penalty.

- A. Any violation of the provisions of this chapter shall be considered a public offense punishable under the general penalty OCCGF 1.4.070.

Exhibit "B"

(Updated from First Reading)

Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY

B. A violation of the provisions of this chapter in hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.

Chapter 14 TREES AND SHRUBBERY

Sections:

12.14.010 Trimming required.

12.14.020 Hedge and shrubbery maintenance.

12.14.030 Injuring trees and shrubbery unlawful.

12.14.040 Violation - penalty.

12.14.010 Trimming required.

Any owner of any real property shall be responsible for trimming all trees on property overhanging any public thoroughfare or boulevard district, so that the branches thereon will not interfere with pedestrians or public travel.

12.14.020 Hedge and shrubbery maintenance.

Any owner or occupant of any real property shall maintain all hedges and shrubbery adjacent to public sidewalks so that no part of the hedges and/or shrubbery shall extend over any part of a public sidewalk in the municipality.

12.14.030 Injuring trees and shrubbery unlawful.

It is unlawful for any person, not the owner thereof, or without lawful authority to do so, to injure willfully, deface, disfigure or destroy any tree or shrub, or to injure, destroy, cut or pick any flower or plant located on any public thoroughfare or boulevard district.

12.14.040 Violation - penalty.

A. Any violation of the provisions of this chapter shall be considered a public offense punishable under the general penalty OCCGF 1.4.070.

Exhibit "B"

(Updated from First Reading)

Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY

- B. A violation of the provisions of this chapter in hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.

Chapter 15 TREE REMOVAL

Sections:

- 12.15.010 Application.
- 12.15.020 New location.
- 12.15.030 City Forester to remove or supervise.
- 12.15.040 Trees interfering with right-of-way.
- 12.15.050 Violation - penalty.

12.15.010 Application.

- A. Any person, firm, corporation, or other entity desiring to cut down any of the trees located the boulevards of the City, shall submit an application to the City Park and Recreation Department for its review.
- B. The application shall state the following:
 - 1. The lot, block, and street number adjacent to the affected boulevard area;
 - 2. The reason for the request;
 - 3. A plan showing the location of the tree or trees; and
 - 4. The distance the tree or trees will be moved; or
 - 5. The tree or trees to be cut down.
- C. The Park and Recreation Department shall review the application and within ten (10) days of the receipt thereof, submit its recommendation to the City Manager, who shall approve or reject the application and immediately notify the applicant of the decision.
- D. The applicant may appeal the decision of the City Manager by filing a written notice of appeal with the office of the City Clerk within fifteen (15) calendar days of the date of the decision. The appeal shall be heard at the next regularly scheduled meeting of the City Commission, unless another date is mutually agreed upon by the applicant and the City. The Commission shall, by written finding, affirm or reverse the decision within fifteen (15) calendar days after the hearing.
- E. Any tree removed pursuant to an approved application, shall be replaced with a two-inch balled and burlapped tree. The Park and Recreation Director or designee shall designate permissible replacement tree species. Care and maintenance of replacement trees shall be the responsibility of the applicant for two consecutive calendar years from the date of replacement.

12.15.020 New location.

No tree or trees shall be moved to a place where the conditions will hinder their growth or the growth of others, and the new location must conform as nearly as possible to the regular spacing and alignment of the trees in the locality to which it is moved.

Exhibit "B"

(Updated from First Reading)

Title 12 STREETS, SIDEWALKS, TREES, AND SHRUBBERY

12.15.030 City Forester to remove or supervise.

Upon the permission of the City Manager, the City Forester may cut down or remove any tree or trees which have been petitioned to be cut down or removed from the public boulevards of the City, provided, however, that all expenses of cutting or removal and transplant shall be paid by the petitioning party and such cutting, removal and transplanting shall be supervised by the City Forester.

12.15.040 Trees interfering with right-of-way.

The City Manager or designee may order the City Forester to remove any tree, subject to the provisions of this chapter, that in judgment of the Public Works Director is either interfering with, or damaging, a City street or public right-of-way.

12.15.050 Violation - penalty.

- A. Any violation of the provisions of this chapter shall be considered a public offense punishable under the general penalty OCCGF 1.4.070.
- B. A violation of the provisions of this chapter in hereby declared a nuisance as defined in OCCGF Title 8, Chapter 49.

(Ord. 3170, 2018; Ord. 3143, 2016; Ord. 3086, 2012; Ord. 3057, 2010; Ord. 2801, 2001; Ord. 2798, 2001; Ord. 2785, 2000; Ord. 2766, 2000; Ord. 2734, 1998; Ord. 2584, 1991; Ord. 2568, 1990; Ord. 2564, 1990; Ord. 2549, 1989; Ord. 2526, 1989; Ord. 2490, 1988; Ord. 2489, 1988; Ord. 2485, 1987; Ord. 2476, 1987; Ord. 2462, 1987; Ord. 2460, 1987; Ord. 2435, 1986; Ord. 2409, 1985; Ord. 2393, 1985; Ord. 2338, 1983; Ord. 2314, 1983; Ord. 2312, 1982; Ord. 2301, 1982; Ord. 2187, 1980; Ord. 2065, 1979; Ord. 2022, 1977)
(Prior Codes: §§ 9-15-1, 9-14-4, 9-14-3, 9-14-2, 9-14-1, 9-11-1, 9-10-7, 9-10-6, 9-10-5, 9-10-4, 9-10-3, 9-10-1, 9-4-3, 9-4-2, 9-4-1, 9-3-4, 9-3-3, 9-3-2, 9-3-1, 9-2-4, 9-2-3, 9-2-2, 9-2-1, 9-1-15, 9-1-14, 9-1-13, 9-1-12, 9-1-11, 9-1-10, 9-1-9, 9-1-8, 9-1-7, 9-1-6, 9-1-5, 9-1-4, 9-1-3, 9-1-2, 9-1-1, 6-1-3)



Item: Resolution 10222 to Re-Create Tourism Business Improvement District (TBID) No. 1307

From: Judy Burg, Taxes and Assessments

Initiated By: Tourism Business Improvement District Board of Directors

Presented By: Melissa Kinzler, Finance Director

Action Requested: Conduct Public Hearing and adopt Resolution 10222.

Public Hearing:

1. Mayor conducts public hearing, calling three times each for opponents and proponents.
2. Mayor closes public hearing and asks the will of the Commission.

Suggested Motion:

1. Commissioner moves:

"I move the City Commission (adopt/deny) Resolution 10222 to Re-Create the Tourism Business Improvement District (TBID) No. 1307."

2. Mayor requests a second to the motion, Commission discussion, public comment, and calls for the vote.
-
-

Staff Recommendation:

Staff recommends the City Commission adopt Resolution 10222 to Re-Create the Tourism Business Improvement District (TBID) No. 1307.

Background:

The City Commission is authorized by Mont. Code Ann. §§ 7-12-1101 through 7-12-1144 to create a business improvement district for the purpose of promoting tourism, conventions, trade shows and travel to the City of Great Falls. The City Commission is also authorized to assess the applicable property owners within the TBID for any or all of the costs of funding, uses and projects associated to promoting tourism within the City.

The TBID in the City of Great Falls was originally created on December 2, 2008. Mont. Code Ann. § 7-12-1141 specifies that the TBID shall not be for a period longer than ten (10) years unless the duration

of the district is extended in compliance with the provisions for the creation of the district.

The City of Great Falls was presented with petitions signed by 83% of the property owners within the district asking for the re-creation of the TBID. This percentage more than exceeded the statutorily required more than 60% of the area of the property of the property owners for re-creation. On December 5, 2017, the City Commission adopted Resolution 10221 Intention of the City Commission to Re-Create a Tourism Business Improvement District (TBID) No. 1307.

The property owners within the district as listed on the attached Exhibit "C," were given a fifteen (15) day protest period following the first publication of the Legal Notice to Re-Create the district. During the fifteen (15) day protest period, one protest was received by the City Clerk's office which resulted in a 3% protest against the district as shown on the attached Exhibit "A."

The boundary lines of the TBID district are outlined on the attached Exhibit "B."

Fiscal Impact:

The assessment for the costs of tourism promotion and operating the TBID will be placed upon all parcels with a facility, with six (6) or more rooms, as defined as any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes and includes any hotel, inn, motel or other similar structure or portion thereof, within the boundaries of the district. Stays by persons who are otherwise exempt from paying a transient occupancy rate (aka lodging facility use tax), as provided in Mont. Code Ann. §§ 15-65-101 through 15-65-136, shall be exempt from the assessment.

The assessment will be a flat fee of two dollars (\$2.00) per occupied room night for establishments with 31-40 rooms (Land Use Code 154) and establishments with over 40 rooms (Land Use Code 155) and a flat fee of one dollar (\$1.00) per occupied room night for establishments with 1-10 rooms (Land Use Code 151), 11-20 rooms (Land Use Code 152) and for establishments with 21-30 rooms (Land Use Code 153) as prescribed in Mont. Code Ann. § 7-12-1133(f). The new assessment methods will begin on July 1, 2018.

Alternatives:

The City Commission could choose to not adopt Resolution 10222 and thereby deny the Re-Creation of the Tourism Business Improvement District (TBID) No. 1307.

Concurrences:

Representatives from the Finance Department have been assisting the property owners and the TBID Board of Directors on the re-creation and approval process.

ATTACHMENTS:

- ▢ Resolution 10222 Re-Create TBID
- ▢ TBID Protest Proceedings Exhibit "A"
- ▢ TBID Boundaries Exhibit "B"
- ▢ TBID List of Properties Exhibit "C"

RESOLUTION 10222

A RESOLUTION TO RE-CREATE A TOURISM BUSINESS IMPROVEMENT DISTRICT NO. 1307 WITHIN THE CITY OF GREAT FALLS, MONTANA

WHEREAS, the City Commission of the City of Great Falls, duly and regularly passed and adopted Resolution No. 10221 on the 5th day of December, 2017, a Resolution of Intent to Re-Create a Tourism Business Improvement District which is now on file in the office of the City Clerk and to which reference is hereby made; and

WHEREAS, the City Commission caused notice of the intent of passage of Resolution of Intent 10221 to be published in the Great Falls Tribune, a newspaper of regular distribution published in the City of Great Falls, Montana, in the manner and form and during the period as required by law and also caused the City Clerk on the 8th day of December, 2017, that being the day of the first publication of the notice, to mail to each person, firm, corporation, or a known agent thereof, having property within the District subject to the District assessment, listed in his or her name upon the last completed assessment roll for state, county and school district taxes, at his or her last-known address, a notice of the passage of the Resolution of Intent 10221, and in the form and manner prescribed by law; and

WHEREAS, the City Commission having this day met in regular session, at the time and place fixed and mentioned in the Resolution of Intent 10221 and in said notices for a public hearing, and the passing upon protests against the re-creation of the proposed District therein; and the Commission having fully heard and considered all of such protests and other testimony; and

WHEREAS, in accordance with Mont. Code Ann. § 7-12-1102, the City Commission has determined that this purpose promotes tourism, conventions, trade shows, marketing and travel to the City of Great Falls and the proposed district provides special benefits to the properties located within the boundaries of said district.

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

1. That the City Commission does hereby re-create a Tourism Business Improvement District pursuant to Mont. Code Ann. § 7-12-1101, et seq., for the purposes and with the powers provided for in State Statutes. The Tourism Business Improvement District shall be named Great Falls Tourism Business Improvement District No. 1307. The duration of the Great Falls Tourism Business Improvement District shall be for a period of ten (10) years from December 2, 2018.

2. The City Commission does hereby find and determine that the protests and each of them made against the re-creation of the District are and the same are hereby declared insufficient.

3. The boundaries of the District shall be the same as described in the Resolution of Intent 10221 to which reference is hereby made for a particular description thereof.

4. On Tuesday, February 6, 2018, in the City Commission Chambers, in the Civic Center, Great Falls, MT at 7:00 p.m., the City Commission conducted a public hearing to consider re-creation of the Tourism Business Improvement District. At that time, the City Commission provided any property owner, or known agent thereof, with the opportunity to comment either for or against the creation of said district, and concluded there were insufficient protest to prevent the re-creation of the District.

PASSED AND ADOPTED by the Commission of the City of Great Falls, Montana, on this 6th day of February, 2018.

Bob Kelly, Mayor

ATTEST:

Darcy Dea, Deputy City Clerk

(SEAL OF CITY)

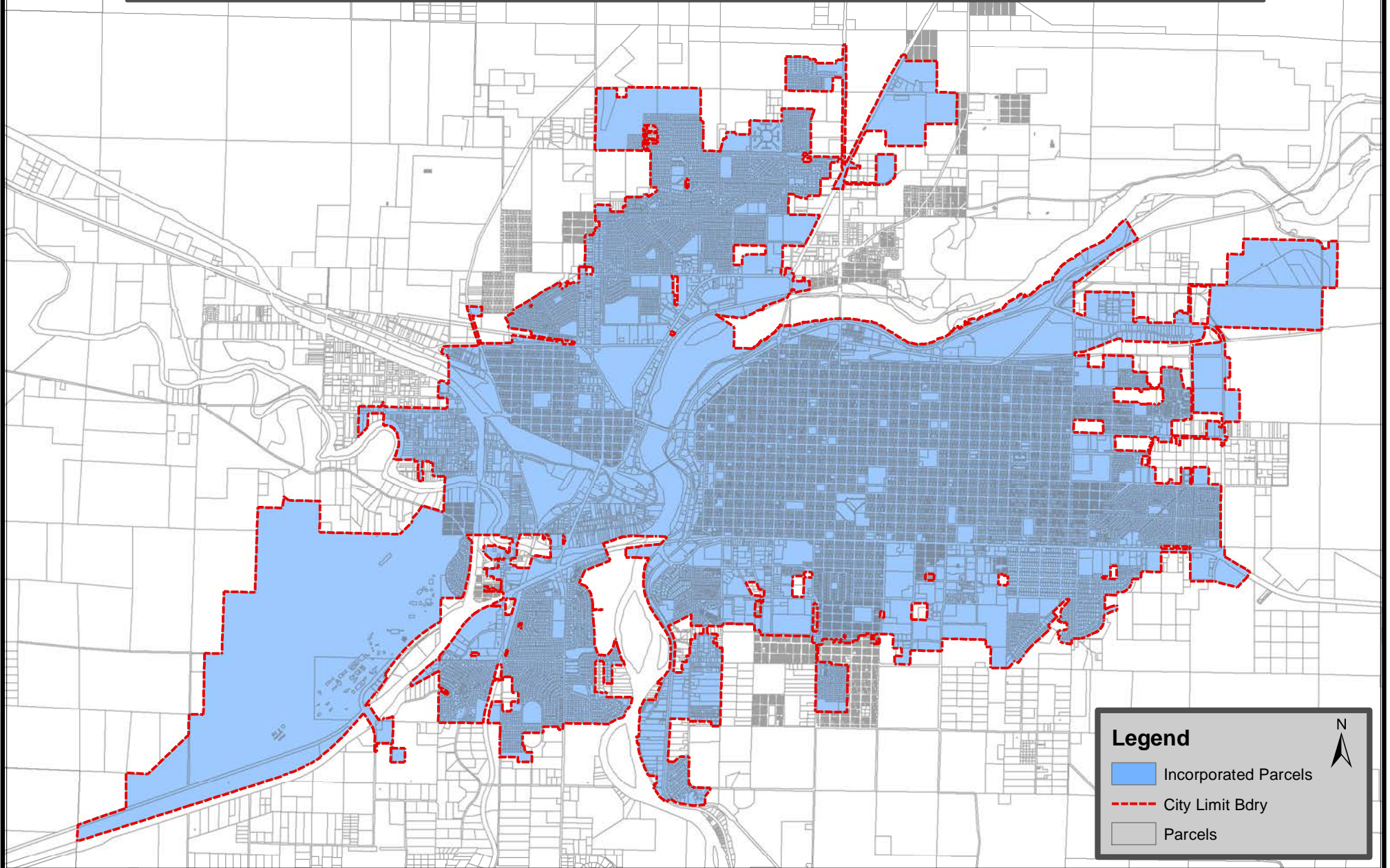
APPROVED FOR LEGAL CONTENT:

Joseph P. Cik, Assistant City Attorney

**TOURISM BUSINESS IMPROVEMENT DISTRICT
RENEWAL PROTEST PROCEEDINGS
RESOLUTION #10222 - Exhibit "A"**

PARCEL NO.	PROPERTY OWNER	LODGING FACILITY	2017 PROTESTS	15-DAY PROTEST PERIOD - Ends December 23, 2017										
				TAXABLE VALUATION		Percentage Needed			TOTAL		Percentage Needed		TBID ANNUAL ASSESSMENT	Percentage Needed
				TOTAL	Footprint %	≥ 50%	SQ.FT.	Footprint %	≥ 50%	ASSESSMENT	Footprint %	≥ 50%		
1	122950	Shah Family Trust	Imperial Inn	N	9,210	0.55%	0.00%	15,000	0.74%	0.00%	928.00	0.24%	0.00%	
2	157350	Twedt Survivors Trust Etal	Mid-Town Motel	N	30,015	1.78%	0.00%	16,343	0.81%	0.00%	2,231.00	0.57%	0.00%	
3	162050	Josco Properties Inc	Greystone Inn	N	31,756	1.89%	0.00%	15,000	0.74%	0.00%	3,838.00	0.98%	0.00%	
4	185550	Mehta Properties Partnership	Royal Motel	N	6,987	0.41%	0.00%	22,500	1.11%	0.00%	1,308.00	0.33%	0.00%	
5	189075	Big Sky Development Ent	O'Haire Motor Inn	N	51,813	3.08%	0.00%	33,739	1.66%	0.00%	11,469.00	2.92%	0.00%	
6	191500	JJS World Enterprises LLC	Econolodge	N	22,680	1.35%	0.00%	30,000	1.48%	0.00%	7,891.00	2.01%	0.00%	
7	192200	Arvon Block Development Venture LLC	Hotel Arvon	N	1,276	0.08%	0.00%	11,237	0.55%	0.00%	2,970.00	0.76%	0.00%	
8	278000	W2005/Fargo Hotels (Pool C) LPP	Great Falls Fairfield Inn	Y	48,522	2.88%	2.88%	52,500	2.59%	2.59%	12,798.00	3.26%	3.26%	
9	311500	Mehta Mark Etal	Central Motel	N	9,210	0.55%	0.00%	25,000	1.23%	0.00%	2,658.00	0.68%	0.00%	
10	314000	Forbes Properties Inc	Alberta Motel & Annex Court	N	4,657	0.28%	0.00%	9,325	0.46%	0.00%	2,338.00	0.60%	0.00%	
11	526020	BRE ESA Properties LLC	Extended Stay America	N	67,188	3.99%	0.00%	90,605	4.47%	0.00%	32,092.00	8.18%	0.00%	
12	526040	Great Falls Inn-Vestments LLC	La Quinta Inn & Suites	N	111,890	6.65%	0.00%	104,121	5.13%	0.00%	23,814.00	6.07%	0.00%	
13	716000	BRGF Enterprises LLC	Best Resting Great Falls Inn	N	15,386	0.91%	0.00%	50,965	2.51%	0.00%	338.00	0.09%	0.00%	
14	722415	Great Falls Inn	Great Falls Inn	N	38,811	2.30%	0.00%	18,584	0.92%	0.00%	14,127.00	3.60%	0.00%	
15	821600	Dhillon Hotels Inc	Holiday Inn	N	111,674	6.63%	0.00%	216,798	10.68%	0.00%	39,343.00	10.03%	0.00%	
16	824600	Corporation H Inc	Great Falls Comfort Inn	N	81,393	4.83%	0.00%	37,500	1.85%	0.00%	12,354.00	3.15%	0.00%	
17	898060	JK Great Falls LLC	Great Falls Holiday Inn Express	N	110,966	6.59%	0.00%	98,372	4.85%	0.00%	19,915.00	5.08%	0.00%	
18	898070	l15 Hotels LLC	Comfort Inn & Suites	N	83,725	4.97%	0.00%	97,487	4.80%	0.00%	18,021.00	4.59%	0.00%	
19	972810	Russell Country Investors LLC	Hilton Garden Inn	N	179,977	10.69%	0.00%	153,374	7.56%	0.00%	30,247.00	7.71%	0.00%	
20	979200	Mehta Mukesh N	Plaza Inn	N	13,973	0.83%	0.00%	19,351	0.95%	0.00%	3,024.00	0.77%	0.00%	
21	979300	Kashmir Hospitality LLC	Super 8	N	71,124	4.22%	0.00%	66,429	3.27%	0.00%	13,750.00	3.50%	0.00%	
22	1047100	Mehta Mukesh N	Western Motel a.k.a. Ski's	N	13,749	0.82%	0.00%	26,964	1.33%	0.00%	2,644.00	0.67%	0.00%	
23	1083100	Heritage Inn Inc	Best Western Heritage Inn	N	146,214	8.68%	0.00%	265,805	13.10%	0.00%	40,720.00	10.38%	0.00%	
24	1083400	Volk Roy D & Diane N	Motel 6	N	38,956	2.31%	0.00%	146,606	7.22%	0.00%	12,168.00	3.10%	0.00%	
25	1734800	3 High Inc - Exempt	Airway Motel	N	EXEMPT	0.00%	0.00%	EXEMPT	0.00%	0.00%	EXEMPT	0.00%	0.00%	
26	1832800	Starlit Motel Inc - Exempt	Starlit Motel	N	EXEMPT	0.00%	0.00%	EXEMPT	0.00%	0.00%	EXEMPT	0.00%	0.00%	
27	1861800	Coopers Troopers Limited Partnership	Days Inn	N	22,491	1.34%	0.00%	191,228	9.42%	0.00%	14,150.00	3.61%	0.00%	
28	1888950	West Bank Properties LLC	Staybridge Suites	N	148,806	8.84%	0.00%	75,600	3.73%	0.00%	25,298.00	6.45%	0.00%	
29	1894100	Roy D & Diane N Volk - Exempt	Crestview Inn & Suites	N	EXEMPT	0.00%	0.00%	EXEMPT	0.00%	0.00%	EXEMPT	0.00%	0.00%	
30	1897650	Great Falls Lodging Investors	Hampton Inn	N	97,352	5.78%	0.00%	45,318	2.23%	0.00%	24,597.00	6.27%	0.00%	
31	1900110	Great Falls Crystal Inn LLC	Crystal Inn	N	113,994	6.77%	0.00%	93,464	4.61%	0.00%	17,350.00	4.42%	0.00%	
32	NA	Malmstrom Inn & Suites - Exempt	Malmstrom Inn & Suites	N	EXEMPT	0.00%	0.00%	EXEMPT	0.00%	0.00%	EXEMPT	0.00%	0.00%	
32		TOTALS			\$ 1,683,795	100%	3%	2,029,215	100%	3%	\$392,381.00	100%	3%	

