

Title 12

STREETS, SIDEWALKS AND PUBLIC PLACES

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Chapter 12.04

CONSTRUCTION WITHIN PUBLIC RIGHTS-OF-WAY

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12.04.010 Purpose.

The purpose of this chapter is to provide minimum standards, requirements, rules and regulations for construction and maintenance by all persons excavating within the public right-of-way within the city and county of Butte-Silver Bow, Montana and providing for the movement of traffic, maintenance of safety and protection of existing improvements during such work.

(Ord. 05-13 § 1, 2005; Ord. 48 § 1, 1978)

12.04.020 Scope.

All work done with respect to excavations within the public right-of-way and up to the property line shall comply with the requirements of this chapter.

(Ord. 48 § 2, 1978)

12.04.025 Interpretation of grammar.

"Interpretation of grammar" means unless the context otherwise requires, the following definitions set forth in this chapter shall be used in the interpretation and construction of this title. Words used in the present tense shall include the future; the singular number shall include the plural; the plural the singular; the masculine gender shall include the feminine and the neuter and the word "shall" is mandatory and not directory.

(Ord. 05-13 § 2, 2005)

12.04.030 Definitions.

The following definitions are provided for the sole purpose of proper interpretation and administration of this chapter:

"Attorney" means the county attorney of Butte-Silver Bow or a duly authorized representative.

"Bond" means:

1. Lawful money of the United States;
2. A cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a federally chartered or state-chartered bank insured by the Federal Deposit Insurance Corporation; or
3. A bid bond, guaranty bond, or surety bond executed by a surety corporation authorized to do business in the state of Montana. If a financial guaranty bond or surety bond is provided to secure the purchase of indebtedness, the long-term indebtedness of the company executing the financial guaranty bond or surety bond must carry an investment grade rating of one or more nationally recognized independent rating agencies.

"Butte-Silver Bow" means the local government of the city and county of Butte-Silver Bow, state of

Montana which includes all of that area within the jurisdictional limits of the city and county of Butte-Silver Bow, excluding that area within the territorial limits of the town of Walkerville and maybe referred to as "Butte-Silver Bow" or "city-county".

"City-county" means the local government of the city and county of Butte-Silver Bow, state of Montana, and includes all of that area within its jurisdiction.

"Collection system," "system," or "lines," used either in the singular or plural, means and includes any pipes, conduits or pipelines within the public rights-of-way or upon public properties used for the purpose of collecting sanitary wastewater or stormwater and transporting such water to a point of discharge.

"Construction," "construct," or "installation" means constructing, laying, extending, renewing, removing, restoring and other operations incidental thereto, when any of these involves an excavation, is preplanned, and does not relate to maintenance as defined in this section. Excavation in a construction project for the purpose of installing utility poles shall be considered a single excavation.

"Customer sanitary sewer service line" or "sewer service line" means any pipe, tubing or other means of conveying sewage from premises to the main sewer line.

"Customer water service line" or "water service line" means any pipe, tubing or other means of conveying water from the water main to the customer's property line.

"Department" means the department of public works of Butte-Silver Bow.

"Director" means the director of the department of public works or a duly authorized representative.

"Distribution system," "system," or "lines," used either in the singular or plural, means and includes any pipes, conduits, poles, wires or pipelines within the public rights-of-way or upon public properties used for the purpose of transporting, transmitting, distributing, selling and supplying utilities.

"Engineer" means the director of public works or assistant director of public works or another Butte-Silver Bow employee designated to serve in that capacity.

"Excavation" or "excavating" means and includes a hole, hollow, or cavity formed by the digging, drilling, cutting, scooping, or removal of materials or improvements.

"Excavator" means a person, firm or corporation engaged in the business of excavation within the public right-of-way.

"Government" means the local government of Butte-Silver Bow.

"Inspection" means water, sewer or road inspection and shall include inspection (or repair) of taps into water mains by staff of the water utility division, inspection of taps (or repair) into sewer mains by staff of the metro sewer division and inspection of the roadway service by staff of the road division, all within the department of public works.

"Main lines" means and includes all water mains, sewer mains, television and telephone lines, gas lines, electrical lines and fiber optic cable which are located within public rights-of-way.

"Maintenance," "maintaining," or "maintained" means and includes the relaying, repairing, replacing, examining, testing, inspecting, removing, restoring and operations incidental thereto, when any of these involves an excavation which is not preplanned, and does not relate to construction as defined in this section.

"Permit" means an instrument issued by the building code department certifying that the grantee has been authorized to engage in construction or maintenance on public properties or within the public right-of-way of Butte-Silver Bow and specifying both the conditions attached thereto and the period for which the permit is effective.

"Permittee" means any person, company, partnership or corporation which has obtained a permit for construction or maintenance on public properties or within the public right-of-way within Butte-Silver Bow.

"Person" means any person, firm, association or corporation.

"Public properties" means and includes streets, alleys, sidewalks, curbs, roads, highways, avenues, thoroughfares, parkways, bridges, viaducts, public improvements, and other public places within Butte-Silver Bow.

"Public utility" means any person, company, partnership or corporation, or its successors and assigns, holding a franchise or permission by ordinance to construct, lay, maintain, and operate over, across, upon, along, and under the present and future streets, alleys, sidewalks, curbs, roads, highways, thoroughfares, parkways, bridges, viaducts, public property, public improvements, and other places in Butte-Silver Bow a distribution system for the purpose of transporting, transmitting, distributing, selling, and supplying utilities for any and all domestic, commercial and industrial purposes and other reasons and purposes to inhabitants, persons, firms, associations, and corporations within Butte-Silver Bow for public, domestic, and industrial use, and other purposes.

"Roadway" means the paved (or improved) driving portion of a dedicated street or the proper driving portion of a city-county maintained public right-of-way designed, or ordinarily used for vehicular travel, and includes roadways referred to as streets, roads and alleys.

"Settlement" means and includes the sinking of the surface of a roadway below the elevation of the surrounding roadway surface as a result of improper compaction and occurs where an excavation has been made in the roadway surface.

"Soil compaction" means a procedure whereby the maximum soil density at optimum moisture content is achieved as determined by the American Society for Testing Material (ASTM) Method No. 1557-58T or the American Association of State Highway Official (AASHTO) Standard Method T-99.

"Underground location center" means that person, firm or corporation engaged in the business of providing assistance for location of underground utilities, the duties of which are described in Section 69-4-502, MCA.

"Utility" or "utility system" means any facilities or equipment used for the distribution of any of the following services: gas, oil, water, sewer, electricity, telephone, television, steam, alarm systems and railway systems, whether operating under a franchise or ordinance permission.
(Ord. 05-13 § 3, 2005; Ord. 449 § 1, 1993; Ord. 48 § 4, 1978)

12.04.035 Public utility right-of-way construction permit.

A. Utility Locations and Plan Review. Locations of utilities placed in public right-of-way and public utility easements shall be approved by the engineer. One set of construction plans shall be submitted to the engineer or designated agent for review and approval for the installation or replacement of utilities within the public right-of-way and public utility easements. The construction plans shall be drawn to scale (unless non-scale drawings are approved by the department) and include right-of-way boundaries, street names, location of existing infrastructure including curbs, sidewalks, edges of asphalt, and other utilities.

B. No other utilities, including lines, pipe, mains, cables or wires, shall be located within ten feet, measured horizontally, from the center of a Butte-Silver Bow water or sewer main line located within the public right-of-way. If a utility locates its line within ten feet of a city-county water or sewer main line after January 1, 2006, such utility shall be responsible for all costs of relocating the city-county main line.

C. No public utility shall excavate within or upon public properties without having first obtained a public utility right-of-way construction permit. Said permit shall be issued to those firms which excavate within or upon public properties whether operating under the franchise or ordinance permission.

D. When an excavation is necessary for maintenance for the protection of public or private property, the public utility, as soon as possible, shall report the location of said excavation to the law enforcement department, the fire department and the department of public works. After the public utility has determined the specific location that must be maintained, it shall inform the department of public works of said site.

E. If in making the excavation, the public utility determines that ultimate responsibility for the condition lies with another person, then the public utility shall notify both the person responsible and the department of public works of the condition.

F. Except in those cases described herein where an emergency condition exists, a public utility shall obtain a public utility right-of-way construction permit prior to excavating in any street, alley, public utility easement or public right-of-way.

