



## COMMUNITY PLANNING, DEVELOPMENT & INNOVATION

Development Services Division

435 RYMAN | MISSOULA, MT 59802-4297 | 406.552.6630 | FAX 406.552.6053

# REFERRAL AND STAFF REPORT

## I. PROJECT INFORMATION

**Agenda Item:** City Interim Urgency Zoning Amendments: Complying with 2023 State Legislation  
**Report Date:** 9/27/2023  
**Project Lead:** Madson Matthias, Associate Planner  
**Applicant:** This is a CPDI initiated request.

## II. PUBLIC MEETINGS & NOTIFICATION

### City Council Consent Agenda, 10/2/23

*(Consent Agenda Item Recommended Motion)* Set a public hearing on October 16, 2023, for an interim zoning ordinance, 'City Interim Urgency Zoning Amendments: Complying with 2023 State Legislation,' and refer this matter to the Land Use and Planning committee for a preview prior to the public hearing.

### Land Use and Planning discussion, 10/4/23

*(No motion, Preview of Ordinance)*

### City Council Public Hearing and Final Consideration, 10/16/2023

*(Recommended Motion, waive 1<sup>st</sup> reading)* Pursuant to State Law Section 76-2-307 MCA, the Missoula City Council hereby (**adopts/denies**) an interim urgency zoning measure amending Title 20, Missoula City Zoning Ordinance, Chapter 20.01 Introductory Provisions, Chapter 20.05 Residential Districts, Chapter 20.10 Business and Commercial Districts, Chapter 20.15 Industrial and Manufacturing Districts, Chapter 20.20 Open Space, Public, and Aviation Districts, Chapter 20.25 Overlay Districts, Chapter 20.40 Use- and Building-Specific Standards, Chapter 20.45 Accessory Uses and Structures, Chapter 20.60 Parking and Access, Chapter 20.65 Landscaping, Chapter 20.75 Signs, Chapter 20.85 Review and Approval Procedures, Chapter 20.90 Administration, Chapter 20.100 Terminology, and Chapter 20.105 Use Classifications to incorporate regulations concerning legislative changes to state land use regulations. As these are zoning amendments that are mandated by the State of Montana with effective dates that occur before or on October 1, 2023, timing necessitates addressing these amendments through an interim urgency ordinance.

**City Council public hearing legal ad:** Published in the Missoulian on October 7, 2023

### Additional Notification:

1. Sent agency and interested party memo (attached) via email to interested parties and City agencies for review
2. Posted on Engage Missoula (9/29/23)

## III. SUMMARY

Community Planning, Development, and Innovation planning staff is proposing an interim urgency ordinance (in accordance with MCA 76-306) that amends Title 20 City Zoning Ordinance in response to the recent legislation amending state land use regulations. The goal is to review current codes and develop proposed local zoning amendments to accommodate these changes in a timely manner. *See Attachment A – Ordinance: City Zoning Amendments: Complying with 2023 State Legislation (September 2023).*

Implementing the State bills through an interim urgency ordinance accomplishes many changes including the prohibition of certain design standards and processes, and the reduction of parking requirements for certain uses. Incorporating state mandated rules in Title 20 as close to the effective date of the bills as possible, allows us to establish the intent of the bills in a transparent and easy to follow way that benefits the community and users of the regulations which will help with our ability to operate and conduct business efficiently while also supporting the overall public health, safety, and welfare of our growing community. The interim urgency ordinance is an interim solution while the City contemplates comprehensive code reform as part of the ongoing Our Missoula: Growth Policy Update and Code Reform Project.

## IV. OVERVIEW

### Context and Purpose

The City of Missoula Community Planning, Development and Innovation is proposing an urgency interim ordinance to amend Title 20 Zoning Code. The amendments in the ordinance will comply with mandated regulations outlined in the six bills affecting municipal zoning recently passed by the Montana State Legislature and are effective on or before October 1, 2023.