Tourism Business Improvement District No. 1307
Map of District Boundaries
Resolution 10222 – Exhibit "B"



**TOURISM BUSINESS IMPROVEMENT DISTRICT
LIST OF PROPERTIES WITHIN THE DISTRICT
RESOLUTION #10222 - EXHIBIT "C"**

	PROPERTY OWNER	BUSINESS NAME	PARCEL NO.	SUB DIV	LOT	BLOCK	PROPERTY ADDRESS
1	Shah Family Trust	Imperial Inn	122950	GFO	13-14	255	601 2nd Ave N
2	Twedt Survivors Trust Etal	Mid-Town Motel	157350	GFO	5-6	307	526 2nd Ave N
3	Josco Properties	Greystone Inn	162050	GFO	8-9	317	621 Central Ave
4	Mehta Properties Partnership	Royal Motel	185550	GF1	1-3	355	1300 Central Ave
					W/2 Lot 10 & Lots		
5	Big Sky Development Ent	O'Haire Motor Inn	189075	GFO	11-14	361	17 7th St S
6	JJS World Enterprises LLC	Econolodge	191500	GFO	4-7	366	220 Central Ave
					E1/2 Lot 4 - All of		
7	Arvon Block Development Venture LLC	Hotel Arvon	192200	GFO	Lot 5	368	116 1st Ave S
8	W2005/Fargo Hotels (Pool C) LPP	Great Falls Fairfield Inn	278000	GF1	1- 7	513	1000 9th Ave S
9	Mehta Mark Etal	Central Motel	311500	GF5	11-14	603	715 Central Ave
					Lot 8 - E15' & E15' OF W35' OF N80'		
10	Forbes Properties Inc.	Alberta Motel & Annex Court	314000	GF5	Lot 9	607	1101 Central Ave W
11	BRE ESA Properties LLC	Extended Stay America	526020	BBP	3	1	800 River Dr S
12	Great Falls Inn-Vestments LLC	La Qunita Inn & Suites	526040	BBP	5	1	600 River Dr S
13	BRGF Enterprises LLC	Best Resting Great Falls Inn	716000	COW	1	1	5001 River Dr N
14	Great Falls Inn	Great Falls Inn	722415	DE2	2	1	1400 28th St S
15	Dhillon Hotel Inc	Holiday Inn	821600	G15	15	1	1100 5th St S
16	Corporation H LLC	Great Falls Comfort Inn	824600	G15	10	2	1120 9th St S
17	JK Great Falls LLC	Great Falls Holiday Inn Express	898060	GMP	7AA	1	1625 Market Place Dr
18	I15 Hotels LLC	Comfort Inn & Suites	898070	GMP	8	1	1801 Market Place Dr
19	Russell Country Investors LLC	Hilton Garden Inn	972810	HGI	2	1	2520 14th St SW
20	Mehta Mukesh N	Plaza Inn	979200	HL1	5, 6, 7	1	1224 10th Ave S
21	Kashmir Hospitality LLC	Super 8	979300	HL1	8-14	3	1214 13th St S
22	Mehta Mukesh N	Western Motel a.k.a. Ski's	1047100	LIN	11-19	2	2420 10th Ave S
23	Heritage Inn Inc	Best Western Heritage Inn	1083100	MNT	2-7	1	1700 Fox Farm Rd
24	Volk Roy D & Diane N	Motel 6	1083400	MNT	1	2	2 Treasure State Dr
25	3 High Inc - EXEMPT	Airway Motel	1734800	UNA	1	8	1800 14th St SW
26	Starlit Motel Inc - EXEMPT	Starlit Motel	1832800	WGF	W40' 4 & 5-12	34	1521 1st Ave NW
27	Coopers Troopers Limited Partnership	Days Inn	1861800	WW4	1	1	101 14th Ave NW
					Tr 3, COS #4750, IN SESW, IN Lot		
28	West Bank Properties LLC	Staybridge Suites	1888950		7, Mark 2		201 3rd St NW
29	Volk Roy D & Diane N - EXEMPT	Crestview Inn & Suites	1894100		In SENW Mark 5B		502 13th Ave S
					Imps Only on State Land		
30	Great Falls Lodging Investors	Hampton Inn	1897650				2301 14th St SW
31	Great Falls Crystal Inn LLC	Crystal Inn	1900110	FJT	1	1	3701 31st St SW
32	Malmstrom Inn & Suites - EXEMPT	Malmstrom Inn & Suites	NA				7028 4th Ave N



Item: Resolution 10223, Submit the Question of Whether the City of Great Falls Should Establish Park District Number 1 on the May 8, 2018 Ballot.

From: Park and Recreation

Initiated By: Park and Recreation

Presented By: Steve Herrig, Park and Recreation Director

Action Requested: Conduct Public Hearing and Adopt Resolution 10223.

Public Hearing:

1. Mayor conducts public hearing, calling three times each for opponents and proponents.
2. Mayor closes public hearing and asks the will of the Commission.

Suggested Motion:

1. Commissioner moves:

"I move that the City Commission (adopt/deny) Resolution 10223 to Submit the Question of Whether the City of Great Falls Should Establish Park District Number 1 on the May 8, 2018 Ballot."

2. Mayor requests a second to the motion, Commission discussion, and the calls for the vote.
-
-

Staff Recommendation:

Staff recommends that the City Commission conduct a public hearing and adopt Resolution 10223.

Background:

The City Commission conducted a public hearing and adopted Resolution No. 10191, Intention to Create a Special District to be known as Park District Number 1, at its regular meeting on June 6, 2017. Following approval of the Intent to Create, Resolution No. 10192, Creation of Special Park District Number 1, was prepared and submitted for consideration and action to conduct a public hearing at the City Commission's regular meeting on August 15, 2017. The City received 21.6% in protest of the cost of the assessment for the proposed Park District, and because this amount was more than 10% but less than 50%, the Commission denied Resolution 10192 creating the district. In accordance with Mont. Code Ann. §7-11-1008(5)(b)(ii) since the protests were more than 10% but less than 50%, the

Commission could decide to proceed with proposing the district by ordering a referendum.

The Commission has decided to proceed with creating the district and has directed staff to prepare a Resolution to refer the question of creation to the Great Falls electorate. Resolution 10223 needs to be adopted by the Commission on February 6, 2018, to be submitted to the County Election Administrator. Pursuant to Mont. Code Ann. §13-1-504, the referendum must be held on the same day as the regular school election day, which is May 8, 2018. All registered electors of the state who are a resident of, or owner of taxable real property located in, the proposed special district are eligible to vote.

The purpose of creating the district is to provide certain maintenance, purchasing, and improvement services for City-owned facilities, land, and equipment under the responsibility and care of the City of Great Falls Parks and Recreation Department; and providing for other matters properly relating thereto. Current funding does not allow for adequate maintenance of facilities and parks. There has been no funding for capital improvements or major repairs. In Fiscal Year 2018, the City's Capital Improvement Plan recommended \$654,450; however, no dollars were funded.

Creation of the Park District would help fund the deferred maintenance, and it may prevent removal or closure of amenities. Proposed improvements over a three year period include, but are not limited to:

1. Rest Room improvements for Gibson, Oddfellows, and Lions Parks;
2. Picnic pavilion and tables;
3. Resurface sports courts (basketball, tennis/pickleball);
4. ADA sidewalks to play structures;
5. Improvements to Electric City Water Park bath house;
6. Replacement of Elks Riverside Trail;
7. Overlay of Gibson Park Trail;
8. Improvements to River's Edge Trail (matching funds);
9. Multi Sports dugouts/backstops;
10. New asphalt park trail;
11. Mature tree trimming and tree replacement; and
12. Operations/Equipment/Irrigation Upgrades/Labor/Staff/Professional Services.

Fiscal Impact:

The cost of the proposed improvements for the district is \$1,500,000 annually for the first three years; the assessment method will be based on each lot or parcel of land, including the improvements on the lot or parcel, for that part of the cost of the district that its taxable valuation bears to the total taxable valuation of the property of the district; the estimated 2018 assessment for a property with a 2017 Market Value of \$100,000 would be \$22.92 per year. The assessment can be adjusted annually and must be set by resolution and adopted by the City Commission.

Alternatives:

The City Commission could deny Resolution 10223. However, the City would be faced with finding an alternative funding source for deferred maintenance and needed improvements to the park system including facilities and the urban forest; or maintenance will not improve and facilities will deteriorate or close.

ATTACHMENTS:

- ▣ Resolution 10223
- ▣ Exhibit "A" Boundary Map

RESOLUTION 10223

A RESOLUTION TO SUBMIT THE QUESTION OF WHETHER THE CITY OF GREAT FALLS SHOULD ESTABLISH A SPECIAL PURPOSE PARK DISTRICT WITHIN THE INCORPORATED CITY LIMITS OF GREAT FALLS ON THE MAY 8, 2018 BALLOT.

WHEREAS, the City Commission is authorized by Mont. Code Ann., Title 7, Chapter 11, Part 10, to create special districts to serve the residents of the special district and creation of a special park district is necessary to provide funding relating to maintenance, amenities, and sustainable projects; and

WHEREAS, in accordance with Mont. Code Ann. §7-11-1007, the City Commission conducted a public hearing and adopted Resolution 10191 on June 6, 2017, at the Civic Center, 2 Park Drive South, Commission Chambers Room 206, Great Falls, Montana, at 7:00 p.m., regarding the intent of the City to create a special park district in the form of a City-wide special district; and

WHEREAS, pursuant to Mont. Code Ann. §7-11-1007, the City Commission conducted a public hearing and denied Resolution No. 10192 on August 15, 2017, at the Civic Center, 2 Park Drive South, Commission Chambers Room 206, Great Falls, Montana, at 7:00 p.m., which would have allowed creation of a special district, known as the City of Great Falls Park District Number 1, for the purpose of providing services and improvements to parks, recreation, trails, pathways, sidewalks, and public easements owned and/or operated by the City; and

WHEREAS, in accordance with Mont. Code Ann. §7-11-1008, because the protest of the cost of the assessment from property owners was more than 10% but less than 50%, and the City Commission would like to proceed with the district, the City Commission must order a referendum pursuant to Mont. Code Ann. §7-11-1011.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, that:

1. The district shall be known as the City of Great Falls Park District Number 1 and established for the purpose of providing services including but not limited to: (1) maintenance, repair, replacement, upkeep, installation, improvement, operational enhancement, construction, reconstruction, acquisition of land, and/or (2) implementation of measures required to maintain public health and safety, or meet legal or regulatory requirements; and/or (3) purchasing, replacing, and/or maintaining equipment, tools or vehicles used to carry out the functions described herein, and/or (4) any other functions, labor, supplies and/or materials necessary for management and maintenance of City-owned facilities, lands and equipment under the responsibility and care of the City of Great Falls Parks and Recreation Department including but not limited to: public parks and park areas (as described in the City of Great Falls Park and Recreation Master Plan), recreation facilities, trails, open space, urban forest, medians, boulevards, pathways, sidewalks, public easements, and other facilities which are located in the city limits and/or are owned by the City (collectively, the “Services and Improvements”).

2. The boundaries of the District are declared to be the current incorporated boundary of the City of Great Falls in accordance with City Commission municipal annexation resolutions and municipal annexation ordinances filed in the City of Great Falls City Clerk's Office public records as well as all properties later annexed thereto. Parcels within the boundary are the current parcels subject to the City of Great Falls property taxes as shown in the tax rolls of the Montana Department of Revenue and inclusive of those parcels that are exempt from property taxes. However, parcels that are exempt from property taxes shall not be subject to the assessment provided by section three of this Resolution. The current boundaries of the City are depicted on a map attached hereto as Exhibit "A."
3. In fiscal year 2019, the cost of the services to be performed in the District totals \$1,500,000. The annual assessment shall be based on the taxable value of each parcel within the Special District. This method of assessment shall be made pursuant to Mont. Code Ann. §7-11-1023(3)(a)(iii) which states:

each lot or parcel of land, including the improvements on the lot or parcel, may be assessed for that part of the cost of the special district that its taxable valuation bears to the total taxable valuation of the property of the district.

The annual assessment for a \$100,000 market value property would be \$22.92.

In accordance with Mont. Code Ann. §§7-11-1021 and 1025, prior to annually levying assessments necessary to carry out the services to be performed in the District, each year the City Manager shall prepare, or cause to be prepared, for Commission approval, a work plan, budget, and estimate of expenses for the services to be performed in the District and the Commission shall specify the method of assessment for the lots and parcels of land located in the District, provide for any methods of financing such services, publish notice and conduct a public hearing on such assessments before finally adopting a resolution levying assessments against the lots and parcels of land in the District. The Commission must annually adopt a resolution establishing the annual assessment for the District.

The special assessment for the costs of providing services in the District shall be payable as provided in Mont. Code Ann. §§7-11-1024 -1028.

4. The District shall exist for a period of 20 years beginning on the date the Commission, by ordinance or resolution, orders the district created pursuant to Mont. Code Ann. §7-11-1013. The District may be dissolved, if it is considered to be in the best interest of the City and approved by the Commission, as prescribed in Mont. Code Ann. §7-11-1029.
5. The District shall be governed by the Great Falls City Commission pursuant to the general respective exercise of their duties, responsibilities, and powers as respectively set forth in the City Charter, the Official Code of the City of Great Falls, and the Mont. Code Ann.
6. An individual is entitled to vote if the individual is a registered elector of the state and a resident of, or owner of, taxable real property in the area subject to the proposed special district.

7. The question to be placed on the May 8, 2018, the same day as the Great Falls Public School District Election Ballot and shall read as follows:

Shall the proposition to organize Great Falls Park District Number 1 be adopted?

- Yes
- No

(By voting yes, you support creation of Great Falls Special Park District Number 1 for the purpose of providing certain maintenance, purchasing, and improvement services for City-owned facilities, land, and equipment under the responsibility and care of the City of Great Falls Parks and Recreation Department and providing for other matters properly relating thereto.)

8. The City Commission hereby requests that the election be conducted by mail pursuant to Mont. Code Ann. §13-1-504(5).

ADOPTED by the City Commission of the City of Great Falls, Montana, this 6th day of February, 2018.

Bob Kelly, Mayor

ATTEST:

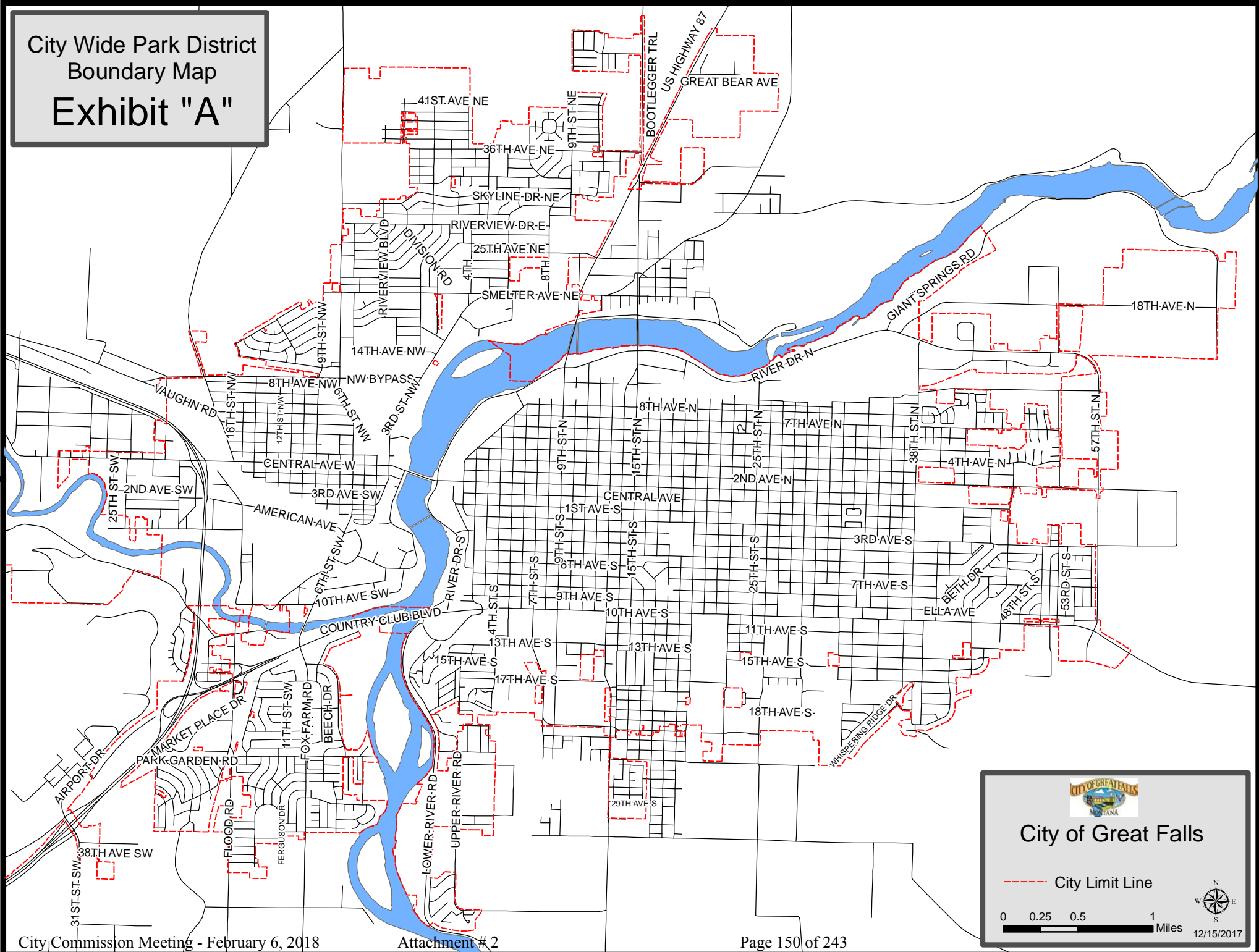
Darcy Dea, Deputy City Clerk

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

Joseph P. Cik, Assistant City Attorney

City Wide Park District
Boundary Map
Exhibit "A"



City of Great Falls

--- City Limit Line

0 0.25 0.5 1 Miles

12/15/2017



Item: Consideration of retaining Simon, Greenstone, Panatier, Bartlett, P.C. and Montana litigation counsel, to represent the City of Great Falls in claims or litigation against various pharmaceutical manufacturers or other entities regarding marketing and selling opiate-derived painkillers and authorize the execution of a retainer agreement and/or other related documentation.

