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Montana Legislative Services Division
Office of Research and Policy Analysis
David D. Bohyer, Director

January 25, 2016

TO: Members of the Task Force on State Public Defender Operations
FROM: Dave Bohyer, LSD Research Director
RE: Information on City of Billings' ordinances

The Task Force at its December 10, 2015 meeting requested information about the City of Billings' Ordinances that parallel or supplant various state statutes addressing low-level criminal behavior. Please accept this memorandum and the attachments as my initial response to the requests.

Sections 7-1-4150 through 7-1-4152, MCA, address "municipal infractions". (Attached) The statutes authorize municipalities to enact city ordinances that provide that violation of some ordinances is merely a municipal infraction that, absent the ordinance, could otherwise be a violation of a state law. Violation of one of these types of ordinances is potentially punishable only by a fine and not by incarceration.

The City of Billings' Ordinance No. 10-5501, enacting sections 18-1301, is also attached and provides an overview of the application of the ordinance. According to Billings City Attorney Brent Brooks, the City of Billings has not conducted any analysis of the impacts of the ordinances, so the effects of the ordinances on Public Defender services are not known.

Respectfully submitted.

HB627\012516g-BillingsOrdinances.wpd
enc.

West's Montana Code Annotated

Title 7. Local Government

Chapter 1. General Provisions

Part 41. Municipalities

MCA 7-1-4150

7-1-4150. Municipal infractions--civil offense

Currentness

(1) A municipal infraction is a civil offense punishable by a civil penalty of not more than \$300 for each violation or if the infraction is a repeat offense, a civil penalty not to exceed \$500 for each repeat violation.

(2) A municipality may by ordinance provide that a violation of an ordinance is a municipal infraction.

(3)(a) A municipality may by ordinance provide that a criminal offense under state law that is punishable only by a fine is a municipal infraction.

(b) Statutory surcharges must be imposed, as provided in [3-1-317\(1\)\(a\)](#), [3-1-318\(1\)](#), and [46-18-236\(6\)\(a\)](#), on municipal infractions that are criminal offenses under state law, and the amounts must be distributed as provided in those sections.

(c) A person may not be proceeded against for the same act or omission to act under both a municipal infraction ordinance and the corresponding state law criminal offense on which the municipal infraction ordinance is based.

(4) An officer who is authorized by a municipality to enforce a municipal code or regulation may issue a civil citation to a person who commits a municipal infraction. The citation may be served by personal service, by certified mail addressed to the defendant at the defendant's last-known mailing address, return receipt requested, or by publication, as provided in Rule 4(o), M.R.Civ.P. A copy of the citation must be retained by the issuing officer and one copy must be sent to the clerk of the municipal or city court. The citation must serve as notification that a municipal infraction has been committed and must contain the following information:

(a) the name and address of the defendant;

(b) the name or description of the infraction attested to by the officer issuing the citation;

- (c) the location and time of the infraction;
- (d) the amount of civil penalty to be assessed or the alternate relief sought, or both;
- (e) the manner, location, and time in which the penalty may be paid;
- (f) the time and place of court appearance; and
- (g) the penalty for failure to appear in court.

Credits

Enacted by [Laws 1999, ch. 249, § 2](#). Amended by [Laws 2005, ch. 398, § 1](#).

MCA 7-1-4150, MT ST 7-1-4150

Current through the 2015 session. Statutory changes are subject to classification and revision by the Code Commissioner. Court Rules in the Code are current with amendments received through October 1, 2015.

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West's Montana Code Annotated

Title 7. Local Government

Chapter 1. General Provisions

Part 41. Municipalities

MCA 7-1-4151

7-1-4151. Municipal infractions--proceedings

Currentness

(1) In municipal infraction proceedings:

(a) the matter must be tried before a municipal court judge or city court judge in the same manner as a small claim if the total amount of civil penalties does not exceed \$7,000. The matter may only be tried before a judge in district court if the total amount of civil penalties assessed exceeds \$7,000.

(b) the city has the burden of proof that the municipal infraction occurred and that the defendant committed the infraction. The proof must be by clear and convincing evidence.

(c) the court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the municipality and produce evidence or witnesses on the defendant's behalf.

(d) the defendant may be represented by counsel of the defendant's own choosing and at the defendant's own expense;

(e) the defendant may answer by admitting or denying the infraction;

(f) if a municipal infraction is proven, the court shall enter a judgment against the defendant. If the infraction is not proven, the court shall dismiss the charges. Each day that a violation occurs or is permitted to exist by the defendant constitutes a separate infraction.

