UTILITIES

HIGHWAY UTILITY EASEMENTS

1. Types of Activities Regulated

Utility facilities used to transport or distribute hydrocarbons, electric power, energy, communication signals, water, and sewage are authorized to occupy highway rights-of-way if they conform to certain standards approved by the Montana Department of Transportation (MDT) (see also HIGHWAY ENCROACHMENTS, p. 67). All other facilities are considered privately owned and must receive a permit from the MDT before being constructed in a highway right-of-way. City councils and Boards of County Commissioners may grant similar approval along city streets and county roads.

Statute: 7-13-2101 and 7-13-4101, MCA

Rule: ARM 18.7.201, *et seq.* and 18.7.221-18.7.232

Contact: CITY OR TOWN COUNCIL

BOARD OF COUNTY COMMISSIONERS

DEPARTMENT OF TRANSPORTATION
Division Office

2. Permitting Procedures

1) The utility must prepare and submit a notice of its proposed occupancy to the appropriate division office of the MDT. The notice must be submitted in triplicate and accompanied by utility plans showing the locations of the proposed facilities in relation to the highway centerline and right-of-way.

2) The Division Maintenance Chief or Division Utility Agent will review the occupancy proposed by the utility. If the proposal conforms to certain standards, specified by rule, the supervisor must sign it, and if not, the supervisor must specify in writing the reasons the proposal is not in compliance. Standards include preserving the natural environment to the greatest extent possible, maintaining the facility, and avoiding hazards or conflicts between the highway and the facility.

3) The utility may resubmit its proposal after making the necessary changes to comply with the standards.

Rule: ARM 18.7.232

IMPROVEMENT AND UTILITY DISTRICTS

1. Types of Activities Regulated

A number of means of funding are available to cities and counties for the construction of capital improvements such as streets, malls, lighting, parking, water, and sewer systems, etc. Provisions vary, but typically, an improvement district may be established by the local government. In some cases, a petition by residents of the district is required. A board of directors may be elected or appointed, or the local government itself may be the authority. The district may sell bonds to finance the improvements, and an assessment is levied on benefitted property to service the bond debt and to operate and maintain the improvements. In some cases, user fees may be assessed. Potential developers should contact local authorities to determine applicable requirements.

Statute: Business Improvement Districts:
7-12-1101, *et seq.*, MCA
Consolidated Local Government Water Supply and Sewer Districts:
7-13-3001, *et seq.*, MCA
County Water/Sewer Districts:
7-13-2201, *et seq.*, MCA
Fire Hydrant Maintenance Districts:
7-12-4601, *et seq.,* MCA
Industrial Revenue Bonds:
90-5-101, *et seq.*, MCA
Lighting Districts:
7-12-2201, *et seq.* and 7-12-4301, *et seq.*, MCA
Local Water Quality Districts:
7-13-4501, *et seq.*, MCA
Metropolitan Sanitary/Storm Sewer Districts:
7-13-101, *et seq.*, MCA
Municipal Revenue Bonds:
7-7-4401, *et seq.*, MCA
Municipal Sewage/Water Systems:
7-13-4301, *et seq.*, MCA
Overhead Facilities Converted to Underground Location:
69-4-301, *et seq.*, MCA
Public Sewer Systems:
7-13-4201, *et seq.*, MCA

Rural Fire Districts:
7-33-2101, *et seq.*, MCA
Rural Improvement Districts:
7-12-2101, *et seq.*, MCA
Service Districts:
7-11-1001, *et seq.*, MCA
Special Improvement Districts:
7-12-4101, *et seq.*, MCA
Street Maintenance Districts:
7-12-4401, *et seq.*, MCA
Street Parking Districts:
7-12-4501, *et seq.*, MCA
Wildland Fire Protection Districts:
76-13-201, *et seq.*, MCA

NATURAL GAS SUPPLIERS

1. Types of Activities Regulated

Gas suppliers must be licensed by the Public Service Commission before offering natural gas for sale to retail customers. Licensed suppliers must complete and maintain an electronic registration form on the Commission internet site (http://psc.mt.gov/Energy/GSupplierRegistration.asp) and file annual reports.