From: City Attorney's Office

Initiated By: City Attorney's Office

Presented By: Sara R. Sexe, City Attorney

Action Requested: Retain Simon, Greenstone, Panatier, Bartlett, P.C. (SGPB), and Montana Litigation Counsel (consisting of the following law firms: Kovacich Snipes, P.C.; Edwards, Frickle, & Culver; Beck Amsden & Stalpes, PLLC; and Boone Karlberg P.C.), to represent the City of Great Falls in claims and/or litigation against appropriate opioid-based drug manufacturers and distributors, and authorize the City Manager to execute the attorney retainer agreement, and/or other necessary documents.

Suggested Motion:

1. Commissioner moves:

"I move that the City of Great Falls (retain/not retain) Simon, Greenstone, Panatier, Bartlett, P.C. (SGPB), and associated Montana Litigation Counsel to represent the City of Great Falls in claims and/or litigation against appropriate opioid-based drug manufacturers and distributors, and authorize the City Manager to execute the attorney retainer agreement, and/or other necessary documents."

2. Mayor calls for a second to the motion, Commission discussion, public comment, and calls for the vote.

Staff Recommendation:

Staff recommends that the City Commission retain (SGPB) and Montana litigation counsel, to represent the City of Great Falls in claims or litigation against various pharmaceutical manufacturers or other entities regarding marketing and selling opiate-derived painkillers and authorize the execution of a retention agreement or other related documentation, by the City Manager.

Summary:

The United States and the local governments within are faced with an overwhelming opioid based drug

addiction epidemic. State and local governments have incurred significant costs as a result of this epidemic.

The retainer agreement under consideration is presented by the SGPB law firm and associated local Montana counsel. SGPB has experience in litigation against opioid based drug manufacturers and distributors. Its research has indicated that some manufacturers and distributors have misrepresented the highly addictive nature of these types of medications, leading to the drugs being improperly prescribed and ultimately causing addiction.

Staff recommends that the City Commission hire counsel, authorize the City Manager to enter into the proposed retainer agreement.

Background:

Opioid-based drugs are derived from morphine and were considered highly addictive. Research has indicated that beginning in the 1990's many opioid-based drug manufacturers and distributors began an orchestrated effort to change the standard practice of prescribing opioid based drugs only for acute severe pain, cancer treatment, end of life care, etc.

Since the 1990's, the orchestrated effort changed the standard practice of how these medications were prescribed. The research indicates that through the late 1990's and early 2000's many physicians across the country began prescribing these types of medications much more frequently and at higher levels of dosage. These types of medications started being prescribed for chronic pain management, which is believed to have lead to the epidemic the country is experiencing today.

The issues and concerns surrounding opioid overuse and abuse are shared by many states, counties, and municipalities across the country, as has been well documented through various reports and publications. The societal costs associated with the opioid epidemic are staggering and, according to the Centers for Disease Control and Prevention, amount to over \$75 billion annually. The National Institute for Health has identified the manufacturers and distributors of certain opioid-based medications, by virtue of their aggressive practices, as being directly responsible for the rapid rise of the opioid epidemic. Many of the opioid manufacturers have faced civil and criminal liability for their actions that relate directly to the rise of the opioid epidemic.

SGPB has represented that it specializes in litigation against opioid based drug manufacturers and distributors and that its research has led it to conclude that certain drug companies misled the medical community and regulatory authorities in ways that resulted in overprescribing, oversupply, and overuse of opioid medications. The theory of the potential claim for the City of Great Falls is based on damages incurred as a result of this conduct. The damages consist, in part, of City resources having been spent on dealing with the ramifications of the opioid epidemic. Law enforcement, emergency services, court, prosecutorial and other resources have been spent dealing with the ramifications of opioid addiction. The total scope of the damages would be subject to investigation by retained forensic experts.

The Montana State Department of Justice through the Attorney General's Office has recently initiated similar litigation on behalf of the State of Montana. SGPB and associated local counsel currently represent Cascade and Gallatin Counties in litigation against several opioid based drug manufacturers and distributors in United States District Court.

Staff recommends that the City Commission authorize the City of Great Falls to retain SGPB and associated local Montana counsel to investigate, and if appropriate, file any potential claims on its

behalf. Staff believes the City may have potential claims resulting from the ramifications of the opioid epidemic. The City Manager requested Department input regarding the potential litigation, and those which recognized impacts of the opioid epidemic were supportive of this recommendation.

Attached to this agenda report is a copy of the proposed retention agreement. Also attached to this report is a copy of a complaint filed by SGPB and associated local counsel on behalf of Cascade and Gallatin Counties in United States District Court, District of Montana.

Fiscal Impact:

The proposed attorney retainer agreement has been negotiated so that the City will have no direct expense resulting from any representation in these matters. SGPB and associated local counsel would be compensated and reimbursed through a contingency fee of 25% of any gross recovery from any potential settlement or award. Indirect expense may be incurred through staff time necessary to assist in any forensic investigation to determine the scope of the City's potential damages and in other participation in the litigation.

Alternatives:

1. The Commission could vote to not authorize the City to enter into the retention agreement; or
2. The Commission could vote to table this item to a date certain for further Commission consideration.

Concurrences:

City Manager's Office
Municipal Court
Police Department
Great Falls Fire Rescue
Human Resources Department
Parks and Recreation Department
Great Falls Housing Authority
Great Falls Public Library

ATTACHMENTS:

- ▣ Retention Agreement
- ▣ Cascade and Gallatin Counties' Complaint

RETENTION AGREEMENT

WHEREAS, City of Great Falls has determined that claims should be made against Purdue Pharma, L.P., Purdue Pharma, Inc., The Purdue Frederick Company, Inc., Teva Pharmaceutical Industries USA, Ltd., Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., Endo Health Solutions Inc., Endo Pharmaceuticals, Inc., Allergan, PLC f/k/a Actavis, PLC, Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc., Watson Laboratories, Inc., Actavis, LLC, and Actavis Pharma, Inc. f/k/a Watson Pharma, Inc., McKesson Corporation, AmerisourceBergen Corporation, and any other entities which have engaged in violations of the Montana Controlled Substances Act, Montana Food, Drug and Cosmetic Act, and other violations of law in the fraudulent marketing and sales of certain highly addictive, opiate-derived painkillers for purposes for which they are neither safe nor effective; and

WHEREAS, City of Great Falls has determined that the investigation, research, and litigation of the claims may require the expenditure of large sums of money and require the work of numerous lawyers, paralegals, and other who are familiar with Defendants' wrongful actions and/or inactions and related issues for an extended period of time; and

WHEREAS, City of Great Falls has further determined that it is in the best interests of the City and its citizens that the City retain attorneys with significant litigation experience; and

WHEREAS, Simon Greenstone Panatier Bartlett, P.C. and Montana Litigation Counsel (consisting of the following law firms: Kovacich Snipes, P.C.; Edwards, Frickle, & Culver; Beck Amsden & Stalpes, PLLC; and, Boone Karlberg P.C.) are experienced at such litigation and consented to represent City of Great Falls independently and/or in association with the Attorney General, respecting the claims and pursuant to the terms and conditions hereof.

IT IS, ACCORDINGLY, AGREED as follows:

1. City of Great Falls hereby retains Simon Greenstone Panatier Bartlett, P.C. and Montana Litigation Counsel and their lawyers ("Law Firms"), who are hereby designated to investigate, research, and prepare claims or complaint(s) for City of Great Falls to file in any appropriate Court or before any appropriate governmental agency.
2. City of Great Falls does not relinquish authority or responsibility through this Retention Agreement. City of Great Falls has the sole authority to settle this litigation on behalf of the City and its citizens, and the Law Firms shall inform the City Attorney of all settlement offers. The Law Firms shall consult with City of Great Falls and obtain approval on all material matters pertinent to the claims and any litigation arising therefrom; including whether and how to proceed with litigation, which claims to advance, what relief to seek, and whether and on what terms to settle. City of Great Falls shall cooperate with the Law Firms and use

best efforts to secure the cooperation of other City agencies. City of Great Falls is not required, however, to assign any member of staff to pursue the claims, but may from time to time afford staff and other support services as deemed appropriate. City of Great Falls shall designate one or more members of staff to monitor these claims, who will be available directly to the parties in this matter as needed, and the Law Firms shall keep City of Great Falls and the designated staff member(s) fully informed on all matters pertaining to the claims.

3. City of Great Falls and the Law Firms both recognize that the claims present numerous factual and legal obstacles and that no assurance of success on the claims has or can be made.
4. City of Great Falls shall maintain responsibility for the public distribution of information within City of Great Falls concerning this matter.
5. Notwithstanding the potential difficulties, the Law Firms have agreed to represent City of Great Falls and City of Great Falls hereby agrees that the Law Firms will be compensated for any monies recovered by City of Great Falls on the following basis:
 - a. Recovery of Attorneys' Fees: City of Great Falls may request that the Court, to the extent permitted by applicable law, award the City and the Law Firms reasonable attorneys' fees.
 - b. In addition, the Law Firms will be entitled to compensation that, along with any award of attorneys' fees, is equal to but shall not exceed 25% of gross recovery. An award of attorneys' fees shall serve as a credit to the 25% contingent fee.
 - c. All reasonable and necessary costs of litigation including, but not limited to, court costs, travel, witness fees, consultants, accounting, and expert fees and expenses, as shall be approved by City of Great Falls, shall be borne entirely by the Law Firms, but shall be reimbursed from any gross recoveries from the pursuit of the claims.
 - d. The Law Firms shall receive no compensation or reimbursement other than set out above, and all within conformity of State law. In the event that no recovery is realized, the Law Firms shall receive no compensation or reimbursement.
6. With approval of City of Great Falls, the Law Firms may associate other attorneys at its own expense and at no costs to the City. Notwithstanding such association of other attorneys, this Retention Agreement is non-assignable and non-transferable, nor are the Law Firms' commitments delegable without the express, written approval of City of Great Falls.

7. The Law Firms shall, from the date hereof until not less than four (4) years after this contract expires or is terminated, maintain detailed current records, including documentation of all expenses, disbursement, charges, credits, underlying receipts and invoices, and other financial transactions that concern the providing of attorney services.

DATED this the _____ day of February, 2018.

GREAT FALLS CITY MANAGER

Gregory Doyon

GREAT FALLS CITY ATTORNEY

Sara Sexe

ATTEST

On this ____ day of _____, 2018, I hereby attest the above-written signatures of the City Manager and City Attorney for the City of Great Falls.

Lisa Kunz
City Clerk

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BY: _____
Jeffrey Simon, Shareholder

MONTANA LITIGATION COUNSEL

BY: _____
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**UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
GREAT FALLS DIVISION**

**COUNTY OF CASCADE, COUNTY
OF GALLATIN,**

Plaintiffs,

vs.

**PURDUE PHARMA, L.P.; PURDUE
PHARMA, INC.; THE PURDUE
FREDERICK COMPANY;
CEPHALON, INC.; JOHNSON &
JOHNSON; JANSSEN
PHARMACEUTICALS, INC.;
ORTHO-MCNEIL-JANSSEN
PHARMACEUTICALS, INC. n/k/a
JANSSEN PHARMACEUTICALS,
INC.; JANSSEN
PHARMACEUTICA, INC. n/k/a
JANSSEN PHARMACEUTICALS,
INC.; ENDO HEALTH
SOLUTIONS INC.; ENDO
PHARMACEUTICALS, INC.;
ABBVIE INC.; KNOLL
PHARMACEUTICAL COMPANY,
a wholly-owned subsidiary of ABBVIE
INC; ALLERGAN PLC f/k/a
ACTAVIS PLC; ALLERGAN
FINANCE LLC f/k/a ACTAVIS,
INC. f/k/a WATSON
PHARMACEUTICALS, INC.;
WATSON LABORATORIES, INC.;
ACTAVIS LLC; ACTAVIS
PHARMA, INC. f/k/a WATSON
PHARMA, INC.; and **DOES 1 – 100,
INCLUSIVE,****

Defendants.

Case No. 4:17-cv-00130-BMM

**FIRST AMENDED COMPLAINT
AND JURY DEMAND**

PLAINTIFFS' FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, the Counties of Cascade, Montana, and Gallatin Montana, by and through the undersigned attorneys, (hereinafter “Counties”), against Defendants Purdue Pharma, L.P., Purdue Pharma, Inc., The Purdue Frederick Company, Cephalon, Inc., Johnson & Johnson, Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc., Endo Health Solutions Inc., Endo Pharmaceuticals, Inc., Abbvie Inc., Knoll Pharmaceutical Company, a wholly-owned subsidiary of Abbvie Inc, Allergan PLC f/k/a Actavis PLC, Allergan Finance, LLC f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc., Watson Laboratories, Inc., Actavis LLC, Actavis Pharma, Inc. f/k/a Watson Pharma, Inc., and Does 1 – 100, alleges as follows:

I. INTRODUCTION

1. The United States is in the midst of an opioid epidemic caused by Defendants’ fraudulent marketing and sales of prescription opioids (“opioids”) that has resulted in addiction, criminal activity, and loss of life. The opioid crisis has been described as “the AIDS epidemic of our generation, but even worse.”¹ On

¹ David Wright, “Christie on Opioids: “This is the AIDS Epidemic of Our Generation, but even Worse,” (Oct. 27, 2017), <http://www.cnn.com/2017/10/27/politics/chris-christie-opioid-commission-aids-cnntv/index.html>.

October 26, 2017, President Donald Trump “declared a nationwide public health emergency to combat the opioid crisis.”²

2. In 2016 alone, health care providers wrote more than 289 million prescriptions for opioids, enough for *every adult in the United States* to have more than one bottle of pills.³ Americans “consume 85% of all the opioids in the world” and are “the most medicated country in the world”⁴

3. Unfortunately, using opioids too often leads to misusing and abusing opioids. In 2014, almost 2 million Americans abused or were addicted to opioids.⁵ That same year, more people died from drug overdoses than in any other year, and most overdose deaths involved an opioid. Public health officials in Montana have said that “drug poisoning deaths are the third-leading cause of fatalities in Montana”⁶

4. In fact, accidental drug overdose deaths, of which at least two-thirds are opioid overdoses, are the leading cause of death for Americans under the age of 50. Accidental drug overdose deaths, predominantly from opioids, exceed the number of deaths caused by cars or guns.

² Dan Merica, “What Trump’s Opioid Announcement Means – and Doesn’t Mean,” (Oct. 26, 2017), <http://www.cnn.com/2017/10/26/politics/national-health-emergency-national-disaster/index.html>.

³ *Prevalence of Opioid Misuse*, BupPractice (Sept. 7, 2017), <https://www.buppractice.com/node/15576>.

⁴ David Wright, “Christie on Opioids: “This is the AIDS Epidemic of Our Generation, but even Worse,” (Oct. 27, 2017), <http://www.cnn.com/2017/10/27/politics/chris-christie-opioid-commission-aids-cnntv/index.html>.

⁵ Substance Abuse and Mental Health Services Administration, National Survey on Drug Use and Health, 2014.

⁶ Keeley Van Middendorp, “Montana Taking Action Against Opioid Crisis,” (July 12, 2017), <http://cordilleramontana.worldnow.com/story/35871955/montana-taking-action-against-opioid-crisis>.

5. The Counties are responsible for programs and services which require the Counties to expend resources generated through state and federal aid, property taxes, fees and other permissible revenue sources; and provide programs and services such as the Missouri River Drug Task Force, the City-County Health Department, and Court Services, which become more burdened every year due to the costs associated with providing the programs and services to deal with the opioid abuse.

6. The following are examples of the burden imposed by opioid abuse in Gallatin County:

- a. Gallatin County Court Services estimates that each year it expends approximately \$103,666.00 of County tax dollars due to opioid abuse (two re-entry beds, \$48,000; pretrial defendants, \$14,000.00; drug testing, \$10,000; treatment court, \$21,666; and misdemeanor supervision-post-sentencing costs, \$10,000);
- b. Missouri River Drug Task Force reports that there were 53 calls for service for opioid overdoses from September, 2015 through September, 2016, and 58 overdoses during that time period in 2017. Also, AMR reported these yearly ambulance or fire emergency responses where Naloxone (a drug used to treat opioid overdose) was administered: 2014, 14; 2015, 30; 2016, 36; 2017 (YTD);

c. The Montana State Forensic Science division reported that, from January 1, 2014, through November 17, 2017, its toxicology and chemistry sections analyzed specimens submitted by law enforcement agencies and found opiates in 1,643 cases.

7. The Counties' ability to generate revenue through property taxes is limited by state law. However, the Counties' expenditures addressing, combating, and otherwise trying to deal with opioid abuse are monies that cannot be used for other important programs and services that County provides to County citizens, residents and visitors.

8. The economic burden caused by opioid abuse in the United States is approximately \$78.5⁷ billion, including lost productivity and increased social services, health insurance costs, increased criminal justice presence and strain on judicial resources, and substance abuse treatment and rehabilitation.

9. This epidemic did not occur by chance. Defendants manufacture, market, distribute, and sell prescription opioids, including, but not limited to, brand-name drugs like OxyContin, Vicodin, Opana, Percocet, Percodan, Roxicodone, Avinza, and generics like oxymorphone and hydrocodone, which are powerful narcotic painkillers. Other Defendants manufacture, market, distribute, and sell

⁷ CDC Foundation's *New Business Pulse Focuses on Opioid Overdose Epidemic*, Centers for Disease Control and Prevention (Mar. 15, 2017), <https://www.cdc.gov/media/releases/2017/a0315-business-pulse-opioids.html>.

prescription opioids, including, but not limited to, brand-name drugs like Fentanyl, Fentora, Duragesic, Ultram, and Ultracet.

