

City Clerk Staff

From: Jim Nugent
Sent: Thursday, November 10, 2022 3:36 PM
To: Heidi West
Cc: Grp. City Council and City Web Site; Dept. Mayors Office; Dept. City Clerk; Eran Pehan; Montana James (she/her); Emily Harris-Shears (she/her/hers); Emily Armstrong (she/her/hers); Mary McCrea; Dept. Attorney
Subject: RE: Tourist Home definition

HEIDI:

Thank you for the additional inquiry, Your inquiry is a logical inquiry to make.

There is no Montana statutory definition of the term or phrase "owner occupied". There is no definition in Black's Law Dictionary, Eighth edition. Also, no Administrative Rules of Montana of the Montana Department of Health and Human Services definition of "owner occupied" was located by our staff.

However, the Montana statutory rules for determining what constitutes a "residence" set forth in section 1-1-215 MCA of the general provisions of Montana law may provide some reasonable, helpful and practical guidance as to what constitutes an "owner occupied" "residence".

- (1) Obviously if an owner or person leasing the residence is simultaneously residing at the residential dwelling unit it is owner occupied by a person entitled to occupy the residence as their "residence"
- (2) Montana state law section 1-1-215 MCA setting forth statutory rules for determining the term "residence" states that every person has in law a "residence" The primary Montana statutory rules for determining "residence" are established as follows in section 1-1-215 MCA:
 - a. The place where a person remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.
 - b. There may be only one legal residence .
 - c. A residence cannot be lost until another is gained.
 - d. The residence can be changed only by union of act and intent.

Legally a "residence" that constitutes a person's personal residence pursuant to the statutory rules of "residence" set forth above should be considered as an "owner occupied" "residence" for the reason that it is the "residence" that the person considers to be their "residence" as well as the location where a person returns to when not called elsewhere, for any purpose, including temporary absence due to vacations, illness, work, attending training or school, etc..

Pursuant to the "residence" guidance set forth above in section 1-1-215 MCA, a person may only have a single legal residence and that legal residence may not be changed except by the person's union of act and intent to change their "residence".. Therefore a person who is temporarily away from their "residence" on a camping weekend, or camping or other type vacation, school, work, training, school, etc.; who intends to return to that "residence" as the only location of their personal "residence"; is not in the tourist home business if they have someone stay at or even temporarily short term rent their residence while they are away. Some people may desire to have someone temporarily occupy their "residence" in their absence for property security or care, etc.: their conduct is not a business tourist rental "residence". No business license is required in the above identified factual circumstances if the "residence" owner is not advertising the "residence" as a short term rental. If the "residence" is advertised as a short term rental during the owner's temporary absence the factual circumstances might cause the "residence" rental to be a business.

Practically, If you and your family are temporarily away from your “residence” on a camping trip or any other vacation and you have an opportunity to temporarily rent your “residence”; it would seem that your “residence” legally is still owner occupied and is not a tourist home pursuant to Montana state law if you temporarily rent it while you are on vacation, temporarily working elsewhere , ill; attending school etc., etc.; your personal “residence” is not a tourist home pursuant to Montana state law.

It should also be noted that if you are temporarily absent or away from your “residence” on a camping vacation, or other type vacation; etc., you would not be taking a potential residential rental dwelling unit out of potential availability/circulation as a potential housing dwelling unit; if it is your legal residence that you are intending to return to. .

JIM NUGENT

From: Heidi West <WestH@ci.missoula.mt.us>
Sent: Wednesday, November 9, 2022 4:34 PM
To: Jim Nugent <NugentJ@ci.missoula.mt.us>
Cc: Grp. City Council and City Web Site <Council@ci.missoula.mt.us>; Dept. Mayors Office <DeptMayor@ci.missoula.mt.us>; Dept. City Clerk <CLERK@ci.missoula.mt.us>; Eran Pehan <PehanE@ci.missoula.mt.us>; Montana James (she/her) <jamesm@ci.missoula.mt.us>; Emily Harris-Shears (she/her/hers) <Harris-ShearsE@ci.missoula.mt.us>; Emily Armstrong (she/her/hers) <ArmstrongE@ci.missoula.mt.us>; Mary McCrea <McCreaM@ci.missoula.mt.us>; Dept. Attorney <Atty@ci.missoula.mt.us>
Subject: Re: Tourist Home definition

Thank you!

I have a follow up question. What is meant by “not occupied by an owner or manager”? If I go camping for a long weekend and want to rent out my primary residence while I am gone - is that enough to constitute not occupying the home any longer?”

Heidi

Sent from my iPhone

On Nov 9, 2022, at 12:49 PM, Jim Nugent <NugentJ@ci.missoula.mt.us> wrote:

HEIDI:

Sure.. Title 50 HEALTH AND SAFETY, chapter 51 HOTELS, MOTELS AND ROOMINGHOUSES. MCA sets forth state law provisions that include addressing tourist homes. Chapter 51 MCA sets forth approximately nine (9) pages of MCA codified state laws that address hotels, motels , roominghouses, etc. general provisions, state licensing,, inspections, and civil penalties for violations of Montana state law..

Subsection 50-51-10212) MCA defines the term “TOURIST HOME” as meaning:

.... (12) ‘TOURIST HOME’ means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.”

