

DRAFT AS AMENDED DATED: 09/30/09,
As recommended to the Missoula City Council by the Missoula
Consolidated Planning Board, August 18, 2009

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ORDINANCE

AN ORDINANCE OF THE MISSOULA CITY COUNCIL AMENDING MISSOULA
MUNICIPAL CODE TITLE 20, THE MISSOULA CITY ZONING ORDINANCE AND
**ESTABLISHING CHAPTER 20.30 ENTITLED "HISTORIC PRESERVATION."
BE IT ORDAINED THAT CHAPTER 20.30 HISTORIC PRESERVATION OF TITLE 20,**
MISSOULA CITY ZONING ORDINANCE, IS HEREBY ESTABLISHED AS FOLLOWS:

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20.30 Historic Preservation

20.30.010 Purpose.

The City recognizes that our community contains irreplaceable Historic Resources that significantly enhance our sense of place and cultural heritage. Accordingly, the purpose of this Chapter is to establish a uniform procedure for the identification, protection, enhancement, perpetuation, and use of Historic Resources within the city that reflect unique elements of the City's architectural, artistic, cultural, engineering, aesthetic, historical, political, economic, social and other heritage. Furthermore, these regulations and standards are established to:

1. Promote and safeguard the City's heritage;
2. Enhance the City's ability to visually convey its history;
3. Stimulate revitalization and enhance property values in the City;
4. Increase economic and financial benefits to the City and its inhabitants;
5. Attract tourists and visitors to the City; and
6. Promote civic and neighborhood pride and a sense of identity.

20.30.015 Relationship to Other Provisions.

The designation of a resource as an Historic Resource does not change the underlying zone classification of the Historic Resource and does not exempt Historic Resource owners from complying with other city building and zoning regulations. A designation may place further restrictions upon the Historic Resource than the building or zoning regulation requires.

20.30.020 Definitions

1. **Actions Subject to Review** are development activities that require review by the Historic Preservation Commission and/or the Historic Preservation Officer prior to the issuance of a zoning compliance permit. Ordinary maintenance that does not require zoning compliance permit, like painting, repairing siding or window repair, do not require review. Per State of Montana codes, public development activity on government owned property is not subject to compliance under this ordinance. Those reviewable development activities are:
 - a. **Alteration to an Historic Resource**, which includes any addition, removal, reconfiguration or modification to the Historic Resource that changes the design, material, or character defining features, ~~or appearance~~, and changes to or removes character defining architectural features;
 - b. **New Construction in Historic Districts**, which includes any free standing building, structure, object or feature that was not a part of an Historic Resource at the time of designation;
 - c. **Relocation of an Historic Resource**, which includes the removal of an Historic Resource from its historic context; and
 - d. **Demolition of an Historic Resource**, which includes the razing,

Comment: At this point the Definitions may contain terms no longer being used elsewhere in the ordinance. Perhaps a word search is the best way to identify definitions no longer needed.

Comment: Both this definition and the next one are numbered "1".

Comment: Montana state law exempts government development activity on government owned property from enforcement of local zoning rules.

Comment: (do SIGNS require review?)

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destruction, or dismantling of an Historic Resource to the degree that its character defining features are is substantially obliterated.