10. Historically, opioids were considered too addictive and debilitating for treating chronic pain,⁸ such as back pain, migraines, and arthritis, and were used only to treat short-term acute pain or for palliative or end-of-life care.

11. By the late 1990s or early 2000s, however, each Defendant began a marketing scheme to persuade doctors and patients that opioids can and should be used for chronic pain. Each Defendant spent, and continues to spend, millions of dollars to promote the benefits of opioids for chronic pain while trivializing or even denying their risks.

12. Contrary to the language of their drugs' labels, Defendants falsely and misleadingly: (1) downplayed the serious risk of addiction; (2) promoted the concept of "pseudoaddiction" thereby advocating that the signs of addiction should be treated with more opioids; (3) exaggerated the effectiveness of screening tools in preventing addiction; (4) claimed that opioid dependence and withdrawal are easily managed; (5) denied the risks of higher opioid dosages; and (6) exaggerated the effectiveness of "abuse-deterrent" opioid formulations to prevent abuse and addiction.

13. Defendants disseminated these falsehoods through their sales representatives and physicians who supported Defendants' message. Sales representatives, working at Defendants' behest, promoted highly addictive opioids

⁸ In this Complaint, "chronic pain" means non-cancer pain lasting three months or longer.

through souvenirs and toys, including but not limited to, opioid brand-bearing stuffed plush toys, dolls, coffee cups, fanny packs, water bottles, notepads, pens, refrigerator magnets, clocks, letter openers, rulers, daytime planners, bags, puzzles, posters, clipboards, highlighters, flashlights, key chains, clothing, reflex mallets, and mock-ups of the United States Constitution.

14. Defendants also used third parties they controlled by: (a) funding, assisting, encouraging, and directing doctors, known as “key opinion leaders” (“KOLs”) and (b) funding, assisting, directing, and encouraging seemingly neutral and credible professional societies and patient advocacy groups (referred to hereinafter as “Front Groups”).

15. Defendants worked with KOLs and Front Groups to taint the sources that doctors and patients relied on for ostensibly “neutral” guidance, such as treatment guidelines, Continuing Medical Education (“CME”) programs, medical conferences and seminars, and scientific articles. After their individual and concerted efforts, Defendants convinced doctors that instead of being addictive and unsafe for long-term use in most circumstances, opioids were *required* in the compassionate treatment of chronic pain.

16. Essentially each Defendant ignored science and consumer health for profits. Defendants’ efforts were so successful that opioids are now the most prescribed class of drugs generating \$11 billion in revenue for drug companies in 2014 alone.

17. As a direct and foreseeable consequence of Defendants' misrepresentations regarding the safety and efficacy of using opioids for chronic pain, Cascade County has spent and continues to spend large sums combatting the public health crisis created by Defendants' negligent and fraudulent marketing campaign.

18. For example, thousands of prescriptions were written for opioids in the Counties in 2012⁹ and in 2015 there were multiple deaths reported from drug overdoses.¹⁰ A substantial number of those overdose deaths were a result, in whole or in part, of opioid ingestion.

19. The Counties committed and continues to commit resources to provide and pay for health care, law enforcement, social services, public assistance, pharmaceutical care and other services necessary for its residents.

II. VENUE AND JURISDICTION

20. Venue is proper in the United States District Court for the District of Montana because all or a substantial part of the events or omissions giving rise to this claim occurred in Cascade County. Mont. Code Ann. §§ 25-2-122(1)(b); 25-2-115.

21. Federal subject matter jurisdiction is based upon 28 U.S.C. §1332 because there is complete diversity among Plaintiffs and Defendants in each of the

⁹ <https://www.cdc.gov/drugoverdose/maps/rxrate-maps.html>; <https://www.cdc.gov/nchs/data-visualization/drug-poisoning-mortality>.

¹⁰ <https://www.cdc.gov/nchs/data-visualization/drug-poisoning-mortality>.

constituent actions and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

22. This Court has specific jurisdiction over all Defendants as their activities were directed toward Montana, and injuries complained of herein resulted from their activities. Mont. R. Civ. P. 4B(1). Each Defendant has a substantial connection with Montana and the requisite minimum contacts with Montana necessary to constitutionally permit the Court to exercise jurisdiction. *See id.*

III. PARTIES

A. Plaintiffs

23. This action is brought for and on behalf of Cascade and Gallatin Counties, which provide a wide range of services on behalf of its residents, including services for families and children, public health, public assistance, law enforcement, and emergency care.

B. Defendants

24. PURDUE PHARMA L.P. is a limited partnership organized under the laws of Delaware. PURDUE PHARMA INC. is a New York corporation with its principal place of business in Stamford, Connecticut, and THE PURDUE FREDERICK COMPANY is a Delaware corporation with its principal place of business in Stamford, Connecticut (collectively “Purdue”).

25. Purdue manufactures, promotes, sells, and distributes opioids in the U.S. and on information and belief in the Counties. Purdue’s opioid drug,

OxyContin, is among the most addictive and abused prescription drugs in the history of America. Purdue promotes opioids throughout the United States and on information and belief in the Counties.

26. CEPHALON, INC. is a Delaware corporation with its principal place of business in Frazer, Pennsylvania. Cephalon, Inc. manufactures, promotes, sells, and distributes opioids in the U.S. and on information and belief in the Counties.

27. JANSSEN PHARMACEUTICALS, INC. is a Pennsylvania corporation with its principal place of business in Titusville, New Jersey, and is a wholly owned subsidiary of JOHNSON & JOHNSON (J&J), a New Jersey corporation with its principal place of business in New Brunswick, New Jersey. ORTHO-MCNEIL-JANSSEN PHARMACEUTICALS, INC., now known as JANSSEN PHARMACEUTICALS, INC., is a Pennsylvania corporation with its principal place of business in Titusville, New Jersey. JANSSEN PHARMACEUTICA INC., now known as JANSSEN PHARMACEUTICALS, INC., is a Pennsylvania corporation with its principal place of business in Titusville, New Jersey. J&J is the only company that owns more than 10% of Janssen Pharmaceuticals' stock, and corresponds with the FDA regarding Janssen's products. Upon information and belief, J&J controls the sale and development of Janssen Pharmaceuticals' drugs and Janssen's profits inure to J&J's benefit. (Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica, Inc., and J&J are referred to as "Janssen").

28. Janssen manufactures, promotes, sells, and distributes opioids in the U.S. and on information in belief in the Counties.

29. ENDO HEALTH SOLUTIONS INC. is a Delaware corporation with its principal place of business in Malvern, Pennsylvania. ENDO PHARMACEUTICALS INC. is a wholly-owned subsidiary of Endo Health Solutions Inc. and is a Delaware corporation with its principal place of business in Malvern, Pennsylvania. (Endo Health Solutions Inc. and Endo Pharmaceuticals Inc. are referred to as “Endo”).

30. Endo develops, markets, and sells opioid drugs in the U.S. and on information and belief in Cascade County. Endo also manufactures and sells generic opioids in the U.S. and on information and belief in the Counties, by itself and through its subsidiary, Qualitest Pharmaceuticals, Inc.

31. ABBVIE INC. (“Abbvie”) is a Delaware corporation with its principal place of business in North Chicago, Illinois. KNOLL PHARMACEUTICAL COMPANY (“Knoll”) has been a wholly-owned subsidiary of Abbvie from January 1, 2013. KNOLL PHARMACEUTICAL COMPANY is a New Jersey corporation with its principal place of business in Ewing Township, New Jersey.

32. Knoll irresponsibly marketed narcotics, such as Vicodin, through whimsical toys and souvenirs and Knoll marketed such toys and souvenirs to boost the sales of opioids. Taking advantage of the fact that Vicodin was not regulated as a Schedule II controlled substance for many years, and the fact physicians and

consumers did not fully appreciate the highly addictive nature of Vicodin, Knoll advertised Vicodin with tag lines such as “The Highest Potency Pain Relief You Can Still Phone In.” This tag line came as part and parcel of souvenirs like a “Vicodin” fanny pack and water bottle, both bearing the name of Vicodin, the opioid Knoll was promoting. This irresponsible marketing of a narcotic drug caused doctors and patients to believe Vicodin was safer than it really was, to the detriment of people in the Counties.

33. Abbvie began manufacturing, developing, promoting, marketing, and selling the opioid drug, Vicodin, in the U.S. and on information and belief in Cascade County beginning January 1, 2013. On information and belief, it continues to do so at the time of filing this pleading.

34. ALLERGAN PLC is a public limited company incorporated in Ireland with its principal place of business in Dublin, Ireland. ACTAVIS PLC acquired Allergan plc in March 2015, and the combined company changed its name to Allergan plc in January 2013. Before that, WATSON PHARMACEUTICALS, INC. acquired ACTAVIS, INC. in October 2012, and the combined company changed its name to ALLERGAN FINANCE, LLC as of October 2013. WATSON LABORATORIES, INC. is a Nevada corporation with its principal place of business in Corona, California, and is a wholly-owned subsidiary of Allergan plc (f/k/a Actavis, Inc., f/k/a Watson Pharmaceuticals, Inc.). ACTAVIS PHARMA, INC. (f/k/a Actavis, Inc.) is a Delaware corporation with its principal place of business in

New Jersey and was formerly known as WATSON PHARMA, INC. ACTAVIS LLC is a Delaware limited liability company with its principal place of business in Parsippany, New Jersey. Each of these defendants is owned by Allergan plc, which uses them to market and sell its drugs in the United States.

35. Upon information and belief, Allergan plc exercises control over these marketing and sales efforts and profits from the sale of Allergan/Actavis products ultimately inure to its benefit. (Allergan plc, Actavis plc, Actavis, Inc., Allergan Finance, LLC, Actavis LLC, Actavis Pharma, Inc., Watson Pharmaceuticals, Inc., Watson Pharma, Inc., and Watson Laboratories, Inc. are referred to as “Actavis”). Actavis acquired the rights to Kadian from King Pharmaceuticals, Inc. on December 30, 2008, and began marketing Kadian in 2009.

36. Actavis manufactures, promotes, sells, and distributes opioids in the U.S. and on information and belief in the Counties.

37. The Counties lack information sufficient to specifically identify the true names or capacities, whether individual, corporate or otherwise, of Defendants sued herein under the fictitious names DOES 1 through 100 inclusive. The Counties will amend this Complaint to show their true names and capacities if and when they are ascertained. The Counties are informed and believe, and on such information and belief allege, that each of the Defendants named as a DOE has engaged in conduct that contributed to cause events and occurrences alleged in this Complaint and, as such shares liability for at least some part of the relief sought herein.

IV. FACTUAL ALLEGATIONS

38. Before the 1990s, generally accepted standards of medical practice dictated that opioids should be used only for short-term acute pain – pain relating to recovery from surgery or for cancer or palliative (end-of-life) care. Using opioids for chronic pain was discouraged or even prohibited because there was a lack of evidence that opioids improved patients’ ability to overcome pain and function. Instead the evidence demonstrated that patients developed tolerance to opioids over time, which increased the risk of addiction and other side effects.

39. Defendants dramatically changed doctors’ views regarding opioids through a well-funded deceptive marketing scheme. Each Defendant used direct marketing and unbranded advertising disseminated by seemingly independent third parties to spread false and deceptive statements about the risks and benefits of long-term opioid use.

A. **Defendants Used Multiple Avenues To Disseminate their False and Deceptive Statements about Opioids.**

40. Based upon information and belief, Defendants spread their false and deceptive statements by (1) marketing their branded opioids directly to doctors and patients in the Counties and (2) deploying so-called unbiased and independent third parties to the Counties.

1. Defendants Spread and Continue to Spread Their False and Deceptive Statements Through Direct Marketing of Their Branded Opioids.

41. Defendants' direct marketing of opioids generally proceeded on two tracks. First, each Defendant conducted advertising campaigns touting the purported benefits of their branded drugs. For example, Defendants spent more than \$14 million on medical journal advertising of opioids in 2011, nearly triple what they spent in 2001, including \$8.3 million by Purdue, \$4.9 million by Janssen, and \$1.1 million by Endo.

42. A number of Defendants' branded ads deceptively portrayed the benefits of opioids for chronic pain. For example, Endo distributed and made available on its website, www.opana.com, a pamphlet promoting Opana ER with photographs depicting patients with physically demanding jobs like a construction worker and chef, implying that the drug would provide long-term pain-relief and functional improvement. Purdue also ran a series of ads, called "Pain vignettes," for OxyContin in 2012 in medical journals. These ads featured chronic pain patients and recommended OxyContin for each. One ad described a "54-year-old writer with osteoarthritis of the hands" and implied that OxyContin would help the writer work more effectively. Pursuant to a settlement agreement, Endo and Purdue agreed in late 2015 and 2016 to halt these misleading representations in New York, but they may continue to disseminate them in Montana.

43. Second, each Defendant promoted the use of opioids for chronic pain through “detailers” – sales representatives who visited individual doctors and medical staff in their offices – and small-group speaker programs. Defendants devoted massive resources to direct sales contacts with doctors. In 2014 alone, Defendants spent \$168 million on detailing branded opioids to doctors, including \$108 million by Purdue, \$34 million by Janssen, \$13 million by Cephalon, \$10 million by Endo, and \$2 million by Actavis. This amount is twice as much as Defendants spent on detailing in 2000.

44. Defendants also identified doctors to serve, for payment, on their speakers’ bureaus and to attend programs with speakers and meals paid for by Defendants. These speaker programs provided: (1) an incentive for doctors to prescribe a particular opioid (so they might be selected to promote the drug); (2) recognition and compensation for the doctors selected as speakers; and (3) an opportunity to promote the drug through the speaker to his or her peers. These speakers gave the false impression that they were providing unbiased and medically accurate presentations when they were, in fact, presenting a script prepared by Defendants. On information and belief, these presentations conveyed misleading information, omitted material information, and failed to correct Defendants’ prior misrepresentations about the risks and benefits of opioids.

45. Based upon information and belief, Defendants employed the same marketing plans, strategies, and messages in the Counties as they did nationwide.

Across the pharmaceutical industry, “core message” development is funded and overseen on a national basis by corporate headquarters. This comprehensive approach ensures that Defendants’ messages are accurately and consistently delivered across marketing channels and in each sales territory. Defendants consider this high level of coordination and uniformity crucial to successfully marketing their drugs.

2. Defendants Used a Diverse Group of Seemingly Independent Third Parties to Spread False and Deceptive Statements about the Risks and Benefits of Opioids.

46. Based upon information and belief, Defendants also deceptively marketed opioids in the Counties through unbranded advertising – *i.e.*, advertising that promotes opioid use generally but does not name a specific opioid. This advertising was ostensibly created and disseminated by independent third parties. But by funding, directing, reviewing, editing, and distributing this unbranded advertising, Defendants controlled the deceptive messages disseminated by these third parties and acted in concert with them to falsely and misleadingly promote opioids for treating chronic pain.

47. Unbranded advertising also avoided regulatory scrutiny because Defendants did not have to submit it to the FDA, and therefore it was not reviewed by the FDA.

48. Defendants’ deceptive unbranded marketing often contradicted their branded materials reviewed by the FDA. For example, Endo’s unbranded advertising contradicted its concurrent, branded advertising for Opana ER:

Pain: Opioid Therapy (Unbranded)	Opana ER Advertisement (Branded)
<p>“People who take opioids as prescribed usually do not become addicted.”</p>	<p>“All patients treated with opioids require careful monitoring for signs of abuse and addiction, since use of opioid analgesic products carries the risk of addiction even under appropriate medical use.”</p>

a. Key Opinion Leaders (KOLs)

49. Defendants spoke through a small circle of doctors who, upon information and belief, were selected, funded, and elevated by Defendants because their public positions supported using opioids to treat chronic pain. These doctors became known as “key opinion leaders” or “KOLs.”

50. Defendants paid KOLs to serve as consultants or on their advisory boards and to give talks or present CMEs, and their support helped these KOLs become respected industry experts. As they rose to prominence, these KOLs touted the benefits of opioids to treat chronic pain, repaying Defendants by advancing their marketing goals. KOLs’ professional reputations became dependent on continuing to promote a pro-opioid message, even in activities that were not directly funded by Defendants.

51. KOLs have written, consulted on, edited, and lent their names to books and articles, and given speeches and CMEs supportive of chronic opioid therapy. Defendants created opportunities for KOLs to participate in research studies Defendants suggested or chose and then cited and promoted favorable studies or articles by their KOLs. By contrast, Defendants did not support, acknowledge, or disseminate publications of doctors unsupportive or critical of chronic opioid therapy.

52. Defendants' KOLs also served on committees that developed treatment guidelines that strongly encourage using opioids to treat chronic pain, and on the boards of pro-opioid advocacy groups and professional societies that develop, select, and present CMEs. Defendants were able to direct and exert control over each of these activities through their KOLs.

53. Pro-opioid doctors are one of the most important avenues that Defendants use to spread their false and deceptive statements about the risks and benefits of long-term opioid use. Defendants know that doctors rely heavily and less critically on their peers for guidance, and KOLs provide the false appearance of unbiased and reliable support for chronic opioid therapy.

54. Defendants utilized many KOLs, including many of the same ones. Two of the most prominent are described below.

1. Russell Portenoy

55. Dr. Russell Portenoy, former Chairman of the Department of Pain Medicine and Palliative Care at Beth Israel Medical Center in New York, is one example of a KOL who Defendants identified and promoted to further their marketing campaign. Dr. Portenoy received research support, consulting fees, and honoraria from Cephalon, Endo, Janssen, and Purdue (among others), and was a paid consultant to Cephalon and Purdue.

56. Dr. Portenoy was instrumental in opening the door for the regular use of opioids to treat chronic pain. He served on the American Pain Society (“APS”)/American Academy of Pain Medicine (“AAPM”) Guidelines Committees, which endorsed the use of opioids to treat chronic pain, first in 1997 and again in 2009. He was also a member of the board of the American Pain Foundation (“APF”), an advocacy organization almost entirely funded by Defendants.

57. Dr. Portenoy also made frequent media appearances promoting opioids. He appeared on *Good Morning America* in 2010 to discuss using opioids long-term to treat chronic pain. On this widely-watched program, broadcast in Montana and across the country, Dr. Portenoy claimed: “Addiction, when treating pain, is distinctly uncommon. If a person does not have a history, a personal history, of substance abuse, and does not have a history in the family of substance abuse, and

does not have a very major psychiatric disorder, most doctors can feel very assured that that person is not going to become addicted.”¹¹

58. Dr. Portenoy later admitted that he “gave innumerable lectures in the late 1980s and ‘90s about addiction that weren’t true.”¹² These lectures falsely claimed that less than 1% of patients would become addicted to opioids. According to Dr. Portenoy, because the primary goal was to “destigmatize” opioids, he and other doctors promoting them overstated their benefits and glossed over their risks. Dr. Portenoy also conceded that “[d]ata about the effectiveness of opioids does not exist.”¹³ Portenoy candidly stated: “Did I teach about pain management, specifically about opioid therapy, in a way that reflects misinformation? Well...I guess I did.”¹⁴

2. Lynn Webster

59. Another KOL, Dr. Lynn Webster, was the co-founder and Chief Medical Director of Lifetree Clinical Research, an otherwise unknown pain clinic in Salt Lake City, Utah. Dr. Webster was President in 2013 and is a current board member of AAPM, a front group that ardently supports chronic opioid therapy. He is a Senior Editor of *Pain Medicine*, the same journal that published Endo special advertising supplements touting Opana ER. Dr. Webster authored numerous CMEs

¹¹ Good Morning America television broadcast, ABC News (Aug. 30, 2010).

¹² Thomas Catan & Evan Perez, *A Pain-Drug Champion Has Second Thoughts*, WALL ST. J., Dec. 17, 2012.

