

## REFERRAL AND STAFF REPORT

|                                       |   |
|---------------------------------------|---|
| <b>Agenda item:</b>                   | Ordinance amending the Title 20 City Zoning standards for public forums   |
| <b>Report Date:</b>                   | 3/29/2022   |
| <b>Project Lead:</b>                  | Emily Gluckin, Associate Planner  |
| <b>Reviewed By:</b>                   | Ben Brewer, Planning Supervisor   |
| <b>Public Meetings &amp; Hearings</b> |   |
| <b>Planning Board (PB) Hearing:</b>   | 4/5/2022  |
| <b>City Council:</b>                  | First Reading and Set Public Hearing: 4/11/2022<br>Public Hearing: 4/18/2022<br>Land Use & Planning Committee Post-Public Hearing Informational Item (Tentative): 4/20/2022<br>Second Reading & Final Consideration: 5/2/2022   |
| <b>Legal Ad:</b>                      | Published for the Planning Board and City Council public hearings in the <i>Missoulian</i> on March 20th and 27th, 2022   |
| <b>Applicant:</b>                     | This is a CPDI-initiated request  |
| <b>Notification:</b>                  | <ul style="list-style-type: none"> <li>Sent agency and interested parties memo (Attachments C and D) via email to interested parties and City agencies for review</li> <li>Posted on the Engage Missoula website</li> <li>Published a legal ad in the Missoulian</li> </ul> |

## STAFF RECOMMENDATION

Approve the adoption of an ordinance to amend Title 20, Sections 20.85.010, 20.85.020, and 20.85.095 as described in Attachment A.

## RECOMMENDED MOTIONS

|  |   |
|--|---|
| <b>PB Public Hearing<br/>4/5/2022</b>      | <b>Recommend the City Council approve</b> the adoption of an ordinance to amend Title 20, Sections 20.85.010, 20.85.020, and 20.85.095 as described in Attachment A.  |
| <b>CC First Reading<br/>4/11/2022</b>      | [First reading and preliminary adoption] <b>Set a public hearing</b> on April 18, 2022 and <b>preliminarily adopt</b> an ordinance to amend Title 20, Sections 20.85.010, 20.85.020, and 20.85.095 as described in Attachment A, and <b>refer this item</b> to the Land Use and Planning Committee for discussion only, post-public hearing presentation on April 20, 2022. |
| <b>CC Public Hearing<br/>4/18/2022</b>     | Public hearing: <b>no motion</b>  |
| <b>LUP<br/>4/20/2022</b>                   | Post-public hearing informational item: <b>no motion</b>  |
| <b>CC Final Consideration<br/>5/2/2022</b> | [Second and final reading] <b>(Adopt/Deny)</b> an ordinance to amend Title 20, Sections 20.85.010, 20.85.020, and 20.85.095 as described in Attachment A.   |

## **I. PROPOSAL SUMMARY**

This ordinance proposes to amend the existing sections of Title 20 that discuss public forums in order to align City zoning regulations with recent changes to the state law regulations for public forums. The proposed amendments are focused solely on updating the review and approval procedures for public forums, and do not propose any content changes to the application or function of public forum processes.

## **II. BACKGROUND**

As described in Part 4 of the Planning & Zoning chapter of Montana's Land Use and Planning Statutes, a public forum is a type of public hearing that is held when a public agency, including a board, bureau, commission, department, authority, or other entity of state or local government, proposes to develop or use land in a way that does not meet the requirements of a local zoning code. When such a proposal is made by a public agency, a public forum for comment on the project must be held. (As a note, federal public agencies are not subject to the public forum requirements, as the federal government is not subject to local zoning laws.)

The State regulations for public forums were not specifically addressed in the Missoula zoning code until recently. They were first incorporated into Missoula's zoning code in 2018, when Ordinance 3609 was passed to create a new section for public forums under the Review and Approval Procedures chapter (Title 20.85), among other changes to the zoning code as part of a maintenance update. Guidance for public forums was also added to the existing Review and Decision-Making Authority section (Title 20.85.010) during that process. In 2020, Ordinance 3669 was passed as part of a subsequent Title 20 update that modified the public forum section by moving the notice requirements into a new portion of the Common Provisions section (Title 20.85.020) that consolidated information on noticing for all public processes.