(2) All penalties or forfeitures collected by the court for municipal infractions must be remitted to the municipality in the same manner as fines and forfeitures collected for criminal offenses. If the person named in the citation is served as provided in 7-1-4150 and fails without good cause to appear in response to the civil citation, judgment must be entered against the person.

- (3) A person against whom judgment is entered shall pay court costs and fees as in small claims court under Title 25, chapter 35. If the action is dismissed by the court, the municipality is liable for the court costs and court fees.
- (4) Seeking a civil penalty as authorized in this section does not preclude a municipality from seeking alternative relief from the court in the same action.
- (5) When judgment has been entered against a defendant, the court may do any of the following:
- (a) impose a civil penalty by entry of a judgment against the defendant;
 - (b) direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court;
 - (c) grant appropriate alternative relief ordering the defendant to abate or cease the violation;
 - (d) authorize the municipality to abate or correct the violation;
 - (e) order that the municipality's costs for abatement or correction of the violation be entered as a judgment against the defendant or assessed against the property where the violation occurred, or both.
- (6) If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt.

Credits

Enacted by [Laws 1999, ch. 249, § 3](#). Amended by [Laws 2011, ch. 284, § 4](#), eff. July 1, 2011.

MCA 7-1-4151, MT ST 7-1-4151

Current through the 2015 session. Statutory changes are subject to classification and revision by the Code Commissioner. Court Rules in the Code are current with amendments received through October 1, 2015.

West's Montana Code Annotated

Title 7. Local Government

Chapter 1. General Provisions

Part 41. Municipalities

MCA 7-1-4152

7-1-4152. Municipal infractions--jurisdiction--appeal

Currentness

(1) A municipal court judge or city court judge has jurisdiction to assess or enter judgment for costs of abatement or correction in any amount not to exceed the jurisdictional amount for a money judgment in a civil action pursuant to [3-11-103](#). If the municipality seeks abatement or correction costs in excess of that amount, the matter must be referred to the district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appealed under [25-35-803](#).

(2) The defendant or the municipality may file a motion for a new trial or may appeal the decision to district court. A factual determination made by the trial court, supported by substantial evidence as shown in the record, is binding for purposes of appeal relating to the violation at issue, but is not admissible or binding as to any future violations for the same or similar ordinance provision by the same defendant.

(3) Except for willful or wanton misconduct on the part of the municipality, the issuance of a civil citation for a municipal infraction or the ensuing court proceedings do not provide an action for false arrest, false imprisonment, or malicious prosecution.

(4) An action brought pursuant to this section for a municipal infraction that is an environmental violation does not preclude, and is in addition to, any other enforcement action that may be brought under state law.

Credits

Enacted by [Laws 1999, ch. 249, § 4](#).

MCA 7-1-4152, MT ST 7-1-4152

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Sec. 18-1301. - Definitions.

Municipal infraction means any violation of this Code which has been specifically declared to be a municipal infraction under provisions of this Code.

Officer means any employee or official authorized to enforce provisions of this Code, as amended.

Repeat violation means a recurring violation of the same section of this Code within a 12-month period.

(Ord. No. 10-5501, § 1, 1-11-10)

Sec. 18-1302. - Civil citations—Service and requirements.

- (a) Any officer may issue a civil citation to a person who commits a municipal infraction.
- (b) The citation may be served on the alleged violator by any one of the following methods:
 - (1) Personal service;
 - (2) By certified mail addressed to the defendant at the defendant's last known mailing address, return receipt requested; or
 - (3) By publication, in the manner described in rule 4D(5) of the Montana Rules of Civil Procedure.
- (c) A copy of the citation must be retained by the issuing officer and one copy be sent to or filed with the clerk of the Billings Municipal Court.
- (d) The citation shall serve as notification that a municipal infraction has been committed and shall contain the following information:
 - (1) The name and address of the defendant;
 - (2) The name or description of the infraction attested to by the officer issuing the citation;
 - (3) The location and time of the infraction;
 - (4) The amount of the civil penalty to be assessed or the alternative relief sought, or both;
 - (5) The manner, location and time in which the penalty may be paid;
 - (6) The time and place of court appearance; and
 - (7) The penalty for failure to appear in court.

(Ord. No. 10-5501, § 1, 1-11-10)

Sec. 18-1303. - Court proceedings.