¹³ *Id.*

¹⁴ *Id.*

sponsored by Cephalon, Endo, and Purdue while he was receiving significant funding from Defendants (including nearly \$2 million from Cephalon).

60. In 2011, Dr. Webster presented a program via webinar sponsored by Purdue titled, *Managing Patient's Opioid Use: Balancing the Need and the Risk*. Dr. Webster recommended using risk screening tools, such as urine testing and patient agreements as a way to prevent “overuse of prescriptions” and “overdose deaths.” Based upon information and belief, these recommendations were available to and were intended to reach Cascade County doctors.

61. Dr. Webster also was a leading proponent of the concept of “pseudoaddiction,” the notion that addictive behaviors should be seen not as warnings, but as indications of undertreated pain. In Dr. Webster’s description, the only way to differentiate the two was to *increase* a patient’s dose of opioids. As he and his co-author wrote in a book entitled *Avoiding Opioid Abuse While Managing Pain* (2007), a book that is still available online, when faced with signs of aberrant behavior, increasing the dose “in most cases . . . should be the clinician’s first response.” Endo distributed this book to doctors. Years later, Dr. Webster reversed himself, acknowledging that “[pseudoaddiction] obviously became too much of an excuse to give patients more medication.”¹⁵

¹⁵ John Fauber & Ellen Gabler, *Networking Fuels Painkiller Boom*, MILWAUKEE WISC. J. SENTINEL (Feb. 19, 2012).

b. Front Groups

62. Defendants entered into arrangements with seemingly unbiased and independent patient and professional organizations to promote opioids for treating chronic pain. Under Defendants' direction and control, these "Front Groups" generated treatment guidelines, unbranded materials, and programs that favored chronic opioid therapy. They also assisted Defendants by responding to negative articles, by advocating against regulatory changes that would limit prescribing opioids in accordance with the scientific evidence, and by conducting outreach to vulnerable patient populations targeted by Defendants.

63. These Front Groups depended on Defendants for funding and, in some cases, for survival. Defendants also exercised control over programs and materials created by these groups by collaborating on, editing, and approving their content, and by funding their dissemination. In doing so, Defendants made sure these Groups would generate only the messages Defendants wanted to distribute. Even so, the Front Groups held themselves out as independent and as serving the needs of their members – whether patients suffering from pain or doctors treating those patients.

64. Defendants Cephalon, Endo, Janssen, and Purdue utilized many Front Groups, including many of the same ones. Several of the most prominent are described below, but there are many others, including the American Pain Society ("APS"), American Geriatrics Society ("AGS"), the Federation of State Medical Boards ("FSMB"), American Chronic Pain Association ("ACPA"), American

Society of Pain Education (“ASPE”), National Pain Foundation (“NPF”) and Pain & Policy Studies Group (“PPSG”).

1. American Pain Foundation (“APF”)

65. The most prominent of Defendants’ Front Groups was APF, which received more than \$10 million in funding from opioid manufacturers from 2007 until it closed its doors in May 2012. Endo alone provided more than half that funding; Purdue was next at \$1.7 million.

66. In 2009 and 2010, more than 80% of APF’s operating budget came from pharmaceutical industry sources. Including industry grants for specific projects, APF received about \$2.3 million from industry sources out of total income of about \$2.85 million in 2009; its budget for 2010 projected receipts of roughly \$2.9 million from drug companies, out of total income of about \$3.5 million. By 2011, APF was entirely dependent on incoming grants from defendants Purdue, Cephalon, Endo, and others to avoid using its line of credit. As one of its board members, Russell Portenoy, explained, the lack of funding diversity was one of the biggest problems at APF.

67. APF issued education guides for patients, reporters, and policymakers that touted the benefits of opioids for chronic pain and trivialized their risks, particularly the risk of addiction. APF also engaged in a significant multimedia campaign – through radio, television, and the internet – to educate patients about their “right” to pain treatment, namely opioids. All of the programs and materials

were available nationally and were intended to reach patients and consumers in the Counties.

2. American Academy of Pain Medicine (“AAPM”)

68. The American Academy of Pain Medicine, with the assistance, prompting, involvement, and funding of Defendants, issued treatment guidelines and sponsored and hosted medical education programs essential to Defendants’ deceptive marketing of chronic opioid therapy.

69. AAPM received over \$2.2 million in funding since 2009 from opioid manufacturers. AAPM maintained a corporate relations council, whose members paid \$25,000 per year (on top of other funding) to participate. The benefits included allowing members to present educational programs at off-site dinner symposia in connection with AAPM’s marquee event – its annual meeting held in Palm Springs, California, or other resort locations. AAPM describes the annual event as an “exclusive venue” for offering education programs to doctors. Membership in the corporate relations council also allows drug company executives and marketing staff to meet with AAPM executive committee members in small settings. Defendants Endo, Purdue, Cephalon, and Actavis were members of the council and presented deceptive programs to doctors who attended this annual event.

70. AAPM is viewed internally by Endo as “industry friendly,” with Endo advisors and speakers among its active members. Endo attended AAPM conferences, funded its CMEs, and distributed its publications. The conferences

sponsored by AAPM heavily emphasized sessions on opioids – 37 out of roughly 40 at one conference alone. AAPM’s presidents have included top industry-supported KOLs Perry Fine, Russell Portenoy, and Lynn Webster. Dr. Webster was even elected president of AAPM while under a DEA investigation. Another past AAPM president, Dr. Scott Fishman, stated that he would place the organization “at the forefront” of teaching that “the risks of addiction are . . . small and can be managed.”¹⁶

71. AAPM’s staff understood they and their industry funders were engaged in a common task. Defendants were able to influence AAPM through both their significant and regular funding and the leadership of pro-opioid KOLs within the organization.

72. In 1997, AAPM and the American Pain Society jointly issued a consensus statement, *The Use of Opioids for the Treatment of Chronic Pain*, which endorsed opioids to treat chronic pain and claimed there was a low risk that patients would become addicted to opioids. The co-author of the statement, Dr. Haddox, was at the time a paid speaker for Purdue. Dr. Portenoy was the sole consultant. The consensus statement remained on AAPM’s website until 2011, and was taken down from AAPM’s website only after a doctor complained, though it still lingers on the internet elsewhere.

¹⁶ Interview by Paula Moyer with Scott M. Fishman, M.D., Professor of Anesthesiology and Pain Medicine, Chief of the Division of Pain Medicine, Univ. of Cal., Davis (2005), <http://www.medscape.org/viewarticle/500829>.

73. AAPM and APS issued their own guidelines in 2009 (“AAPM/APS Guidelines”) and continued to recommend using opioids to treat chronic pain. Fourteen of the 21 panel members who drafted the AAPM/APS Guidelines, including KOLs Dr. Portenoy and Dr. Perry Fine of the University of Utah, received support from Janssen, Cephalon, Endo, and Purdue.

74. The 2009 Guidelines promote opioids as “safe and effective” for treating chronic pain, despite acknowledging limited evidence, and conclude that the risk of addiction is manageable for patients regardless of past abuse histories. One panel member, Dr. Joel Saper, Clinical Professor of Neurology at Michigan State University and founder of the Michigan Headache & Neurological Institute, resigned from the panel because he was concerned the 2009 Guidelines were influenced by contributions that drug companies, including Defendants, made to the sponsoring organizations and committee members. These AAPM/APS Guidelines have been a particularly effective channel of deception and have influenced not only treating physicians, but also the body of scientific evidence on opioids. The Guidelines have been cited 732 times in academic literature, on information and belief were disseminated in the Counties during the relevant time period, are still available online, and were reprinted in the *Journal of Pain*.

B. Defendants’ Marketing Scheme Misrepresented the Risks and Benefits of Opioids.

75. To convince doctors and patients like those living and working in the Counties that opioids can and should be used to treat chronic pain, Defendants had

to convince them that long-term opioid use is both safe and effective. Knowing they could do so only by deceiving those doctors and patients about the risks and benefits of long-term opioid use, Defendants made claims that were not supported by, or were contrary, to the scientific evidence. Even though pronouncements by and guidance from the FDA and the CDC based on that evidence confirm that their claims were false and deceptive, Defendants have not corrected them, or instructed their KOLs or Front Groups to correct them, and continue to spread them today.

C. Defendants Falsely Trivialized or Failed to Disclose the Known Risks of Long-Term Opioid Use.

76. To convince doctors and patients that opioids are safe, Defendants deceptively trivialized and failed to disclose the risks of long-term opioid use, particularly the risk of addiction, through a series of misrepresentations that have been conclusively debunked by the FDA and CDC. These misrepresentations – which are described below – reinforced each other and created the dangerously misleading impression that: (1) starting patients on opioids was low-risk because most patients would not become addicted, and because those who were at greatest risk of addiction could be readily identified and managed; (2) patients who displayed signs of addiction probably were not addicted and, in any event, could easily be weaned from the drugs; (3) the use of higher opioid doses, which many patients need to sustain pain relief as they develop tolerance to the drugs, do not pose special risks; and (4) abuse-deterrent opioids both prevent abuse and overdose and are inherently

less addictive. Defendants have not only failed to correct these misrepresentations, they continue to make them today.

77. **First**, Defendants falsely claimed the risk of addiction is low and unlikely to develop when opioids are prescribed, as opposed to obtained illicitly; and failed to disclose the greater risk of addiction with prolonged use of opioids. For example:

- a. Actavis's predecessor caused a patient education brochure to be distributed in 2007 claiming opioid addiction is possible, but "less likely if you have never had an addiction problem." Upon information and belief, based on Actavis's acquisition of its predecessor's marketing materials along with the rights to Kadian, Actavis continued to use this brochure in 2009 and beyond;
- b. Cephalon and Purdue sponsored APF's *Treatment Options: A Guide for People Living with Pain* (2007), which instructed that addiction is rare and limited to extreme cases of unauthorized dose escalations, obtaining duplicative opioid prescriptions from multiple sources, or theft. This publication is still available online;
- c. Endo sponsored a website, Painknowledge.com, which claimed in 2009 that "[p]eople who take opioids as prescribed usually do not become addicted." Another Endo website, PainAction.com, stated "Did you know? Most chronic pain patients do not become addicted to the opioid medications that are prescribed for them;"
- d. Endo distributed a pamphlet with the Endo logo entitled *Living with Someone with Chronic Pain*, which stated that: "Most health care providers who treat people with pain agree that most people do not develop an addiction problem." A similar statement appeared on the Endo website, www.opana.com;
- e. Janssen reviewed, edited, approved, and distributed a patient education guide entitled *Finding Relief: Pain Management for Older Adults* (2009), which described as "myth" the claim that

opioids are addictive, and asserted as fact that “[m]any studies show that opioids are rarely addictive when used properly for the management of chronic pain;”

- f. Janssen currently runs a website, Prescriberresponsibly.com (last updated July 2, 2015), which claims that concerns about opioid addiction are “overestimated;”
- g. Purdue sponsored APF’s *A Policymaker’s Guide to Understanding Pain & Its Management* – which claims that less than 1% of children prescribed opioids will become addicted and that pain is undertreated due to “misconceptions about opioid addiction[.]” This publication is still available online; and
- h. Detailers for Purdue, Endo, Janssen, and Cephalon minimized or omitted any discussion with doctors of the risk of addiction; misrepresented the potential for opioid abuse with purportedly abuse-deterrent formulations; and routinely did not correct the misrepresentations noted above.

78. These claims contradict longstanding scientific evidence, as the FDA and CDC have conclusively declared. As noted in the 2016 CDC Guideline endorsed by the FDA, there is “extensive evidence” of the “possible harms of opioids (including opioid use disorder [an alternative term for opioid addiction]).”¹⁷ The guideline points out that “[o]pioid pain medication use presents serious risks, including...opioid use disorder” and that “continuing opioid therapy for 3 months substantially increases risk for opioid use disorder.”¹⁸

79. The FDA further exposed the falsity of Defendants’ claims about the low risk of addiction when it announced changes to the labels for ER/LA opioids in

¹⁷ *CDC Guideline for Prescribing Opioids for Chronic Pain – United States 2016*, Centers for Disease Control and Prevention (Mar. 18, 2016).

¹⁸ *Id.*

2013 and for IR opioids in 2016. In its announcements, the FDA discussed the risks related to opioid use and that IR opioids are associated with “persistent abuse, addiction, overdose mortality, and risk of NOWS [neonatal opioid withdrawal syndrome].”¹⁹

80. According to the FDA, because of the risks associated with long-term opioid use, including “the serious risk of addiction, abuse, misuse, overdose, and death,”²⁰ opioids should be “reserved for pain severe enough to require opioid treatment and for which alternative treatment options (e.g., non-opioid analgesics or opioid combination products, as appropriate) are inadequate or not tolerated.”²¹

81. The warnings on Defendants’ own FDA-approved drug labels caution that opioids “exposes users to risks of addiction, abuse and misuse, which can lead to overdose and death”²² and that addiction “can occur in patients appropriately prescribed”²³ opioids.

82. **Second**, Defendants falsely instructed doctors and patients that signs of addiction are actually signs of undertreated pain and should be treated by prescribing more opioids. Defendants called this phenomenon “pseudoaddiction” – a term coined by Dr. David Haddox, who went to work for Purdue, and popularized by Dr.

¹⁹ *FDA Announcement of Enhanced Warnings for Immediate-Release Opioid Pain Medications Related to Risks of Misuse, Abuse, Addiction, Overdose and Death*, Federal Drug Administration (Mar. 22, 2016)

²⁰ *Id.*

²¹ *Id.*

²² *See, e.g.*, OxyContin label and insert at *OxyContin.com*.

²³ *Id.*

Russell Portenoy, a KOL for Cephalon, Endo, Janssen, and Purdue – and claimed that pseudoaddiction is substantiated by scientific evidence. For example:

- a. Cephalon and Purdue sponsored *Responsible Opioid Prescribing* (2007), which taught that behaviors such as “requesting drugs by name,” “demanding or manipulative behavior,” seeing more than one doctor to obtain opioids, and hoarding, are all signs of pseudoaddiction, rather than true addiction. *Responsible Opioid Prescribing* remains for sale online. The 2012 edition continues to teach that pseudoaddiction is real;
- b. Janssen sponsored, funded, and edited the *Let’s Talk Pain* website, which in 2009 stated: “pseudoaddiction . . . refers to patient behaviors that may occur when pain is under-treated Pseudoaddiction is different from true addiction because such behaviors can be resolved with effective pain management;”
- c. Endo sponsored a National Initiative on Pain Control (NIPC) CME program in 2009 titled *Chronic Opioid Therapy: Understanding Risk While Maximizing Analgesia*, which promoted pseudoaddiction by teaching that a patient’s aberrant behavior was the result of untreated pain. Endo substantially controlled NIPC by funding NIPC projects; developing, specifying, and reviewing content; and distributing NIPC materials;
- d. Purdue published a pamphlet in 2011 entitled *Providing Relief, Preventing Abuse*, which described pseudoaddiction as a concept that “emerged in the literature” to describe the inaccurate interpretation of [drug-seeking behaviors] in patients who have pain that has not been effectively treated;” and
- e. Purdue sponsored a CME program entitled *Path of the Patient, Managing Chronic Pain in Younger Adults at Risk for Abuse*. In a role play, a chronic pain patient with a history of drug abuse tells his doctor that he is taking twice as many hydrocodone pills as directed. The narrator notes that because

of pseudoaddiction, the doctor should not assume the patient is addicted even if he persistently asks for a specific drug, seems desperate, hoards medicine, or “overindulges in unapproved escalating doses.” The doctor treats this patient by prescribing a high-dose, long- acting opioid.

83. The 2016 CDC Guideline rejects the concept of pseudoaddiction. The Guideline nowhere recommends that opioid dosages be increased if a patient is not experiencing pain relief. To the contrary, the Guideline explains that “[p]atients who do not experience clinically meaningful pain relief early in treatment...are unlikely to experience pain relief with longer-term use,”²⁴ and that physicians should “reassess[] pain and function within 1 month”²⁵ in order to decide whether to “minimize risks of long-term opioid use by discontinuing opioids”²⁶ because the patient is “not receiving a clear benefit.”²⁷

84. **Third**, Defendants falsely instructed doctors and patients that addiction risk screening tools, patient contracts, urine drug screens, and similar strategies allow them to reliably identify and safely prescribe opioids to patients predisposed to addiction. These misrepresentations were especially insidious because Defendants aimed them at general practitioners and family doctors who lack the time and expertise to closely manage higher-risk patients. Defendants’ misrepresentations made these doctors feel more comfortable prescribing opioids to their patients, and patients more comfortable starting opioid therapy for chronic pain. For example:

²⁴ *CDC Guidelines for Prescribing Opioids for Chronic Pain, supra.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

- a. Endo paid for a 2007 supplement in the *Journal of Family Practice* written by a doctor who became a member of Endo's speakers' bureau in 2010. The supplement, entitled *Pain Management Dilemmas in Primary Care: Use of Opioids*, emphasized the effectiveness of screening tools, claiming that patients at high risk of addiction could safely receive chronic opioid therapy using a "maximally structured approach" involving toxicology screens and pill counts;
- b. Purdue sponsored a 2011 webinar, *Managing Patient's Opioid Use: Balancing the Need and Risk*, which claimed that screening tools, urine tests, and patient agreements prevent "overuse of prescriptions" and "overdose deaths;" and
- c. As recently as 2015, Purdue has represented in scientific conferences that "bad apple" patients – and not opioids – are the source of the addiction crisis and that once those "bad apples" are identified, doctors can safely prescribe opioids without causing addiction.

85. Once again, the 2016 CDC Guideline confirms these representations are false. The Guideline notes that there are no studies assessing the effectiveness of risk mitigation strategies – such as screening tools, patient contracts, urine drug testing, or pill counts, widely believed by doctors to detect and deter abuse, "for improving outcomes related to overdose, addiction, abuse, or misuse."²⁸ As a result, the Guideline recognizes that available risk screening tools "show insufficient accuracy for classification of patients as at low or high risk for [opioid] abuse or misuse"²⁹ and counsels that doctors "should not overestimate the ability of these tools to rule out risks from long-term opioid therapy."³⁰

²⁸CDC *Guidelines for Prescribing Opioids for Chronic Pain*, *supra*.

²⁹*Id.*

³⁰*Id.*

86. *Fourth*, to underplay the risk and impact of addiction and make doctors feel more comfortable starting patients on opioids, Defendants falsely claimed that opioid dependence can easily be addressed by tapering and that opioid withdrawal is not a problem thereby failing to disclose the increased difficulty of stopping opioids after long-term use.

87. For example, a CME sponsored by Endo, entitled *Persistent Pain in the Older Adult*, claimed that withdrawal symptoms can be avoided by tapering a patient's opioid dose by 10%-20% for 10 days. And Purdue sponsored APF's *A Policymaker's Guide to Understanding Pain & Its Management*, which claimed that "[s]ymptoms of physical dependence can often be ameliorated by gradually decreasing the dose of medication during discontinuation."

88. Defendants deceptively minimized the significant symptoms of opioid withdrawal, which, as explained in the 2016 CDC Guideline, include drug cravings, anxiety, insomnia, abdominal pain, vomiting, diarrhea, sweating, tremor, tachycardia (rapid heartbeat), spontaneous abortion and premature labor in pregnant women, and the unmasking of anxiety, depression, and addiction – and grossly understated the difficulty of tapering, particularly after long-term opioid use.

89. Yet the 2016 CDC Guideline recognizes that the duration of opioid use and the dosage of opioids prescribed should be limited to “minimize the need to taper opioids to prevent distressing or unpleasant withdrawal symptoms,”³¹ because

³¹ CDC Guidelines for Prescribing Opioids for Chronic Pain, *supra*.

