

**TITLE 20, MISSOULA CITY ZONING ORDINANCE – CITY COUNCIL PUBLIC HEARING DRAFT
 ADDITIONAL STAFF RECOMMENDED REVISIONS/CORRECTIONS**

1. CHAPTER 20.01 INTRODUCTORY PROVISIONS

Statutory Revision: Page 20.01-1, 20.01.050 Purpose:

Add a reference to MCA 76-2-304(1), as a clarification and in response to recent changes to State law from the 2009 State Legislative Session. The revision would be as follows:

20.01.050 Purposes

This zoning ordinance is adopted for the purposes of:

A. conformance with MCA 76-2-304(1);

B. protecting and promoting the public health, safety and general welfare;

Re-number accordingly

2. CHAPTER 20.05 RESIDENTIAL DISTRICTS

Correction: Page 20.05-9, 20.05.020 Allowed Use, Table 20.05-1 Uses Allowed in Residential Districts:

Delete footnote [1] from column RM1 because the footnote is only applicable to uses in the proposed RM1.5-35 Zoning District (previously R-III and R-IV). Footnote [1] would still apply to specified uses in the RM1.5 district. The revision would be as follows:

Use Category ↳specific use type	RM1.5	RM1
COMMERCIAL		
Lodging		
↳Bed and Breakfast	C	C
Office	C [1]	C [1]
Parking, Non-accessory	C [1]	C [1]
Personal Improvement Service	C [1]	C [1]
Residential Support Services	C	C
OTHER		
Agriculture, Animal	-	-
Agriculture, Crop	P	P
Community Garden	P	P
Water Testing Laboratory	C [1]	C [1]
Wireless Communication Facility		
↳Freestanding	C	C
↳Co-located antenna	P	P

[1] Allowed (as conditional use) in RM1.5-35 district only.

3. CHAPTER 20.45 ACCESSORY USES AND STRUCTURES

Correction: Page 20.45-2, 20.45.020 Parcel and Building Standards in Residential Districts, B.2 Setbacks:

Zoning districts R8 and RT2.7 should also be listed with the 3-foot side and rear setbacks (per Planning Board motion on May 19, 2009). This revision would result in eliminating a row from the table and moving R8, RT2.7 to the row with R5.4, RT5.4, R3, etc. The revision would be as follows:

Zoning District	Side Setback	Rear Setback
R215	50	50[1]
OP2	50	50[1]
R80, R40, R20, RT10	5	5
R8, RT2.7, RM1, RM0.5, RMH	5	5
R8, R5.4, RT5.4, RT2.7, R3, RM2.7, RM1.5, RM1, RM0.5, RMH	3	3

4. CHAPTER 20.70 MISCELLANEOUS REGULATIONS

Correction: Page 20.70-2, 20.70.010 Unzoned Land, E Compliance with General Zoning Regulations: Maximum Height for "Residential (Principal Structures)" should be changed from 35 feet to "30/35" feet. (per Planning Board motion on May 19, 2009) with the following footnote [1]: "[1] Maximum height is 30 feet for buildings with primary roof pitch of less than 8 in 12 and 35 feet for buildings with primary roof pitch of 8 in 12 or greater."

Interior side yard setback for "Residential (Principal Structures)" should be changed to match the existing ordinance, adding the requirement for 1/3 height setback measurement (per Planning Board motion on May 19, 2009). The table would include the following language for "interior side" setback: 7.5 [2]: "[2] Minimum interior side setback for principal buildings must equal at least 33% of the height of the subject building."

5. CHAPTER 20.75 SIGNS

Correction: Page, 20.75-14 - 20.75.130 Sign Variances, B:

Due to concerns over the vagueness of using the term "unreasonable" and given the draft document revision to Board of Adjustment criteria, eliminating "practical difficulty" – similarly vague, staff recommends striking the last portion of the last sentence under this section, as follows:

- B. Sign variances may be approved only when the board of adjustment finds that literal enforcement of the sign regulations of this chapter will result in unnecessary hardship to the applicant that were not brought about by an act of the applicant, ~~or when strict application of the provisions of this chapter would be unreasonable for particular sign.~~

6. CHAPTER 20.80 NONCONFORMITIES

Clarification: Page 20.80-2, Section 20.80.020 Nonconforming Lots, B Use of Nonconforming Lots, 3:

Add the reference to the date the existing regulation took effect – May 4, 2005. The statement would read as follows:

- 3. When 2 contiguous lots of record are held in common ownership (effective May 4, 2005), and when both of the lots of record are nonconforming lots, they will be deemed a single parcel for the purpose of meeting applicable parcel area and parcel width requirements of the zoning district in which they are located. This provision treats contiguous lots under common ownership as merged for the purposes of the zoning regulation of bulk, size, and similar dimensional standards only and does not aggregate individual parcels in a manner affected by 76-3-103(17)(b), MCA.