Statute: 69-3-1401, *et seq.*, MCA

Rule: ARM 38.5.7010-38.5.7016

Contact: PUBLIC SERVICE COMMISSION
Regulatory Division

2. Application Requirements

The license application requests detailed information about the company's organization and services to ensure that the supply will be provided as offered and is of adequate quality, safety, and reliability. Unless rejected for cause, a license application becomes effective 30 days after filing.

Statute: 69-3-1405, MCA

Rule: ARM 38.5.7010

Contact: PUBLIC SERVICE COMMISSION
Regulatory Division

PIPELINES: UNDERGROUND EXCAVATION

1. Types of Activities Regulated

A. Common Carrier Pipelines

An entity owning, operating, or managing a pipeline for others for the transportation of crude petroleum, coal, the products of crude petroleum or coal, or carbon dioxide from a plant or facility that produces or captures carbon dioxide may obtain the right to construct and operate pipelines in public streams or highways by filing a written agreement with the Montana Public Service Commission (PSC) to become a common carrier pipeline. Entities constructing pipelines must follow statutory condemnation procedures. The pipelines may not be placed in public streets or alleys without obtaining permission from the city.

Statute: 69-13-101, *et seq.*, MCA

Rule: ARM 38.7.101 and 38.7.102

Contact: PUBLIC SERVICE COMMISSION
Regulatory Division

CITY OR TOWN COUNCIL

BOARD OF COUNTY COMMISSIONERS

B. Natural Gas Pipelines

The PSC enforces the safety regulations adopted under the Natural Gas Pipeline Safety Act of 1968, as amended. This authority extends over intrastate pipeline operators and systems. The PSC also has the power to investigate all methods and practices of pipeline owners and operators, make report filing requirements, issue informal reports of probable violations and orders to show cause, establish formal enforcement procedures, hold hearings, and enter onto the property and inspect books and records relevant to the PSC's enforcement responsibilities.

Statute: 69-3-207, MCA

Rule: ARM 38.5.2201, *et seq.*

Contact: PUBLIC SERVICE COMMISSION
Regulatory Division

C. Underground Excavations

Prior to moving earth, rock, or other ground material, excluding surface road grading, an excavator must first obtain information from a one-call notification center on the possible location of any underground facility. Every public utility, municipal corporation, underground facility owner, or person with the right to bury underground facilities must be a member of a one-call notification center in the region where the facilities are located.

Before beginning a project, the excavator must notify the owners of underground facilities through the center. The owners must mark the locations of the facilities within two business days or respond immediately if informed it is an emergency. If the excavator has not excavated within 30 days, the excavator must request relocations and marks and is responsible for the associated costs.

Architects and engineers designing projects requiring excavation in a public right-of-way or easement must obtain information on underground facilities from the owners and then make the information part of the plan by which the contractors operate.

Statute: 69-4-501 through 69-4-504, MCA

Contact: PUBLIC SERVICE COMMISSION
Regulatory Division

CITY OR TOWN COUNCIL

BOARD OF COUNTY COMMISSIONERS

UTILITY AND MOTOR CARRIER REGULATION

1. Types of Activities Regulated

The Public Service Commission (PSC) regulates the rates and services of privately owned public utilities and has the authority to inquire into their management. Public utilities are defined as entities owning, operating, or controlling plant or equipment for delivering or furnishing heat, light, power, water, sewer, or telecommunications services to others.

Utilities owned or controlled by a municipality, town, or village or by a county or city-county water or sewer district or water or sewer association are excluded from PSC regulation. The rates and services for these systems are determined by the local government, district, or association.

The PSC regulates certain types of intrastate motor carriage transportation—issuing Certificates of Public Convenience and Necessity to certain carriers of passengers, household goods, and garbage.

Cooperative or reciprocal vehicle registration licenses are issued through the Montana Department of Transportation, Motor Carrier Services Division. To receive a license, carriers traveling interstate must show proof of insurance with the Federal Highway Administration.