“physical dependence on opioids is an expected physiologic response in patients exposed to opioids for more than a few days.”³² The Guideline further states that “tapering opioids can be especially challenging after years on high dosages because of physical and psychological dependence”³³ and highlights the difficulties, including the need to carefully identify “a taper slow enough to minimize symptoms and signs of opioid withdrawal”³⁴ and pausing and restarting tapers depending on the patient’s response.

90. The CDC also acknowledges the lack of any “high-quality studies comparing the effectiveness of different tapering protocols for use when opioid dosage is reduced or opioids are discontinued.”³⁵

91. ***Fifth***, Defendants falsely claimed that doctors and patients could increase opioid dosages indefinitely without added risk and failed to disclose the greater risks to patients at higher dosages. The ability to escalate dosages was critical to Defendants’ efforts to market opioids for long-term use to treat chronic pain because, absent this misrepresentation, doctors would have abandoned treatment when patients built up tolerance and lower dosages did not provide pain relief. For example:

- a. Actavis’s predecessor created a patient brochure for Kadian in 2007 that stated, “Over time, your body may become tolerant of your current dose. You may require a dose adjustment to get the right amount of pain relief. This is not addiction.” Upon

³² *Id.*

³³ *Id.*

³⁴ *CDC Guidelines for Prescribing Opioids for Chronic Pain, supra.*

³⁵ *Id.*

information and belief, based on Actavis's acquisition of its predecessor's marketing materials along with the rights to Kadian, Actavis continued to use these materials in 2009 and beyond;

- b. Cephalon and Purdue sponsored *APF's Treatment Options: A Guide for People Living with Pain* (2007), which claims that some patients "need" a larger dose of an opioid, regardless of the dose currently prescribed. The guide stated that opioids have "no ceiling dose" and are therefore the most appropriate treatment for severe pain. This guide is still available for sale online;
- c. Endo sponsored a website, painknowledge.com, which claimed in 2009 that opioid dosages may be increased until "you are on the right dose of medication for your pain";
- d. Endo distributed a pamphlet edited by a KOL entitled *Understanding Your Pain: Taking Oral Opioid Analgesics*, which was available during the time period of this Complaint on Endo's website. In Q&A format, it asked "If I take the opioid now, will it work later when I really need it?" The response is, "The dose can be increased. . . . You won't 'run out' of pain relief;";
- e. Janssen sponsored a patient education guide entitled *Finding Relief: Pain Management for Older Adults* (2009), which was distributed by its sales force. This guide listed dosage limitations as "disadvantages" of other pain medicines but omitted any discussion of risks of increased opioid dosages;
- f. Purdue's In the Face of Pain website promotes the notion that if a patient's doctor does not prescribe what, in the patient's view, is a sufficient dosage of opioids, he or she should find another doctor who will;
- g. Purdue sponsored APF's *A Policymaker's Guide to Understanding Pain & Its Management*, which taught that dosage escalations are "sometimes necessary," even unlimited ones, but did not disclose the risks from high opioid dosages. This publication is still available online;

- h. Purdue sponsored a CME entitled *Overview of Management Options* that is still available for CME credit. The CME was edited by a KOL and taught that NSAIDs and other drugs, but not opioids, are unsafe at high dosages; and
- i. Purdue presented a 2015 paper at the College on the Problems of Drug Dependence, the “the oldest and largest organization in the US dedicated to advancing a scientific approach to substance use and addictive disorders,” challenging the correlation between opioid dosage and overdose.

92. These claims conflict with the scientific evidence, as confirmed by the FDA and CDC. As the CDC explains in its 2016 Guideline, the “[b]enefits of high-dose opioids for chronic pain are not established”³⁶ while the “risks for serious harms related to opioid therapy increase at higher opioid dosage.”³⁷

93. More specifically, the CDC explains that “there is now an established body of scientific evidence showing that overdose risk is increased at higher opioid dosages.”³⁸ Similarly, there is an “increased risk for opioid use disorder, respiratory depression, and death at higher dosages.”³⁹ That is why the CDC advises doctors to avoid increasing dosages above 90 morphine milligram equivalents per day.

94. The 2016 CDC Guideline reinforces earlier findings announced by the FDA. In 2013, the FDA acknowledged that available data suggested that increasing the opioid dosage likewise increased certain adverse events. For example, the FDA

³⁶ *CDC Guidelines for Prescribing Opioids for Chronic Pain, supra.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

noted that studies suggest a positive association between high-dose opioid use and overdoses.

95. *Finally*, Defendants' deceptive marketing of the so-called abuse-deterrent properties of some of their opioids has created false impressions that these opioids can curb addiction and abuse.

96. More specifically, Defendants have made misleading claims about the ability of their so-called abuse-deterrent opioid formulations to deter abuse. For example, Endo's advertisements for the 2012 reformulation of Opana ER claimed that it was designed to be crush resistant in a way that suggested it was more difficult to abuse. This claim was false.

97. The FDA warned in a 2013 letter that there was no evidence Endo's design would provide a reduction in oral, intranasal or intravenous abuse.⁴⁰ Moreover, Endo's own studies, which it failed to disclose, showed that Opana ER could still be ground and chewed.

98. In a 2016 settlement with the State of New York, Endo agreed not to make statements in New York that Opana ER was designed to be or is crush resistant. The State found those statements false and deceptive because there was no difference in the ability to extract the narcotic from Opana ER.

99. Similarly, the 2016 CDC Guideline states that no studies support the notion that "abuse-deterrent technologies [are] a risk mitigation strategy for deterring

⁴⁰ See *FDA Statement: Original Opana ER Relisting Determination* (May 10, 2013).

or preventing abuse,”⁴¹ noting that the technologies – even when they work – “do not prevent opioid abuse through oral intake, the most common route of opioid abuse, and can still be abused by non-oral routes.”⁴²

100. These numerous, long-standing misrepresentations of the risks of long-term opioid use spread by Defendants successfully convinced doctors and patients to discount those risks.

D. Defendants Grossly Overstated the Benefits of Chronic Opioid Therapy.

101. To convince doctors and patients that opioids should be used to treat chronic pain, Defendants had to persuade them that there was a significant benefit to long-term opioid use. But as the 2016 CDC Guideline makes clear, there is “insufficient evidence to determine the long-term benefits of opioid therapy for chronic pain.”⁴³

102. In fact, the CDC found no evidence showing “a long-term benefit of opioids in pain and function versus no opioids for chronic pain with outcomes examined at least 1 year later (with most placebo-controlled randomized trials \leq 6 weeks in duration)”⁴⁴ and that other treatments were more or equally beneficial and less harmful than long-term opioid use. The FDA, too, has recognized the lack of evidence to support long-term opioid use.

⁴¹ *CDC Guidelines for Prescribing Opioids for Chronic Pain, supra.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

103. In 2013, the FDA stated that it was unaware of any studies demonstrating the safety and efficacy of opioids for long-term use.⁴⁵ Despite this lack of studies, Defendants falsely and misleadingly touted the benefits of long-term opioid use and suggested that these benefits were supported by scientific evidence. Not only have Defendants failed to correct these false and deceptive claims, they continue to make them today. For example:

- a. Actavis distributed an advertisement that claimed that the use of Kadian to treat chronic pain would allow patients to return to work, relieve “stress on your body and your mental health,” and help patients enjoy their lives;
- b. Endo distributed advertisements that claimed that the use of Opana ER for chronic pain would allow patients to perform demanding tasks like construction work or work as a chef and portrayed seemingly healthy, unimpaired subjects;
- c. Janssen sponsored and edited a patient education guide entitled *Finding Relief: Pain Management for Older Adults* (2009) – which states as “a fact” that “opioids may make it easier for people to live normally.” The guide lists expected functional improvements from opioid use, including sleeping through the night, returning to work, recreation, sex, walking, and climbing stairs;
- d. Purdue ran a series of advertisements for OxyContin in 2012 in medical journals entitled “Pain vignettes,” which were case studies featuring patients with pain conditions persisting over several months and recommending OxyContin for them. The ads implied that OxyContin improves patients’ function;
- e. *Responsible Opioid Prescribing* (2007), sponsored and distributed by Cephalon, Endo and Purdue, taught that relief of

⁴⁵ Letter from Janet Woodcock, M.D., Dir., Ctr. For Drug Eval. & Res., to Andrew Kolodny, M.D., Pres. Physicians for Responsible Opioid Prescribing, Re Docket No. FDA-2012-P-0818 (Sept. 10, 2013).

pain by opioids, by itself, improved patients' function. The book remains for sale online;

- f. Cephalon and Purdue sponsored APF's *Treatment Options: A Guide for People Living with Pain* (2007), which counseled patients that opioids "give [pain patients] a quality of life we deserve." The guide was available online until APF shut its doors in 2012;
- g. Endo's NIPC website *painknowledge.com* claimed in 2009 that with opioids, "your level of function should improve; you may find you are now able to participate in activities of daily living, such as work and hobbies, that you were not able to enjoy when your pain was worse." Elsewhere, the website touted improved quality of life (as well as "improved function") as benefits of opioid therapy. The grant request that Endo approved for this project specifically indicated NIPC's intent to make misleading claims about function, and Endo closely tracked visits to the site;
- h. Endo was the sole sponsor, through NIPC, of a series of CMEs titled *Persistent Pain in the Older Patient*, which claimed that chronic opioid therapy has been "shown to reduce pain and improve depressive symptoms and cognitive functioning." The CME was disseminated via webcast;
- i. Janssen sponsored, funded, and edited a website, *Let's Talk Pain*, in 2009, which featured an interview edited by Janssen claiming that opioids allowed a patient to "continue to function." This video is still available today on YouTube;
- j. Purdue sponsored the development and distribution of APF's *A Policymaker's Guide to Understanding Pain & Its Management*, which claimed that "multiple clinical studies" have shown that opioids are effective in improving daily function, psychological health, and health-related quality of life for chronic pain patients." The Policymaker's Guide was originally published in 2011 and is still available online today; and
- k. Purdue's, Cephalon's, Endo's, and Janssen's sales representatives have conveyed and continue to convey the message that opioids will improve patient function.

104. These claims find no support in the scientific literature. Most recently, the 2016 CDC Guideline, approved by the FDA, concluded, “There is no good evidence that opioids improve pain or function with long-term use”⁴⁶ and “complete relief of pain is unlikely.”⁴⁷ (Emphasis added.) The CDC reinforced this conclusion throughout its 2016 Guideline:

- a. “No evidence shows a long-term benefit of opioids in pain and function versus no opioids for chronic pain with outcomes examined at least 1 year later . . .”⁴⁸
- b. “Although opioids can reduce pain during short-term use, the clinical evidence review found insufficient evidence to determine whether pain relief is sustained and whether function or quality of life improves with long-term opioid therapy”⁴⁹ and
- c. “[E]vidence is limited or insufficient for improved pain or function with long-term use of opioids for several chronic pain conditions for which opioids are commonly prescribed, such as low back pain, headache, and fibromyalgia.”⁵⁰

105. The CDC also noted that the risks of addiction and death “can cause distress and inability to fulfill major role obligations.”⁵¹ As a matter of common sense (and medical evidence), drugs that can kill patients or commit them to a life of addiction or recovery do not improve their function and quality of life.

106. The 2016 CDC Guideline was not the first time a federal agency repudiated Defendants’ claim that opioids improved function and quality of life. In

⁴⁶CDC Guidelines for Prescribing Opioids for Chronic Pain, *supra*.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ CDC Guidelines for Prescribing Opioids for Chronic Pain, *supra*.

2010, the FDA warned Actavis that “[w]e are not aware of substantial evidence or substantial clinical experience demonstrating that the magnitude of the effect of the drug [Kadian] has in alleviating pain, taken together with any drug-related side effects patients may experience...results in any overall positive impact on a patient’s work, physical and mental functioning, daily activities, or enjoyment of life.”⁵²

107. Defendants also falsely emphasized or exaggerated the risks of competing products like NSAIDs so that doctors and patients would look to opioids first for treating chronic pain. Once again, Defendants’ misrepresentations contravene pronouncements by and guidance from the FDA and CDC based on the scientific evidence.

108. Consequently, the FDA changed the labels for ER/LA opioids in 2013 and IR opioids in 2016 to state that opioids should be used only as a last resort where alternative treatments like non-opioid drugs are inadequate. And the 2016 CDC Guideline states that NSAIDs, not opioids, should be the first-line treatment for chronic pain, particularly arthritis and lower back pain.

109. In addition, Purdue misleadingly promoted OxyContin as unique among opioids in providing 12 continuous hours of pain relief with one dose. In fact, OxyContin does not last for 12 hours – a fact that Purdue has known at all times relevant to this action.

⁵² Warning Letter from Thomas Abrams, Dir., FDA Div. of Mktg., Adver., & Commc’ns, to Doug Boothe, CEO, Actavis Elizabeth LLC (Feb. 18, 2010), available at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/EnforcementActivitiesbyFDA/WarningLettersandNoticeofViolationLetterstoPharmaceuticalCompanies/ucm259240.htm>.

110. According to Purdue's own research, OxyContin wears off in under six hours in one quarter of patients and in under 10 hours in more than half. The reason is that OxyContin tablets release approximately 40% of their active medicine immediately, after which release tapers. Although the patient experiences a powerful initial response, there is little or no pain relief at the end of the dosing period because less medicine is released.

111. This phenomenon is known as "end of dose" failure, and the FDA found in 2008 that a substantial number of chronic pain patients taking OxyContin experience it.

112. This "end of dose" failure not only renders Purdue's promise of 12 hours of relief false and deceptive, it also makes OxyContin more dangerous because the declining pain relief patients experience toward the end of each dosing period drives them to take more OxyContin before the next dosing period begins, quickly increasing the amount of drug they are taking and spurring growing dependence.

113. Purdue's competitors were aware of this problem. For example, Endo ran advertisements for Opana ER referring to "real" 12-hour dosing. Nevertheless, Purdue falsely promoted OxyContin as if it were effective for a full 12 hours. Indeed, Purdue's sales representatives continue to tell doctors like those working in and around the Counties that OxyContin lasts a full 12 hours.

E. Defendants also engaged in Other Unlawful, Unfair, and Fraudulent Misconduct.

114. Cephalon deceptively marketed its opioids Actiq and Fentora for chronic pain even though the FDA has expressly limited their use to the treatment of cancer pain in opioid-tolerant individuals.

115. Both Actiq and Fentora are extremely powerful fentanyl-based IR opioids. Neither is approved for or has been shown to be safe or effective for chronic pain. Indeed, the FDA expressly prohibited Cephalon from marketing Actiq for anything but cancer pain, and refused to approve Fentora for the treatment of chronic pain because of the potential harm, including the high risk of “serious and life-threatening adverse events” and abuse – which are greatest in non-cancer patients.

116. The FDA also issued a Public Health Advisory in 2007 emphasizing that Fentora should be used only for cancer patients who are opioid-tolerant and should not be used for any other conditions, such as migraines, post-operative pain, or pain due to injury.

117. Despite this advisory, Cephalon conducted and continues to conduct a well-funded campaign to promote Actiq and Fentora for chronic pain and other non-cancer conditions for which it was not approved, appropriate, or safe. As part of this campaign, Cephalon used CMEs, speaker programs, KOLs, journal supplements, and detailing by its sales representatives to give doctors the false impression that Actiq and Fentora are safe and effective for treating non-cancer pain. For example:

- a. Cephalon paid to have a CME it sponsored, *Opioid-Based Management of Persistent and Breakthrough Pain*, published in a supplement of *Pain Medicine News* in 2009. The CME instructed doctors that “clinically, broad classification of pain syndromes as either cancer, or non-cancer, related has limited utility” and recommended Actiq and Fentora for patients with chronic pain. The CME is still available online;
- b. Cephalon’s sales representatives set up hundreds of speaker programs for doctors, including many non-oncologists, which promoted Actiq and Fentora for the treatment of non-cancer pain; and
- c. In December 2011, Cephalon widely disseminated a journal supplement entitled “*Special Report: An Integrated Risk Evaluation and Mitigation Strategy for Fentanyl Buccal Tablet (FENTORA) and Oral Transmucosal Fentanyl Citrate (ACTIQ)*” to *Anesthesiology News*, *Clinical Oncology News*, and *Pain Medicine News* – three publications that are sent to thousands of anesthesiologists and other medical professionals. The Special Report openly promotes Fentora for “multiple causes of pain” – and not just cancer pain.

118. Cephalon’s deceptive marketing gave doctors and patients the false impression that Actiq and Fentora were safe and effective not only for treating chronic pain, but were also approved by the FDA for such uses.

119. Other Defendants herein participated in illicit and unlawful prescribing of its drugs. For example, Purdue did not report illegal prescribing of OxyContin until years after law enforcement shut down a Los Angeles clinic that prescribed more than 1.1 million OxyContin tablets. In doing so, Purdue protected its own profits at the expense of public health and safety.

120. The State of New York also found that Endo failed to require sales representatives to report signs of abuse, diversion, and inappropriate prescribing; paid bonuses to sales representatives for detailing prescribers who were subsequently arrested or convicted for illegal prescribing; and failed to prevent sales representatives from visiting prescribers whose suspicious conduct had caused them to be placed on a no-call list.

F. Defendants Targeted Susceptible Prescribers and Vulnerable Patient Populations.

121. As a part of their deceptive marketing scheme, Defendants identified and targeted susceptible prescribers and vulnerable patient populations in the U.S., and based upon information and belief, the Counties were identified and targeted as well. For example, Defendants focused their deceptive marketing on primary care doctors, who were more likely to treat chronic pain patients and prescribe them drugs, but were less likely to be educated about treating pain and the risks and benefits of opioids.

122. Defendants also targeted vulnerable patient populations like the elderly and veterans, who tend to suffer from chronic pain. Defendants targeted these vulnerable patients even though the risks of long-term opioid use were significantly greater for them.

123. For example, the 2016 CDC Guideline observes that existing evidence shows that elderly patients taking opioids suffer from elevated fall and fracture risks, greater risk of hospitalization, and increased vulnerability to adverse drug effects

and interactions. The Guideline therefore concludes that there are “special risks of long-term opioid use for elderly patients” and recommends that doctors use “additional caution and increased monitoring” to minimize the risks of opioid use in elderly patients. The same is true for veterans, who are more likely to use anti-anxiety drugs (benzodiazepines) for post-traumatic stress disorder, which interact dangerously with opioids.

G. Although Defendants knew that their Marketing of Opioids was False and Deceptive, they Fraudulently Concealed their Misconduct.

124. Defendants, both individually and collectively, made, promoted, and profited from their misrepresentations about the risks and benefits of opioids for chronic pain even though they knew their misrepresentations were false and deceptive. The history of opioids, as well as research and clinical experience over the last 20 years, established that opioids were highly addictive and responsible for a long list of very serious adverse outcomes.

125. Not only did the FDA and other regulators warn Defendants, but Defendants had access to scientific studies, detailed prescription data, and reports of adverse events, including reports of addiction, hospitalization, and deaths – all of which made clear that harms from long-term opioid use and that patients are suffering from addiction, overdoses, and death in alarming numbers in patients using opioids.

126. More recently, the FDA and CDC have issued pronouncements based on the medical evidence that conclusively expose the known falsity of Defendants’ misrepresentations, and Endo and Purdue have recently entered agreements

prohibiting them from making some of the same misrepresentations described in this Complaint in New York.

127. Moreover, Defendants took steps to avoid detection of and to fraudulently conceal their deceptive marketing and unlawful, unfair, and fraudulent conduct. For example, Defendants disguised their own role in the deceptive marketing of chronic opioid therapy by funding and working through third parties like Front Groups and KOLs.

128. Finally, Defendants manipulated their promotional materials and the scientific literature to make it appear that these items were accurate, truthful, and supported by objective evidence when they were not.

