

Missoula City Council Land Use and Planning Committee Minutes - DRAFT

October 4, 2023

10:25 am

Council Chambers (in person) or TEAMS (virtually)

Attend in person: City Council Chambers, 140 W Pine, Missoula MT

Members present: Stacie Anderson, Mirtha Becerra, Daniel Carlino, John P. Contos, Sierra Farmer, Gwen Jones, Kristen Jordan, Mike Nugent, Jennifer Savage, Amber Sherrill, Sandra Vasecka

Members absent: Heidi West

1. ADMINISTRATIVE BUSINESS

The meeting was called to order at 10:27 a.m.

1.1 Roll Call

Administrative staff called the roll.

1.2 Approval of the Minutes

1.2.1 Approval of the Minutes from September 27, 2023

The minutes were approved as submitted.

2. PUBLIC COMMENT

There was no public comment for items not listed on the agenda.

3. COMMITTEE BUSINESS

3.1 Ordinance Amending Title 18 Floodplain Hazard Management Regulations

Presentation only.

Cassie Tripard, Planning Supervisor with Community Planning, Development, and Innovation (CPDI) did a presentation on Ordinance Amendment Title 18 Floodplain Hazard Management Regulation. Ms. Tripard introduced a proposed ordinance to amend Title 18, the city's Floodplain Hazard Management regulations, emphasizing that the city's participation in the National Flood Insurance program mandated compliance with federal floodplain development regulations as well as Montana State law, which held higher standards. Notifications from the Montana Department of Natural Resources and Conservation (DNRC) and the Federal Emergency Management Agency (FEMA) triggered updates to local regulations. The City Council faced a tight timeline due to a new flood insurance study. Four types of amendments were proposed, including updates to Appendix A, language revisions required by DNRC, and aligning Title 18 with state model regulations. Additionally, the presentation highlighted the need to update Appendix A to reference the new flood insurance study firm index numbers and the Butler Creek Letter of Map revision. DNRC's updated model regulations required changes to

definitions, floodplain administrator designation, and various sections to align with state and federal laws. Overall, the proposed ordinance aimed to ensure compliance and clarity in floodplain management regulations for the city of Missoula. This item was approved in the city council meeting on October 2, 2023, and has come back to the Land Use and Planning Committee (LUP) meeting for a pre-public hearing.

John Contos joined the meeting at 10:33 a.m.

A committee member asked for clarification if the proposed ordinance regarding historic structures in the floodplain change property rights or merely acknowledges the historic status of buildings without affecting property rights. Ms. Tripard clarified that the regulations already addressed historic structures, allowing them to be considered in variances and for substantial improvements. The proposed changes aim to clarify and define these existing provisions without harming the historic designation.

Elizabeth Johnson, Historic Preservation Officer for CPDI, agreed and added that the purpose is to provide additional protection. It will not affect or take away property rights in any way. The proposed definition for historic structures aligns with federal and state standards and is meant to provide additional protections for historic property owners without inherently restricting their private property rights. Listing a property on the National Register does not impose restrictions; it's up to local municipalities to create such protections or processes.

Public commenter, Ellie Boldman, expressed concern that the proposed interim zoning ordinance, which aimed to implement 2023 land use policy legislation, was moving too quickly, and lacked sufficient public engagement and stakeholder involvement. They urged the council to slow down the process to ensure proper consideration and community buy-in.

Public commenter, Jamie Erbacher, commented to the definition of substantial improvement, specifically regarding the inclusion of language related to historic structures. They wanted to ensure that improvements to historic structures in a designated floodplain would not count towards 50% of the market value threshold for substantial improvement.

Public commenter, David Gray, expressed concern about the accuracy of Elizabeth's statement regarding historic districts during a historic preservation meeting. He cited an example of a property owner needing approval to replace a garage for a contributing building in a historic district. David expressed worry about the definition being added to Title 18, as it could potentially restrict property owners' rights to develop or maintain their property if it is considered historic without their consent, which he found concerning.

Elizabeth Johnson provided information on the concern and added listing a property in the National Register of Historic Places does not, by itself, impose restrictions on property owners; additional restrictions and processes related to historic districts are determined by local ordinances. Cassie Tripard explained how the floodplain regulations related to the definition of substantial improvement and how it specifically exempted alterations to structures listed on the historic register or inventory at places. They also mentioned that the regulations already contained provisions for variances related to historic structures, providing flexibility rather than restrictions, and the new definition aligns with the federal definition previously used.

This item has been scheduled for a public hearing before the City Council on October 16, 2023.

3.2 Referral - Interim Ordinance, City Zoning Amendments, Complying with 2023 Legislation

Presentation only.

Madson Matthias, Associate Planner for Community Planning, Development, and Innovation (CPDI) did a presentation on Interim Ordinance, City Zoning Amendments, Complying with 2023 Legislation. This item was presented to the committee for information only. No action was required. For details, please watch the full video recording of the meeting available in escribe. Ms. Matthias provided information on "what is left of design excellence". She mentioned that many standards related to aesthetic architectural design preferences were being maintained in the code, including aspects like building height on High Street, vertical scale step backs, and facade design standards, including glazing and street-facing entrance requirements. However, material coverage requirements like masonry and natural materials were being eliminated, along with the requirement for facade articulation in corridor typologies (excluding downtown).

Additionally, she provided clarification on the minimum daycare capacity requirement for commercial facilities. Ms. Matthias mentioned that residential daycares were allowed in residential and many commercial districts, but they needed to meet minimum occupancy requirements. If they fell below these requirements, they could only continue as a home occupation. Daycares that met the criteria at the time of permitting were considered legally established, and any changes or abandonment would require new permits. The city did not force legally permitted daycares to shut down.

Ms. Matthias gave clarification that In the process of repealing standards related to welfare and not public health and safety in Title 20, staff thoroughly examined all sections, including overlay districts and neighborhood character overlays, to identify any design standards explicitly mentioned. They found that many of these sections either had a general applicability or were related to bulk and form rather than architectural preferences. It was determined that the neighborhood character overlays in Title 20 already complied with the requirement for public health and safety in their design standards.

Another item explained was that Senate Bill 407 tied zoning regulations to public health and safety, specifically related to design standards. However, there were no design standards proposed or applicable to data centers and digital asset mining at that time. They emphasized that while there may be public health and safety concerns and mitigation measures in the future, currently, there was no requirement for city codes to match state statutory standards, as state law prevailed. The purpose of the ordinance was to align the city's language with state laws to avoid contradictory enforcement, particularly concerning data centers and digital asset mining in industrial areas. Laval Means, Community Planning Manager for CPDI, suggested that this question should be directed to the city attorney.

Senator Ellie Boldman, public commenter, addressed the implementation of the 2023 legislative land use planning bills, focusing on Senate Bill 407. Senator disagreed with the interpretation of the historic preservation officer and highlighted discrepancies

between staff interpretations and state law regarding design review standards. They emphasized that historic districts and neighborhood overlay districts were not the same, despite potential boundary overlap, and urged the Council not to create confusion or hinder economic development by misinterpreting the law. They requested a collaborative approach to address these concerns and align with the statutory requirements.

Laval Means mentioned that city attorney were comfortable with their approach regarding amendment #11 in the draft amendments. They believed they were making a reasonable and appropriate interpretation of SB 407, especially in designating historic districts through the neighborhood character overlay, expressing the intent clearly. They also stated that the city attorney could be available at the hearing for further clarification if needed.

This item has been scheduled for a public hearing before the City Council on October 16, 2023.

4. ADJOURNMENT

The meeting was adjourned at 11:34 a.m.