2. **Alternative Compliance** is a manner in which an Historic Resource owner may, in cases of exceptional practical difficulty or undue hardship, alternatively comply with the provisions of this Chapter when seeking an Historic Preservation Permit Certificate of Appropriateness (COA) for Alteration or New Construction.
3. **Contributing Resources** are Historic Resources that reflect the unique elements of the Historic District's architectural, artistic, cultural, engineering, aesthetic, historical, political, economic, social, or other heritage features, and which have been identified as such pursuant to the Designation.
4. **Commissioner** is a person duly appointed to the Historic Preservation Commission.
5. **Historic American Building Survey/Historic American Engineering Record Documentation** ("HABS/HAER") is archival level documentation, which may include large-or-medium format, black and white photographs, measured drawings, or written historical reports pursuant to Secretary of the Interior standards for architectural and engineering documentation.
6. **Historic District** is a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or development and which collectively contribute to and reflect the unique elements of the architectural, artistic, cultural, engineering, aesthetic, historical, political, economic, social, or other heritage features of the City.
7. **Historic Preservation Commission** ("Commission") is the board appointed by the City Council to carry out the purposes of this Chapter.
8. **Historic Preservation Officer** ("Officer") is the staff person appointed by the Office of Planning and Grants to carry out the purposes of this Chapter and obligations of the City as a Certified Local Government.
9. **Historic Preservation Permit Certificate of Appropriateness** ("COA HPP") is a permit issued by the Officer or the Commission on an Action Subject to Review that complies with this ordinance.
10. **Historic Resource** includes designated improvements, buildings, structures, signs, objects, features, sites, places, Historic Districts, and landscape elements or features, as well as Landmarks, which are listed, or have been determined to be eligible for listing, in the National Register of Historic Places.
11. **Interested Party** means a party whose rights and interests are affected by an action taken under this Chapter, and whose interests are immediate and substantial and not nominal or remote.
12. **Landmark** is an exceptional place designation that may be applied to an Historic Resource that possesses regionally significant characteristics like integrity, association, location, design, materials, and workmanship.
13. **Missoula Inventory of Historic Resources** ("Local Inventory") is a list of all Historic Resources designated pursuant to this chapter, which is found at the Office of Planning and Grants.
14. **National Register of Historic Places** ("National Register") is the official federal list of districts, sites, buildings, structures, and objects significant in American

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Comment: Although "economic" was struck in 20.30.092, the "undue hardship" exception continues to exist in that section.

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history, architecture, archeology, engineering and culture under the National Historic Preservation Act and 36 C.F.R. 60.

15. **Non-Contributing Resources** are all resources located within the boundaries of a Historic District that do not qualify as Contributing Resources. Upon Demolition of the primary building or structure, a Non-Contributing Resource becomes an Unimproved Resource.
16. **Ordinary Repair and Maintenance** is an action that does not change the design, material, or outward appearance of the Historic Resource. Actions to prevent deterioration, decay or damage, or to restore the resource, as nearly as practicable, to the condition prior to the occurrence of deterioration, decay, or damage are ordinary repair and maintenance.
17. **Rehabilitation** is the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.
18. **The Secretary of the Interior's Standards** for rehabilitation are intended to promote responsible preservation practices that help protect our Nation's irreplaceable cultural resources.
19. **Unimproved Resource** is a lot with no primary buildings or structures, and is subject to this Chapter when New Construction in a Historic District is proposed.

20.30.050 Designation Criteria for an Historic Resource.

The City recognizes that within its jurisdiction there exist significant Historic Resources that should be protected. Accordingly, any property listed in the National Register or any contributing or non-contributing property in an Historic District listed in the National Register, or that has received a determination of eligibility for the NRHP, is automatically classified as an Historic Resource that is subject to this Chapter and included in the Local Inventory. The City also recognizes that the federal process of listing a property in the National Register does not require that the property be protected, thus creating the need for local protection of Historic Resources.

~~Criteria for Evaluation~~ The federal criteria for evaluating whether a resource is an Historic Resource are the following:

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. That are associated with the lives of persons significant in our past; or
- C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or

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that represent a significant and distinguishable entity whose components may lack individual distinction; or

D. That have yielded or may be likely to yield, information important in prehistory or history.

20.30.060 City Agencies.

All City agencies shall consult the Local Inventory before commencing or permitting any action that might adversely affect an Historic Resource.

20.30.070 Demolition by Neglect.

Failure to repair and maintain a property on the Local Inventory shall be considered Demolition by neglect and subject to enforcement as set forth in this Chapter.

20.30.080 Delisting of Historic Resources.

The City Council may initiate the removal of an Historic Resource from the Local Inventory if the Historic Resource no longer satisfies the criteria set forth in this Chapter.