The 2023 Montana State Legislative Session passed a variety of land-use related bills, including a comprehensive re-write of the Subdivision and Platting Act. The State's legislative effort is in large part due to the affordable housing crisis, compounded by increasing materials costs and lengthy development schedules. To invoke change at an even more rapid pace, the legislature assigned immediate or late-2023 effective dates to several of the bills passed.

### Approach to Ordinance Amendments

The City of Missoula is responding quickly with immediate changes. In conjunction with other Montana communities and the Montana League of Cities and Towns, City of Missoula staff have reviewed applicable bills to align the new requirements with existing city regulations.

The Montana Code Annotated, Section 76-2-306 allows a City to amend land use allowances to protect the public welfare without following the procedures otherwise required prior to the adoption of a zoning ordinance. This allows for ordinance adoption without a 30-day period between adoption and effective date and reduces the requirements for public participation and engagement. These amendments are mandated by the State Legislature, regardless of local community guidance. Interim ordinances may only be in effect for a period of up to 18 months (a combination of six-month initial urgency ordinance and the possibility of a one-year extension). By the end of that 18-month period, the City will have adopted a reformed code through the Our Missoula project.

### Statutory Changes resulting from House and State Bills

The proposed amendments result from seven bills, these are:

1. House Bill 305
2. House Bill 918
3. Senate Bill 178
4. Senate Bill 195
5. Senate Bill 245
6. Senate Bill 331
7. Senate Bill 407

The proposed amendments comprise changes to fifteen chapters of Title 20 zoning code. These are:

- Chapter 20.01 Introductory Provisions,
- Chapter 20.05 Residential Districts,
- Chapter 20.10 Business and Commercial Districts,
- Chapter 20.15 Industrial and Manufacturing Districts,
- Chapter 20.20 Open Space, Public, and Aviation Districts,
- Chapter 20.25 Overlay Districts,
- Chapter 20.40 Use- and Building-Specific Standards,
- Chapter 20.45 Accessory Uses and Structures,
- Chapter 20.60 Parking and Access,

- Chapter 20.65 Landscaping,
- Chapter 20.75 Signs,
- Chapter 20.85 Review and Approval Procedures,
- Chapter 20.90 Administration,
- Chapter 20.100 Terminology, and
- Chapter 20.105 Use Classifications,

Each bill below is described in terms of its statutory changes within State Law and the resulting impacts of these changes on Title 20.

### 1. [House Bill 305](#)

In House Bill 305, the 2023 Montana Legislature removed the statutory prohibition on microbreweries being able to obtain a retail beer and wine sales permit from the Montana Department of Revenue. This bill became effective on July 1, 2023.

At the time House Bill 305 was passed, Title 20 Zoning Code did not consider the possibility of a microbrewery being able to obtain a retail beer and wine sales permit at the same location where the microbrewery operates.

In response to the bill, the City proposes continuing to treat a microbrewery that obtains a retail beer and wine sales permit to be co-located at the same location as the microbrewery as a microbrewery under Title 20 so long as:

1. the primary use continues to be the microbrewery, and
2. the operation does not have an unreasonable impact on the surrounding area.

To avoid unreasonable impacts on the surrounding neighborhood, microbreweries with a co-located retail beer and wine license shall close at 10:00p.m. on Sunday through Thursday, and 11:00p.m. on Friday and Saturday, to mirror the general hours of operations of restaurants that are otherwise authorized to operate in the same districts as microbreweries.

### 2. [House Bill 918](#)

In House Bill 918, the 2023 Montana Legislature increased the statutory zoning occupancy limit for home day-cares from 12 to 15 children. This bill became effective on July 1, 2023.

At the time House Bill 918 was passed, Title 20 Zoning Code limited Residential Day Care occupancies from 1-12 children or adults and Day Care Centers to 13+ children or adults.

In response to the bill, the City proposes increasing the occupancy limit for Residential Day Cares to 15 children or adults and increasing the occupancy minimum for Day Care Centers to 16 children or adults.