- (a) If the total amount of civil penalties does not exceed three thousand dollars (\$3,000.00), the matter shall be tried before the municipal court judge in the same manner as a small claim. If the total amount of civil penalties assessed exceeds three thousand dollars (\$3,000.00), the matter must be tried before a district court judge.
- (b) The city has the burden of proof that the municipal infraction occurred and that the defendant committed the infraction. The proof must be by clear and convincing evidence.
- (c) The court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the municipality and produce evidence or witnesses on the defendant's behalf.

- (d) The defendant may be represented by counsel of the defendant's own choosing and at the defendant's own expense.
- (e) The defendant may answer by admitting or denying the infraction.
- (f) If a municipal infraction is proven, the court shall enter judgment against the defendant. If the infraction is not proven, the court shall dismiss the charges. If the action is dismissed by the court, the municipality is liable for the court costs and court fees.
- (g) If the person named in the citation is shown to have been served with the civil citation in the proper manner and, without good cause, fails to appear in response to the citation, judgment shall be entered against the person by the court.

(Ord. No. 10-5501, § 1, 1-11-10)

Sec. 18-1304. - Penalties.

- (a) A municipal infraction is a civil offense and for a proven violation, a civil penalty may be imposed.
- (b) For a first violation, a civil penalty of not more than three hundred dollars (\$300.00) shall be imposed.
- (c) For each repeat violation, a civil penalty not to exceed five hundred dollars (\$500.00) shall be imposed. Each day that a violation occurs or is permitted to exist constitutes a separate and distinct infraction.
- (d) Seeking a civil penalty as authorized in this article does not preclude the city from seeking alternative relief from the court in the same action.
- (e) Statutory surcharges and required city surcharges must be imposed, as provided in MCA 3-1-317(1)(a), 3-1-318(1), and 46-18-236(6), on municipal infractions that are criminal offenses under state law, and the amounts must be distributed as provided in those sections.
- (f) All penalties and forfeitures collected by the municipal court for a municipal infraction shall be remitted to the city in the same manner as fines and forfeitures collected for criminal offenses.
- (g) A defendant against whom judgment is entered shall pay court costs and fees as in small claims court under Title 25, Chapter 35 of the Montana Code Annotated in addition to the penalties imposed by the court.
- (h) In addition to the imposition of civil penalties authorized by law against a defendant, the court may impose alternative relief in the same action. Alternative relief may consist of any of the following:
 - (1) Direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court;
 - (2) Order the defendant to abate or cease the violation;
 - (3) Authorize the city to abate or correct the violation;
 - (4) Order the city's costs for abatement or correction of the violation be entered as a judgment against the defendant or assessed against the property where the violation occurred or both.
- (i) The municipal court may assess or enter judgment for costs of abatement or correction in any amount not to exceed the jurisdictional amount for a money judgment in a civil action under MCA 3-11-103. If the city seeks abatement or correction costs in excess of this amount, the matter shall be referred to district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appealed under MCA 25-35-803.
- (j) A defendant who willfully violates the terms of an order imposed by the municipal court is guilty of contempt.

(Ord. No. 10-5501, § 1, 1-11-10)

Sec. 18-1305. - Appeals following judgment.

- (a) The defendant or the city may file a motion for a new trial or may appeal the decision to district court.
- (b) A factual determination made by the trial court, supported by substantial evidence as shown on the record, is binding for purposes of appeal relating to the violation at issue, but is not admissible or binding as to any future violations for the same or similar ordinance provision by the same defendant.

(Ord. No. 10-5501, § 1, 1-11-10)

Sec. 18-1306. - Issuance of civil citations not grounds for further legal action.

Except for willful or wanton misconduct on the part of the city, the issuance of a civil citation for a municipal infraction or the ensuing court proceedings do not provide an action for false arrest, false imprisonment, or malicious prosecution.

(Ord. No. 10-5501, § 1, 1-11-10)

Sec. 18-1307. - Environmental actions.

An action brought by the city for an environmental violation does not preclude, and is in addition to, any other enforcement action that may be brought under state law.

(Ord. No. 10-5501, § 1, 1-11-10)

Sec. 18-1308. - Designated offenses.

In addition to those code sections specifically identified as municipal infractions, violations of the following code sections are hereby designated as municipal infractions and subject to civil penalties as specified in section 18-1304.