20.30.090 ~~Certificate of Appropriateness~~ Historic Preservation Permit.

Comment: Change name of permit?

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A zoning compliance permit for an Action Subject to Review shall not be issued until the Commission issues an COA-HPP.

1. The COA-HPP shall be in addition to any other required permits, and the City shall not issue a building, Demolition or other permit authorizing work on site until the Commission issues an COA-HPP.
2. Actions Subject to Review include alterations to an Historic Resource, new construction in Historic Districts, relocation of an Historic Resource, and demolition of an Historic Resource, as defined in Section 20.30.020(1).
3. Ordinary repair and maintenance, like painting and repair of windows, is not an Action Subject to Review.
4. To avoid undue delay, the COA-HPP permit review should occur prior to or simultaneously with any other permit reviews the applicant has before the City.
5. Any subsequently issued permit shall be consistent with the terms and conditions of the COA-HPP.
6. If an Action Subject to Review occurs without an COA-HPP, the Officer may request that the Building Department issue a Stop Work Order, and all other enforcement provisions in this Chapter may be applied.

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20.30.091 ~~Certificate of Appropriateness~~ Historic Preservation Permit Application.

1. Parties seeking an COA HPP are strongly encouraged to schedule a pre-application meeting with the Officer to obtain guidance about the application process.
2. A completed COA HPP application shall be submitted to the Officer and shall include the following information:
 - a. Name, address and telephone number of applicant;
 - b. Address and legal description of the Historic Resource;
 - c. Detailed description of the proposed work;
 - d. Photograph of each elevation for which an Action Subject to Review is proposed, and photographs or drawings that clearly illustrate the nature and extent of the action proposed. Photographs and drawings shall be mounted and clearly annotated with the resource address and elevation (front, side, rear façade) and elevation direction (north, south, east, west);
 - e. A site plan, drawn to scale and oriented with North at the top of page, showing site boundaries, street and alley names and frontages and location of all structures; and
 - f. A statement demonstrating how the proposed work meets the Review Criteria and any applicable Design Guidelines.
3. The Commission or Officer may request the following additional information:
 - a. Elevation drawings, plans, specifications to scale or other illustrations that will clearly express the proposed Action Subject to Review;
 - b. Material samples;
 - c. Historical information, photographs, plans or other documentation that may be relevant to the proposed Action Subject to Review; and
 - d. Other information necessary to enable the Commissioners to visualize the proposed work.
4. The Commission or Officer may require a new or amended application if there is a change in plans for Actions Subject to Review. If a new or amended application is submitted, the review procedures provided for in this Chapter shall apply in the same manner as if the application had been submitted for the first time.

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20.30.092 Alternative Compliance for Alterations or New Construction.

In cases of exceptional practical difficulty or economic undue hardship, Alternative Compliance may be available for COA HPP s for Alterations or New Construction. Alternative Compliance is not available for COA HPP s for Relocation or Demolition. A property owner unable to comply with the COA HPP review criteria and any applicable Design Guidelines may propose alternative forms of compliance if the following conditions exist:

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1. ~~The Historic Resource or Unimproved Resource is or will be the principal residence of the applicant;~~
2. 1. That by reason of unusual circumstances not of the applicant's own making, the strict application of this Chapter would result in either:
 - a. Exceptional practical difficulty due to unique physical circumstances or conditions on the property that preclude an Alteration or New Construction in compliance with this Chapter, as based on the following factors:
 - i. Irregularity;
 - ii. Narrowness;
 - iii. Shallowness;
 - iv. Topographical slope;
 - v. Lot configuration; or
 - vi. Other physical conditions peculiar to the property;

Comment: Moved struck by Planning Board

Or

- b. Undue hardship that precludes an Alteration or New Construction from complying with this Chapter, as based on the following factors:
 - i. The unavailability of any reasonable, historically correct preservation methodology;
 - ii. The degree of existing architectural significance and integrity of the Historic Resource; and
 - iii. Whether the strict application of this Chapter would prevent the reasonable use of the property.

