



**REFERRAL AND STAFF REPORT**

<b>Agenda item:</b>	Conditional Use Interim Ordinance
<b>Report Date:</b>	11/9/2022
<b>Project Lead:</b>	Jen Gress, Senior Planner, CPDI
<b>Public Meetings &amp; Hearings</b>	
<b>Planning Board (PB) hearing:</b>	N/A
<b>City Council (CC) 1<sup>st</sup> Reading (date)</b>	11/14/2022
<b>Land Use and Planning discussion:</b>	11/16/2022
<b>City Council (CC) public hearing and final consideration</b>	11/28/2022
<b>Applicant:</b>	This is a Community Planning, Development & Innovation (CPDI) initiated request.
<b>Notification and public engagement:</b>	<ul style="list-style-type: none"> <li>• Legal ad in Missoulian 11/20/2022</li> <li>• Engage Missoula (Activated 11/10/2022)</li> <li>• Monthly CPDI Developer meetings at CPDI</li> </ul>

**STAFF RECOMMENDATION**

Pursuant to State Law Section 76-2-306 Montana Code Annotated, **Adopt** an interim urgency zoning measure amending Title 20, Missoula City Zoning Ordinance Section 20.05 Residential Districts, Section 20.10 Business and Commercial Districts, Section 20.15 Industrial and Manufacturing Districts, and Section 20.20 Open Space, Public, and Aviation Districts, prohibiting the application of the conditional use process to certain use categories.

**RECOMMENDED MOTIONS**

<p><b>CC First Reading Consent Agenda</b> 11/14/2022</p>	<p>(First reading and preliminary adoption) Set a public hearing on November 28, 2022, on an interim zoning ordinance, Conditional Use Interim Zoning Ordinance, and refer this matter to the Land Use and Planning committee for a preview prior to the public hearing.</p>
<p><b>LUP</b> 11/16/2022</p>	<p>No motion – Preview of Ordinance</p>
<p><b>CC Public Hearing and Final Consideration</b> 11/28/2022</p>	<p>[Second and final reading] Pursuant to State Law Section 76-2-306 Montana Code Annotated, the Missoula City Council hereby <b>(adopt/deny)</b> an interim urgency zoning measure amending Title 20, Missoula City Zoning Ordinance Section 20.05 Residential Districts, Section 20.10 Business and Commercial Districts, Section 20.15 Industrial and Manufacturing Districts, and Section 20.20 Open Space, Public, and Aviation Districts, prohibiting the application of the conditional use process to certain use categories.</p>

## I. PROPOSAL SUMMARY

CPDI is proposing an interim urgency ordinance (in accordance with MCA 76-2-306) that will shift a number of existing conditional uses throughout the zoning districts to permitted based on analysis of specific considerations. This interim urgency ordinance will help to provide a more effective delivery of City services, consistent with the City's mission, and supports the overall public health, safety, and welfare of our growing community by allowing a more streamlined review of certain types of uses, thereby freeing up staff time to review and approve the housing and support services necessary to support a safe and healthy community.

Adopting a conditional use interim ordinance allows us to act now to ensure we continue to meet the needs of development and support the creation of new homes and businesses despite historic levels of development review. The interim urgency ordinance provides an interim solution while the City studies and contemplates broader amendments to the approach for conditional use and project development review process efficiencies through the code reform project.

## II. BACKGROUND

The City of Missoula is facing historic levels of development review, causing backlogs and delays that are directly and indirectly impacting our ability to move key priorities like residential projects forward. In light of current demand, there is an urgent need to identify and simplify regulations and processes that have an immediate impact on our ability to operate and help us to move toward doing business efficiently.

A large cause of this backlog is due to the historic number of active subdivision applications, which have review and response times that are mandated by state law, and so essentially jump to the head of the line. Since the conditional use process is not subject to state mandated timelines and are discretionary reviews, CPDI staff is focusing on amendments to these use types. Proposed amendments prohibit the application of the conditional use process to certain use categories, as these may be in conflict with a contemplated zoning proposal the City Council intends to study. By reducing the number of uses required to go through the conditional use process, around 3 months of work for each request will be removed from the development review process, allowing staff to work on other projects.

The zoning code includes three use designations: permitted by right, unpermitted (aka prohibited), and conditional. As stated in the zoning code, conditional uses are intended to provide a transparent, public review process for land uses that, because of their widely varying design and operational characteristics, require case-by-case review in order to determine whether they will be compatible with surrounding uses and development patterns. Uses are reviewed by certain criteria (see 20.85.070.H in Title 20) to determine if the proposed use is compatible in the specific location being proposed. Approval through the conditional use application process is ultimately received through a vote by City Council and includes a public hearing.