Section 24-101-The following Title 61, M.C.A. offenses adopted and incorporated by reference into B.M.C. Section 24-101

Certificates of Ownership, Registration and Taxation of Motor Vehicles—Registration

61-3-301. Registration—License plate required—Display

61-3-302. Residents operating motor vehicles under licenses issued by any state other than Montana forbidden

61-3-322. Certificates of registration—Issuance

Traffic Regulation—General Provisions:

61-8-104. Required obedience to traffic laws

61-8-105. Obedience to police officers and highway patrolmen

61-8-106. Responsibility of public officers and employees

61-8-108. Traffic laws applicable to persons driving animal-drawn vehicles

Traffic Regulations—Traffic-Control Devices:

61-8-201. Obedience to traffic-control devices

61-8-207. Traffic-control signal legend

61-8-208. Pedestrian control signals

61-8-209. Flashing signals

61-8-210. Display of unauthorized signs, signals or markings

Traffic Regulations—Vehicle Operating Requirements:

61-8-302. Careless driving (misdemeanor)

61-8-311. Minimum speed regulations

61-8-312. Special speed limitations on trucks, truck-tractors, motor-driven cycles, and vehicles towing housetrailers

61-8-313. Special speed limitations

61-8-321. Drive on right side of roadway—Exceptions

61-8-322. Passing vehicles proceeding in opposite directions

61-8-323. Overtaking a vehicle on the left

61-8-324. When overtaking on right is permitted

61-8-325. Limitations on overtaking on the left

61-8-328. Driving on roadways laned for traffic

61-8-329. Following too closely

61-8-330. Driving on divided highways

61-8-331. Restricted and controlled access

61-8-332. Restrictions on use of controlled-access roadway

61-8-333. Required position and method of turning at intersection—Bicycle turn procedures—Signs

61-8-334. Turning on curve or crest of grade prohibited

61-8-335. Starting parked vehicle

61-8-336. Turning movements and required signals

61-8-337. Signals by hand and arm or signal device

61-8-338. Method of giving hand-and-arm signals

61-8-339. Vehicle approaching or entering intersection

- 61-8-340. Vehicle turning left at intersection
- 61-8-342. Vehicle approaching "yield" sign
- 61-8-343. Vehicle entering highway from private road, driveway, or public approach ramp
- 61-8-344. Vehicles to stop at stop signs
- 61-8-345. Stop before emerging from alley, driveway, or building
- 61-8-347. Obedience to signal indicating approach of train
- 61-8-348. All vehicles to stop at certain railroad grade crossings
- 61-8-349. Certain vehicles to stop at all railroad grade crossings
- 61-8-350. Moving heavy equipment at railroad grade crossings
- 61-8-351. Meeting or passing school bus
- 61-8-352. Prohibited operation of special lighting equipment on school buses
- 61-8-354. Stopping, standing or parking prohibited in specified places
- 61-8-355. Additional parking regulations
- 61-8-356. Prohibition against parking or leaving vehicles on public property
- 61-8-357. Unattended motor vehicles
- 61-8-358. Limitations on backing
- 61-8-359. Riding on motorcycles
- 61-8-360. Obstruction to driver's view or driving mechanism
- 61-8-362. Coasting prohibited
- 61-8-363. Following fire apparatus prohibited
- 61-8-364. Crossing firehose
- 61-8-365. Putting refuse on highway prohibited
- 61-8-366. Riding on fenders or running boards prohibited
- 61-8-367. Riding in housetrailer
- 61-8-368. Opening and closing vehicle doors
- 61-8-369. Shooting from or across highway

Traffic Regulations—Pedestrian Traffic:

- 61-8-501. Pedestrians subject to traffic regulations
- 61-8-502. Pedestrians' right-of-way in crosswalk
- 61-8-503. Crossing at other than crosswalks

- 61-8-504. Drivers to exercise due care
- 61-8-505. Pedestrians to use right half of crosswalk
- 61-8-506. Pedestrians on roadways
- 61-8-507. Pedestrians soliciting rides or business
- 61-8-508. Intoxicated pedestrian
- 61-8-509. Pedestrians' right-of-way on sidewalks

Traffic Regulations—Bicycle Traffic:

- 61-8-601. Effect of regulations
- 61-8-602. Traffic laws applicable to persons operating bicycles
- 61-8-603. Riding on bicycles
- 61-8-604. Clinging to vehicles
- 61-8-605. Riding on roadways and bicycle paths
- 61-8-606. Carrying articles
- 61-8-607. Lamps and other equipment on bicycles
- 61-8-608. Bicycles on sidewalks

