

Plat, Annexation and Zoning Committee Minutes

July 22, 2009

10:05 am – 12:00 pm

Missoula City Council Chambers, 140 W. Pine Street

Members Present: Bob Jaffe (Chair), Ed Childers, Lyn Hellegaard, John Hendrickson, Dick Haines, Marilyn Marler, Renee Mitchell, Stacy Rye, Dave Strohmaier, Pam Walzer, Jason Wiener, and Jon Wilkins.

Members Absent:

Others Present: Jen Gress, Laval Means, Ryan Morton, Jim Nugent, Olivia Riutta, Lewis YellowRobe, Tom Zavitz and Shelley Oly

I. Approval of Minutes

July 15, 2009 approved.

II. Public Comment on Items not on the Agenda

III. Staff Announcements

IV. Consent Agenda Items

V. Regular Agenda Items

- A. An [ordinance](#) repealing Title 19 Zoning Code in its entirety and adopting Title 20 Missoula City Zoning Ordinance and an [ordinance](#) repealing Title 2.84, the Historic Preservation Committee in its entirety. ([memo](#)) ([PAZ](#)) ([Staff Report](#)) ([Potential List of Issues](#)) —Regular Agenda (Laval Means) (Returned from Council floor: 06/22/09) ([Powerpoint Presentation](#)) **HELD IN COMMITTEE**

Laval Means went through the points and offered clarification on some of the questions brought up during the Home Occupation discussion last week:

- Regarding the language about the one non resident person in Standard #7. Staff suggested revision would clarify what was meant by non resident person. The second sentence would be replaced with the following revision “in addition one non resident associate whether a paid employee or not, may be on the property at any time”.
- Regarding hazardous substances and consumer quantities in Standard #8. Ms. Means explained the agencies involved with these substances were contacted to determine what was permitted and the amount permitted. The Health Department already has standards in place for hazardous substances referred to as “regulated” substances through the Missoula Valley Water Quality Ordinance based on the threshold of the amount being used. If the substance was determined to be over a certain threshold then a permit was required and that permit would be reviewed annually. Staff’s suggestion is to strike Standard #8 and leave the regulating to the Health Department or create a cross reference in the proposed ordinance between the current statement and the Health Department’s language.
- Regarding storage and trailers and distinguishing between the household use of equipment and a person’s business. Standard #4 addressed the need for storage related to a home occupation to be in an enclosed area.
- Regarding the definition of a trailer. Standard #11 addressed the use of trucks and other commercial vehicles as well as trailers are prohibited. She added there was no need for a revision on this item.
- Regarding the prohibition of medical or dental clinics. The point was made that these medical offices do not require specialized equipment. Ms. Means suggested striking the

word *clinic* and use the statement *medical or dental office requiring specialized equipment*. If it was a use for consulting then that home occupation would not be prohibited.

The floor was opened for discussion for non resident persons:

Chair Jaffe asked for the amended revision to be read. Ms. Means read, "The owner of the Home Occupation must reside in the dwelling unit in which the home occupation is located. *In addition one non resident associate whether a paid employee or not, may be on the property at any time.*" This one person limit per property applies regardless of the number of home occupations being conducted on the property. Chair Jaffe asked if this would relevant to customers. Ms. Means explained that the number of customers was addressed on the following page, under Prohibited Uses Standard J.

There was discussion on a non resident:

- ✓ If the home occupation was too restrictive it would encourage people to break the rules.
- ✓ It would be reasonable to increase the number of non resident associates to two.
- ✓ Increase the number of non-resident associates to 3 people regardless of employee or customers in addition to the owner.
- ✓ There needs to be another level of tier business to acknowledge a more than a hobby business but less than a home occupation. Ms. Means stated she did not have a definition of this type of business but stated it could be found under Exemptions in 20.45.050 D and include a subsection 3 for occasional home occupation with language included as to what an occasional home occupation was. Mr. Haines implied this was more than an occasional home occupation. Ms. Means explained the home occupation could be reviewed when an applicant came in seeking a business license.
- ✓ The intent has to do with traffic and parking in the neighborhood.
- ✓ There needs to be some acknowledgement of the occasional intrusion in the neighborhood.
- ✓ What about the home occupation like Pampered Chef to have one sales meeting per month. Jen Gress explained that business licenses were required when a certain amount of money per year was earned from that business. If that business earned enough money to required a license than it was regarded as a home occupation and needed to go through the home occupation requirements. She explained that the permits staff looks at each case according to location of the neighborhood, the number of customers and how intrusive the home occupation may be to that neighborhood.
- ✓ Needed to have new language added to incorporate what was in the existing ordinance and merge it with the proposed ordinance.

Ed Childers offered an **amendment** to strike Standard J and amend the language for Standard 12-7 to state owner plus three non resident persons inclusive of customers may be on the premises.