Statute: 69-3-101, *et seq.*, 69-7-101, *et seq.*, MCA (public and municipal utilities)
69-12-101, *et seq.*, MCA (motor carriers)
61-3-708 through 61-3-710, MCA (cooperative or reciprocal vehicle registration)

Rule: ARM 38.3.401, *et seq.* (motor carriers)

Contact: PUBLIC SERVICE COMMISSION
Regulatory Division

MUNICIPAL GOVERNMENT
City or City-County water or sewer district

DEPARTMENT OF TRANSPORTATION
Motor Carrier Services Division

UTILITY LINES

1. Types of Activities Regulated

A. Construction or Extension of Electric/Telecommunication Lines: Underground Facilities

The city or town council may regulate the erection of poles and stringing of wires, rods, or cables in the streets or alleys or within the limits of the city or town, but not within highway rights-of-way. Corporations, persons, or public bodies owning or operating electric power or telecommunication service and supply facilities are authorized to install and construct power or

telecommunications lines or wires along and on any public roads, streets, and highways in the state, and to erect posts, piers, and abutments necessary to support the wires provided that they do not endanger the public in its use of roads, streets, or highways. An entity exercising the right to use these public rights-of-way to construct electric distribution lines and facilities in a new service area must install underground lines where technically and economically feasible.

Landowners, cities, towns, counties, rural electric cooperatives, or public utilities that wish to convert existing overhead electric and communication facilities to underground locations may institute special improvement district proceedings. The governing body on its own initiative or by petition signed by 60 percent of the property owners owning 60 percent of the land of a proposed district can pass a resolution, make a study, and make the study available for inspection in the governing office.

Utilities or customers wishing to extend transmission lines to new subdivisions or areas must comply with the Territorial Integrity Act. Agreements are generally submitted to the PSC for review.

The Public Service Commission (PSC) enforces the National Electric Safety Code, which governs all construction (overhead and underground electrical supply and communication lines) involving wires for power, heat, light, telephone, telegraph, or signal transmission or reception. There are exceptions for railroad electrification and private construction of wires less than 450 volts. Cities and towns in the state may not enact any ordinance that conflicts with any provisions of the code, and conflicting ordinances are void.

Statute: 7-13-4106, 69-4-101 through 69-4-103, and 69-4-301, *et seq.*, MCA
69-4-102, 69-4-201 through 69-4-204, 69-5-121 and 69-5-122, MCA

Rule: ARM 38.5.1002

Contact: CITY OR TOWN COUNCIL

BOARD OF COUNTY COMMISSIONERS

PUBLIC SERVICE COMMISSION
Regulatory Division

B. Moving/Raising or Cutting Overhead Utility Lines or Poles

1) A person moving a structure through an area in which wires, cables, or poles will interfere with the move must provide at least 10 days written notice of the time and place of the move to the person owning or controlling the utility lines or poles and to that person's office nearest to the move.

2) At least three days prior to the move or within 10 days after the receipt of the notice, whichever is sooner, the owner must give the person moving the structure a written estimate of the total cost of raising or cutting the wires or cables and moving the poles. The owner or person controlling the utility lines or poles furnishes the workers.

3) The costs of the move are the responsibility of the person moving the structure, except, if the structure is owned by a person for occupancy and use by that person, the person moving the structure and the person owning or controlling the utility lines or poles must split the expenses. Prepayment of the estimate by the person moving the structure is required in some instances.

4) Public utilities, cable television companies, and unregulated telecommunications providers must file with the PSC, by April 1 of each year, an application for approval of a cost schedule for labor and equipment for all work related to raising wires or cables or moving poles. The cost schedule is effective on a temporary basis, subject to a rebate and a surcharge pending a final order by the PSC.

5) The owner of agricultural lands may petition the District Court for permission to relocate overhead lines for the purposes of installing an agricultural improvement. After a hearing, the court may grant or deny the petition. The owner of the land must pay the costs of relocating the overhead lines.

Statute: 69-4-601, *et seq.* and 69-4-401, *et seq*., MCA

Rule: ARM 38.5.2410 and 38.5.2414

Contact: PUBLIC SERVICE COMMISSION
Regulatory Division