Vehicle Equipment—General Provisions:

- 61-9-104. Required obedience to traffic laws
- 61-9-105. Obedience to police officers and highway patrolmen
- 61-9-107. Traffic laws applicable to persons driving animal-drawn vehicles
- 61-9-109. Driving vehicle in unsafe condition prohibited—Applicability of chapter

Vehicle Equipment—Lighting Equipment:

- 61-9-201. When lighted lamps are required
- 61-9-202. Visibility distance and mounted height of lamps
- 61-9-203. Headlamps on motor vehicles
- 61-9-204. Taillamps
- 61-9-205. New motor vehicles to be equipped with reflectors
- 61-9-206. Stop lamps—When required
- 61-9-207. Application of succeeding sections
- 61-9-208. Additional equipment required on certain vehicles
- 61-9-209. Color of clearance lamps, side marker lamps, reflectors, and back-up lamps

- 61-9-210. Mounting of reflectors, clearance lamps, and side marker lamps
- 61-9-211. Visibility of reflectors, clearance lamps, and marker lamps
- 61-9-212. Obstructed lights not required
- 61-9-213. Lamp or flag on projecting load
- 61-9-214. Lamps on parked vehicles
- 61-9-215. Lamps on farm tractors, farm equipment, and implements of husbandry
- 61-9-216. Lamps on other vehicles and equipment
- 61-9-217. Spot lamps and auxiliary lamps
- 61-9-218. Signal lamps and signal devices
- 61-9-219. Additional lighting equipment
- 61-9-220. Multiple-beam road-lighting equipment
- 61-9-221. Use of multiple-beam road-lighting equipment
- 61-9-222. Single-beam road-lighting equipment
- 61-9-223. Lighting equipment on motor-driven cycles
- 61-9-225. Number of driving lamps required or permitted
- 61-9-226. Special restrictions on lamps
- 61-9-227. Blinker-type red light on fireman's private vehicle—Use—Identification card
- 61-9-228. Standards for lights on snow-removal equipment

Vehicle Equipment—Brakes:

- 61-9-301. Brake equipment required
- 61-9-302. Service brakes—Adequacy
- 61-9-303. Parking brakes—Adequacy
- 61-9-304. Brakes required on all wheels—Exceptions
- 61-9-305. Automatic trailer brake application upon breakaway
- 61-9-306. Tractor brakes protected
- 61-9-307. Trailer air reservoirs safeguarded
- 61-9-308. Two means of emergency brake operation
- 61-9-309. Single control to operate all brakes
- 61-9-310. Reservoir capacity and check valve
- 61-9-311. Warning devices

61-9-312. Performance ability of brakes

61-9-313. Maintenance of brakes

Vehicle Equipment—Miscellaneous Regulations:

61-9-401. Horns and warning devices

61-9-403. Mufflers—Prevention of noise

61-9-404. Mirrors

61-9-405. Windshields to be unobstructed and equipped with wipers

61-9-406. Restrictions as to tire equipment

61-9-407. Fenders, splash aprons, or flaps required on certain vehicles—Dimension and location

61-9-408. Safety glazing material in motor vehicles

61-9-409. Seatbelts required in new vehicles

61-9-411. Certain vehicles to carry flares or other warning devices

61-9-412. Display of warning devices when vehicle disabled

61-9-413. Vehicles transporting explosives

61-9-414. Logging trucks

61-9-415. Slow-moving vehicles

61-9-417. Headgear required for minor motorcycle riders

61-9-418. Motorcycle noise suppression devices

61-9-420. Child safety restraint systems—Standards—Exemptions

Vehicle Equipment—Enforcement—Penalties:

61-9-503. Owners and drivers to comply with inspection laws

61-9-514. Unauthorized use of firefighter's private vehicle—Penalty

Size—Weight—Load—Standards, Permits, and Fees:

61-10-101. Standards of maximum dimensions, weights, etc.

61-10-102. Width

61-10-103. Height

61-10-104. Length

61-10-106. Measuring distance between axles

61-10-107. Maximum gross weight—When permit required

61-10-108. Reduction under special circumstances

61-10-109. Operation without special permits prohibited

61-10-144. Violation of standards—Tolerance

(Ord. No. 10-5501, § 1, 1-11-10)