~~Alternative compliance for setbacks may be granted for existing Historic Resources in order to retain existing historic setbacks and historic development pattern without need to apply for a variance.~~

Comment: Removed by Planning Board, already addressed in title 20 revisions.

Alternative materials may be substituted for original materials when they have the same dimensions and form as original materials, but represent more efficient technology.

An applicant seeking Alternative Compliance shall provide the Officer supporting documentation demonstrating that the conditions set forth in this Section are met.

20.30.093 Historic Preservation Officer Review.

1. The Officer shall review COA- HPP applications for completeness.
2. When an applicant seeks Alternative Compliance, the Officer shall determine whether the conditions in Section 20.30.092 have been met.
3. The Officer shall prepare a COA- HPP report for each COA- HPP application that includes the following:
 - a. A summary of the Actions Subject to Review;

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- b. Applicable review criteria and any applicable Design Guidelines triggered by the proposed Action Subject to Review;
 - c. Description of whether and how the proposed Action Subject to Review meets or does not meet applicable review criteria and Design Guidelines; and
 - d. Conditions recommended to be imposed on the COA-HPP, if any, in order to meet applicable review criteria and Design Guidelines.
 - e. When an applicant seeks Alternative Compliance, the recommended manner for alternatively complying with the applicable review criteria and Design Guidelines.
4. An COA-HPP application for New Construction, Relocation or Demolition requires Commission review at a public hearing. Additionally, any application seeking Alternative Compliance requires Commission review at a public hearing.
 5. An COA-HPP application for Alterations that clearly meets the review criteria of Section 20.30.096, and any applicable Design Guidelines, may be approved by the Officer without Commission review, subject to the following process:
 - a. For those applications the Officer intends to approve, the Officer shall make the applications available for review by Commissioners and Interested Parties for a period of one week.
 - b. During the one week review period a Commissioner or Interested Party may request that the COA-HPP application be reviewed by the Commission at a public hearing.
 - c. If, after one week, no Commission hearing is requested, the Officer shall approve the COA-HPP application.
 6. If an COA-HPP application for Alterations does not clearly meet the review criteria of Section 20.30.096, and any applicable Design Guidelines, further Commission review is required at a public hearing.

20.30.094 Commission Action on ~~Certificate of Appropriateness~~ Historic Preservation Permit Applications.

1. Except for Officer reviewed alterations under Section 20.30.093(5), ~~the~~ Commission shall review and decide on an COA-HPP application at a scheduled public meeting. ~~Except for those applications involving a Demolition or Relocation delay,~~ the Commission's decision shall occur within sixty days from the date the completed application was received (90 days for applications involving a Demolition or Relocation). If the

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Commission is unable to process the request within sixty days of receipt of the completed application, the Commission may request an extension of time from the applicant. If an application is not processed within 60 days of submittal (90 days for applications involving a Demolition or Relocation) and no extension of time is granted by the applicant then the HPP is approved.

2. For ~~COA~~ HPP applications that do not seek Alternative Compliance, the Commission may approve, approve with conditions, or deny an ~~COA~~ HPP application as follows:
 - a. The Commission shall approve an ~~COA~~ HPP application if it determines that the Action Subject to Review meets the Criteria for Review and any applicable Design Guidelines.
 - b. The Commission shall approve an ~~COA~~ HPP application with conditions if it determines that the Action Subject to Review substantially meets the review criteria, and any applicable Design Guidelines, and that only minor modifications to the plans for the proposed Action Subject to Review are required to bring it into compliance.
 - c. The Commission shall deny an ~~COA~~ HPP application if it determines that the Action Subject to Review does not meet the review criteria and any applicable Design Guidelines, and that more than minor modifications to the plans for the proposed Action Subject to Review are required to bring it into compliance.
3. For ~~COA~~ HPP applications that seek Alternative Compliance, the Commission may, in its ~~absolute~~ discretion, approve, conditionally approve, or deny the application. Before approving or conditionally approving such an application, the Commission must find that the exceptional practical difficulty to the applicant outweighs the need for strict adherence to this Chapter.