When Title 20 was adopted in 2009, it included 49 use types that, depending on which zoning district they occur in, may be conditional. In 2019 two of those uses were removed from the conditional use process. Accessory Dwelling Units (ADU) and Townhome Exemption Development (TED) projects both became permitted in all residential, commercial, and industrial zones allowing for more "by right" housing options. There are currently 47 use types that are conditional in at least some zoning districts.

In the time since Title 20 was adopted, there have been a total of 78 conditional use projects processed. Of those 78 only one project was denied, and 21 of them were uses that are no longer conditional (ADU & TED). Through the lens of Community Design and Livability, the City's Strategic Plan identifies the need to create understandable and reasonable regulations that support sustainable and equitable development. The outcome of the conditional use process has resulted in one denial over 13 years; some additional conditions applied in some cases; and enhanced neighborhood awareness of projects. The proposed interim urgency ordinance will yield reasonable interim regulations and still retain additional review for some conditional use types.

In recent years CPDI has recognized that we need to streamline processes where appropriate. A recent study of current subdivision and townhome exemption development review processes included a general observation that "the

## II. BACKGROUND

development and review process is necessary to ensure that development meets community standards but any additional time spent in the development process beyond what is necessary to meet community standards can negatively impact new housing supply, costs and staff availability to work on other city priorities or projects.” By prohibiting the application of conditional use processes to certain use categories, we can shift project review priorities to other projects.

In order to determine which conditional uses are good candidates for shifting to permitted, staff developed the following considerations:

- Level of Frequency: how many individual projects have we seen within a specific use type?
- Degree of Controversy/Perceived Impact: what are the uses that have generated notable levels of public comment and input? What specific projects resulted in applying conditions that would not have otherwise or already been required?
- Policy Alignment: Which uses are clearly aligned with existing policy goals, such as the growth policy, associated issue plans, or the City strategic plan?
- Additional support by other standards/codes: What uses have existing specific regulations that are also required and help to mitigate impacts?
- Equity: Is the application of the conditional use requirement applied equitably across similar use categories? Similarly, is application of this ordinance applied across similar zoning districts?
- Relationship to code reform: Are changes associated with this interim ordinance focused on streamlining department business operations, and not requiring consideration on a more comprehensive level that should wait for inclusion in the code reform initiative?
- Complexity: Which individual uses require a level of evaluation and analysis that a conditional use review is warranted? Which changes to uses would require other edits to the code, making it too complex to address at this time?
- Addresses transitional areas: In relation to the previous considerations, special focus was included on how this would affect specific uses applied for in a transitional area, especially between residential zones and non-residential.

Based on applying these considerations, staff identified that a use-specific approach was the preferred route and established three categories of amendments: change some uses from conditional to permitted in all applicable zoning districts; change some uses from conditional to permitted only in some applicable districts; and maintain some uses as conditional as they currently exist. The following guidelines were also identified:

- Only districts covered under Title 20 are being addressed (not special districts, PUDs, etc).
- No use will be expanded beyond its existing range: for example, if a use is prohibited in a certain district, we are not recommending making them permitted or conditional.
- No use will be made more prohibitive: for example, we are not moving any conditional uses to prohibited, or permitted uses to conditional.
- Similar types of uses are addressed similarly: for example, day care centers, community residential facilities and group living were treated similarly.

The following guidelines were identified specifically related to those uses that are proposed to be changed only in some zoning districts:

- The M1R district is considered more residential in nature than industrial.
- The Central Business District (CBD) was considered more carefully than other districts.
- All three Business (B) districts were looked at more or less consistently by not differentiating between the three districts.

Of the 47 existing conditional uses more than half will be either permitted in every district they are listed in or will be permitted in some of the districts they are listed in. Proposed amendments will result in:

- 13 uses remaining conditional and unchanged;
- 21 uses changing to permitted in each district the use is currently conditional;
- And 13 uses with some districts remaining conditional and other districts changing to permitted.

Refer to Attachment A for a complete list of which uses are included in each of these three categories.

## **II. BACKGROUND**

To protect the public health, safety, and welfare of our growing community by allowing a more streamlined review of certain types of uses and prohibiting the application of the conditional use process to certain use categories, staff is requesting City Council set a public hearing to consider the passage of an interim zoning ordinance (76-2-306 MCA), that addresses conditional use types. State law requires interim zoning ordinances to be noticed at least seven days prior to the public hearing. If the City Council consents to proceeding, the City Clerk will publish legal notice of the public hearing on the Conditional Use Interim ordinance on Sunday, November 20, 20022. The hearing would be held November 28, 2022.

## **III. REVIEW CRITERIA**

Subject to MCA 76-2-306 Interim Zoning Ordinances.

## **IV. ATTACHMENTS:**

- A. Summary of proposed changes – 11-9-2022
- B. Conditional Use Interim Ordinance – 11-9-2022