Stacy Rye offered an **amendment** to allow eight exceptions per month for the occasional event.

There was discussion on the amendment

- ◀ Felt the preference should be lowered to four exceptions per month.
- ◀ How many complaints related to home occupation did the permits staff get a year. Ms. Means replied she did not have an answer for that at this time. She added there are no standards for the number of employees or customers but there was desire to get this into the regulations for future use.
- ◀ Felt that twelve exceptions a year was better.
- ◀ The Committee has a chance to encourage and promote small business in Missoula and not discourage small businesses with all kinds of restrictions placed on the ordinance.
- ◀ A home business means a business that is started in the home but once the business grows to include hiring employees it should be moved to a commercial area.
- ◀ Stacy Rye called for the question, it carried.

Dave Strohmaier offered a **friendly amendment** to allow four exceptions per month. Ms. Rye accepted the friendly amendment and asked for two exceptions per month. Ed Childers accepted Stacy's amendment.

The floor was opened for public comment:

Ryan Morton was in support of the motion. He stated he had seen home occupations in different parts of the world that included the store front and the living space was in the back of the business. He felt this was more protective of the residential character of the neighborhood.

The motion to strike Standard 13-J and amend the language for Standard 12-7 to state owner plus three non resident persons inclusive of employees, associates and customers may be on the premises with two exceptions per month carried with 11 votes of 'aye' and one vote opposed (Mr. Weiner).

Hazardous Substances

Marilyn Marler made a **motion** to strike Standard #8 because hazardous substances are already regulated by County and State laws

There was discussion on hazardous substances:

- ❖ This was an important discussion. It showed how difficult it is for the permits section to use these rules and implement them.
- ❖ The standards that are currently in Title 19 state the use shall not produce light, noise, and odor are in Title 20, section E1.
- ❖ Want to make sure the Health Department has regulated this. An example was given that hazardous materials were vandalized and poured spilled down a storm drain. Ms. Means explained this was a Health Department issue. Missoula Valley Water Quality Ordinance states that the intent is to regulate the improper storage, handling use, transportation, production or disposal through determining the degree of threshold on those substances. There is an exception for household personal use of regulated substances.
- ❖ According to the example given pesticides are licensed with Montana Department of Agriculture and subject to random audits. As part of the license requirements if there is a spill of more than five gallons that person is legally required to report this to the Department of Agriculture. Pesticides need to be locked up and not on the street.
- ❖ Not every substance that is toxic is limited to smell. Marilyn Marler called for the question, it carried.

The motion to strike Standard #8 because hazardous substances are already regulated by County and State laws carried with 10 votes of 'aye' and 2 votes opposed (Ms. Mitchell and Mr. Haines).

Jason Wiener clarified that Standard #11 meant it was prohibited to park a personal raft in front of a home? Ms. Laval replied this standard was speaking to quantities and the amount of storage typically needed for a residential property in a residential district. Mr. Wiener realized it was a judgment call but asked where the cap for storing these amounts of items would be in the regulations.

Chair Jaffe asked what was being proposed for this Standard. Ms. Means replied that nothing was being proposed for this amendment because in Standard #11 the use of trucks and other commercial vehicles are prohibited. Also Standard #4 speaks to home occupations and that storage must be in an enclosed area.

There was discussion on the storage:

- ❖ Chair Jaffe wanted to make sure that the language was clear.
- ❖ In Standard #11 the language exempts the prohibition of the trucks as long as the trucks are not parked on the property whereas Standard #4 talked about all storage needed to be enclosed. Ms. Means explained that Standard #11 spoke to regulating storage within the

- property. Ms. Gress stated there was a difference between commercial vehicles and a personal truck.
- ❖ A scenario was explained using a lawn mowing/tree maintenance home occupation and the person had a truck and trailer filled with his equipment on site. Ms. Gress responded that person was in violation of the current regulations. All that equipment should be stored in an enclosed area or an appropriately zoned area. The current regulations state that only 25% of the residence can be used for storage.
 - ❖ The point was brought up that streets are public property. Mr. Nugent explained there is an ordinance that prohibits trucks in residential areas defined by weight. However the City does not attempt to regulate the person who uses a truck or van or large vehicle for his business and drives that vehicle home at night if the vehicle is parked on private property. If that vehicle is parked on the street according to the City Ordinance there is a five day rule which means that vehicle needs to be moved by the fifth day.
 - ❖ The term storage needed to be defined. Ms. Means explained that there was no definition of storage in the terminology section however this type of storage goes beyond the typical personal use.
 - ❖ Could parking conditions either in front of the applicant's home or on the street, be placed on a business license. Mr. Nugent replied the issue was to not have a home occupation that involved the necessity of having a commercial vehicle. He added that if the person was using their personal driveway to park a work vehicle overnight then that can not be regulated.
 - ❖ Ms. Rye called for the question, it carried.