20.30.095 Record of Decision on ~~Certificate of Appropriateness~~ Historic Preservation Permit.

1. All decisions of the Commission shall be memorialized in a written record of decision, which shall be provided to the applicant within thirty days of the public meeting at which the decision was made.
2. The record of decision shall include findings of fact and conclusions relied upon in reaching the decision pertaining to the approval, conditional approval, or denial of the ~~COA~~ HPP application.
3. The Officer shall include a copy of the record of decision as part of the documentation maintained on the Historic Resource and shall distribute a copy to the Building Inspection Division of the Missoula Public Works Department.

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20.30.096 Criteria for Review of Alterations and New Construction.

Except as otherwise approved in this Section, the characteristics of an Historic Resource that qualify it for designation shall be preserved and existing setbacks illustrating historic patterns of development shall be retained. Before issuing an ~~HPP COA~~ for Alterations or New Construction, the Commission shall consider the cumulative effects on the integrity of the City’s Historic Resources resulting from the requested ~~HPP COA~~, any other pending ~~HPP COA~~ applications, and any previously issued ~~HPP COA~~s. The Commission also shall review the ~~HPP COA~~ application for compliance with ~~the Secretary of Interior’s Standards for Rehabilitation~~ and/or any applicable Design Guidelines and the following criteria:

Comment: Rather than just mentioning these, I would lay out what they are. Otherwise the landowner has to dig for them. Could those standards be set out in lieu of the present list you have under “1”?

1. Alterations shall be compatible with the relevant characteristics or character defining features that qualify the Historic Resource for designation and shall not diminish, eliminate, or adversely affect the historic character of the Historic Resource. Consideration shall include, but not be limited to, elements of:
 - a. Size;
 - b. Scale;
 - c. Lot coverage
 - d. Massing;
 - e. Proportion;
 - f. Architectural style;
 - g. Orientation;
 - h. Surface textures and patterns;
 - i. Details and embellishments; and
 - j. Relation of these elements to one another.

2. New Construction in Historic Districts is not required to conform to specific architectural styles. Design of New Construction shall be compatible with the character of Historic Resources in the immediate area, but shall distinguish itself from Historic Resources and not create a false sense of history.

3. Alternative materials may be substituted for original materials when they have the same dimensions and form as original materials.

4. Photovoltaic and solar hot water equipment are permitted and are not subject to this ordinance.

Comment: Moved to approve by Planning Board. Placed here, but may be better in 20.030.20 sub 1 Actions Subject to Review

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20.30.097 Criteria and Procedure for Review of Relocation and Demolition Certificate of Appropriateness ~~Historic Preservation Permit.~~

1. **Criteria for Review.** The Commission shall review the ~~HPP COA~~ application for compliance in accordance with the following criteria:

- a. The applicant has consulted with the Commission and the State Historic Preservation Office, and made a good faith effort to find an alternative that would result in the preservation, renovation, or reuse of the Historic Resource;
- b. The applicant's good faith efforts to find a purchaser interested in acquiring and preserving, renovating, or reusing the Historic Resource have failed; and
- c. Denying the application would prevent all reasonable economic use of the property.

The applicant shall provide the Officer supporting documentation demonstrating that the above criteria are met.

2. Relocation and Demolition Delay. Upon receipt of a completed **HPP COA** application for Demolition or Relocation, the Commission may impose a Relocation or Demolition delay for 60 days to allow sufficient time to explore preservation of the Historic Resource.

3. Mitigation.

a. If an **HPP COA** for Relocation is approved, the applicant shall mitigate the adverse effects of Relocation by providing, to the extent possible, documentation, similar to HABS/HAER, of the Historic Resource prior to undertaking the Relocation.

b. If an **HPP COA** for Demolition is approved, the applicant shall mitigate the adverse effects of Demolition by:

- i. advertising the Historic Resource for Relocation in a local newspaper of general circulation for a period of 30 days prior to Demolition; and
- ii. providing archival level documentation similar to HABS/HAER of the Historic Resource prior to undertaking the Demolition.

c. If Relocation or Demolition results in conversion to a use not requiring buildings or structures, such as a parking lot, the area shall be buffered from other Historic Resources by landscaping, walls, or fencing.