### 3. [Senate Bill 178](#)

In Senate Bill 178, the 2023 Montana Legislature added new definitions for 'data center' and 'digital asset mining' within the regulations for utilities and imposed a statutory zoning prohibition on local governments from enacting rules that: (a) impose requirements on a digital asset mining business that are not also requirements for data centers, (b) prevent a digital asset mining business from operating in an area zoned for industrial use; or (c) prevent home digital asset mining at a private residence. This bill became effective on July 1, 2023.

At the time Senate Bill 178 was passed, Title 20 Zoning Code did not include definitions for 'data center' or 'digital asset mining' and did not expressly consider where they would be allowed and to which use-specific standards they would be subjected.

In response to the bill, the City proposes to add new definitions for 'data center' and 'digital asset mining.' These will be permitted in M2 (Heavy Industrial) and conditional in M1 (Limited Industrial) and M1R (Limited Industrial-Residential) districts. Additionally, new definition for 'home digital asset mining' will be added and these uses will be allowed as home occupations. No changes to the section addressing home occupations are needed.

#### 4. [Senate Bill 195](#)

In Senate Bill 195, the 2023 Montana Legislature amended the statutory requirements for the state building code as adopted by the Department of Labor and Industry to include a new allowance for places of religious worship to “accommodate temporary overnight visitors for the purpose of religious retreats, ministry programs, overnight events, and emergency or catastrophic occurrences or to provide shelter or to accommodate displaced persons due to hardship or inclement weather.” This bill became effective immediately upon signing.

At the time Senate Bill 195 was passed, Title 20 Zoning Code defined Religious Assembly with the following language: “Religious services involving public assembly such as customarily occur in synagogues, temples, mosques and churches. Religious Assembly includes a provision for extreme weather shelter use. Religious institutions providing extreme weather shelter must comply with Section 20.40.055, Extreme Weather Shelter.” Furthermore, the Temporary Uses section of 20.40.130 does not explicitly reference Religious Assemblies or provisions therefrom.

In response to the bill, the City proposes to amend the definition of Religious Assembly to reflect the following: “Religious Assembly include provisions for temporary shelter use..... Religious institutions accommodating temporary overnight visitors per the allowance in per MCA §§ 50-60-203(7)(a) for the purpose of religious retreats, ministry programs, overnight events, and emergency or catastrophic occurrences or to provide shelter or to accommodate displaced persons due to hardship or inclement weather must comply with Section 20.40.130, Temporary Uses.” Additionally, the section on Temporary use is revised to describe this temporary use and limit the timeframe for the use to 75 days in any zone, in accordance with the bill.

#### 5. [Senate Bill 245](#)

In Senate Bill 245, the 2023 Montana Legislature amended the statutory guidelines for municipal zoning regulations to include provisions requiring cities with populations over 5,000 to allow, as a permitted use, multi-dwelling buildings and mixed-use developments in commercial zones and to limit the required vehicle parking for these developments to 1 space per unit. This bill became effective immediately upon signing.

At the time Senate Bill 245 was passed, Title 20 Zoning Code expressly permitted multi-dwelling and mixed-use buildings in all Business and Commercial districts. Title 20, furthermore, contained three separate classifications for multi-dwelling vehicle parking requirements (senior housing, affordable housing, and general) and subsequently broke each of these categories down by unit area. In total Title 20 contained eight categories for multi-dwelling vehicle parking requirements. Five of the categories required 1.0 or fewer vehicle parking spaces per unit and three required between 1.5 and 2.0 spaces per unit.

In response to the bill, the City proposes to add a new, ninth, multi-dwelling category to the schedule of vehicle parking requirements that sets a maximum of 1.0 space per unit for multi-dwelling units in B and C districts.

#### 6. [Senate Bill 331](#)

In Senate Bill 331, the 2023 Montana Legislature amended the statutory subdivision exemptions for certain condominiums and townhouses. These amendments include: (1) limiting zoning regulations applicable to the review and approval process to land use, density, bulk and dimensional requirements, landscaping, and parking requirements, (2) limiting the review period to twenty working days, and (3) prohibiting governing bodies from imposing conditions on these proposals. This bill became effective immediately upon signing.