Mr. Wiener offered a **friendly amendment** to Standard #4 to insert the language after the word storage to read *but accepting lawful parking*. Ms. Rye accepted the friendly amendment.

Ms. Walzer made a **motion** to strike Standard #11.

The motion to amend Standard #4 and strike Standard #11 carried with 11 votes of 'aye' and one vote opposed (Ms. Mitchell).

Medical Or Dental Clinics

Chair Jaffe wanted to make sure this section did not exclude types of home occupations such as medical or dental offices that supplied a service but used no specialized equipment. Ms. Means replied there was nothing in the current ordinance concerning this section however this was presented under the list of prohibited uses. She offered to strike the whole section that spoke about clarified or requiring specialized equipment from the document.

Ms. Walzer made a **motion** to strike Section C.

The **motion** to strike Section C carried with 10 votes of 'aye' and 2 votes opposed (Ms. Hellegaard and Mr. Haines).

Mr. Walzer made a **motion** to strike or amend Standard #9 that dealt with special equipment and then add to E-1 in the last sentence and insert the word *vibrations*.

There was discussion on special equipment and vibration:

- Special equipment was already covered with separate Noise Ordinance, however the noise ordinance did not address vibration.
- Ms. Means noted that more detail was better for the Permits section to determine whether an applicant could apply for a home occupation license.
- The ordinance needed to address after the fact enforcement, clarifying what is allowed and what is not allowed.
- The change provides greater clarity but also provides a way to deny the license.

- If an applicant applies for a home ordinance that violates a city ordinance that should be a red flag to deny the permit.
- This section talks about specialized equipment and not noise and the specialized equipment should not be outlawed.
- The issue was with the size and usage of the specialized equipment.
- Mr. Weiner called for the question, it carried.

The **motion** to insert the word *vibration* into the E-1 of the standards passed unanimously. The **motion** to strike Standard #9 passed with 9 votes of 'aye' and 3 votes opposed. (Mr. Hendrickson, Mr. Wilkins, and Ms. Hellegaard).

V. Items to be Removed from the Agenda

VI. Held in Committee or Ongoing in Committee

1. Annexation. (see separate list at City Clerk's Office for pending annexations) (Ongoing in Committee)
2. Update the Rattlesnake Valley Comprehensive Plan Amendment ([memo](#)).—Regular Agenda (Dave Strohmaier) (Referred to committee: 04/02/07)
3. Discuss council's interest in pursuing a negotiated settlement over disputed trail conditions for Clark Fork Terrace No. 2 Subdivision ([memo](#)).—Regular Agenda (Mayor Engen/Jim Nugent) (Referred to committee: 02/25/08)
4. Request to rezone the property legally described as Lot 3 of Scott Street Lots Subdivision, located in Section 16, T13N, R19W, P.M.M. form D (Industrial) to I-1 (Light Industrial), based on the finding of fact and conclusions of law. (PAZ [05/21/08](#)) (Returned from Council floor: 6/2/08)
5. Correct the conflict in the height calculation regulations, between written language (a building envelope shall be established by showing the maximum vertical height allowed by zoning from finished grade) and the drawing on [page 151](#) of the [Zoning Ordinance](#).—Regular Agenda (Ed Childers) (Referred to committee: 3/27/06)
6. Ongoing discussion of City planning issues with members of the Planning Board.—Regular Agenda (Bob Jaffe) (Referred to committee: 3/20/06)
7. Discussion on assuring the currency of growth policy amendments ([memo](#))—Regular Agenda (Dave Strohmaier) (Referred to committee: 09/08/08)
8. Consider an interim emergency ordinance for proposed amendments to the City Zoning Ordinance, Chapter 19.90 Signs ([memo](#)).—Regular Agenda (Tom Zavitz) (Referred to committee: 12/15/08)
9. Consolidated Public Review Draft of the Missoula City Zoning Ordinance submitted by Duncan Associates to the Missoula Consolidate Planning Board for its review and recommendation ([memo](#)).—Regular Agenda (Roger Millar) (Referred to committee: 02/09/09)
10. Discussion of OPG's [task list](#) and workload ([Urban Initiatives work plan](#)).—Regular Agenda (Mike Barton) (Referred to committee: 06/12/06)
11. Develop policies and procedures regarding ag land mitigation ([memo](#)).—Regular Agenda (Lyn Hellegaard) (Referred to committee: 06/01/09)

VIII. Adjournment

The meeting adjourned at 12:05 pm

Respectfully Submitted,

Shelley Oly

Administrative Secretary
Office of Planning and Grants

The recording of these minutes is available in the City Clerk's Office (for up to three months after approval of minutes). These minutes are summary and not verbatim.