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Comment: The MCZR currently requires 180 days. Thirty days seems too short – is there a number in between that would work?

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20.30.098 Design Guidelines.

The City Council may adopt Design Guidelines applicable to specific Historic Resources that are consistent with and in addition to the General Criteria for Review of **HPP COA** as set forth in Sections 20.30.096-097. The existing Design Guidelines for the Fort Missoula Historic District and the Roosevelt Block/University Apartments shall remain in effect.

1. Design Guidelines may include, but shall not be limited to:

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- a. Size;
 - b. Scale;
 - c. Lot coverage
 - d. Massing;
 - e. Proportion;
 - f. Architectural style;
 - g. Orientation;
 - h. Materials, surface textures and patterns;
 - i. Details and embellishments;
 - j. Description of the Historic Resource and its context as it reflects the unique elements of the City’s architectural, artistic, cultural, engineering, aesthetic, historical, political, economic, social, and other heritage;
 - k. Character defining features; and
 - l. Relation of these elements to one another.
2. Design Guidelines shall be compatible with the unique elements of the City’s architectural, artistic, cultural, engineering, aesthetic, historical, political, economic, social, and other heritage qualities that qualify the Historic Resource for designation and shall not diminish, eliminate, or adversely affect those elements of the Historic Resource.
 3. The Commission may recommend Design Guidelines to the City Council after a public hearing.
 4. Design Guidelines shall be adopted by the City Council ~~during~~ after a public hearing and be made a part of the City Code.
 5. The Officer shall file notice of the existence of any Design Guidelines with the Missoula County Clerk and Recorder’s Office within thirty days of the Council’s adoption of the Design Guidelines.
 6. The City shall provide a written copy of the Design Guidelines, sent by first class mail, to the owner of any designated Historic Resource affected by Design Guidelines within thirty days of the Council’s adoption of those guidelines.
 7. The City Council may amend Design Guidelines using the same procedures required for their adoption.

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20.30.099 Void if Construction Not Commenced.

Approved HPP COAs expire two years from the date of issuance unless the authorized work is started within that time.

20.30.100 Interim Permit in Hazardous or Unsafe Conditions.

The officer ~~Commission~~ may grant interim permits to stabilize and mitigate immediate and serious threats to public safety in extenuating circumstances such as acts of God, fire, or earthquakes. Upon expiration of the interim permit, any subsequent actions taken that are Actions Subject to Review shall be subject to the HPP COA process pursuant to this

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20.30.110 Technical Advice.

If the nature of the proposed designation or Action Subject to Review requires technical advice beyond the expertise of the Commission and Officer, the Commission may request such advice. The applicant shall be responsible for the cost of such technical advice, not to exceed five hundred dollars, unless the applicant authorizes a higher amount in advance. The Commission shall notify the applicant of the necessity of such technical advice before incurring such fees.

20.30.120 Enforcement.

If a violation of this Chapter occurs, the City can take any enforcement measures allowed by law. No zoning or building permit shall be issued until the violation is corrected.

20.30.130 Appeals. Appeals to decisions of the historic preservation officer and to decisions of the historic preservation commission may be made to the Missoula City Council in accordance with the process described in 20.85.100. Variance requests may be made to the Board of Adjustment in accordance with 20.85.090.

Comment: It makes sense to address appeal process here for landowners who might not know to look in another section of the ordinance.

Comment: Add appeal statement here?

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Effective Date. The provisions of the ordinance shall be effective in 30 days.

Severability. If any selection, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

PASSED by a Ayes, Nays, Abstain and Absent vote and

APPROVED by the Mayor this _____ day of _____, 200__.

ATTEST:

APPROVED:

Martha L. Rehbein

John Engen

City Clerk

Mayor

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