Pursuant to section 50-51-103 the Montana Department of Public Health and Human Services is the Montana state department empowered to make rules governing the operation of bed and breakfasts, hotels, motels, roominghouses, boarding houses and tourist homes to protect the public health and safety. The rules adopted by the State Health department may relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal, systems and refuse collection and disposal, registration and supervision, fire and life safety, food, service, staggered license expiration dates, and reimbursements of local governments for inspection and enforcement:.

Pursuant to section 50-51-303 MCA the State Health department is authorized to pay local health boards for inspections and enforcement.

JIM NUGENT

From: Heidi West <WestH@ci.missoula.mt.us>
Sent: Wednesday, November 9, 2022 11:09 AM
To: Jim Nugent <NugentJ@ci.missoula.mt.us>
Subject: Tourist Home definition

Hi Jim,
when you have a moment can you address what the state definition of a tourist home is?
I have always been under the understanding that it is an entire home that is not a primary residence.

Thank you,

Heidi West

City Council Ward 1 Representative

405.747.9158

hwest@ci.missoula.mt.us

City Clerk Staff

From: Gwen Jones
Sent: Thursday, November 10, 2022 1:14 PM
To: jack adamson; Grp. City Council and City Web Site
Cc: Brian Hensel
Subject: Re: URGENT: Snow Danger Around Campus

Dear Jack, thank you for the email. The City of Missoula does not maintain the sidewalk system at the University of Montana...that is under the purview of the University. I will forward your email on the University office that does handle that.

As for the snowplowing of streets, this early, heavy snow has caused the City to pivot from leaf collection to snowplowing...and our protocol is to always start with the busiest main streets....i.e. Brooks, Higgins, Russell, etc. The streets in the residential areas are plowed only after the more frequently used streets are plowed.

I anticipate that now that the snow has stopped falling, street crews will be able to get ahead on the plowing...and eventually back to leaf collection. Thanks for inquiring, and let me know if I can help with any additional information. -Gwen

Gwen Jones
Ward 3 City Councilwoman
606 Woodford St., Missoula, MT 59801
406 549-3295

Note: All emails to and from this address are in the public domain.

From: jack adamson <jackhenryadamson@gmail.com>
Sent: Wednesday, November 9, 2022 4:30 PM
To: Grp. City Council and City Web Site <Council@ci.missoula.mt.us>
Subject: URGENT: Snow Danger Around Campus

To whom it may concern,

I am a student currently attending the University of Montana. This is my first year living in Missoula and I love it so far. However, I have had growing concerns about snow safety lately, and am immensely disappointed by how the city has handled the winter weather.

First off, pathways all over the University of Montana campus have not been shoveled or cleared in any way. This is an ADA requirement and it's very clearly not being met. I have, in the past couple of days, seen students and others in wheelchairs get stuck on the sidewalks that are supposed to be assisting them to their locations across campus. This is absolutely unacceptable. Even for students who aren't hindered by a disability, it is extremely difficult and treacherous to travel across campus on foot. There are a number of icy areas on walking paths that there has been no effort to clear and is therefore causing people to slip. The stairs outside of elrod hall are covered in a thick sheet of ice which multiple students have reported falling down. Those are just some of the many issues. Overall, the campus is not a safe place under the current conditions. I haven't seen a single staff member putting in any effort to clear pathways around campus, and the current condition of the pathways proves the University's inability to create a safe environment in the winter weather conditions.

The roads around campus, and throughout the university district are also extremely unsafe. They are clearly not being plowed. This is an issue for students and staff traveling by car to campus every day, students who have to travel to work after school, and anyone who owns a vehicle and needs to travel around the university district. I have witnessed countless accidents and other issues in this area just in this past week.

There is clearly an issue with students not being able to get ot campus, and safe travel not being guaranteed when they step foot on campus. As I said, I have loved Missoula in the past, but recently living on campus, and having to travel around campus, has been complete hell for me and many others. I am asking that the city makes it a priority to keep walking paths on campus clear and the roads around campus plowed. These conditions are borderline unlivable for many people.

Jack Adamson
(406)-438-5390

City Clerk Staff

From: Daniel Carlino
Sent: Thursday, November 10, 2022 10:21 AM
To: J. Kevin Hunt; Grp. City Council and City Web Site
Subject: Re: Keeping a matter in committee: HOW TO

Thanks Mr. Hunt for your emails and comments. We've all been forwarded a cheat sheet for Mason's rules from the clerk. If you're referring to the motion to table keeping the ACS open, that appeared to be a deliberate motion to kill the item, ensuring the ACS closes next week.

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From: J. Kevin Hunt <jkhesq23@gmail.com>
Sent: Wednesday, November 9, 2022 3:31:46 PM
To: Grp. City Council and City Web Site <Council@ci.missoula.mt.us>
Subject: Keeping a matter in committee: HOW TO

A motion to:

(1) postpone further consideration of an item
(a) to a date certain;
(b) indefinitely (which essentially kills it);

(2) lay the item on the table,

are the three typical ways of putting off an up/down vote on an agenda item.

It would be really great if the City would spring for copies of Mason's Rules for each Council member.

Mason's is for the most part like Roberts'.

A simple Mason's "cheat sheet," along with the Council's standing rules, would help the Council overcome its unfamiliarity with how to make and dispose of motions. For new Councilors without deliberative body experience, a learning curve for basic parliamentary procedural literacy is understandable.

For multi-term Councilors not to have attained such basic literacy in parliamentary procedure is -- with respect -- a fundamental failure to effectively and adequately discharge the duties of the office and a disservice to constituents.

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/s/ J. Kevin Hunt
Ward 1 Resident
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