



October 15, 2023

City Council
Cit of Missoula
435 Ryman St.
Missoula, MT 59802

Re: Interim Ordinance affecting City Zoning Amendments to comply with 2023 State Legislation

Dear: Council Members,

I have reviewed the amendments made to Title 20 and I agree many of them are moving the Zoning Code in the correct direction to allow affordable housing to be built in Missoula.

In the Bill SB0407 the following text was added in Yellow Highlight below “(5) *This section may not be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2. **Local design review standards imposed by a local government must be clear, objective, and necessary to protect public health or safety or to comply with federal law.**”*

I believe the plain language of this underlined section of text is quite clear that zoning language must check each of the following boxes to be a valid zoning rule:

- ✓ Clear
- ✓ Objective
- ✓ Necessary to protect public health or safety or comply with federal law.

If the rules in Title 20 do not meet all of these it should be amended or removed from the code. There are several sections of Title 20 which have been overlooked in the proposed amendments. I recommend the Council review the specific section below of Title 20 for removal or amendment to comply with State Law.

- 1) 20.25.080 DE, Design Excellence Overlay – Generally
 - a) Amend or delete for following 20.25.080.C.3.b: “~~Build To Zone~~” section as it is not necessary to protect public health or safety or comply with federal law.

- b) Amend or delete for following 20.25.080.C.3.c: ~~“Build-To-Width”~~ section as it is not necessary to protect public health or safety or comply with federal law.
- c) Amend or delete for following 20.25.080.C.4: ~~“Vertical Scale”~~ section as it is not necessary to protect public health or safety or comply with federal law.
 - i) I have professionally found this section of the code to limit Dwelling Unit density along all Commercial Corridors as much as 33% for a four-story building. This has pushed multi-family development into residential neighborhoods and away from Bus routes, bike lanes, services, and similarly massed buildings. This change would need to be amended through the underlying districts.
 - ii) Delete ~~“e. Floor to Ceiling Height (Ground Floor)”~~ section as it is not necessary to protect public health or safety or comply with federal law. This section has increased the cost of multi-family and mixed-use building significantly making Missoula less affordable. The minimum ceiling heights for residential and commercial spaces are required to be between 10-13 feet high to the lowest ceiling projection which increases the cost of the space by 120%-160% in construction assemblies, heating and cooling costs and the carbon footprint of the Ground Floor. This change would need to be amended through the underlying districts.
- d) Amend or delete the following 20.25.080.C.5.a: ~~“Glazing Area”~~ section as it is not necessary to protect public health or safety or comply with federal law.
 - i) This section has increased the cost of multi-family and mixed-use building significantly making Missoula less affordable. The minimum glazing for residential is 30% and commercial spaces as much as 65% are required. This has increased the cost of residential glazing by 300% and commercial glazing by 433%. The operating costs have increased for heating / cooling proportionally with the carbon footprint of an entire building in perpetuity. This has made Missoula less affordable and contributed to the housing crisis. This change would need to be amended through the underlying districts.

2) 20.40.090 - Multi-dwelling Building

- a) Amend or delete for following: 20.40.090 E.1a ~~“Patio style doors, such as sliding glass doors, may not be used for entrance doors on building façades that face a public street.”~~ As it is not necessary to protect public health or safety or comply with federal law.
- b) Amend or delete the following: 20.40.090 E.1b: ~~“The entrance must be in the form of a porch, deck, or covered entry that is at least eight feet in width and six feet in depth. A door that leads directly into a garage does not qualify as a primary entrance.”~~ As it is not necessary to protect public health or safety or comply with federal law.
- c) Amend or delete the following: 20.40.090 E.2: ~~“Glazing Each multi dwelling building must provide windows or glazed area equal to at least 15% of the building façade that faces a public street or a right of way other than an alley. Glazing in (vehicle) garage doors may not be counted towards meeting glazing requirements.”~~ As it is not necessary to protect public health or safety or comply with federal law.