7. CHAPTER 20.85 REVIEW AND APPROVAL PROCEDURES

Statutory Revision: Page 20.85-5, Section 20.85.040 Text Amendments, F – Review Criteria:

During the 2009 State Legislative Session, state law that directs the purpose and criteria for municipal zoning regulations was modified (MCA 76-2-304). The state law revisions clarify that all zoning regulations, whether general text amendments or map amendments, must consider certain criteria when adopting regulations. The recommended revision is a reference to MCA 76-2-304(2). This general reference allows for future revisions by the State Legislature without necessarily changing the text of this ordinance each time. The revision would be as follows:

20.85.040 Text Amendments, F. Review Criteria

In reviewing and making decisions on zoning ordinance text amendments, the zoning officer, planning board, and city council must consider at least the following ~~factors~~ criteria:

1. whether the proposed zoning regulations are consistent with MCA 76-2-304(2).
2. whether the proposed zoning ordinance text amendment corrects an error or inconsistency in the zoning ordinance or meets the challenge of a changing condition;
3. whether the proposed zoning ordinance text amendment is in substantial conformance with the growth policy and other adopted plans and policies of the city; and
4. whether the proposed zoning ordinance text amendment is in the best interests of the city as a whole;

Statutory Revision: Page 20.85-7, Section 20.85.050 Zoning Map Amendments, G – Review Criteria:

Over the course of this review and State Legislative revisions, it is clear that findings of fact are not required for zoning map amendment requests therefore the recommended language strikes findings of fact and more accurately reflect the language in state law. The revision would be as follows:

20.85.050 Zoning Map Amendments (Rezoning), G. Review Criteria

In reviewing and making decisions on proposed zoning map amendments, the planning board and city council must consider ~~must be guided by and adopt findings of fact based upon~~ the following criteria:

1. whether the rezoning is consistent with MCA 76-2-304(2);
2. whether the proposed rezoning is in substantial conformance with the growth policy and other adopted plans and policies affecting the area proposed to be rezoned;
3. whether public facilities (infrastructure) and services will be adequate to serve development allowed by the requested rezoning;
4. whether the rezoning will substantially harm the public health, safety, or general welfare or the value of nearby properties;
5. whether the rezoning is compatible with the zoning and use of nearby property;
6. the suitability of the subject property for the uses and development to which it has been restricted under the existing zoning regulations;
7. the gain, if any, to public health, safety, and general welfare due to the denial of the application, as compared to the hardship imposed upon the landowner, if any, as a result of the denial of the application.

8. CHAPTER 20.85 REVIEW AND APPROVAL PROCEDURES

Clarification: Page 20.85-13, Section 20.85.070 Conditional Use, G Hearing and Final Action – Planning Board:

After researching treatment of Conditional Uses in other Montana jurisdictions and further review of Montana Code Annotated (MCA), staff recommends changing the public hearing requirement to go before the City Council, rather than Planning Board. The revisions would read as follows:

G. Hearing and Final Action—~~Planning Board~~ City Council

1. The ~~planning board~~ city council must hold at least one public hearing on a proposed conditional use.
2. Following the close of the hearing, at the same or subsequent meeting, the ~~planning board~~ city council must take action to approve, approve with modifications or conditions or deny the conditional use based on the review criteria of 20.85.070H. The ~~planning board's~~ city council's decision must be supported by written findings of fact.

Other sections of 20.85.070 that refer to Planning Board would be revised to refer to City Council instead.

9. CHAPTER 20.85 REVIEW AND APPROVAL PROCEDURES

Correction: Page 20.85-28, Section 20.85.140 Final Zoning Compliance Approval C:

Based on further review of Planning Board minutes from the hearing on March 24, 2009 and public comment, staff recommends a correction to this section. Sub-section C should not only allow for an owner to make a request for a final zoning compliance approval, there may be other individuals that could request the review. The statement should be struck and replaced with the following:

~~20.85.140 C Owners of detached houses and two unit houses may request a final zoning compliance approval, but they are not required to obtain such approval.~~

20.85.140 C. The zoning officer may conduct a final inspection of the premises of detached houses and two-unit houses to determine that the site has been developed in compliance with the site plan approved by the zoning compliance officer.

10. CHAPTER 20.90 ADMINISTRATION

Corrections: Page 20.90-5, Section 20.90.030 Historic Preservation Commission, B Membership d and e:

Language describing membership on the Historic Preservation Commission (HPC) by a member of the Design Review Board (DRB) and the Missoula Redevelopment Agency (DRB) is not correct. DRB and MRA appoint a member to the HPC but the member is not required to be a part of the DRB or MRA board. The revisions would be as follows:

- d. One of the members of historic preservation commission must be ~~a member of~~ appointed by the city's design review board. That member may reside in the either the city or the unincorporated county.
- e. One of the members of the historic preservation commission must be ~~a member of~~ appointed by the Missoula Redevelopment Agency (MRA) ~~commission~~. That member may reside in the either the city or the unincorporated county.

Corrections: Page 20.90-6, Section 20.90.030 Historic Preservation Commission, D Operation, 6:

The intent was not to change the typical practice for recording historic preservation commission decisions. The language should be as follows:

- ~~6. The zoning officer must file historic preservation commission decisions (with the deed to the subject property) with the county clerk and recorder and keep a summary of all actions of the historic preservation commission in the form of minutes or reports on the historic preservation commission's decisions.~~
- 6. The zoning officer must keep a summary of all actions of the historic preservation commission in the form of minutes or reports on the historic preservation commission's decisions.

Corrections: Page 20.90-7, Section 20.90.040 Planning Board, D Operation, 5:

The intent was not to change the typical practice for recording Planning Board decisions. The language should be as follows:

- ~~5. The zoning officer must file planning board decisions (with the deed to the subject property) with the county clerk and recorder and keep a summary of all actions of the planning board in the form of minutes or reports on the planning board's decisions.~~
- 5. The zoning officer must keep a summary of all actions of the planning board in the form of minutes or reports on the planning board's decisions.