At the time Senate Bill 331 was passed, Title 20 Zoning Code contained provisions related to Townhome Exemption Developments (TEDs) requiring a 15-day noticing period, requiring parkland dedication or cash-in-lieu to the Parks department, and containing references to conditions of approval.

In response to the bill, the City proposes to repeal the requirement for a 15-day noticing period and all subsequent noticing requirements for TEDs. The City also proposes repealing all references to conditions of approval and parkland dedication (or cash-in-lieu).

#### 7. [Senate Bill 407](#)

In Senate Bill 407, the 2023 Montana Legislature amended the statutory requirements for municipal zoning districts to limit local design review standards to what is “clear, objective, and necessary to protect public health or safety or to comply with federal law” and, furthermore, requires administrative determinations of design review applications, except those applying for Historic Preservation Review. This bill became effective on October 1, 2023.

At the time Senate Bill 407 was passed, Title 20 Zoning Code contained certain design standards that were solely architectural and aesthetically focused and other design standards that were not clearly and objectively worded. These standards were contained in the Overlay Districts (Chapter 20.25), Use- and Building-Specific Standards (Chapter 20.40), Accessory Uses and Structures (Chapter 20.45), and Signs (Chapter 20.75). Title 20, furthermore, contained provisions requiring Design Review by the Design Review Board and giving the Design Review Board decision-making authority for alternative compliance and variations to design regulations.

In response to the bill, the City is repealing the Design Review Board, all references to the Board, and comprehensively transferring the Board’s authority to the Zoning Officer and, in specific cases, retaining the Historic Preservation Commission. Within Design Excellence, standards and intent statements unrelated to public health and safety have been amended, including a complete repeal of requirements for material coverage and façade articulation.

In further response to the Bill, the City proposes to repeal design standards expressly related to aesthetic or architectural preference and to keep those standards that are clear and measurable; that help guide bulk and form (including setbacks, building width, building height, and mass variation); that help promote Crime Prevention Through Environmental Design (CPTED) (including glazing, eyes on the street); that maintain clear visibility and identification of buildings and entrances for emergency services; that protect and provide comfort for the pedestrians and other sidewalk users (protection from cars, connectivity, walkability, delineation of the public and private realm); that protect and buffer residential uses; and that promote climate resilience and reduce urban heat island effect. Furthermore, alternative design options for multi-dwelling buildings, Enterprise Commercial Uses and Commercial Uses Not Exceeding 30,000 Square Feet are being maintained, including those standards related to colors, materials, or other architectural features. The amended minimum required options to be chosen is limited to those related explicitly to public health and safety, and the option for welfare-based choices remains.

Those standards that get repealed are expressly preferential or architectural in nature and cannot be clearly and objectively measured and tied to the protection of public health and safety. These repealed standards include (1) material coverage requirements within Design Excellence; (2) façade articulation requirements within Design Excellence; (3) building as a sign-related regulations and references; (4) activity area landscaping maximum length and width restrictions; (5) select garage design standards for Townhouses; and (6) limitations on entryway location for Accessory Dwelling Units.

In addition to the repeal of design standards, certain other standards have been amended to be clearer, more objective, or to transparently tie to public health and safety. These amended standards include intent statements and category names for form- and design-related regulations as well as a complete reconsideration of the purpose and applicability screening landscaping to revolve entirely around public protection.

For full draft language, see *Attachment A – Ordinance: City Zoning Amendments: Complying with 2023 State Legislation (September 2023)*.

## V. REVIEW CRITERIA

Title 20, Section 20.85.040.G states “In reviewing and making decisions on zoning amendments, the Zoning Officer and City Council must consider” a set of criteria. The following is a review of the proposed regulations relative to the criteria listed in Section 20.85.040.G.