- d) Amend or delete the following: 20.40.090 E.3: ~~“Storage Each dwelling unit must be provided with an enclosed area that is not located within an individual dwelling unit. The storage space must be a minimum of seven feet in height and 25 square feet in floor area, with no minimum interior dimension of less than four feet. Access doors for storage areas may not directly face a public street. This storage space may be combined with the required long-term bicycle storage space found in Section 20.60.090; the total combined area must be a minimum 35 square feet.”~~ As it is not necessary to protect public health or safety or comply with federal law. This rule is also a hindrance to accessibility of occupants as it cannot be accessed from the unit. The cost of this storage room is now between \$6,650 - \$8750 per dwelling unit driving up the cost of rent and hindering affordable rental prices.
 - e) Amend or delete the following: 20.40.090 E.4: ~~“Other Design Features”~~ section as it is not necessary to protect public health or safety or comply with federal law.
- 3) 20.40.140 – Townhouse
- a) Amend or delete the following 20.40.140.E: ~~“Number of Units In zoning districts that allow three+ unit townhouses, buildings may not contain more than eight attached townhouse units.”~~ As it is not necessary to protect public health or safety or comply with federal law. Every Townhouse is an individual single family home that can be more affordable than a detached single family home.
 - b) Amend or delete the following 20.40.140.F3: ~~“When parking is provided in a garage or carport that faces a street, the following standards must be met :a. The garage or carport width may not exceed 50% of the street facing façade of each attached dwelling unit or 13 linear feet, whichever is greater (see diagram).”~~ As it is not necessary to protect public health or safety or comply with federal law.
 - i) The width of the driveway access is better controlled under Title 12 as that is what protects public safety with the width of driveway crossing the sidewalk. Regulating the width of garages does not meet the law to protect public safety.
 - c) Amend or delete the following 20.40.140.G: ~~“Building Design”~~ section as it is not necessary to protect public health or safety or comply with federal law.
- 4) 20.40.170 - Commercial Uses Not Exceeding 30,000 Square Feet
- a) Amend or delete the following 20.40.170.F: ~~“Mechanical Equipment and Utilities Ground or wall mounted mechanical equipment, utility cabinets, junction boxes, valve boxes, utility meters and the like shall not be placed on, or in front of, primary facades.”~~ As it is not necessary to protect public health or safety or comply with federal law.
 - b) Amend or delete the following 20.40.170.I: sections “2, 4 & 5” As it is not necessary to protect public health or safety or comply with federal law.
 - c) Amend or delete the following 20.40.170.J: sections “2, 4 & 5” As it is not necessary to protect public health or safety or comply with federal law.
- 5) 20.100.010 Terminology

- a) Amend Vertical Mixed-Use Building “~~C. The floor to ceiling height of the ground floor space is at least 13 feet except these areas not being used or capable of being used for commercial purposes including, but not limited to, storage areas, stairwells and elevator shafts, bathrooms, mechanical equipment rooms, and interior vehicular parking or loading.~~” As it is not necessary to protect public health or safety or comply with federal law. It also increased the cost of rent for Dwelling units making Missoula less affordable.

In the Bill SB0407 the following text was added in Yellow Highlight below:

(8) (a) Except as provided in subsection (8)(b), when reviewing an application for a zoning permit or variance from local design review standards , the determination of compliance with local design review standards as provided in subsection (5) must be conducted by employees of the municipality, and the municipality may not require review by an external board.

(b) Subsection (8)(a) does not apply to historic preservation boards reviewing an application for a permit or variance to structures or districts that the local government has designated as historic or that are listed on the national register of historic places as defined in the National Historic Preservation Act of 1966 as it read on [the effective date of this act]."

- 1) SECTION 20.25.070 - /NC-HFM is proposed to have the text “Design Review Board” substituted with the Historic Preservation Commission doing the same Design Review as the Design Review Board. I feel all overlay districts should be treated equally. The Historic Preservation Commission is an External Board as called out in the law. As such it should not be able to be allowed to do Design Review except for buildings under a federal act. An Overlay called out under Title 20 is not a federal act, it is a zoning design rule. If a new building is built on a historic property, that building is not a part of the Federal Act (Building or Historic District) as it would be Non-Contributing and therefore should not be forced to have Design Review by and external board.

- a) State Bill SB0331 also added new rules concerning residential development and what a municipality can do which is highlighted as follows:

b) **“3) The governing body may not enact regulations prohibiting the townhome form of ownership or impose conditions on a determination that the condominium, townhome, townhouse, or conversion proposal is exempt from the provisions of this chapter, and may not require the condominium, townhome, townhouse, or conversion proposal to undergo a conditional use permit or other quasi-judicial governmental review process pursuant to regulations adopted pursuant to Title 76, chapter 2, as a prerequisite to determining eligibility for an exemption from the provisions of this chapter.”**

- i) The Historic Preservation Commission or Board of Adjustments could be considered quasi-judicial review process in a Historic District or even a Registered property if it was to be converted into a condominium or possibly a residential condominium. As such the Historic Preservation Commission or Board of Adjustments (if a zoning officer denied a design) could be violating SB0331 as a quasi-judicial board being required.

Lastly, I feel very strongly that any design review that is to be appealed should be presented to the City Council and NOT the Board of Adjustments. The Board of Adjustments is looking for hardship to allow a variance, costs thousands of dollars to apply and takes months to get scheduled. The proposed amendments for appeals will drive up the cost of Dwelling Units, Mixed-use Buildings, Vertical Mixed-use Buildings, Commercial buildings, and parcels in Overlay Zones as the aesthetic decision of the Zoning Officer with little to no experience in Architectural Design will become the law of the land. The zoning officer is making aesthetic design decisions in all cases the Design Review Board was removed and not decisions on public safety or health. Aesthetics are not a hardship for a variance and cost cannot be considered in the variance decision. Allow the Elected Representatives of the Citizens to make the final decision and not a zoning officer unqualified to do the task. A section of code will need to be created to allow this change but it is not a difficult task nor one unworthy of the effort.

Sincerely,

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