G. The installation, maintenance, removal, repair or replacement of utility poles shall require a public utility right-of-way construction permit.
(Ord. 05-13 § 4, 2005)

12.04.040 Street opening--Permit required.

A. Street Opening Permit. It is unlawful for any person (other than a public utility) to place any poles or wires upon or above the surface of any public properties, or any ducts, pipes, conduits or wires below the surface of any public properties or to dig up, break, excavate, tunnel, undermine, cut, or in any way obstruct or disturb any public properties within Butte-Silver Bow or to fill in, place, leave, or deposit in, or upon, any

public properties any earth, refuse, gravel, rock, or other material or thing tending to obstruct, disturb or interfere with the free use of the same without first having obtained a permit, or without complying with the provisions of this chapter or at variance with the terms of any such permit; provided, however, that in case of an emergency when an immediate excavation may be necessary for the protection of public or private property, the same shall be reported to the law enforcement department, the fire department and the department of public works and the necessary excavation made with the express condition that an application be made, in the manner provided in this chapter, on or before five p.m. of the second business day following the opening.

B. Customer Street Opening Permit.

1. When an excavation is necessary for the replacement of a customer water or sewer service line, a customer street opening permit must first be obtained for each customer water or sewer service line excavation, except as provided in subsection (B)(2) of this section.
2. A customer street opening permit shall not be required if the customer water or sewer service line replacement is being constructed by the Butte-Silver Bow department of public works, or by a contractor under contract to the Butte-Silver Bow department of public works.
3. Landscaping sprinklers and irrigation systems shall only require a street opening permit if the installation is in a public right-of-way. Repair of landscaping sprinkler and irrigation system do not require an excavation permit.

(Ord. 05-13 § 5, 2005; Ord. 449 § 2, 1993; Ord. 48 § 4, 1978)

12.04.050 Street opening permit--Application requirement.

A. When applying for a street opening permit for installation of new or replacement public utility lines, the following information shall be contained in the application:

1. When applying for a street opening permit for installation of new or replacement public utility lines, detailed plans describing the proposed work shall be attached to the application. The provisions of this section shall not apply to maintenance or repair of customer service lines. All applications shall be made on forms supplied by the city-county, one copy of which shall be returned to the applicant when approved. Said detailed plans, along with profiles of such size and at such scale as may be prescribed, showing pipes or mains or fixtures to be laid or installed underneath public properties, shall show the centerline of the street or alley and in relation thereto the position, location and depth of the distribution or collection system, the height of the proposed work, the pipes or mains intended to be laid, the size of the pipes or mains, the location of the manholes leading to the pipes or mains and the depth of the pipes or mains from the service, and such other information as may be required. If an excavation is to be performed by a contractor, the name of the contractor shall be specified. The applicant, its successors and assigns, shall amend the plans, specifications, and profiles in accordance with the orders of the director before the department issues the permit and before the applicant commences construction or maintenance work. Each applicant shall be provided with a copy of the application indicating the date and time received. Any such amendments or modifications shall be ordered within five days of receipt of the application and plans.

2. If requested, the applicant shall advise the director in writing of the proposed method of excavation, or other things desired to be done, constructed or maintained, the size thereof, the public properties to be excavated or obstructed, together with a full description of such work and the name of the person, firm, or corporation doing the actual work. Whenever additional improvements or extensions are to be made, additional plans, specifications and profiles shall be filed with the department in the same manner as required at the time of initial application. The application shall contain an agreement that the applicant will comply with all ordinances and laws relating to the work to be done, and that no openings shall be made until all necessary fittings and materials are available and on hand to complete the work. Each application for a permit shall state the length of time that is anticipated will elapse from the commencement of the work until the surface of the ground is restored and the refill is made ready for the pavement to be replaced. If a permanent pavement surface is to be replaced, the application shall also state the date by which the permanent pavement surface is to be restored.
3. Except as provided in subsection (A)(4) of this section, permits shall expire by limitation and become null and void if work authorized is not commenced within fifteen calendar days after date of issuance. Also, permits shall expire by limitation and become null and void if work authorized by the permit is suspended by the excavator for more than fifteen calendar days. Before work is recommenced, a new permit shall be issued and a full permit fee paid.
4. It is unlawful to fail to comply with this time limitation unless permission for an extension of time is granted by the director. When an extension of time beyond the originally prescribed time is needed to complete the work, a written request for extension of time must be delivered to the director on or before the expiration date stated in the original request. When a time extension request is authorized in writing by the director, it shall constitute the permit extension; provided; the bond and insurance are extended for the period of the extension granted.

B. Before issuance of a street opening permit, the excavator shall contact the underground location center defined in Section 12.04.030 of this chapter, for location of all underground facilities pursuant to Section 69-4-502, MCA. The excavator shall obtain a location number from the underground location center, which number shall be provided to the building code office before a permit is issued.

C. In accordance with the provisions of Section 12.04.110 of this chapter, excavators shall give the department of public works and any person, firm or corporation which owns utility lines in the area to be excavated at least twenty-four hours notice prior to beginning excavation and at least two hours notice before commencing backfill.

D. No excavation shall extend over half the width of any traveled portion of the public right-of-way section at any time, except under written authorization of the department of public works or a designated agent.

E. Unless specified otherwise, a set of as-built drawings will be required upon completion of the construction or replacement project.

(Ord. 05-13 § 6, 2005; Ord. 449 § 3, 1993; Ord. 48 § 5, 1978)

12.04.060 Street opening permit--Issuance--Deferral.

A. The building code department shall issue a street opening permit if the department of public works approves the application after examining the application documents, including maps, plans and specifications and if the bond provided in this chapter has been approved by the county attorney and filed with the clerk and recorder. Such permit shall specify the name and location of the public properties in front of, through, under or near which such acts are to be performed or done, and what portions thereof obstructed together with a description of the proposed work or acts to be done under such permit and the length of time allowed for the completion thereof. The permit shall state the dates by which the roadway surface shall be restored, according to standards as provided in this chapter, including repairing of the roadway surface.

B. The department may defer approving the permit until such time as it deems proper in all cases in which the public properties where the work desired to be done is occupied or about to be occupied by the government or by some other person having a right to use the same and where any further obstruction would seriously inconvenience the public. The department may, in granting such permit, so regulate the manner of doing such work as shall cause the least inconvenience to the public in the use of such public properties, of every kind. If a decision is made to defer granting of a permit for any of the above reasons the applicant shall be notified immediately in writing.

(Ord. 05-13 § 7, 2005; Ord. 48 § 6, 1978)

12.04.070 Street opening permit--Fees.

A. Permit and Inspection Fees.

1. Standard Street Opening Permit and Inspection Fees for Service Line Excavations. The permit and inspection fee for work within the public right-of-way shall be twenty-five dollars for excavations which do not exceed forty lineal feet. This schedule shall apply to each separate project according to plans filed with the city-county.
2. The permit and inspection fee for excavation for a customer service line exceeding forty lineal feet shall be twenty-five dollars plus fifty cents per lineal foot for each foot beyond forty feet.

B. Except as provided in subsection C of this section, in addition to any other penalties that may be imposed, an additional fee of one hundred dollars shall be charged for failure to obtain a street opening permit before beginning excavation.

C. Exception. During the period of time when city-county offices are closed, emergency repairs may be performed by the excavator before obtaining a permit. The permit shall be obtained by the excavator by five p.m. on the second business day after the excavation is made.

D. Street Opening Permits for Utility Excavations by Public Utilities.

1. The fee for excavation for installation of new utility mains as defined by Section 12.04.030 of this chapter shall be as follows:
 - a. Utility main construction from forty to six hundred lineal feet, five hundred dollars;
 - b. Utility main construction from six hundred one to two thousand four hundred lineal feet,

one thousand dollars;

- c. Utility main construction greater than two thousand four hundred lineal feet, one thousand five hundred dollars.

E. Any excavation performed by the city-county or by any agent designated by the city-county shall be exempt from street opening permit fees.