- 1. Whether the proposed zoning amendment is consistent with §76-2-304(2) MCA, Criteria and guidelines for zoning regulations. These state:**

- (1)(a) Zoning regulations must be made in accordance with a growth policy.**  
The 2035 Our Missoula City Growth Policy is the guiding regional plan for the City of Missoula. The proposed regulation revisions are in accordance with the 2035 Our Missoula Growth Policy.
- (1)(b)(i) Zoning regulations must be designed to secure safety from fire and other dangers.**  
No changes have been made to any approved safety regulations. The proposed regulations maintain security of safety from fire and other dangers.  
All development subject to zoning must comply with all other applicable city, state and federal regulations (Title 20, Section 20.01.060.B). Fire safety, emergency services, water, sewer and other public facilities are taken into consideration during the permitting process.
- (1)(b)(ii) Zoning regulations must be designed to promote public health, public safety, and the general welfare.**  
All amendments have been made in strict accordance with statutory changes in the Montana Code Annotated. They have been reviewed for their potential impact and limited to the minimum necessary to comply with the state changes. SB 245 mandates regulations be tied to public health and safety. The proposed regulations will promote the public health, public safety, and the general welfare.
- (1)(b)(iii) Zoning regulations must be designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.**  
No substantial changes have been made to regulations concerning transportation, water, sewer, schools, or other public requirements. The provision related to parks that has been repealed is in accordance with state law. The proposed regulations will not have an impact on the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. All future development subject to zoning must comply with all other applicable city, state and federal regulations (Title 20, Section 20.01.060.B). Fire safety, emergency services, water, sewer and other public facilities are taken into consideration during the permitting process.
- (2)(a) In the adoption of zoning regulations, the municipal governing body shall consider reasonable provision of adequate light and air.**  
The reasonable provision of adequate light and air is a fundamental characteristic of how zoning regulations provide for public health and safety and is repeatedly used to support the design regulations that were maintained in Title 20. The proposed regulations will not have an impact on reasonable provision of adequate light and air.
- (2)(b) In the adoption of zoning regulations, the municipal governing body shall consider the effect on motorized and nonmotorized transportation systems.**  
Few changes were made to sections containing motorized and nonmotorized transportation systems. The section affected, the motor vehicle parking requirements, is appended to include a requirement that falls near the median of other similar requirements. The proposed regulations will not have an impact on motorized and nonmotorized transportation systems.
- (2)(c) In the adoption of zoning regulations, the municipal governing body shall consider promotion of compatible urban growth.**  
The changes to allowed uses and intensities have been made in accordance with state requirements and uses with similar intensities. No changes have been made to density requirements. The proposed regulations have considered the promotion of compatible urban growth.
- (2)(d) In the adoption of zoning regulations, the municipal governing body shall consider the character of the district and its peculiar suitability for particular uses.**  
The changes to allowed uses and intensities have been made in accordance with state requirements and uses with similar intensities. The proposed regulations consider the character of Missoula's zoning districts and their peculiar suitabilities for particular uses.

**(2)(e) In the adoption of zoning regulations, the municipal governing body shall consider conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**

The proposed regulations are in strict compliance with state statutory amendments. The proposed regulations consider conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

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

The state legislative changes to the Montana Code Annotated affected municipal zoning requirements and allowances requiring the City of Missoula Community Planning, Development and Innovation department to respond to with local land use regulation amendments quickly and clearly. The proposed amendment meets the challenge of a changing condition.

**3. Whether the proposed zoning ordinance amendments are in the best interests of the city as a whole.**

The proposed regulations are in strict compliance with state statutory amendments. The application of the state legislation to the Title 20 Zoning Code has been cross-referenced with other Montana cities, legal resources, and the Montana League of Cities and Towns. The proposed amendments comprise the minimum necessary changes to the existing adopted code that is in the best interest of the city as a whole, while preserving integrity with State requirements. Staff considered various impacts of different approaches and of the repealed standards and have been confident in this approach's commitment to Missoula's community and environmental health and safety. The proposed amendments are in the best interests of the city as a whole.

## VI. AGENCY AND PUBLIC COMMENT

The project will be posted on Engage Missoula on September 29, 2023.

## VII. ATTACHMENTS

- A. Ordinance: City Zoning Amendments: Complying with 2023 State Legislation (September 2023)
- B. Summary: City Zoning Amendments: Complying with 2023 State Legislation