During the 2021 legislative session, the State of Montana passed House Bill 496, which revised the section of state law that regulates public forums (Montana Codes Annotated 76-2-402). The revisions included changing the review authority of public forums from the local Board of Adjustment to the local governing body (City Council), as well as adding a new requirement for the requesting agency to attend the public hearing.

The Missoula City Zoning Ordinance (Title 20) includes a requirement that in addition to the regulations of the zoning ordinance, all uses and development must comply with all other applicable city, state, and federal regulations. When state regulations change, the zoning ordinance must be updated to incorporate the applicable changes. The proposed targeted amendments to Title 20 are intended to align the City zoning regulations surrounding public forums with the amendments to MCA 76-2-402 to allow for consistency in the implementation of state and local regulations. These proposed code amendments include the following sections of the zoning ordinance:

### **Title 20.85.010 – Review and Decision-Making Authority (Summary Table)**

- Changes the review and decision-making authority for a public forum from Board of Adjustment to City Council.

### **Title 20.85.020 – Common Provisions**

- Removes public forums from the Board of Adjustment application types;
- Adds a new line for public forums under Noticing Requirements for Specific Application Types.

### **Title 20.85.095 – Public Forum Review and Approval Procedures**

- Changes all instances of "Board of Adjustment" to "City Council";
- Adds a requirement that, per the new State Law, an agency requesting a public forum shall attend the public hearing.

## II. BACKGROUND

The applicability and functionality of public forums would generally remain the same as under the existing code language, with the main difference being that public forum hearings will now take place before the City Council. As Similarly to public forums previously held by the Board of Adjustment, City Council would not be authorized to deny or condition the proposed action.

## III. AGENCY AND PUBLIC COMMENT

On March 16<sup>th</sup> and March 18<sup>th</sup>, 2022, CPDI requested City agency and interested party review and comment on the proposed Title 20 public forum amendments and posted the project on the City's Engage Missoula website on March 18<sup>th</sup>, 2022. At this time, the Missoula Urban Transportation District and the Missoula Fire Department have replied with "no comment."

## IV. REVIEW CRITERIA

### **1. Whether the proposed zoning amendment is consistent with §76-2-304(2) MCA (20.85.040.G.1).**

MCA 76-2-304(2) requires that governing bodies, in adopting zoning regulations, must be made in accordance with a growth policy and be designed to secure safety from fire and other danger, promote public health, safety, and general welfare and facilitate the adequate provision of transportation, water, sewerage, and schools, parks and other public requirements. In addition, the governing body shall consider the reasonable provision of adequate light and air; the effect on motorized and non- motorized transportation systems; the promotion of compatible urban growth, the character of the district and its peculiar suitability for particular uses and conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

The proposed regulation revisions are strictly focused on consistency with state law, and do not contain content changes that would impact the code's accordance with the *Our Missoula 2035 Growth Policy*. The proposed amendments will not negatively impact public health, safety, and welfare; will not influence the provision of public infrastructure, services, light and air, and transportation systems; and will not impede compatible urban growth or appropriate land uses in Missoula. While a public agency may propose a development or a use that is not fully in accordance with these factors, it is already authorized under state and local regulations, which these amendments will not modify.

### **2. Whether the proposed zoning amendment corrects an error or inconsistency in the zoning ordinance or meets the challenge of a changing condition. (20.85.040.G.2)**

The passage of House Bill 496 by the State of Montana created an inconsistency between local and state regulations for public forums, which these proposed amendments intend to resolve. The proposed amendments will align the zoning ordinance with the new language that exists in MCA 76-2-402 to eliminate confusion.

### **3. Whether the proposed zoning ordinance amendments are in the best interests of the city as a whole. (20.85.040.G.3)**

Our local zoning code must comply with state law, therefore it is important for the zoning code to accurately represent state regulations. The proposed zoning amendments will provide clarity to public agencies, reviewing bodies, city staff, and the community regarding the correct regulations and process for public forums, and thus are in the best interest of the city as a whole.

| <b>V. ATTACHMENTS:</b> |  |
|------------------------|--|
| A.                     | Proposed Title 20 Amendments to Public Forum Standards |
| B.                     | House Bill 496   |
| C.                     | Agency Memo  |
| D.                     | Interested Parties Memo                                |