129. Thus, Defendants successfully concealed from the medical community and patients facts sufficient to arouse suspicion of the claims the Counties now assert. The Counties did not know of the existence or scope of Defendants' industry-wide fraud and could not have acquired such knowledge earlier through the exercise of reasonable diligence.

H. By Increasing Opioid Prescriptions and Use, Defendants' Deceptive Marketing Scheme has fueled the Opioid Epidemic and Devastated County Communities.

130. Defendants' misrepresentations deceived doctors and patients about the risks and benefits of long-term opioid use. Studies reveal that many doctors and patients are unaware of or do not understand the risks or benefits of opioids. Indeed, patients often report that they were not warned they might become addicted to

opioids prescribed to them. As reported in January 2016, a 2015 survey of more than 1,000 opioid patients found that 4 out of 10 were not told opioids were potentially addictive.⁵³

131. Defendants' deceptive marketing scheme caused and continues to cause doctors like those working in and around the Counties to prescribe opioids for chronic pain conditions such as back pain, headaches, arthritis, and fibromyalgia. Absent Defendants' deceptive marketing scheme, these doctors would not have prescribed as many opioids.

132. Defendants' deceptive marketing scheme also caused and continues to cause patients to purchase and use opioids for their chronic pain believing they are safe and effective. Absent Defendants' deceptive marketing scheme, fewer patients would be using opioids long-term to treat chronic pain, and those patients using opioids would be using less of them.

133. Defendants' deceptive marketing has caused and continues to cause the prescribing and use of opioids to explode. Indeed, this dramatic increase in opioid prescriptions and use corresponds with the dramatic increase in Defendants' spending on their deceptive marketing scheme. Defendants' spending on opioid marketing totaled approximately \$91 million in 2000. By 2011, that spending had tripled to \$288 million.

⁵³ Hazelden Betty Ford Foundation, *Missed Questions, Missed Opportunities* (Jan. 27, 2016), available at <http://www.hazeldenbettyford.org/about-us/news-and-media/pressrelease/doctors-missing-questions-that-could-prevent-opioid-addiction>.

134. The escalating number of opioid prescriptions written by doctors who were deceived by Defendants' deceptive marketing scheme is the cause of a correspondingly dramatic increase in opioid addiction, overdose, and death throughout the U.S. and, based upon information and belief, in the Counties.

135. Scientific evidence demonstrates a strong correlation between opioid prescriptions and opioid abuse. In a 2016 report, the CDC explained that prescribing opioids has quadrupled since 1999, which has resulted in a parallel increase in opioid overdoses.⁵⁴ Indeed, there has been a two-third increase in overdose deaths from using opioids since 2000.⁵⁵ For these reasons, the CDC concluded that efforts to rein in the prescribing of opioids for chronic pain are critical "to reverse the cycle of opioid pain medication misuse that contributes to the opioid overdose epidemic."⁵⁶

136. Based upon information and belief, Defendants' deceptive marketing scheme has also detrimentally impacted children in the Counties. Overprescribing opioids for chronic pain has made the drugs more accessible to school-aged children, who come into contact with opioids after they have been prescribed to friends or relatives in the same household.

⁵⁴ CDC. National Vital Statistics System, Mortality. CDC WONDER. Atlanta, GA: US Department of Health and Human Services, CDC; 2016. <https://wonder.cdc.gov/>; Rudd RA, Seth P, David F, Scholl L. Increases in Drug and Opioid-Involved Overdose Deaths — United States, 2010–2015. MMWR Morb Mortal Wkly Rep. ePub: 16 December 2016.

⁵⁵ *National Vital Statistics System*, Mortality file and appearing *Center for Disease Control and Prevention* Morbidity and Mortality Weekly Report, January 1, 2006 / 64(50); 1378-82, Increases in Drug and Opioid Deaths — United States, 2000-2014.

⁵⁶ *CDC Guideline for Prescribing Opioids for Chronic Pain*, *supra*; see also Rudd RA, Seth P, David F, Scholl L. Increases in Drug and Opioid-Involved Overdose Deaths — United States, 2010–2015. MMWR Morb Mortal Wkly Rep. ePub: 16 December 2016.

137. Due to the increase in opioid overdoses, first responders such as police officers, have been and will continue to be in the position to assist people experiencing opioid-related overdoses.⁵⁷ In 2016, “over 1,200 law enforcement departments nationwide carried naloxone in an effort to prevent opioid-related deaths.”⁵⁸

138. Based upon information and belief, there was also an increase in the Counties’ child protection agencies in the number of children in foster care driven by parental drug addiction. Children with parents addicted to drugs tend to stay in foster care longer, and they often enter the system having experienced significant trauma, which makes these cases more expensive for counties like the Plaintiffs.

139. Opioid addiction is one of the primary reasons that County residents seek substance abuse treatment. A significant number of admissions for drug abuse were associated with a primary diagnosis of opiate abuse or dependence.

140. Defendants’ creation, through false and deceptive advertising and other unlawful and unfair conduct, of a virtually limitless opioid market has significantly harmed communities like the Counties. Defendants’ success in extending the market for opioids to new patients and chronic pain conditions has created an abundance of drugs available for non-medical and criminal use and fueled a new wave of addiction

⁵⁷ Opinion of the Attorney General of Montana, KP-0168 (Oct. 4, 2017).

⁵⁸ *Id.* citing <http://www.nchrc.org/law-enforcement/us-law-enforcement-who-carry-naloxone/>.

and injury. It has been estimated that 60% of the opioids that are abused come, directly or indirectly, through doctors' prescriptions.⁵⁹

141. Law enforcement agencies have increasingly associated prescription drug abuse with violent and property crimes. Despite strict federal regulation of prescription drugs, local law enforcement agencies are faced with increasing diversion from legitimate sources for illicit purposes, including doctor shopping, forged prescriptions, falsified pharmacy records, and employees who steal from their place of employment. The opioid epidemic has prompted a growing trend of crimes against pharmacies including robbery and burglary. This ongoing diversion of prescription narcotics creates a lucrative marketplace.

142. The rise in opioid addiction caused by Defendants' deceptive marketing scheme has also resulted in an explosion in heroin use. For example, heroin use has more than doubled in the past decade among adults aged 18 to 25 years.⁶⁰ Moreover, heroin-related overdoses in the United States has more than quadrupled since 2010.⁶¹

143. The costs and consequences of opioid addiction are staggering. For example, in 2007, the cost of healthcare due to opioid abuse, dependence, and misuse was estimated at 25 billion, the cost of criminal justice was estimated at 5.1 billion, and the cost of lost workplace productivity was estimated at 25.6 billion.

⁵⁹ Nathaniel P. Katz, *Prescription Opioid Abuse: Challenges and Opportunities for Payers*, Am. J. Managed Care (Apr. 19 2013), at 5 ("The most common source of abused [opioids] is, directly or indirectly, by prescription."), available at <http://www.ajmc.com/publications/issue/2013/2013-1-vol19-n4/Prescription-Opioid-Abuse-Challenges-and-Opportunities-for-Payers>.

⁶⁰ Centers for Disease Control and Prevention. Vital Signs: Today's Heroin Epidemic – More People at Risk, Multiple Drugs Abused. (<https://www.cdc.gov/vitalsigns/heroin/index.html>). MMWR 2015.

⁶¹ <https://www.cdc.gov/vitalsigns/heroin/index.html>.

144. Consequently, prescription opioid misuse, abuse, and overdose have an enormous impact on the health and safety of individuals, as well as communities at large, because the consequences of this epidemic reach far beyond the addicted individual.

145. Some of the repercussions for residents of the Counties include job loss, loss of custody of children, physical and mental health problems, homelessness and incarceration, which results in instability in communities often already in economic crisis and contributes to increased demand on community services such as hospitals, courts, child services, treatment centers, and law enforcement.

146. Defendants knew and should have known about these harms that their deceptive marketing has caused and continues to cause and will cause in the future. Defendants closely monitored their sales and the habits of prescribing doctors. Their sales representatives, who visited doctors and attended CMEs, knew which doctors were receiving their messages and how they were responding.

147. Defendants also had access to and carefully watched government and other data that tracked the explosive rise in opioid use, addiction, injury, and death. Defendants not only knew, but intended that their misrepresentations would persuade doctors to prescribe and encourage patients to use their opioids for chronic pain.

148. Defendants' actions are neither permitted nor excused by the fact that their drug labels (with the exception of the Actiq/Fentora labels) may have allowed

or did not exclude the use of opioids for chronic pain. FDA approval of opioids for certain uses did not give Defendants license to misrepresent the risks and benefits of opioids. Indeed, Defendants' misrepresentations were directly contrary to pronouncements by, and guidance from, the FDA based on the medical evidence and their own labels.

149. Nor is Defendants' causal role broken by the involvement of doctors. Defendants' marketing efforts were ubiquitous and highly persuasive. Their deceptive messages tainted virtually every source doctors could rely on for information and prevented them from making informed treatment decisions. Defendants also hijacked what doctors wanted to believe – namely, that opioids represented a means of relieving their patients' suffering and of practicing medicine more compassionately.

150. Defendants' actions and omissions were each a cause-in-fact of the Counties' past and future damages. Defendants' wrongful conduct caused injuries to the Counties in the past, and will continue to cause damages in the future. Future damages include, but are not limited to, additional resources for counseling and medication assisted treatment of addicts, medical treatment for overdoses, life skills training for adolescents, increased law enforcement, and additional resources to treat the psychological effects of opioids and the underlying conditions that make people susceptible to opioid addiction.

I. Defendants' Fraudulent Marketing Has Led To Record Profits.

151. While using opioids has taken an enormous toll on the Counties and its residents, Defendants have realized blockbuster profits. In 2014 alone, opioids generated \$11 billion in revenue for drug companies like Defendants. Indeed, financial information indicates that each Defendant experienced a material increase in sales, revenue, and profits from the false and deceptive advertising and other unlawful and unfair conduct described above.

V. FIRST CAUSE OF ACTION: PUBLIC NUISANCE

152. The Counties re-allege and incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

153. Defendants knowingly encouraged the Counties doctors to prescribe, and residents to use, highly addictive opioids for chronic pain even though Defendants knew using opioids had a high risk of addiction and reduced quality of life.

154. By doing so, Defendants purposefully interfered with the Counties' public health, public safety, public peace, public comfort, and public convenience.

155. Defendants, individually and in concert with each other, have contributed to and/or assisted in creating and maintaining an imminent and substantial endangerment to the public health, welfare, and safety and to the environment of the Counties' residents in violation of Montana law.

156. The public nuisance created by Defendants' actions is substantial and unreasonable – it has caused and continues to cause significant harm to the community – and the harm inflicted outweighs any offsetting benefit.

157. The staggering rates of opioid use resulting from Defendants' marketing efforts have caused, and continues to cause, harm to the community including, but not limited to:

- a. Upwards of 30% of all adults use opioids. These high rates of use have led to unnecessary opioid abuse, addiction, overdose, injuries, and deaths;
- b. Children have been exposed to opioids prescribed to family members or others resulting in injury, addiction, and death. Easy access to prescription opioids has made opioids a recreational drug of choice among County teenagers; opioid use among teenagers is only outpaced by marijuana use. Even infants have been born addicted to opioids due to prenatal exposure causing severe withdrawal symptoms and lasting developmental impacts;
- c. Residents of the Counties, who have never taken opioids, have endured both the emotional and financial costs of caring for loved ones addicted to or injured by opioids and the loss of companionship, wages, or other support from family members who have used, abused, become addicted to, overdosed on, or been killed by opioids;
- d. More broadly, opioid use and misuse have driven County residents' health care costs higher;
- e. Employers have lost the value of productive and healthy employees who have suffered from adverse consequences from opioid use;
- f. Defendants' success in extending the market for opioids to new patients and chronic conditions has created an abundance of drugs available for criminal use and fueled a new wave of

addiction, abuse, and injury. Defendants' scheme created both ends of a new secondary market for opioids – providing both the supply of narcotics to sell and the demand of addicts to buy them;

- g. This demand has created additional illicit markets in other opiates, particularly heroin. The low cost of heroin has led some of those who initially become addicted to prescription opioids to migrate to cheaper heroin, fueling a new heroin epidemic in the process;
- h. Diverting opioids into secondary, criminal markets and increasing the number of individuals who abuse or are addicted to opioids has increased the demands on emergency services and law enforcement in the Counties;
- i. All of Defendants' actions have caused significant harm to the community – in lives lost; addictions endured; the creation of an illicit drug market and all its concomitant crime and costs; unrealized economic productivity; and broken families and homes;
- j. These harms have taxed the human, medical, public health, law enforcement, and financial resources of the Counties; and
- k. Defendants' interference with the comfortable enjoyment of life of a substantial number of people is entirely unreasonable because there is limited social utility to opioid use and any potential value is outweighed by the gravity of harm inflicted by Defendants' actions.

158. Defendants knew, or should have known, that promoting opioid use would create a public nuisance in the following ways:

- a. Defendants have engaged in massive production, promotion, and distribution of opioids for use by the citizens of the Counties;
- b. Defendants' actions created and expanded the market for opioids, promoting its wide use for pain management;

- c. Defendants misrepresented the benefits of opioids for chronic pain and fraudulently concealed, misrepresented, and omitted the serious adverse effects of opioids, including the addictive nature of the drugs; and
- d. Defendants knew or should have known that their promotion would lead to addiction and other adverse consequences that the larger community would suffer as a result.

159. Defendants' actions were, at the least, a substantial factor in doctors and patients not accurately assessing and weighing the risks and benefits of opioids for chronic pain thereby causing opioids to become widely available and used in the Counties.

160. Without Defendants' actions, opioid use would not have become so widespread and the enormous public health hazard of opioid overuse, abuse, and addiction not existing would have been averted.

161. The health and safety of the citizens of the Counties, including those who use, have used, or will use opioids, as well as those affected by opioid users, is a matter of great public interest and legitimate concern to County citizens and residents.

162. The public nuisance created, perpetuated, and maintained by Defendants can be abated and further reoccurrence of such harm and inconvenience can be prevented.

163. Defendants' conduct has affected and continues to affect a considerable number of people within the Counties and is likely to continue to cause significant harm to patients who take opioids, their families, and the community at large.

164. Each Defendant created or assisted in creating the opioid epidemic, and each Defendant is jointly and severally liable for its abatement. Furthermore, each Defendant should be enjoined from continuing to create, perpetuate, or maintain said public nuisance in the Counties.

VI. SECOND CAUSE OF ACTION: COMMON LAW FRAUD

165. The Counties re-allege and incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

166. At all relevant and material times, Defendants expressly and/or impliedly warranted that opioids were safe, of merchantable quality, and fit for use.

167. Defendants' superior knowledge and expertise, its relationship of trust and confidence with doctors and the public, its specific knowledge regarding the risks and dangers of opioids, and its intentional dissemination of promotional and marketing information about opioids for the purpose of maximizing sales, each gave rise to the affirmative duty to meaningfully disclose and provide all material information about the risks and harms associated with opioids.

168. At all times herein mentioned, Defendants, individually and acting through their employees and agents, and in concert with each other, fraudulently represented to physicians who Defendants knew would justifiably rely on Defendants' representations that opioids were safe and effective for treating chronic pain.

169. Defendants' false representations were fraudulently made, with the intent or purpose that healthcare providers and patients would justifiably rely upon them, leading to the prescription, administration, filling, purchasing, and consumption of opioids in the Counties.

170. Defendants' deliberate misrepresentations and/or concealment, suppression, and omission of material facts as alleged herein include, but are not limited to:

- a. Making false and misleading claims regarding the known risks of the addictive nature of opioids and suppressing, failing to disclose, and mischaracterizing the addictive nature of opioids and in concomitant costs, such as overdoses, deaths, and heroin addiction;
- b. Making false and misleading written and oral statements that opioids are more effective than traditional pain killers for chronic pain, or effective at all and/or omitting material information showing that opioids are no more effective than other non-addictive drugs for chronic pain;
- c. Issuing false and misleading warnings and/or failing to issue adequate warnings concerning the risks and dangers of using opioids;
- d. Making false and misleading claims downplaying the risk of addiction when using opioids and/or setting forth guidelines that would purportedly identify addictive behavior; and
- e. Making false and misleading misrepresentations concerning the safety, efficacy and benefits of opioids without full and adequate disclosure of the underlying facts which rendered such statements false and misleading.

171. Defendants willfully, wantonly, and recklessly disregarded their duty to provide truthful representations regarding the safety and risk of opioids.

172. Defendants made these misrepresentations with the intent that the healthcare community and patients located wherever these opioid drugs were sold or consumed would rely upon them.

173. Defendants' misrepresentations were made with the intent of defrauding and deceiving the medical community and consumers to induce and encourage the sale of opioids.

174. Defendants' fraudulent representations evidence their callous, reckless, willful, and depraved indifference to the health, safety, and welfare of consumers living in the Counties.

175. Defendants omitted, misrepresented, suppressed and concealed material facts concerning the dangers and risk of injuries associated with the use of opioids, as well as the fact that the product was unreasonably dangerous.

176. Defendants' purpose was willfully blind to, ignored, downplayed, avoided, and/or otherwise understated the serious nature of the risks associated with the use of opioids.

177. The treating medical community and consumers in the Counties did not know that Defendants' representations were false and/or misleading and justifiably relied on them.

178. Defendants had sole access to material facts concerning the dangers and unreasonable risks of opioids, which they intentionally concealed.

179. As a direct and proximate result of Defendants' fraudulent misrepresentations and intentional concealment of facts, upon which the medical community and consumers in the Counties reasonably relied, County suffered actual and punitive damages.

VII. THIRD CAUSE OF ACTION: NEGLIGENCE

180. The Counties re-allege and incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

181. Defendants have a duty to exercise reasonable care in marketing its opioids to County physicians and residents. Defendants have breached their duty by knowingly and fraudulently misrepresenting the benefits of, and downplaying the risks of, opioids for chronic pain.

182. Defendants have used deceitful marketing ploys, KOLs, Front Groups, and other schemes to increase profits at the cost of public health causing an opioid epidemic. Defendants have acted willfully, wantonly, and maliciously.

183. As a proximate result, Defendants and its agents have caused the Counties to incur excessive costs to treat the opioid epidemic in its county, including but not limited to increased costs of social services, health systems, law enforcement, judicial system, and treatment facilities.

184. The Counties and their residents are therefore entitled to actual and punitive damages.

VIII. FOURTH CAUSE OF ACTION: GROSS NEGLIGENCE

185. The Counties incorporate the allegations within all prior paragraphs within this Complaint as if they were fully set forth herein.

186. Defendants' marketing scheme to optimize profits by misrepresenting and falsely touting opioids as the panacea to chronic pain was done intentionally.

187. Defendants' hiring of KOLs, Front Groups, and others to spread its fraudulent message that opioids were useful and beneficial for chronic pain was grossly negligent and done intentionally to cause a harmful result to the Counties and their residents.

188. Each Defendant's actions and omissions as described herein, singularly or in combination with each other, was intentional and a failure to use even slight care resulting in damages and injuries to the Counties.

189. At every stage, Defendants knew or should have known that their conduct would create an unreasonable risk of physical harm to others, including the Counties and their residents, and should be held liable in punitive and exemplary damages to the Counties.

**IX. FIFTH CAUSE OF ACTION:
MONTANA FOOD, DRUG, AND COSMETIC ACT**

190. The Counties re-allege and incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

191. Defendants have knowingly manufactured, marketed, advertised, distributed, branded, delivered, and administered opioids that have been sold and continue to be sold in Montana in violation of the Montana Food, Drug, and Cosmetic Act Section 50-31-105, *et seq.*

192. As alleged herein, Defendants, at all times relevant to this Complaint, violated the Montana Food, Drug, and Cosmetic Act by disseminating false advertisements about using opioids to treat chronic pain. Each Defendant also omitted or concealed material facts and failed to correct prior misrepresentations and omissions about the risks and benefits of opioids. Each Defendant's omissions rendered even their seemingly truthful statements about opioids deceptive.