(Ord. 05-13 § 8, 2005; Ord. 504 § 1, 1995; Ord. 449 § 4, 1993; Ord. 48 § 7, 1978)

12.04.080 Bond and insurance.

A. Before a permit as provided in this chapter is issued, the applicant or contractor-excavator engaged to conduct work provided for under the permit shall execute and deliver to the building code department a current bond in the amounts set forth below:

1. For excavations less than forty lineal feet, a bond in the sum of one thousand dollars;
2. For excavations from forty to one hundred lineal feet, a bond in the sum of one thousand five hundred dollars;
3. For excavations in excess of one hundred feet, the bond shall be increased at a rate of seven dollars per lineal foot;
4. In lieu of the above rates, a bond in the amount of six thousand dollars or such additional amount as the city-county deems necessary, may be supplied by those persons commonly engaged in the business of street openings;
5. All bonds shall be guaranteed by the approved surety and shall be approved by the attorney, and after such approval shall be filed in the office of the clerk and recorder;
6. All bonds shall be conditioned as follows:
 - a. That the permittee will comply with all of the provisions of this chapter,
 - b. That the permittee will keep and save harmless the government of Butte-Silver Bow from any and all claims, liabilities, judgments, costs, casualty, accident, or damages and expenses arising from any negligence of such permittee on account of any act which the permittee may do or suffer to be done or omission of said permittee in the performance of the work under the permit, or which may be done by any of its agents, servants or employees, or which may arise from any negligence of the permittee or its agents, servants, contractors or employees, or any of them in obstructing or in any way disturbing any private or public properties, or by reason of the violation of any of the provisions of this chapter,
 - c. The permittee shall also indemnify and save harmless the government from all suits and actions of every description brought against the government for, or on account of, any

injuries or damages received or sustained by any person by reason of failure to erect and maintain the required guards barricades, or signals,

- d. Provided further, that in case the act or acts permitted under such permit necessitate for any purpose the cutting into or under any public properties within Butte-Silver Bow, the bond shall be so conditioned that the person, firm or corporation applying for, and acting under the permit shall replace the portion thereof affected and shall restore the same at its expense to standards provided in this chapter within the time specified in the permit.

B. The permittee or any contractor-excavator shall also maintain in full force and effect with any insurance company currently licensed by the state of Montana, the following:

1. Evidence of current liability insurance, which liability insurance shall be maintained and in full force and effect for the entire licensing year in the amounts of seven hundred fifty thousand dollars per claim and one million five hundred thousand dollars per occurrence;
2. Evidence of current worker's compensation coverage in accordance with the provisions of Montana law;
3. The city-county shall assume no responsibility for repair to the roadway surface including any backfill of excavation by an excavator.

C. All excavation work shall conform to the applicable sections of the Montana Public Works Standard Specifications (MPWSS), latest edition; or contract specification approved by the department of public works; or as specified in this chapter. Whenever there is a conflict between MPWSS and the city-county ordinance, the stricter specification shall govern. Whenever there is a conflict between MPWSS and approved contract specifications, the approved contract specifications shall govern.

D. Any evidence of settlement of backfill or deterioration or failure of excavator's repair to the roadway surface within two years after completion and acceptance of the work shall be deemed conclusive evidence of defective backfill or surface restoration by the permittee. In such event of settlement or deterioration of the surface, and after failure of the excavator to repair the surface, after three days' notice to the excavator and its bondsman, the department of public works or a designated agent may elect to re-excavate and backfill properly or to repair defective surface restorations, or both, in accordance with the provisions of this chapter, and the costs thereof shall be assessed against the bond provided for by this section and bond filed under this section must so recite the right of the city-county to do so.

(Ord. 05-13 § 9, 2005; Ord. 526 § 2, 1995; Ord. 48 § 8, 1978)

12.04.090 Maintenance of surface.

A. All permittees will maintain the surface of all restored public roadways for a period of two years from and after the date of repair of the roadway surface. Any breakup or settlement of the permanent surface within this two-year period shall be considered prima facie evidence of either improper compaction or defective repairing by the permittee or public utility.

B. A charge, set by the department of public works, separate from the street opening permit fee,

must be paid by the excavator for each square foot of roadway surface that has to be repaired due to damage. Roadway surface may be considered damaged if it is gouged, scraped, cracked, or has wheel or tread marks as a result of excavation operations.

(Ord. 05-13 § 10, 2005; Ord. 48 § 9, 1978)

12.04.100 Surface restoration.

A. All permanent pavement resurfacing shall be plant mix bituminous surfacing grade "C" as per the current Montana Department of Transportation Standard Specification. Said resurfacing shall be applied by the department according to a schedule of fees to be approved by the council of commissioners or by a licensed and bonded pavement contractor when specifically approved by the city-county.

B. Finished surfaces shall be free of ruts, defects and depressions exceeding three-eighths-inch measured with a ten-foot straightedge paralleling the center of the roadway, and must have a smooth riding quality. After bringing the compacted backfill to finished subgrade, the excavator shall employ the following methods where applicable:

1. Concrete Base or Surface. Where the base or surface is concrete, if required by the department of public works, the permittee shall immediately after completion of backfill pour concrete meeting the current city-county requirements for concrete replacement. All concrete replacement depth shall be a minimum of eight inches, or as directed by the department of public works or a designated agent. The new concrete shall be properly cured out and finished before opening the patch to traffic loads.
2. Bituminous Surface on Concrete Base. If required by the department of public works, the excavator shall first cure out the concrete base. When cured, the excavator shall cause the surface to be reestablished by a four-inch minimum plant-mix penetration bituminous patch, so installed and rolled as to obtain adequate compaction unless specified otherwise by the department of public works. Tack coat shall be applied to square cut edges of patch to insure proper bonding to original surface material. The thickness of the replaced surfacing shall be as follows:
 - a. Residential streets shall be four inches with two lifts required unless specified by the department of public works.
 - b. Commercial streets shall be four inches with two lifts required unless specified by the department of public works.
 - c. Arterial and collector streets shall be four inches with two lifts required unless specified by the department of public works.
 - d. State primary routes shall be six inches with two lifts required unless specified by the department of public works.
3. Bituminous Surface on Improved Base. After bringing the compacted backfill to top of subgrade in a manner specified in this chapter, the excavator shall cause bituminous material, of a type and grade equal to the original, to be placed on the subgrade and rolled or otherwise compacted in

such a way as to smoothly join the original material without noticeable rise or fall above or beneath the original grade of the adjoining material. Tack coat shall be applied to square cut edges to insure proper bonding to original surface material. The thickness of the replaced surfacing shall be as follows:

- a. Residential streets shall be four inches with two lifts required unless specified by the department of public works.
 - b. Commercial streets shall be four inches with two lifts required unless specified by the department of public works.
 - c. Arterial and collector streets shall be four inches with two lifts required unless specified by the department of public works.
 - d. State primary routes shall be six inches with two lifts required unless specified by the department of public works.
4. Bituminous Surface on Brick-Concrete Base. Where a concrete slab or a layer of brick, with a cover of asphalt, is encountered in excavations, only the asphalt shall be replaced.
 5. Unimproved Surface. Where the excavation is on unimproved surfaces, the backfill shall be brought to finish grade by using the material, compaction methods and surface acceptance, as provided in Montana Public Works Standard Specifications (MPWSS). When the trench is in natural soil, the top six inches shall be filled with a topsoil equal to the natural topsoil of the surrounding area. This shall then be graded and shaped to conform to the natural contours of the area.
 6. Resurfacing Materials. Materials used in resurfacing shall be as follows:
 - a. Prime Coat. All square cut edges shall be primed with MC cutback oils before making a patch.
 - b. Plant Mix Asphaltic Types. Asphaltic mix shall be the type and grade specified by the department of public works.
 - c. Asphaltic Hot Mix and Cold Mix. Asphaltic plant hot mix shall be used from April 1st to October 31st of any year. Asphaltic plant cold mix shall be used from November 1st to March 31st of any year and shall thereafter be removed and replaced with hot mix. Adjustments may be made, as to dates and types of mix, upon written approval of the city-county or a designated agent.
 7. Pavement Marking. All pavement marking removed or damaged by excavation work shall be replaced with the same type of material used in the original markings. The work must meet the installation and material specifications commensurate with the type of marking used. Thermoplastic pavement marking may be replaced with plastic inlay tape or an approved equal.

8. Warranty. The holder of the permit shall warrant the work in the public right-of-way to be free from backfill settlement and surface condition for two years following the completed, accepted work. Warranty starts on date project is accepted by the department of public works or a designated agent.

(Ord. 05-13 § 11, 2005; Ord. 48 § 10, 1978)

12.04.105 Applicant to complete excavation and repair public roadway within fifteen days--Inspection of repair by city-county.

A. An applicant for a permit to excavate any surface within a public right-of-way of the city-county shall, within fifteen calendar days of issuance of such permit, repair and complete the surface of the public roadway excavated. Extension of time may be granted by the public works director or a designated agent upon showing of justifiable cause by the excavator; such extension when granted must be in writing.

B. If during inspection of a project, while under construction, the city-county or its agent finds construction methods being practiced not conforming to this chapter, a correction notice will be issued by the engineer or a designated agent listing items or procedures not meeting requirements of this chapter. One calendar day action is required of the excavator to bring items listed on the correction notice into conformity with this chapter. If corrections listed on the notice are not brought to conformity with this article in the specified time period, a stop work order for the project will be issued. Work on the project shall only resume after a meeting with the excavator, the director and the agent who issued the stop work order. If the project is not brought into conformity with this chapter, the director or designated agent shall cause the excavation to be placed in a condition that does meet the requirements of this chapter. Costs shall be assessed to the excavator's bond with action against the excavator's city-county business license.

(Ord. 05-13 § 12, 2005)

12.04.110 Notification of issuance of street opening permit.

A. All permits shall be issued in multiple copies, and the building code department shall retain one copy for its records and send one copy thereof to the dispatcher of the law enforcement department, one copy to the fire department, one copy to the department of public works and one copy to the permittee.

B. The permittee shall give at least twenty-four hours' written notice to the department of public works before it makes any excavation within the public right-of-way. Before it commences to backfill any opening within the public right-of-way, it shall give at least two hours' notice to the department of public works. The permittee shall also give written notice of the opening and backfilling within the public-right-of-way to any person, firm or corporation whose pipes, poles, mains, or conduits are laid in the street if it knows their existence that they may be disturbed by such excavation. Said notice shall be given at least twenty-four hours before commencing such work. The permittee shall at its expense replace and compact the earth wherever the same has been removed, loosened, or disturbed, under or around said pipes, poles, mains or conduits, so that they will be well and substantially supported. When any work done under a permit issued by the city-county is completed and ready for inspection, the person to whom the permit has been issued, shall, within one business day after completion of the work, notify the department in writing that the same has been completed and is ready for inspection, and the inspector shall cause said work to be inspected within a reasonable time thereafter. Any delay in giving written notice to the officials as required in this section shall render the permittee liable for all damages done or suffered by Butte-Silver Bow or any person, firm or corporation caused by such delay and

the bond provided for in this chapter shall stand as security for such penalty and damages.
(Ord. 05-13 § 13, 2005: Ord. 48 § 11, 1978)

12.04.120 Barricades, signs and lights.

A. When the public right-of-way is dug up, excavated, undermined, cut, disturbed, or obstructed, or any obstruction placed thereon, the person, firm or corporation causing the same shall erect, and, so long as the condition exists and any danger may continue, maintain around the portion of the public right-of-way good and sufficient barriers, watchman, guards, barricades, signals, or signing such as "construction," "no parking," "street closed," and "detour," and such lighting, or such other safeguards as may be required, at all unsafe places on or near the work at its own expense to protect persons and property from injury. It shall also cause, at its own expense, to be maintained and conspicuously posted, during every night from sunset to daylight, around and at each end of such obstruction, an approved flasher light. If the excavation is ten feet long or less, at least one such flasher light shall be so maintained; if the excavation is over ten feet long but less than fifty feet long, at least three such flasher lights shall be so maintained, with one at each end of it; and, for excavations longer than fifty feet, such lights shall be maintained on every twenty-five feet or part thereof for longitudinal cuts, but such lights shall be maintained at six-foot intervals for transverse cuts; provided, that during the nighttime or during the daytime when due to climatic or other causes the visibility is less than one hundred fifty feet on twenty-five mile per hour streets, and three hundred feet on thirty-five mile per hour streets, the permittee shall maintain sufficient flasher lights to warn of the barricaded excavation. The permittee shall provide adequate warning signs and devices at effective positions. The minimum distance requirement for warning signs to be placed on all primary approaches to a worksite is four hundred feet, but sufficient signs and markers to provide the best visibility shall also be maintained in the immediate vicinity of the worksite.

B. Standard warning flags shall be placed around each end of obstructions at intervals of not more than sixty feet along the entire course of the excavation. Special care shall be exercised to prevent vehicles, pedestrians, and livestock from falling into open trenches or being otherwise harmed as a result of the work. Wherever in the course of the work temporary fences are required either for the protection of livestock or any other reason, it is the permittee's responsibility to provide the material and construct such fences in a manner satisfactory to the director. Upon completion of the work, fences so constructed shall be removed by the permittee. Whenever public properties are to be closed to traffic for a definite length of time, or for a period of time as ordered by the director, the permittee shall completely barricade each of the public properties leading to the improvement with barricades, signs, signals and lights, where they are erected as required by this chapter.
(Ord. 05-13 § 14, 2005: Ord. 48 § 12, 1978)

12.04.130 Observance of safety provision required.

A. The excavator in accepting and acting under the excavation permit granted under the provisions hereof 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 excavation or to properly barricade, guard, and warn the public of such excavation.

B. Precaution shall be exercised at all times for the protection of persons (including employees) and property. All safety provisions of applicable state laws, standards and rules and regulations and Butte-Silver Bow ordinances, including building and construction codes as hereafter revised or amended, shall be observed. The permittee shall comply with "Construction Safety and Health Regulations," as adopted by the Division of

Worker's Compensation, Montana Department of Labor and Industry, and requirements of the Occupational Safety and Health Administration, of the U.S. Department of Labor, (OSHA) Regulations for Construction, 29 CFR Part 1926 and any subsequent publication, revisions, amendments or additions thereto.

C. All work covered in this chapter shall meet current OSHA safety and health standards. Failure to comply with OSHA regulations may result in an immediate loss of the excavation permit. The excavator shall take all necessary precaution to prevent injury to workers and others, and to protect any and all adjacent private and public property. This shall include protecting sumps, storm drains, sidewalks, curbs, sprinkler systems, traffic loops, traffic signals, etc. The excavator shall be required to have a competent person, as defined by OSHA, on site at all times. The excavator shall be solely responsible for all safety related to the excavation. (Ord. 05-13 § 15, 2005; Ord. 48 § 13, 1978)

12.04.140 Routing of traffic during construction--Officials to be notified.

A. Prior to the issuance of a permit, the excavator shall provide a traffic control plan or a traffic control plan number from the Manual on Uniform Traffic Control Devices for Streets and Highways, U.S. Department of Transportation, Federal Highway Administration (MUTCD) if applicable, and submit for review the traffic control plan to the department of public works or a designated agent for sufficiency. The excavator shall be responsible for maintaining safe travel corridors for all vehicle, bicycle and pedestrian traffic as part of the approved traffic control plan. Traffic control devices shall be installed in accordance with the approved traffic control plan before construction or maintenance operations, and shall be properly maintained and operated during the time such special conditions exist. They shall remain in place only as long as they are needed and shall be immediately removed thereafter. Where operations are performed in stages, there shall be in place only those devices that apply to the conditions present. Devices or signs that do not apply to existing conditions shall be removed, covered or turned so as to not be readable by oncoming traffic. Barricade and sign supports shall be constructed and erected in a proper manner. Weeds, trees shrubbery, construction materials, equipment, spoil piles, etc., shall not obscure any traffic control device. Excavated material that is stockpiled on city-county right-of-way shall be safeguarded by means of flashing barricades, flares and proper traffic regulatory signing. All safeguarding of excavation projects must conform to the MUTCD. Except in the event of an emergency, the following steps are to be taken before any roadway may be closed or restricted to traffic:

1. Receive the approval of the director of public works;
2. Notify the fire department, and the law enforcement department. In the event of an emergency, the permittee shall immediately notify the law enforcement department, the fire department, and the department of public works of the street closed or restricted to traffic.

B. Upon completion of construction work, the persons mentioned in subdivisions 1 and 2 of subsection A of this section shall again be notified before traffic is moved back to its normal flow so that any necessary adjustments may be made. Where flagmen are deemed necessary by the director, they shall be furnished by the permittee at its own expense.

C. Through traffic shall be maintained without the aid of detours if possible. In instances in which this would not be feasible and the director grants the request for a detour, the director will designate the detour. In those cases where there are no existing roadways, the permittee will construct all detours at its expense and in conformity with the specifications of the department. The permittee will be responsible for any damage caused

to any roadways by the operation of its equipment.
(Ord. 05-13 § 16, 2005: Ord. 48 § 14, 1978)

12.04.150 Maintenance of traffic.

The permittee shall construct and maintain adequate and safe crossings over excavations and across public properties under improvement to accommodate vehicular and pedestrian traffic at all street intersections and where a trench crosses a roadway. Vehicular crossings shall be constructed and maintained of plank, timbers, and blocking of adequate size to accommodate vehicular traffic safely. Pedestrian crossings shall be provided where necessary for the proper handling and safety of pedestrian traffic over the trench and shall provide access to private property where required. Pedestrian crossings shall be constructed and maintained as required by the director.
(Ord. 48 § 15, 1978)

12.04.160 Removal and protection of utilities.

A. The permittee shall not interfere with any existing utility without the consent of the director and the public utility involved. If it becomes necessary to move an existing utility, this shall be done by the public utility charged with the operation of the same, at the expense of the permittee. The permittee shall, at its own expense, sustain, secure, support and protect by timbers or otherwise, all pipes, mains, conduits, poles, wires or other apparatus from injury which may be in any way affected by the work, and do everything necessary to support, sustain and protect the same, under, over, along or across said work. In case any of the pipes, conduits, poles, wires, or apparatus are damaged, they shall be repaired as provided in Section 12.04.210 of this chapter.

B. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any main lines and its bond shall be liable therefor.

C. The permittee is required to notify immediately the effected utility of any possible damage.
(Ord. 05-13 § 17, 2005: Ord. 48 § 16, 1978)

12.04.170 Protection of workers and property.

A. The permittee shall erect and maintain trench boxes and similar structures constructed in compliance with the provisions of 29 CFR Part 1926 to protect workers in trenches and other excavations and adjacent property. The permittee shall, at its own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the work, and shall be held responsible for all damage to public or private property, streets, or improvements resulting from its neglect to exercise proper protection in the prosecution of the work. It is unlawful for any person other than a duly authorized officer or employee of Butte-Silver Bow, or a person holding a permit from the department of public works, to dig up, or in any manner injure or destroy any tree, flower, foliage, flowering plants, foliage plant, or shrubbery, in any public properties. Whenever it may be necessary for the permittee to trench through any lawn, the sod shall be carefully cut and rolled and replaced after ditches have been backfilled as provided in this chapter. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as near as possible to that which existed before work began.

B. The permittee shall not remove, even temporarily, any trees or shrubs which exist in parking

strip areas or easements across private property without first having notified the property owners, or, in the case of public properties, the authorities maintaining the same.

C. When required by the department of public works, existing topsoil shall be carefully removed and piled in such a place and in such a manner that it will not become mixed with other soil, and upon completion of the remainder of the backfilling shall be replaced in its original position in a manner satisfactory to the director. In the event an embankment resulting from required pipe covering should be constructed through the area, such embankment shall be covered with topsoil the same as the rest of the area.
(Ord. 05-13 § 18, 2005; Ord. 48 § 17, 1978)

12.04.180 Maintaining postal service.

Postal service shall be maintained in accordance with the instructions of the United States Postal Service. The permittee shall be responsible for moving mailboxes to temporary locations designated by the postal service, and for their replacement upon completion of the work. The permittee shall contact the United States Postal Service to determine its requirements with respect to the maintenance of postal service and shall comply with these requirements.
(Ord. 48 § 18, 1978)

12.04.190 Preservation of monuments.

Monuments and hubs set for the purpose of locating or preserving lines of any street or property subdivision or on a survey reference point or survey bench mark or mining claim corner or other corner shall not be removed or disturbed unless permission to do so is first obtained in writing from the director. Permission shall only be granted upon the condition that the permittee shall pay all expense incident to the proper replacement of the monuments. A penalty of fifty dollars, in addition to replacement expenses, shall be imposed for any monuments or hub removed or disturbed without such authorization.
(Ord. 48 § 19, 1978)

12.04.200 Property lines and easements.

Property lines and limits of easements shall be indicated on plans. When any excavation is to be made in public easements through private property, the permittee shall either notify the property owner at least forty-eight hours in advance before beginning work or shall act in accordance with the terms of those right-of-way easements which set forth ingress/egress requirements. The permittee shall take precautions to limit removal of or damage to existing pavements, sidewalks, curbs, all landscaping, fences and other improvements to the least practical amount, and shall replace or restore such improvements to their original condition and location. These requirements shall apply where the excavation is behind the curb. It shall be the permittee's responsibility to apprise himself of all specific conditions contained within easements and perform all work in accordance to stipulations therein. Any damage resulting from trespassing beyond these stipulations or limits shall be the sole responsibility of the permittee.
(Ord. 48 § 20, 1978)

12.04.210 Damage to existing improvements.

The cost of all damage done to existing improvements during the progress of such work shall be borne

by the permittee. Materials for such repair shall conform to the requirements of applicable building and construction codes as adopted by ordinance. The method of repair shall be determined by the affected owner. The affected owner has the discretion to determine whether the repairs may be made by the permittee. Repair work must be inspected by the affected owner.
(Ord. 05-13 § 19, 2005; Ord. 48 § 21, 1978)

12.04.220 Provisions for watercourses.

The permittee shall provide for the flow of all watercourses, sewers or drains, intercepted during the progress of the work, and shall replace the same in as good a condition as it found them or shall make final provision as the director may require. The permittee shall not obstruct street gutters and shall take proper measures for flow of surface water. The permittee shall make provision to take care of surplus water, mud, silt, or other runoff, pumped or resulting from excavations or other operations and shall clean surfacings of such material within thirty-six hours from completion of backfilling. When the outside temperature is below thirty-two degrees Fahrenheit, all provisions for the removal of water shall be approved by the department.
(Ord. 48 § 22, 1978)

12.04.230 Interference with other services.

Access to private driveways shall be provided except during working hours when construction operation prohibits provision of such access. Access must be provided at all times to fire hydrants. Existence of utility facilities shall be verified by the permittee prior to issuance of a permit and all utility facilities shall be located sufficiently ahead of trench excavation to avoid damage and permit their relocation or adjustment if necessary. Such adjustment or relocation, if necessary, shall be borne by the permittee. Pipe, pipe drains, culverts, cables or any other facility encountered of any nature shall be protected and maintained by the permittee.
(Ord. 48 § 23, 1978)

12.04.240 Street openings.

A. No opening in any street shall extend beyond the center lane or line of the roadway before being backfilled and graded satisfactorily for traffic, as provided in Section 12.04.050(D) of this chapter.

B. Trenches within any roadway may not exceed the following distances except by special permission by the department:

1. In those areas served by municipal water and sewer, three hundred feet; and
2. In those areas not served by municipal water and sewer, one thousand two hundred feet.

C. The length of trench that may be opened at any one time shall not be greater than the length of material and necessary accessories which are available to the site ready to put in place.

D. In no case shall any opening made by a permittee be considered under the control of Butte-Silver Bow or any of the officers or employees, and no officer or employee is authorized in any way to assume any jurisdiction except when necessary to protect life and property or otherwise provided for in this chapter.
(Ord. 05-13 § 20, 2005; Ord. 48 § 24, 1978)

12.04.250 Breaking through pavement and concrete.

A. Whenever it is necessary to break through existing asphalt or concrete paving, the pavement and base shall be removed to at least six inches beyond the outer limits of the subgrade that is to be disturbed, and a six-inch shoulder of undisturbed material shall be provided on each side of the trench or excavation. The outlines of all trenched or excavations having a Portland cement wearing surface shall be cut with an abrasive cutting wheel. The outlines of all trenches or excavations having an asphalt wearing surface shall be cut with an abrasive cutting wheel, impact chisel point, or approved cutting wheel. The face of the remaining pavement shall be approximately vertical, straight and without ragged edges. The use of abrasive wheels and impact chisel is not mandatory on emergency cuts, but shall be required prior to pavement restoration. Whenever a part of a block, square or section of concrete curb, sidewalk, driveways, etc., is to be removed and is within two feet of an existing expansion point, the concrete shall be removed to that expansion point.

B. Where the cut line is less than three feet from the edge of the existing pavement, remove and replace the entire pavement section between the trench and edge of pavement.

C. Whenever an excavator is required to remove curb or sidewalk when reinstalling, replacing, or repairing utility lines, they shall be allowed to, and required to reinstall such curbs and sidewalks as provided in this chapter:

1. The excavator shall indicate on the excavation permit application their intention to perform any concrete curb or sidewalk replacement in the public right-of-way.
2. The excavation permit shall serve as a permit to remove and replace concrete curb and sidewalk within the limits of the excavation work authorized by the excavation permit.

(Ord. 05-13 § 21, 2005; Ord. 48 § 25, 1978)

12.04.260 Trench excavation.

A. Excavation for trenches shall include the removal of all material for the proper installation of the facility. Surface and subbase materials shall be removed by hand or machine in such a manner as to disturb or displace the least possible surface area in excess of that which must be removed for the item to be installed. No undercutting of subgrade shall be permitted. If undercutting occurs, that section where undercutting took place shall be excavated and repaired. The bottom of the trench shall provide foundation in accordance with the type of pipe or facility installed. If rock is excavated, it shall be removed to a depth of six inches below the trench or facility location and a suitable foundation of sand or gravel provided. Excavated materials shall be laid compactly along the side of the trench in accordance with safety setback requirements and kept trimmed so as to cause as little inconvenience as possible to public travel.

B. When any earth, gravel or other excavated material is caused to roll, flow or wash upon any street, then the permittee shall cause the same to be removed from the street within thirty-six hours or upon completion of the excavation and backfill, whichever time period is shorter. In the event such material is not removed, the director shall cause such removal and the cost incurred shall be paid by the permittee.

C. Trench width shall be such as to provide safe and adequate space for workmen to place and joint

pipe or properly install the facility. Trench walls shall be vertical and adequately shored and sheathed in accordance with the minimum requirements of OSHA Regulations.

D. Portable trench boxes or sliding shields may be used for performing excavation in lieu of shoring systems, providing they are designed, constructed and maintained in a manner which will provide protection equal to or greater than the sheathing or shoring required for the trench.
(Ord. 05-13 § 22, 2005; Ord. 48 § 26, 1978)

12.04.270 Trench backfilling.

A. Backfilling shall be so placed that the pipe will not be displaced or damaged.

B. Backfilling to a depth of one foot over the crown of the pipe shall be done with sand, fine gravel or select granular soil, free from lumps, clods or stones.

C. The remainder of the backfill may be completed with material originating on the job, providing such material is not larger than eight inches in dimension.

D. The first lift shall be hand-placed around and over the pipe or facility in six-inch maximum layers and compacted to ninety-five percent of maximum density to a height of one foot above the pipe crown in order to securely anchor the pipe or facility in place.

E. The remainder of the backfill material shall be compacted in lifts or stages to the minimum depth specified in subsection I of this section by means of tamping or water settlement as provided herein.

F. When hand-operated pneumatic tamping methods are used, the moistened fill material shall be compacted in uniform layers not to exceed eight inches in thickness, loose measurement.

G. When other than hand-operated compaction equipment is used, there shall be sufficient hand-compacted backfill material over and around the work to prevent damage thereto.

H. Unless otherwise specified, soil compaction shall be determined by the American Society for Testing Material (ASTM) Method No. 1557-58T, or the American Association of State Highway Officials (AASHTO) Standard Method T-99.

I. Unless otherwise specified, the trench backfill material between one foot above the top of the pipe and the bottom of the surface restoration shall be compacted or consolidated to not less than the following percentages of maximum density:

1. Ninety-five percent under asphalt concrete pavement, bituminous surfacing and Portland cement concrete surfaces;
2. Eighty-five percent under semi-improved or graveled surfaces;
3. For all other locations, backfill shall be mounded over the trench for future settlement to provide a uniform surface free from oversize materials and debris.

J. Flooding of backfill, in lieu of mechanical compaction, will not be allowed under or adjacent to asphalt concrete surfaces.

K. The excavator shall prevent all mud, rocks, or debris from being spilled or dragged onto rights-of-way outside the excavation site. Upon completion of excavation work, the entire area in all directions shall be cleared of all debris, boulders and all other excess materials from excavation, backfill and resurfacing operations to the satisfaction of the department of public works or a designated agent. Cleanup shall include, but not be limited to, pickup of excavated materials and sweeping and washing of roadway surface. This cleanup requirement shall include private property, as well as public rights-of-way.
(Ord. 05-13 § 23, 2005; Ord. 48 § 27, 1978)

12.04.280 Enforcement.

The department of public works shall be responsible for the enforcement of this chapter.
(Ord. 48 § 29, 1978)

12.04.290 Violation--Penalty.

- A. It is unlawful for any person to fail to perform any of the conditions set out in this chapter.
- B. Any person violating any section of this chapter shall be guilty of a misdemeanor and jurisdiction for such violations shall be in the city court of Butte-Silver Bow.
- C. Upon conviction, a minimum fine of three hundred dollars will be levied.
- D. Any excavator convicted of a violation of this chapter may have their city-county business license revoked.
(Ord. 05-13 § 24, 2005; Ord. 48 § 29, 1978)

12.04.300 Bond to be posted--Approval.

- A. In addition to any bond required by Section 12.04.060(A) of this chapter, any person convicted of a violation of this chapter shall be required to post a cash or surety bond in the amount of five thousand dollars before they may perform any further excavating work on public property or within the public right-of-way within the city-county.
- B. The cash or surety bond shall be used on order of the department of public works to repair and maintain any further such excavations made by such person.
- C. The surety bond must be first approved by the attorney and must be issued by a surety company licensed to do business in the state of Montana in accordance with the provisions of Section 12.04.030(B) of this chapter.
(Ord. 05-13 § 25, 2005)

Chapter 12.06

RIGHT-OF-WAY VACATION PROCEDURES AND FEES

Sections:

12.06.010 Right-of-way vacation procedures and fees.

12.06.010 Right-of-way vacation procedures and fees.

Any person or firm requesting vacation and abandonment within the public right-of-way shall submit a petition on a form approved by the Butte-Silver Bow council of commissioners or an approved equivalent petition, accompanied by a nonrefundable filing fee of five hundred dollars to the Butte-Silver Bow building and code office. This nonrefundable filing fee shall be utilized to offset administrative costs in the petition review and preparation of reports, legal advertisements and associated documents.

(Ord. 526 § 3, 1995; Ord. 362 § 1, 1989)

Chapter 12.08

USE OF PUBLIC PARKS

Sections:

12.08.010 Purpose.

12.08.020 Scope.

12.08.030 Definitions.

12.08.040 Hours and use.

12.08.050 Speed limits.

12.08.060 Park vegetation.

12.08.070 Motor vehicles.

12.08.080 Damage.

12.08.090 Garbage--Littering.

12.08.100 Restroom facilities.

12.08.110 Applicable law.

12.08.120 Posting.

12.08.130 Park pool facilities.

12.08.140 Dangerous projectiles.

12.08.150 Tennis courts.

12.08.160 Park closure.

12.08.170 Park privilege revoked.

12.08.180 Glass beverage containers.

12.08.190 Special events.

12.08.200 Concessions.

12.08.210 Suspension of park privileges.

12.08.220 Violation--Penalty.

12.08.010 Purpose.

The purpose of this chapter is to provide standards, requirements, rules and regulations for the protection, use and enjoyment of public parks in the city and county of Butte-Silver Bow, state of Montana. (Ord. 166 § 1, 1982)

12.08.020 Scope.

The scope of this chapter extends to all public parks within the city and county of Butte-Silver Bow and

all individuals on or using these parks shall comply with the requirements of this chapter.
(Ord. 166 § 2, 1982)

12.08.030 Definitions.

The following definitions are provided for the sole purpose of proper interpretation and administration of this chapter:

- A. "City and county" means the local government of the city and county of Butte-Silver Bow, state of Montana, and all the territorial area within the city and county of Butte-Silver Bow, state of Montana.
- B. "Park and recreation board" means the park and recreation board of the city and county.
- C. "Park department personnel" means those individuals employed full time by the department of public works of Butte-Silver Bow and may include those individuals assigned by personnel of that department to work in public parks.
- D. "Public parks" means those areas in the city and county which are dedicated for public use by individuals for recreational purposes, cultural events or public camping, and which are owned and maintained by the city and county.

(Ord. 166 § 3, 1982)

12.08.040 Hours and use.

Public parks in the city and county shall open at five a.m., every day and close at one a.m., every day unless otherwise posted. No person shall remain in any public park during the time when it is closed. Any revision of these hours must be approved by the park and recreation board. This section does not apply to those areas of Thompson Park where overnight camping is available.

(Ord. 166 § 4, 1982)

12.08.050 Speed limits.

No person shall drive a motor vehicle within the public parks' area in excess of fifteen miles per hour, twenty-four hours a day, unless otherwise posted.

(Ord. 166 § 5(A), 1982)

12.08.060 Park vegetation.

No person shall remove, cut, break or climb on any park tree or shrub, nor shall any person cut, pull, or pick any plant in a public park, or remove or damage sod, turf or topsoil.

(Ord. 166 § 5(B), 1982)

12.08.070 Motor vehicles.

No person shall drive, or otherwise bring motorized vehicles into a public park, except on designated

roadways.
(Ord. 166 § 5(C), 1982)

12.08.080 Damage.

No person shall cause damage to any public facility or other property in a public park.
(Ord. 166 § 5(D), 1982)

12.08.090 Garbage--Littering.

No person shall deposit, leave garbage or refuse, or litter in any manner, in a public park, except in a container provided for such use, nor shall any person pour any liquid or throw any object into any public park pool, stream or other body of water.
(Ord. 166 § 5(E), 1982)

12.08.100 Restroom facilities.

A. No person shall urinate or defecate within any public park except in the facilities provided for that purpose.

B. Where no restroom facilities are available, the park board may require the user to provide suitable temporary restroom facilities.
(Ord. 166 § 5(F), 1982)

12.08.110 Applicable law.

All statutes of Montana and all ordinances of the city and county apply in all parks except when modified therein.
(Ord. 166 § 5(G), 1982)

12.08.120 Posting.

No person shall post, affix, place, write, draw, or paint or cause to be posted, affixed, or otherwise attached, any advertisement, notice, handbill, or placard in a public park, without the prior approval of the park and recreation board.
(Ord. 166 § 5(H), 1982)

12.08.130 Park pool facilities.

No alcoholic beverages shall be permitted within the confines of the pool area. No person shall swim or wade in any public park pool except during regular hours open to the public.
(Ord. 166 § 5(I), 1982)

12.08.140 Dangerous projectiles.

No person shall hit golf balls, engage in archery, throw metal spears, or otherwise cause the flight of

dangerous projectiles in a public park, unless in designated areas.
(Ord. 166 § 5(J), 1982)

12.08.150 Tennis courts.

No person shall use the tennis courts in any public park for purposes other than the sport of tennis without prior approval of the park and recreation board. No person shall hang on tennis nets, use street shoes, operate motor vehicles on, or otherwise abuse the tennis courts in any public park.
(Ord. 166 § 5(K), 1982)

12.08.160 Park closure.

No person shall, without having lawful business on the premises, idle, stand around, or situate himself on or about any public park during the hours in which the public park is closed.
(Ord. 166 § 5(L), 1982)

12.08.170 Park privilege revoked.

No person shall enter a public park or remain within a public park while his privilege to use the public parks is suspended or rescinded.
(Ord. 166 § 5(M), 1982)

12.08.180 Glass beverage containers.

No person shall bring to any public park any glass beverage containers of any type, specifically including pop, beer, wine or liquor bottles.
(Ord. 166 § 5(N), 1982)

12.08.190 Special events.

No special events, not associated with the ordinary function of park facilities, will be allowed in public parks without prior approval of the park and recreation board.
(Ord. 166 § 6, 1982)

12.08.200 Concessions.

No individual or private or commercial enterprise shall be allowed to operate any concession in any public park without first obtaining a concession permit from the park and recreation board. The park and recreation board is authorized to issue the permits and in its discretion determine the appropriate fee.
(Ord. 166 § 7, 1982)

12.08.210 Suspension of park privileges.

Any person violating any of the rules and regulations set forth in this chapter may be ordered by any park department personnel or law enforcement personnel to leave the park. Park department personnel, who are specifically designated by the department of public works, are authorized to make such orders and in flagrant

cases to suspend the privilege of any person to use the public parks for a period not exceeding thirty days. Any party so suspended may appeal that decision to the park and recreation board within ten days of his or her suspension. A date for a full hearing before the board shall be set within one week of notice of appeal. (Ord. 166 § 8, 1982)

12.08.220 Violation--Penalty.

In addition to the suspension of park privileges, any person violating any section of this chapter shall be guilty of a misdemeanor and jurisdiction for such violations shall be in the city court of the city and county of Butte-Silver Bow. (Ord. 166 § 9, 1982)

Chapter 12.10

EASEMENT REQUESTS

Sections:

12.10.010 Easement requests, procedures and fees.

12.10.010 Easement requests, procedures and fees.

Any person or firm requesting an easement within, over, under or across public property under the control of the city-county, shall submit an application on a form approved by the Butte-Silver Bow council of commissioners, accompanied by a nonrefundable filing fee of two hundred fifty dollars, to the Butte-Silver Bow building and code office. This nonrefundable filing fee shall be utilized to offset administrative costs in the easement review and preparation of reports and associated documents. (Ord 526 § 4, 1995)

Chapter 12.12

SIDEWALK MAINTENANCE

Sections:

12.12.010 Duties of property owners to keep sidewalks repaired.

12.12.020 Snow and ice removal--Generally.

12.12.030 Snow and ice removal--From private driveways or private parking lots.

12.12.040 Snow and ice removal--Depositing on streets prohibited--Exception.

12.12.050 Snow and ice removal--Time allowed-- Sprinkling of sand or de-icing agents.

12.12.060 Defective sidewalks--Accidents--Reporting.

12.12.070 Defective sidewalks--Failure of owner to repair.

12.12.080 Absence of notice to repair not a defense.

12.12.090 Unlawful to drive over, deface or destroy sidewalks.

12.12.010 Duties of property owners to keep sidewalks repaired.

It is the duty of the owners or tenants or their agents of any premises within the city and county of Butte-Silver Bow to keep the sidewalks in front of and adjoining their premises in good, safe and substantial condition and repair, and the owners or tenants shall see that all breaks and unsoundness of any character resulting from natural deterioration, or from any cause whatever, are repaired with all possible dispatch. (Ord. 187 § 1, 1983)

12.12.020 Snow and ice removal--Generally.

It is the duty of the owner or tenant or their agents of any premises within the city and county of Butte-Silver Bow to keep the sidewalks in front of and adjoining his premises clean and safe for pedestrians, and with all possible dispatch to remove snow, ice, slush and other impediments to safe and convenient foot travel, and to prevent continuous accumulation of the same upon such sidewalks. In no case shall the snow, ice, slush, mud or other material removed from such sidewalk be dumped, placed or deposited on or upon adjacent sidewalks. The snow, ice, slush, mud or other materials may be removed from such sidewalk on to adjoining streets or on to the parkway between nonintegral curb and sidewalk but may not be dumped, placed or deposited in such manner so as to create a hazard to vehicles or pedestrian traffic. In no event may such snow, ice, slush or other material be dumped, placed or deposited beyond the center line of the adjoining streets.
(Ord. 187 § 2, 1983)

12.12.030 Snow and ice removal--From private driveways or private parking lots.

No owner or tenant or their agents shall cause or allow snow, ice, slush, mud or other material removed from a private driveway or private parking lot to be dumped, placed or deposited on or upon adjoining streets or sidewalks or parkways within the dedicated public right-of-way except as provided in Section 12.12.040.
(Ord. 187 § 3, 1983)

12.12.040 Snow and ice removal--Depositing on streets prohibited--Exception.

All snow, ice, slush and other impediments that are removed from any property within the city and county of Butte-Silver Bow, except that which is removed from:

- A. Sidewalks; or
- B. From private driveways not exceeding two hundred square feet in area; by either the tenants or owners of such premises, shall not be deposited in the streets or rights-of-way of the city and county of Butte-Silver Bow.

(Ord. 187 § 4, 1983)

12.12.050 Snow and ice removal--Time allowed--Sprinkling of sand or de-icing agents.

Sidewalks must in all cases be freed from the night's accumulation of snow, ice, slush, mud or other like impediment before twelve noon of the same day. When from freezing of water, snow or slush thereon, or by reason of such compaction resulting from the wear of foot travel or from any cause whatever, sidewalks are rendered dangerous, unsafe or difficult to the free passage of pedestrians, it shall be the duty of the owners or tenants of premises in front of or adjoining such sidewalks to forthwith remedy such conditions by sprinkling sand or de-icing agents on the sidewalks, or chipping or by other safe and efficient means.
(Ord. 187 § 5, 1983)

12.12.060 Defective sidewalks--Accidents--Reporting.

Employees of the department of public works of Butte-Silver Bow shall and any other person may report

defective or unsafe sidewalks or crossings to the department of public works. Such report shall include the street address adjacent to the sidewalk or crossing as well as the particulars of any accidents that may occur by reason of any defective or unsafe sidewalks or crossing and the names of witnesses and persons injured thereby. Upon receipt of this report the department of public works will investigate the sidewalk or crossing and will in turn provide the owners with written notice of repairs required.
(Ord. 187 § 6, 1983)

12.12.070 Defective sidewalks--Failure of owner to repair.

When the director of public works or his agent has given notice to the owner or tenant of any premises that snow, ice, slush or other obstructions must be removed from or necessary repairs made to the sidewalks adjoining the premises, and upon the refusal or neglect of the owner or tenant of any premises to remove snow, ice, slush or other obstructions from or to make necessary repairs to the sidewalks in front of or adjoining the premises, and when, in the opinion of the director of public works or his agent, immediate repairs or the removal of obstructions are necessary to prevent accidents, the director of public works or his agent may immediately proceed with the same, and the full cost of such repairs or removal of such obstructions shall be assessed against the premises.
(Ord. 187 § 7, 1983)

12.12.080 Absence of notice to repair not a defense.

Absence of notice to owners or tenants to repair dangerous or unsafe sidewalks, or to remove snow, ice, slush or other obstructions therefrom, shall not constitute a valid excuse against the payment of any fine or damages or assessments by such owners or tenants; and nothing contained in any of the preceding sections shall be so construed as to release the owners or tenants of real estate from the duty of keeping the sidewalks in front of and adjoining their respective premises in a good and thorough state of repair, but such duty is hereby expressly enjoined and imposed upon all such owners or tenants.
(Ord. 187 § 8, 1983)

12.12.090 Unlawful to drive over, deface or destroy sidewalks.

It is unlawful for any person or persons to drive or park any vehicle of any kind upon, over or across any sidewalk, curb, parkway, or boulevard unless a driveway approach has been constructed. To mark, deface or destroy any sidewalk or curb, or cause the same to be done is also unlawful, and any such person so violating the provisions of this section shall be guilty of a misdemeanor and jurisdiction for such violations shall be in the city court of Butte-Silver Bow.
(Ord. 187 § 9, 1983)

Chapter 12.16

STREET TREES

Sections:

12.16.010 Purpose.

12.16.020 Intent.

12.16.030 Definitions.

12.16.040 Boundaries established.

12.16.050 Official street trees.

12.16.060 Planting and maintenance requirements.
12.16.070 Maintenance of unofficial street trees--Costs.
12.16.080 Required street tree work permit and licenses.
12.16.090 Violation--Penalty.

12.16.010 Purpose.

The purpose of this chapter is to promote the health, safety and general welfare of the citizens of the city and county of Butte-Silver Bow by establishing an official list of tree species suitable for planting within the public right-of-way and establishing planting and maintenance requirements for street trees.
(Ord. 205 § 1, 1984)

12.16.020 Intent.

This chapter is intended to establish regulations governing the planting and maintenance of trees within the public right-of-way within specified boundaries within the city and county of Butte-Silver Bow.
(Ord. 205 § 2, 1984)

12.16.030 Definitions.

The following definitions are provided for the sole purpose of proper interpretation and administration of this chapter:

- A. "Adjacent property owner" means that person(s) having title or vested interest in real property adjacent to or adjoining the public right-of-way.
- B. "Butte-Silver Bow" means the local government of the city and county of Butte-Silver Bow, state of Montana, and, where applicable, includes its officers, employees, agencies, boards and commissions.
- C. "Chief executive" means the chief executive of the city and county of Butte-Silver Bow, the chief executive and administrative officer of the local government.
- D. "Council of commissioners" means the council of commissioners of the city and county of Butte-Silver Bow, the governing body of the local government.
- E. "Local government" means the local government of the city and county of Butte-Silver Bow, state of Montana.
- F. "Official street tree list" means that list of tree species which have been recognized and approved by the park and recreation board and council of commissioners, pursuant to Section 12.16.050, for planting within the public right-of-way.
- G. "Official tree" means a tree, the species of which appears on the official street tree list, and which exists or will exist in the public right-of-way.
- H. "Park and recreation board" means a board formed and created by the council of commissioners

and appointed by the chief executive to supervise the affairs and management of park and recreational facilities owned and operated by Butte-Silver Bow.

- I. "Park director" means the official appointed by the local government with responsibility for the operation and maintenance of park facilities owned by Butte-Silver Bow.
- J. "Public right-of-way" means those land areas dedicated and intended for public use as streets, drives, avenues, boulevards, highways or thoroughfares including areas for sidewalks, gutters, parkways and similar purposes.
- K. "Sidewalk" means a public improvement established within the public right-of-way used primarily for pedestrian or nonvehicular traffic.
- L. "Street tree" means any tree planted or existing within the public right-of-way along a street, drive, avenue, boulevard, highway or thoroughfares.
- M. "Street" means those land areas dedicated and intended for public use as streets, drives, avenues, boulevards, highways or thoroughfares.
- N. "Tree" means a woody plant, the branches of which spring from, and are supported upon, a trunk or main stem.
- O. "Unofficial tree" means any tree, other than an official tree, which exists in the public right-of-way.

(Ord. 205 § 3, 1984)

12.16.040 Boundaries established.

The boundaries of the area included within the jurisdiction of this chapter are identified in Council Resolution Number 681 and shown on the map entitled "Butte-Silver Bow Urban Area Boundary Map."
(Ord. 205 § 4, 1984)

12.16.050 Official street trees.

- A. The official street tree list is as follows:

Norway Maple (*Acer platanoides*)

Marshall seedless ash (*Fraxinus Pennsylvanica*)

European mountain ash (*Sorbus aucuparia*)

- B. Only official trees may be planted within the public right-of-way within the area described in Section 12.16.040.

However, additional tree species may be planted where special circumstances warrant and it is

determined by the park director or his duly authorized agent(s) that such tree species will not create a nuisance or maintenance problem.
(Ord. 205 § 5, 1984)

12.16.060 Planting and maintenance requirements.

A. Official trees planted within the public right-of-way shall meet the standards and minimum criteria for planting established by the park and recreation board.

B. Official trees planted in accordance with permits obtained pursuant to subsection A of Section 12.16.080 shall be maintained by the local government. However, the adjacent property owner shall be encouraged to water newly planted official trees until such trees are established.
(Ord. 205 § 6, 1984)

12.16.070 Maintenance of unofficial street trees--Costs.

A. The park director or his duly authorized agent(s), through issuance of a written order, may require the adjacent property owner to maintain or cause to be maintained any unofficial tree, including removal of such trees necessary to protect the public safety.

B. Trees in the public right-of-way shall be trimmed to allow a clear space over sidewalks of eight feet, and clear space over streets of twelve feet. Nothing in this chapter shall be construed as requiring the adjacent property owner to trim any trees in the public right-of-way when such trimming is required because of their proximity to and interference with utility lines or traffic control signs or devices. Trimming responsibility in these cases shall lie with the appropriate public service company of Butte-Silver Bow.
(Ord. 205 § 7, 1984)

12.16.080 Required street tree work permit and licenses.

A. Permit. It is unlawful and prohibited for any person(s) other than the park director, or his duly authorized agent(s) to plant, or remove any official tree within that area defined in Section 12.16.040, or to cause the same to be done, unless and until a written permit shall have first been obtained from the park director or his duly authorized agent(s).

B. License. It is unlawful and is prohibited for any person(s) or firm to engage in the business or occupation of street tree maintenance, including removal, without first obtaining a Butte-Silver Bow business license. No such license, however, shall be required of any public service company or Butte-Silver Bow employee(s) doing such work in the pursuit of their public service endeavors. Before any business license for the maintenance of street trees shall be issued, each applicant shall first file evidence of possession of liability insurance in the minimum amounts of one hundred thousand dollars for the injury or death of any one person, three hundred thousand dollars for the injury or death of any number of persons in any one accident, and twenty-five thousand dollars for damage to property.
(Ord. 205 § 8, 1984)

12.16.090 Violation--Penalty.

Any person(s) violating any provisions of this chapter shall be guilty of a misdemeanor and jurisdiction for such violations shall be in the city court of Butte-Silver Bow.
(Ord. 205 § 9, 1984)