193. Defendants' false and misleading representations and concealments were reasonably calculated to deceive County practitioners into prescribing opioids even though they are ineffective for treating chronic pain and the risks far outweigh any benefit. Indeed, Defendants continue to make false and misleading representations to this day.

194. As a direct and proximate cause of Defendants' false and misleading drug advertisement, the Counties should be awarded civil penalties and Defendants' conduct should be enjoined pursuant to the Montana Food, Drug, and Cosmetic Act.

X. SIXTH CAUSE OF ACTION:
VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS ACT (“RICO”), 18 U.S.C. § 1961, *ET SEQ.*

195. The Counties re-allege and incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

196. This claim is brought by the Counties against each Defendant for actual damages, treble, damages, and equitable relief under 18 U.S.C. §1964 for violations of 18 U.S.C. §1964, *et seq.*

197. Section 1962(c) makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity . . .” 18 U.S.C. §1962(c).

198. Each Defendant conducted the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. §1962(c) and §1962(d).

199. Each Defendant herein constituted an Enterprise for purposes of 18 U.S.C. § 1961(3) that created and maintained systematic links for a common purpose: to sell and distribute drugs, specifically opioids, that have little or no demonstrated efficacy for the pain they are purported to treat in the majority of persons that obtain prescriptions for them.

200. To accomplish this purpose, the Enterprise engaged in a sophisticated, well-developed, and fraudulent marketing scheme designed to increase the prescription rate for the sale and distribution of Defendants' opioids and popularize the misunderstanding that opioids are effective for chronic pain and the risk of addiction is low ("the Scheme").

201. At all relevant times, each Defendants was aware of the Enterprise's conduct, was a knowing and willing participant in that conduct, and reaped profits from that conduct in the form of increased sales, distributions, and prescriptions of opioids.

202. In fact, Front Groups and KOLs received direct payments from Defendants in exchange their role in the Enterprise and to advance the Enterprises' fraudulent marketing scheme.

203. The Enterprise engaged in, and its activities affected, interstate and foreign commerce because it involved commercial activities across state boundaries, including but not limited to: (1) marketing, promotion, and advertisement of Defendants' opioid medicines; (2) advocacy at the state and federal level for change in the law governing the use, prescription, and distribution of Defendants' opioids; (3) issuing prescriptions and prescription guidelines for Defendants' opioids; and (4) issuing fees, bills, and statements demanding payment for prescriptions of Defendants' opioids.

204. The persons engaged in the Enterprise are systematically linked through contractual relationships, financial ties, and continuing coordination of activities, as spearheaded by the Manufacturer Defendants.

205. The Enterprise functioned as a continuing unit for the purposes of executing the Scheme and when issues arose during the Scheme, each member of the Enterprise agreed to take actions to hide the Scheme and the existence of the Enterprise.

206. Each Defendant participated in the operation and management of the Enterprise by directing its affairs as described herein.

207. While Defendants participated in, and are members of, the Enterprise, they have an existence separate from the Enterprise, including distinct legal statuses, affairs, offices and roles, officers, directors, employees, and individual personhood.

208. Defendants, singularly or in combination with another, orchestrated the affairs of the Enterprise and exerted substantial control over the Enterprise by, at least: (1) making misleading statements about the purported benefits, efficacy, and risks of opioids to doctors, patients, the public, and others, in the form of telephonic and electronic communications, CME programs, medical journals, advertisements, and websites; (2) employing sales representatives or detailers to promote the use of opioid medications; (3) purchasing and utilizing sophisticated marketing data (e.g., IMS data) to coordinate and refine the Scheme; (4) employing doctors to serve as speakers at or attend all-expense paid trips to programs emphasizing the benefits of

prescribing opioid medications; (5) funding, controlling, and operating the Front Groups to target doctors, patients, and lawmakers and provide a veneer of legitimacy to the Manufacturer Defendants' Scheme; (6) retaining KOLs to promote the use of their opioid medicines and (7) concealing the true nature of their relationship with the other members of the Enterprise, including the Front Groups and the KOLs.

209. To carry out, or attempt to carry out, the scheme to defraud, the members of the Enterprise, each of whom is a person associated-in-fact with the Enterprise, did knowingly conduct or participate, directly or indirectly, in the affairs of the Enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §§1961(1), 1961(5) and 1962(c), and employed the use of the mail and wire facilities, in violation of 18 U.S.C. §1341 (mail fraud) and §1343 (wire fraud).

210. Specifically, the members of the Enterprise have committed, conspired to commit, and/or aided and abetted in the commission of, at least two predicate acts of racketeering activity (i.e., violations of 18 U.S.C. §§1341 and 1343), within the past ten years.

211. The Enterprise's predicate acts of racketeering (18 U.S.C. §1961(1)) include, but are not limited to:

- a. Mail Fraud: The members of the Enterprise violated 18 U.S.C. §1341 by sending or receiving, or by causing to be sent and/or received, fraudulent materials via U.S. mail or commercial interstate carriers for the purpose of selling drugs, specifically opioids, that have little or no demonstrated efficacy for the pain they are purported to treat in the majority of persons prescribed them.

- b. Wire Fraud: The members of the Enterprise violated 18 U.S.C. §1343 by transmitting and/or receiving, or by causing to be transmitted and/or received, fraudulent materials by wire for the purpose of selling drugs, specifically opioids, that have little or no demonstrated efficacy for the pain they are purported to treat in the majority of persons prescribed them.

212. The mail and wire transmissions were made in furtherance of Defendants' Scheme and common course of conduct designed to sell drugs that have little or no demonstrated efficacy for chronic pain; increase the prescription rate for opioids; and popularize the misunderstanding that the risk of addiction is low when using opioids.

213. The members of the Enterprise aided and abetted others in violating the law. To achieve their common goals, the members of the Enterprise hid from the Counties and their residents: (1) the fraudulent nature of Defendants' marketing scheme; (2) the fraudulent nature of statements made by Defendants and on behalf of Defendants regarding the efficacy of and risk of addiction associated with Defendants' opioids; and (3) the true nature of the relationship between the members of the Enterprise.

214. Defendants and each member of the Enterprise, with knowledge and intent, agreed to the overall objectives of the Scheme and participated in the common course of conduct. Indeed, for the conspiracy to succeed, each of the members of the Enterprise and their co-conspirators agreed to conceal their fraudulent scheme.

215. The members of the Enterprise knew, and intended that, the Counties and their residents would rely on the material misrepresentations and omissions made by them and suffer damages and a result.

216. The pattern of racketeering activity described herein is currently ongoing and open-ended, and threatens to continue indefinitely unless this Court enjoins the racketeering activity.

217. As a result of Defendants' racketeering activity, the Counties have been injured in their business and/or property in multiple ways, including but not limited to increased health care costs, increased human services costs, costs related to dealing with opioid-related crimes and emergencies, and other public safety costs.

218. Defendants' violations of 18 U.S.C. §1962(c) and (d) have directly and proximately caused injuries and damages to the Counties and the public who are entitled to bring this action for three times its actual damages, as well as injunctive/equitable relief, costs, and reasonable attorney's fees pursuant to 18 U.S.C. §1964(c).

XI. SEVENTH CAUSE OF ACTION: UNJUST ENRICHMENT

219. The Counties re-allege and incorporate by reference each of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

220. As an expected and intended result of their conscious wrongdoing as set forth in this Complaint, Defendants have profited and benefited from opioid purchases made by the Counties and their residents.

221. When the Counties and their residents purchased opioids, they expected that Defendants had provided necessary and accurate information regarding those risks. Instead, Defendants had misrepresented the material facts regarding the risks and benefits of opioids.

222. Defendants have been unjustly enriched at the expense of the Counties, and the Counties is therefore entitled to damages to be determined by the jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray:

- a. That the acts alleged herein be adjudged and decreed to be unlawful and that the Court enter a judgment declaring them to be so;
- b. That Defendants be enjoined from, directly or indirectly through KOLs, Front Groups or other third parties, continuing to misrepresent the risks and benefits of the use of opioids for chronic pain, from false and misleading branding and advertising, and from continuing to violate Montana law;
- c. That Plaintiffs recover all measures of damages, including punitive and exemplary damages, allowable under the law, and that judgment be entered against Defendants in favor of Plaintiffs;
- d. That Plaintiffs recover restitution on behalf of County consumers who paid for opioids for chronic pain;

- e. That Plaintiffs recover the costs and expenses of suit, pre- and post-judgment interest, and reasonable attorneys' fees as provided by law;
- f. That Defendants be ordered to abate the public nuisance that they created in violation of Montana common law; and
- g. That the Court grant any other relief that it deems warranted.

Date: December 1, 2017

Respectfully submitted,

KOVACICH SNIPES, P.C.

/s/Ben A. Snipes

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Item: Resolution 10228 A resolution requesting distribution of BaRSAA Funds.

From: Engineering Division

Initiated By: Public Works Department

Presented By: Jim Rearden, Public Works Director

Action Requested: City Commission adopt Resolution 10228 - The resolution requests distribution of Bridge and Road Safety and Accountability Act (BaRSAA) program funds.

Suggested Motion:

1. Commissioner moves:

"I move that the City Commission (adopt/deny) Resolution 10288 and authorize the Public Works Director or Senior Civil Engineer Russell Brewer to request distribution of Bridge and Road Safety and Accountability Act (BaRSAA) program funds.

2. Mayor requests a second motion, Commission discussion, public comment, and calls for the vote.

Staff Recommendation:

Adopt Resolution 10228.

Summary:

The purpose of Resolution 10288 is to authorize the Public Works Director or Senior Civil Engineer Russell Brewer to request distribution of BaRSAA funds through the Montana Department of Transportation(MDT).

Background:

HB 473 passed by the 65th Legislature and signed by Governor Bullock on May 3, 2017, provides for a graduated increase in the motor fuel tax by fiscal year 2023 (6 cents in gasoline/2 cents in diesel). Each fiscal year, 35% or \$9.8 million of the proceeds (whichever is greater) is allocated to MDT and the remainder (approximately \$21 million by FY2021) is allocated to local governments through a new Bridge and Road Safety and Accountability Program (BaRSAA). Beginning March 1, 2018, local governments may request distribution of their allocation from MDT. Local governments must match all distributions from the BaRSAA account with a minimum 5% funding match.

Fiscal Impact:

The proposed resolution will allow the City to request \$371,362.00 in 2018 funding to pay for the construction, reconstruction, maintenance, and repair of city streets, alleys, and bridges.

Alternatives:

The City Commission could vote to deny the resolution.

ATTACHMENTS:

- ▣ Resolution 10228
- ▣ Resolution 10228 Appendix A
- ▣ Resolution 10228 Appendix B

RESOLUTION NO. 10228

A RESOLUTION REQUESTING DISTRIBUTION OF BRIDGE AND ROAD SAFETY AND ACCOUNTABILITY PROGRAM FUNDS

WHEREAS, the Bridge and Road Safety and Accountability Account created by HB 473 requires the Montana Department of Transportation to allocate accrued funds to cities, towns, counties, and consolidated city-county governments for construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys, bridges, or roads and streets that the city, town, county, or consolidated city-county government has the responsibility to maintain; and

WHEREAS, a city, town, county, or consolidated city-county government that requests funds under the Bridge and Road Safety and Accountability Account must match each \$20 requested with \$1 of local government matching funds; and

WHEREAS, a city, town, county, or consolidated city-county government requesting distribution of allocated funds may make such a request to the Department of Transportation between March 1 and November 1 of the year the funds were allocated; and

WHEREAS, a description of the projects to be funded (or the money used to match federal funds) are detailed in Appendix A attached hereto and made a part hereof; and

WHEREAS, the local match for the allocated funds are identified in Appendix B attached hereto and made a part hereof.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, that:

1. The City of Great Falls requests distribution of its share of the allocated Bridge and Road Safety and Accountability funds to be used for the projects identified in Appendix A.
2. That Public Works Director Jim Rearden, or designee Senior Civil Engineer Russell Brewer, is hereby authorized to execute such further documents as may be necessary to facilitate the distribution of said funds on behalf of the City of Great Falls.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, this 6th day of February, 2018.

Bob Kelly, Mayor

ATTEST:

Darcy Dea, Deputy City Clerk

(SEAL OF CITY)

APPROVED FOR LEGAL CONTENT:

Joseph P. Cik, Assistant City Attorney

APPENDIX A

City of Great Falls Encino Drive Grande Vista 2 Street Repairs Phase 1, O.F. 1679.7

Introduction:

The proposed project is located in City of Great Falls, along Encino Drive extending from Park Garden Road south to the cul-de-sac.

Since construction was completed in 1996, the paved surface along Encino Drive has required extensive maintenance and pavement patching to maintain drainage and an adequate driving surface. The initial investigation into these issues indicated that poor quality of the original development of that area is the primary cause for the continual need for repairs. This suspicion was confirmed by the subsequent geotechnical investigation.

The results of a geotechnical investigation indicated that neither the subgrade nor the gravel base course materials were properly compacted in accordance existing standards for road construction. The geotechnical investigation also indicated that that the subgrade along Encino Drive is possibly inundated, on a seasonal basis, from one or more uphill drainages west of Flood Road, to the west of the Encino Drive.

Due to numerous residential complaints and recurring maintenance issues, this project was initiated to complete the reconstruction of Encino Drive from the intersection of Park Garden Road to the cul-de-sac. The proposed reconstruction will include removal of the existing pavement and base course, proper compaction of the clay subgrade soils, installation of drainage elements, installation of a separation and subgrade support fabric, and then installation and compaction of new base course and asphaltic concrete pavement.

Due to the length and extensive nature of the required fix for the street, the project has been split into phases.

- Phase 1 to extend from Station 9+50, approximately 150-feet south of the intersection of Madera Drive and Encino Drive, to the end at Station 15+50. The project consists of reconstructing approximately 600 feet of road way; installing curb and gutter, sidewalk, storm drain, slip drains and wheel chair ramps.
- Phases 2/3 will extend from Station 1+00, approximately at the intersection of Park Garden Road and Encino Drive to Station 9+50 approximately 150 feet south of the intersection of Madera Drive and Encino Drive. The preliminary schedule for this project is summer 2019.



Resolution 10228 Appendix B. Budget for OF1679.7 Encino Drive Street Repairs

Account	Account Description	Annual Budget Amount	MTD Actual Amount	YTD Actual Amount	Budget Less YTD Actual	% of Budget	Prior Year Total Actual
Fund Type Special Revenue Funds							
Fund 2821 - GAS TAX BaRSAA							
REVENUE							
Department 00 - NON-DEPARTMENTAL							
Division 072 - TRANSFERS							
38310	OPERATING TRANSFER IN (from Street Maintenance Revenue)	18,568.00	.00	.00	18,568.00	0	.00
	Division 072 - TRANSFERS Totals	\$18,568.00	\$0.00	\$0.00	\$18,568.00	0%	\$0.00
	Department 00 - NON-DEPARTMENTAL Totals	\$18,568.00	\$0.00	\$0.00	\$18,568.00	0%	\$0.00
Department 31 - PUBLIC WORKS							
Division 531 - STREET MAINTENANCE							
33505	GAS TAX - SPECIAL ROAD/STREET ALLOCATION	371,363.00	.00	.00	371,363.00	0	.00
	Division 531 - STREET MAINTENANCE Totals	\$371,363.00	\$0.00	\$0.00	\$371,363.00	0%	\$0.00
	Department 31 - PUBLIC WORKS Totals	\$371,363.00	\$0.00	\$0.00	\$371,363.00	0%	\$0.00
	REVENUE TOTALS	\$389,931.00	\$0.00	\$0.00	\$389,931.00	0%	\$0.00
EXPENSE							
Department 31 - PUBLIC WORKS							
Division 531 - STREET MAINTENANCE							
49310	IMPROVEMENTS OTHER THAN BUILDINGS	389,931.00	.00	.00	389,931.00	0	.00
	Division 531 - STREET MAINTENANCE Totals	\$389,931.00	\$0.00	\$0.00	\$389,931.00	0%	\$0.00
	Department 31 - PUBLIC WORKS Totals	\$389,931.00	\$0.00	\$0.00	\$389,931.00	0%	\$0.00
	EXPENSE TOTALS	\$389,931.00	\$0.00	\$0.00	\$389,931.00	0%	\$0.00
	Fund 2821 - GAS TAX BaRSAA Totals						
	REVENUE TOTALS	389,931.00	.00	.00	389,931.00	0%	.00
	EXPENSE TOTALS	389,931.00	.00	.00	389,931.00	0%	.00
	Fund 2821 - GAS TAX BaRSAA Net Gain (Loss)	\$0.00	\$0.00	\$0.00	\$0.00	+++	\$0.00



Item: Resolution No. 10229, "A Resolution by the City Commission of the City of Great Falls, Montana to Amend Resolution 10167, (Establishing Training Requirements for All Members of City Boards, Committees, Commissions, and Councils)

From: City Attorney's Office

Initiated By: City Attorney's Office

Presented By: Sara R. Sexe, City Attorney

Action Requested: The City Commission adopt Resolution No. 10229

Suggested Motion:

1. Commissioner moves:

"I move that the City Commission adopt/deny Resolution 10229."

2. Mayor calls for a second to the motion, Commission discussion, public comment, and calls for the vote.

Staff Recommendation:

Staff recommends that the City Commission adopt Resolution No. 10229.

Background:

The City Commission adopted Resolution No. 10167, requiring all members of City boards, councils and commissions to participate in City sponsored training, during their term or at least every two years. Recently, a question was raised as to whether the Resolution applied to Neighborhood Council or other elected City officials, despite Neighborhood Councils being specifically mentioned in the Resolution. To clarify the Commission's intent, and to avoid similar questions in the future, Resolution No. 10229 updates Resolution No. 10167 to specifically reference the requirement's application to all appointed **and elected** members of City boards, Councils and Commissions.

Concurrences:

Neighborhood Council Liaison

ATTACHMENTS:

- Resolution No. 10229

RESOLUTION NO. 10229

A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, AMENDING RESOLUTION 10167, (ESTABLISHING TRAINING REQUIREMENTS FOR ALL MEMBERS OF CITY BOARDS, COMMITTEES, COMMISSIONS, AND COUNCILS)

WHEREAS, The Charter of the City of Great Falls establishes the City Neighborhood Councils; and

WHEREAS, The Official Code of the City of Great Falls (OCCGF), establishes various boards, committees, commissions, and councils; and

WHEREAS, these various local government boards, committees, and councils have civic duties and responsibilities to the City of Great Falls; and

WHEREAS, the City Commission desires to have all members of City governmental boards, committees, commissions and councils be informed on governance, open meetings, rights to know, record keeping, public participation and/or other laws and policies impacting local governmental operations.

WHEREAS, a question was raised regarding the application of Resolution 10167 and the City Commission wants to clarify that the requirement applies to all City boards, councils and commissions.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA, THAT:

1. During their terms of appointment, or at least every two years, whichever is less, all appointed and elected members of City boards, committees, commissions, and councils, shall be required to participate in City sponsored training on governance, open meetings, rights to know, record keeping, public participation and/or other laws and policies impacting local governmental operations; and
2. **EFFECTIVE DATE:** This Resolution shall be effective upon adoption.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, _____, 2018.

Bob Kelly, Mayor

ATTEST:

Darcy Dea, Deputy City Clerk

(CITY SEAL)

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney