Kenneth Wolf
FAE Missoula Hospital, LLC
4751 Broadway
Denver, Colorado 80216
ken@streamlinedesigns.biz

October 24, 2025

VIA HAND DELIVERY AND EMAIL
Missoula Board of Adjustment
c/o Development Services
435 Ryman
Missoula, MT 59802
zoningdesk@ci.missoula.mt.us
banzigerw@ci.missoula.mt.us

RE: Appeal from Zoning Officer Opinion No. 25-02

Dear Board of Adjustment,

FAE Missoula Hospital, LLC hereby appeals Zoning Officer Opinion No. 25-02 ("Opinion"), which Walter Banziger issued on or about September 26, 2025. FAE Missoula Hospital, LLC respectfully requests that the Board of Adjustment reverse the Opinion. This appeal is made pursuant to Missoula Municipal Code § 20.85.100.

In support of this appeal, please find the following documents included with this letter:

1. A completed Missoula City Board of Adjustment Application form. Because the Opinion and this appeal do not concern a specific development action and are instead limited to interpretation of MMC § 20.85.085.J, no site plan, elevation drawings, topographical maps, or floor plans have been submitted with the application.

2. A memorandum identifying the legal and factual bases for this appeal and the errors in the Zoning Officer's Opinion.

3. The exhibits referenced in that memorandum, which are numbered Exhibits 1-14.

Please let me know if there is any additional information the Board would find helpful or necessary in evaluating this appeal. Thank you for your attention to this matter.

Sincerely,

FAE MISSOULA HOSPITAL, LLC

By: Kenneth Wolf, its Manager

c: Ryan Sudbury (via email only at sudburyr@ci.missoula.mt.us)

DEVELOPMENT SERVICES
435 RYMAN • MISSOULA, MT 59802 - 4297 • (406) 552-6630 • FAX:

MISSOULA CITY BOARD OF ADJUSTMENT APPLICATION

Date: October 24, 2025

Meeting Date: _____

Applicant Name: FAE Missoula Hospital, LLC

Address: 4751 Broadway, Denver, CO 80216 Phone 720-220-4825

Agent Name: Kenneth Wolf

Address: 4751 Broadway, Denver, CO 80216 Phone: 720-220-4825

Project Address/Location: 3255 Lt. Moss Road, Missoula, MT 59804

Request Type: MMC 20.85.100 Appeal from Zoning Officer Opinion No. 25-02

The following items must be submitted as part of the application:

Legal Description

Lot(s): 2A ; Block(s): N/A ;Subdivision: N/A

Section: S31 ;Township: 13N ; Range: 19W

COS# 6792

Zoning: NC-HFM

11 PACKETS CONTAINING THE FOLLOWING ITEMS:

- **a. Application**
- **b. Cover Letter**
- **c. Site Plan/ Landscaping Plan – 11" x 14" or smaller (to scale)**
- **d. Elevation Drawings – 11" x 14" or smaller (to scale)**
- **e. Topography Map, if applicable – 11" x 14" or smaller (to scale)**
- **f. Floor Plan**

MISSOULA CITY BOARD OF ADJUSTMENT APPLICATION

APPLICANT'S RESPONSIBILITY
The burden of proof for an applicable hardship and justification of proposal lies with the applicant. The applicant or the applicant's agent must be present at the meeting. Failure to appear at the meeting is grounds for denial of the variance request.

CHAPTER 20.90.010, BOARD OF ADJUSTMENT, AUTHORITY
A board of adjustment is established as authorized by §76-2-321 through §76-2-328, MCA. The board of adjustment is responsible for conducting public hearings and making decisions in accordance with the procedures of this zoning ordinance and state law.

BOARD OF ADJUSTMENT HAS THE AUTHORITY TO REVIEW:
1. Variance Requests (Section 20.85.090)
2. Appeals of Administrative Decisions (Section 20.85.100)
3. Special Exceptions (Section 20.75.090) and Sign Variances (Section 20.75.130)

VARIANCE APPROVAL
An approved zoning variance will lapse and have no further effect **2 years** after it is granted by the board of adjustment or 2 years after a final court order is issued (if the variance is the subject of litigation), unless **all** of the following occur:
a) a building permit has been issued (if required);
b) a zoning compliance permit has been issued; and
c) a final certificate of zoning compliance has been issued.

I hereby attest that the information on this application form is accurate and complete.

Property Owner's Signature _____ **Date** 10-23-25

I, FAE Missoula Hospital, LLC **, owner of the said property authorize** Kenneth Wolf **to act as my agent in this application.**

BEFORE THE MISSOULA BOARD OF ADJUSTMENTS

FAE MISSOULA HOSPITAL, LLC'S APPEAL OF ZONING OFFICER OPINION NO. 25-02

STATEMENT OF ISSUE

Did the Zoning Officer incorrectly decide in his Opinion No. 25-02 ("Opinion") that all "Historic Resources," including all buildings located within the Historic Fort Missoula Neighborhood Character Overlay District ("District"), are subject to the demolition and redevelopment procedures identified in MMC § 20.85.085.J ("Section J")?

INTRODUCTION

There are two subsets of buildings in the District that qualify as "Historic Resources." MMC § 20.30.040. First, those buildings in the District that are "individually listed in the National Register of Historic Places" are "automatically classified" as Historic Resources. *Id*. Second, the City of Missoula chose to classify other, unlisted buildings in the District as Historic Resources when it adopted the District's "Neighborhood Character Overlay." *Id*.; *see* MMC § 20.25.070.

Both types of Historic Resources are subject to special regulation. For example, any alteration to any Historic Resource requires an Historical Preservation Permit and Historical Preservation Commission Review. MMC §§ 20.30.303.A & 20.85.085.C. The subset of Historic Resources that is "individually listed on the National Register of Historic Places" is, however, subject to added regulation. MMC § 20.85.085.J.2.a.

Notably, demolition of an "individually listed" property requires both an Historic Preservation Permit and an "Historic Demolition/Relocation Permit" under Section J. MMC §§ 20.85.085.C & 20.85.085.J.2.a. Section J is clear on this point. By its plain language, Section

J's "intent" and "applicability" is expressly limited to "properties individually listed on the National Register of Historic Places." MMC § 20.85.085.J.2.a; *see also* MMC § 20.85.085.J.1.a. This point is also clear from the public notices, public hearings, and drafting history of Section J, all of which made clear that the City Council's understanding when it adopted Section J was that this "ordinance upgrade is only subject to individually listed buildings, so not districts. Just those buildings that are listed." (Video of June 20, 2018 Land Use & Planning Committee Meeting at 50:50 (emphasis added)[1]; *see also* Discussion § 2, *infra*). Thus, Section J's language, context, and legislative history all confirm that Section applies only to those properties individually listed on the National Register of Historic Places, and not to all Historic Resources located within an historic district.

The Zoning Officer's Opinion collapses this distinction between Historical Resources that are individually listed and those that are not. (Ex. 2, Opinion at 2-3). The Zoning Officer's Opinion ignores the plain language of Section J and its legislative history to incorrectly conclude that Section J applies to all "Historic Resources," regardless of their listing status. (*Id*.) The Zoning Officer erred in doing so. The Board should reverse the Zoning Officer's Opinion and give effect to Section J's plain language, which limits its "applicability" to that subset of Historic Resources "individually listed on the National Register of Historic Places." MMC § 20.85.085.J.2.a.

BACKGROUND

FAE Missoula is the owner of the Old Post Hospital. The Old Post Hospital is not individually listed on the National Register of Historic Places, but it is located in the District.

[1] Available at https://pub-missoula.escribemeetings.com/Meeting.aspx?Id=f7fdd1c1-b536-4ef4-9a0e-4d50ea6582b7&Agenda=Agenda&lang=English#48256.

(Ex. 10, National Register of Historic Places: City of Missoula[2]; *see also, e.g.*, National Park Service, *National Register of Historic Places NPGallery Digital Asset Search*, https://npgallery.nps.gov/NRHP).

Since purchasing the Old Post Hospital in 2019, FAE Missoula has been attempting to find an economically viable use for its property. Initially, it tried to redevelop and restore the property. When those efforts were stymied and its plans to restore the property were denied, FAE Missoula began seeking an Historical Preservation Permit allowing demolition of the building. Most recently, FAE Missoula appealed the Historic Preservation Commission's denial of a permit to the Missoula City Council. On appeal, FAE Missoula argued both that it was not subject to the demolition permit and redevelopment criteria identified in MMC § 20.85.085.J ("Section J") and, in the alternative, that it meets the criteria for demolition under Section J.

At its hearing on FAE Missoula's appeal, the Missoula City Council indicated that it would not hear or consider FAE Missoula's argument on the applicability of Section J. Instead, it assumed that Section J applied, determined that FAE Missoula had met the criteria for demolition under Section J, conditionally approved the demolition permit, and remanded to the Historic Preservation Officer to work with FAE Missoula on a redevelopment plan. (Ex. 1, Record of Decision at 2 (Sept. 24, 2025)). The City Council made clear that a final demolition permit would not be granted until FAE Missoula submitted an approved redevelopment plan under Section J. (*See id*. at 3).

Two days after the City Council issued its decision, the Zoning Officer issued its Opinion No. 25-02. (Ex. 2). Apparently at the request of the City Council or the City Attorney, the

[2] Available at https://www.ci.missoula.mt.us/DocumentCenter/View/32965/Properties-Listed-in-the-National-Register-of-Historic-Places?bidId=.

Zoning Officer took up the question that the City Council refused to consider: whether Section J governs the demolition and redevelopment of properties that, like FAE Missoula's property, are located within the Historic Fort Missoula Neighborhood Character Overlay District ("District") but not individually listed on the National Register of Historic Places. (*Id*. at 1).

The Zoning Officer decided that Section J does apply. (*Id*. at 3). The Zoning Officer correctly noted that the Missoula Municipal Code draws a distinction between properties that are "Historic Resources" and properties that are "individually listed on the National Register of Historic Places." (*Id*. at 1-2; *see also, e.g.*, MMC §§ 20.30.30.J & 20.30.40). The Zoning Officer further correctly recognized that Section J "ordinarily" requires demolition permits only for "buildings or structures individually listed on the National Register of Historic Places." (Ex. 2 at 2; *see also* MMC § 20.85.085.J.2.a). The Zoning Officer then proceeded, however, to create an exception to this rule unsupported by the text of Section J.

The Zoning Officer decided that, contrary to the plain language of Section J limiting Section J to "buildings or structures individually listed on the National Register of Historic Places," all properties classified as "Historic Resources" in the District are subject to the demolition and redevelopment procedures in Section J. (Ex. 2 at 2-3). Apparently believing that there would be no demolition review for a property if Section J's review did not apply, the Zoning Officer reasoned that "[a]llowing demolition without applying the Historic Demolition Permit process [in Section J] would directly contradict the express legislative intent behind creation of the District." (Ex. 2 at 2-3).

This conclusion and reasoning is incorrect. The Zoning Officer's Opinion is contrary to the plain language of Section J and the legislative history of Section J. FAE Missoula, therefore, appeals the Zoning Officer's Opinion pursuant to MMC §§ 20.85.100.A and B.

STANDARD OF REVIEW

The Board should reverse the Zoning Officer's Opinion if the Zoning Officer "erred" in its interpretation and application of Section J. MMC § 20.85.100.H. Because any Court will review this Board's application and interpretation of Section J de novo, for correctness, and without any deference to the Zoning Officer's initial Opinion, the Board should likewise review the Zoning Officer's opinion to determine whether the Zoning Officer correctly interpreted and applied Section J. *Egan Slough Community v. Flathead Cnty. Bd. of Cnty. Comm'rs*, 2022 MT 57, ¶ 13, 408 Mont. 81, 506 P.3d 996.

When interpreting an ordinance, the goal of the Board is to give effect to the legislative intent of the City Council. *See, e.g.*, *Matter of Estate of Kemmer*, 2023 MT 234, ¶ 10, 414 Mont. 182, 539 P.3d 632. Where that "legislative intent can be determined from the plain language of the [ordinance], the plain language controls." *E.g.*, *Matter of Estate of Kemmer*, ¶ 10 (discussing Montana statutes); *Prosser v. Kennedy Enterprises, Inc.*, 2008 MT 87, ¶ 22, 342 Mont. 209, 179 P.3d 1178 (applying the same rule to city ordinances). "If the language is clear and unambiguous then no further interpretation is required" and an ordinance must be enforced "according to its plain meaning." *Kemmer*, ¶ 10. If, on the other hand, the language is "subject to more than one reasonable interpretation" and is therefore ambiguous, the Board's interpretation may be "aided by legislative history of the ordinance." *E.g.*, *City of Missoula v. Pope*, 2021 MT 4, ¶ 10, 402 Mont. 416, 478 P.3d 815; *State v. Gregori*, 2014 MT 169, ¶ 13, 375 Mont. 367, 328 P.3d 1128.

DISCUSSION

1. Section J does not apply to all Historic Resources or to all buildings or structures in the District.

The Missoula Municipal Code identifies two categories of "historic resources": (1) "any property individually listed on the National Register of Historic Places" and (2) "any

contributing or non-contributing property in an Historic District listed in the [National Register of Historic Places]" that "[t]he City may also choose to classify . . . as an Historic Resource through adoption of a Neighborhood Character Overlay."[3] MMC §§ 20.30.030.J & 20.30.040. The demolition of any such Historic Resource is subject to review under MMC § 20.85.085 (*see* MMC §§ 20.30.030.A & 20.85.085.C), but only the particular subset of Historic Resources that are "individually listed on the National Register of Historic Places" are subject to the more stringent demolition and redevelopment procedures in Section J. MMC §§ 20.85.085.J.1.A & J.2.a.

This limited scope and applicability is clear on the face of Section J. Section J's "Applicability" clause expressly provides:

> Applicability . . . Any property proposed for demolition or relocation <u>which is individually listed on the National Register of Historic Places</u> requires an historic demolition/relocation permit.

MMC §§ 20.85.085.J.2.a (emphasis added). This clause is the only portion of Section J that identifies the scope of Section J and the particular properties to which Section J applies. No

[3] In emails with FAE Missoula, city officials have previously suggested that because the Fort Missoula Historic District is listed on the National Register of Historic Places, all buildings and structures in the District should be considered "individually listed." This argument does not appear in the Zoning Officer's Opinion, and it appears that the City is no longer pursuing this argument. To avoid any doubt, however, this argument is incorrect. It is contrary to the federal regulations governing the National Register of Historic Places, which distinguish between "historic districts" and "individually listed" properties. *E.g.*, 36 C.F.R. §§ 60.3(d), 60.3(r), 67.2(a), 67.2(b), 67.4(b); 44 C.F.R. § 59.1 (defining "Historic Structure"). It is also contrary to the City Council's and City officials' understanding when adopting Section J. (*See* Discussion § 2, *infra*; Video of June 20, 2018 Land Use & Planning Committee Meeting at 50:19 (This "ordinance upgrade is only subject to individually listed buildings, so not districts. Just those buildings that are listed.")). Most notably, the argument is also inconsistent with MMC § 20.30.040, which distinguishes between Historic Resources that are "individually listed" and those properties in an Historic District that the City chooses to classify as Historic Resources. If all properties in an Historic District were automatically "individually listed," as the City previously argued, then there would be no need for this distinction and the language of MMC § 20.30.040 regarding historic districts would be superfluous.

portion of Section J or any other ordinance states that Section J applies to Historic Resources, generally, or to entire historic districts. Instead, the language used in the "applicability" clause of Section J is specific. By its plain language, Section J applies only to the subset of Historic Resources that are "individually listed on the National Register of Historic Places." MMC § 20.85.085.J.2.a.

The rest of Section J underscores this distinction and Section J's limited applicability. Although other portions of Section J occasionally reference the importance of "Historic Resources" more generally, Section J ultimately makes clear that only individually listed properties deserve or require Section J's special protection from demolition and redevelopment. As the City Council stated in Section J's "Intent" clause, "[t]he demolition or relocation of properties individually listed on the National Register of Historic Places are considered significant actions, as historic sites and structures are community resources and contributing elements to the character of Missoula." MMC § 20.85.085.J.1.a (emphasis added). While the removal of any historic resource could "alter[] the established character of the neighborhoods of which they are a part," the City Council has determined that only "individually listed" Historic Resources are subject to the onerous demolition and extensive redevelopment requirements of Section J. *Id*.

2. Section J's legislative history confirms that Section J applies only to properties individually listed on the National Register of Historic Places.

The limited scope of Section J was not a mistake. Before adopting the language limiting Section J to "properties individually listed on the National Register of Historic Places" (MMC § 20.85.085.J.2.a), the City Council and Missoula's boards and commissions intentionally rejected a broader scope that would have applied Section J to Historic Resources more generally.

Section J was drafted in the aftermath of the Historic Preservation Permit review process that led to the demolition of the Missoula Mercantile Building. (*E.g.*, Ex. 11, City Council Referral; Video of July 23, 2018 City Council Meeting at 1:34:10, 1:34:50). The Mercantile Building was an individually listed property, and with that in mind the City Council asked the Historic Preservation Officer to create a clear review process for the demolition and redevelopment of individually listed properties. (*See id*.; Ex. 5 at 1). Questions about this limited scope were raised several times during the drafting process. For example, in an August 2017 meeting, Historic Preservation Commissioner Steve Adler specifically asked about "looking at expanding the ordinance to include contributing buildings, not solely individually listed buildings." (Ex. 3, Aug. 17, 2017 Historic Preservation Commission Minutes at p. 1 (emphasis added)). Likewise, in comments on a February 2018 draft using the same "individually listed" language that the City Council eventually adopted, members of the Historic Preservation Commission considered expanding the scope of Section J to include "historic districts," "historic resources," and other properties beyond those individually listed on the National Register of Historic Places. (Ex. 4, Memorandum re HP Demolition Update Comments at 2, 6).

Ultimately, however, any expansion was rejected and was never incorporated into any draft or into the adopted version of Section J. As Ms. Scherrer, the Historic Preservation Officer that drafted Section J and shepherded it through approval, explained: expanding the scope of Section J to apply to demolition of "Historic Districts/Contributing" properties "would require re-writing [Historic Preservation] ordinance in it's entirety, not just J" and would need to be addressed in other amendments to other sections at another time. (Ex. 12, Scherrer Presentation to HPC at 1 (March 1, 2018); Video of March 1, 2018 Historic Preservation Commission

Meeting at 20:21[4] ("There w[ere] some questions raised about historic districts and contributing. Unfortunately we can't apply that to the demolition portion of the ordinance. . . . So we have to table that for the time being. . . . We can't go about that in Section J. So that will be as we move along for other rewrites in other sections.")).

Accordingly, each and every draft of Section J through its adoption included the language limiting Section J to "properties individually listed on the National Register of Historic Places." (Ex. 13, Jan. 22, 2018 Draft at § 2.a; Ex. 14, May 23, 2018 Draft at § 2.a). Likewise, staff reports, presentations, testimony at public hearings, public notices, and every other communication about Section J made this limited scope clear to the public, to Missoula's boards and commissions, and to the City Council. For example:

- A staff report distributed to the Missoula Planning Board and City Council made clear that the proposed amendment to Section J was "consistent with the framework of the existing Section J. . . . Applicability does not change, and applies only to individually listed buildings on the National Register of Historic Places; 55 buildings in Missoula." (Ex. 5, Staff Report at 4 (emphasis added)).
- That same staff report further confirmed that the proposed Section J was "a city council initiated text amendment request to revise Section J. of Title 20.85.085, regarding the demolition/removal of historic resources (individually listed properties on the National Register of Historic Places)." (*Id*. at 1-2 (emphasis added)).
- Similarly, when the Historic Preservation Office sent a letter to landowners with an interest in the effort to amend Section J, it sent that letter only to "owners of property

[4] Available at https://pub-missoula.escribemeetings.com/Meeting.aspx?Id=df2d8308-049f-420c-8759-55385bc7968c&Agenda=PostMinutes&lang=English#45773.

listed on the National Register of Historic Places" and not to owners of Historic Resources more generally. (Ex. 6, Letter from Scherrer to Listed Property Owners at 1; *see also* Ex. 5, Staff Report at 3; Video of July 23, 2018 Missoula City Council Meeting Minutes at 1:16:05[5]; Ex. 7, Presentation of Scherrer to City Council at 3 (July 23, 2018)).

- Likewise, notices published in the Missoulian on May 22 and 27, 2018 informed the public that the City was considering a proposal to amend Section J. In those notices, the City described the proposed amendment as "a city council initiated text amendment request to revise Section J. of Title 20.85.085, regarding the demolition/removal of historic resources (individually listed properties on the National Register of Historic Places)." (Ex. 8, The Missoulian, May 27, 2018 at B00 (emphasis added); Ex. 9, The Missoulian, May 27, 2018 at F00 (emphasis added); *see also* Ex. 5, Staff Report at 1).
- At meetings of the Land Use and Planning Committee and the Consolidated Planning Board leading up to the City Council's adoption of Section J, Historic Preservation Officer Scherrer repeatedly explained that Section J was limited to individually listed buildings and not to other historic resources:

> Missoula has 10 national register districts. And 62 individually listed buildings on the national register of historic places. And the national register is the official federal list of significant heritage sites. So we're not talking about a local heritage list or a state list but actually the national register of places . . . . And this . . . ordinance upgrade is only subject to individually listed buildings, so not districts. Just those buildings that are listed.

[5] Available at https://pub-missoula.escribemeetings.com/filestream.ashx?documentid=203803.

(Video of June 20, 2018 Land Use & Planning Committee Meeting at 50:19[6]; *see also* Video of June 5, 2018 Consolidated Planning Board meeting at 13:40 ("So as far as this proposed update . . . it only applies to buildings that are individually listed on the national register of historic places. So there is a lot of confusion. There's a lot of signs that say contributing, but those aren't all individually listed. So in Missoula, we only have 62 buildings that would be affected by this.")[7]; Video of June 27, 2018 Land Use & Planning Committee Meeting at 30:09 (Addressing questions about a landowner's options, Scherrer explained that if owners "feel they need to demo it without a redevelopment plan in order to sell it, they'll have to delist the property," an option that would not be available if Section J applied to historic resources not listed on the National Registry of Historic Places.)[8])

- This same message was conveyed to the City Council. During the July 23, 2018 Missoula City Council meeting at which Section J was adopted, Ms. Scherrer began her presentation to the Council by stating that the purpose of the amendment was "to expand the existing Section J and associated subsections of title 20.85.085 regarding demolition and removal of historic resources <u>which are individually listed properties on the National Register of Historic Places</u>." (Video of July 23, 2018 Missoula City Council Meeting Minutes at 1:15:03).[9] Ms. Scherrer made clear at the end of the

[6] Available at https://pub-missoula.escribemeetings.com/Meeting.aspx?Id=f7fdd1c1-b536-4ef4-9a0e-4d50ea6582b7&Agenda=Agenda&lang=English#48256.
[7] Available at https://pub-missoula.escribemeetings.com/Meeting.aspx?Id=13100704-7d63-4b81-8eb4-97f9af285f81&Agenda=PostMinutes&lang=English#46262.
[8] Available at https://pub-missoula.escribemeetings.com/Meeting?Id=a2023c21-6de8-4493-9df8-2d92818a0535&Item=48431&Agenda=Agenda#48431.
[9] Available at https://pub-missoula.escribemeetings.com/Meeting.aspx?Id=2294076e-9117-4220-ae59-68022a30e8a3&Agenda=Agenda&lang=English&Item=48635&Tab=agenda#48635.

presentation that Section J "is just for individually listed resources, and for this it would be about 51 properties." (*Id*. at 1:20:16 (emphasis added)).

Ultimately, in light of the language of the amendment, the express rejection of a broader scope, and the consistent communication in public hearings and notices, the City Council could not have had any understanding that Section J applied to anything other than "properties individually listed on the National Register of Historic Places." MMC § 20.85.085.J.2.a. The City Council had no intention to, and did not, make Section J's demolition and redevelopment criteria applicable to historic resources, more generally.

3. The Zoning Officer's arguments and conclusions to the contrary are incorrect.

The Zoning Officer's conclusion that Section J applied to all buildings in the District is directly contrary to the legislative history and, more critically, the plain language of Section J. The Zoning Officer's conclusion is incorrect for at least the following seven reasons.

First, the Zoning Officer's decision that Section J applies to all "Historic Resources," and not only to the subset of Historic Resources "individually listed on the National Register of Historic Places," is contrary to the plain language of Section J. Again, the "applicability" and "intent" of Section J are expressly limited to "properties individually listed on the National Register of Historic Places." MMC § 20.85.085.J.1.a. & J.2.a.

Second, and relatedly, the Zoning Officer's role in interpreting Section J was "simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. § 1-2-101; *Egan Slough Community v. Flathead Cnty. Bd. of Cnty. Comm'rs*, 2022 MT 57, ¶ 22, 408 Mont. 81, 506 P.3d 996 ("If the language of an ordinance is plain and unambiguous, it is not subject to interpretation or open to construction but must be accepted and enforced as written"); *Hartshorne v. City of*

Whitefish, 2021 MT 116, ¶ 29, 404 Mont. 150, 486 P.3d 693. The Zoning Officer exceeded this role and his authority, because the Zoning Officer's Opinion effectively rewrites Section J.

The Zoning Officer would have Section J read as follows, inserting the underlined text and omitting the strikethrough text:

> Applicability . . . Any property proposed for demolition or relocation which is ~~individually listed on the National Register of Historic Places~~ an Historic Resource requires an historic demolition/relocation permit.

MMC § 20.85.085.J.2.a. (strikethrough and underlined language added). This is not, however, how Section J reads, and "Historic Resource" is not the term Section J uses in defining its "applicability" and "intent." As the legislative history and plain language of Section J makes clear, the City Council understood the distinction between an Historic Resource and individually listed properties, in particular. It could have made Section J applicable to all Historic Resources by using the term "Historic Resources," if it had wished to do so. (*See* Discussion § 2, *supra*). It did not. Instead, as it assured the public in its notices and hearings, the City Council elected to use more specific language expressly limiting Section J to "properties individually listed on the National Register of Historic Places." (*Id*.; MMC § 20.85.085.J.2.a). The Zoning Officer cannot now undo the City Council's decision and broaden the scope of Section J. It cannot read the term "Historic Resource" into Section J.2.a and thereby insert what the Council omitted or omit what the council inserted. Mont. Code Ann. § 1-2-101; *Egan Slough Community*, ¶ 22; *Hartshorne*, ¶ 29.

Third, the Zoning Officer's decision is predicated on the false assumption that if Section J does not apply, then demolition of Historic Resources would not be subject to any review. (*See* Ex. 2 at 2-3). This is incorrect. Any "alteration" of an Historic Resource, including by demolition, requires an Historical Preservation Permit and is subject to the review associated

with such a permit. MMC §§ 20.30.030.A & 20.85.085.C. That review and the criteria for such a permit are identified in MMC § 20.85.085 and, for historic resources in the Historic Fort Missoula Neighborhood Character Overlay, in the "Development Guidelines and Standards for the Fort Missoula Historic District." MMC § 20.25.070.G. Only those Historic Resources that are "individually listed on the National Register of Historic Places" require an additional "demolition/relocation permit" under the demolition and redevelopment criteria of Section J. MMC § 20.85.085.J.2.a.

Fourth, and relatedly, the Zoning Officer ignores the distinction between an Historical Preservation Permit and a demolition/relocation permit. As the Zoning Officer correctly notes, "demolition of an historic resource, as defined in Section 20.30.030.A" is "an action subject to review for a Historic Preservation Permit." (Ex. 2 at 2 (quoting MMC § 20.85.085.C.2)). The Zoning Officer then incorrectly concludes that the demolition and redevelopment criteria of Section J must apply to that review. Historic Preservation Permits are, however, governed by MMC § 20.85.085, generally. Section J, on the other hand, defines the more stringent criteria and review for a "Demolition/Relocation Permit." Again, those more stringent criteria are only applicable to "properties individually listed on the National Register of Historic Places." Nothing in MMC § 20.85.085 or in any other part of the code mandates a Section J "Demolition/Relocation Permit" conditioned on a redevelopment plan for Historic Resources.

Fifth, even if the Zoning Officer were correct that there would be no criteria applicable to demolition of Historic Resources without application of Section J, that fact would not justify the Zoning Officer's decision to interpret Section J in a manner contrary to its plain language. Whether and how to regulate demolition of Historic Resources is up to the City Council alone and any such regulation must be through ordinances properly adopted following public notice

and hearings. *E.g.*, Mont. Code Ann. §§ 2-3-203, 7-5-103; *see also, e.g.*, Mont. Code Ann. Title 7, chapter 5, parts 1, 41, and 42. If the City Council has left gaps in its regulations, the Zoning Officer has no authority to fill those gaps, regardless of whether the gaps were left intentionally or inadvertently. *See id.* Again, the Zoning Officer's power here is limited to interpreting and applying ordinances as written. *E.g.*, *Egan Slough Community*, ¶ 22; *Hartshorne*, ¶ 29. The Zoning Officer has no authority to unilaterally rewrite or add to those ordinances.

Sixth, the City's creation of the District and associated neighborhood overlay does not express any "legislative intent" to make Section J applicable to all Historic Resources in the District, as the Zoning Officer argues. Critically, the City Council created the District and overlay years before it adopted Section J in 2018. (*E.g.*, Missoula City Ordinance No. 3410 (2009)). At the time it amended and adopted Section J, therefore, the City Council knew that the District and overlay existed, knew that the District included Historic Resources that were not "individually listed on the National Register of Historic Places," and could have made Section J expressly applicable to such Historic Resources or to the District in particular. *See* MMC §§ 20.30.030.A, 20.30.040, 20.85.085 (2017). It could, for example, have amended MMC § 20.25.070 to specifically incorporate the criteria or procedure of Section J or, again, it could have extended the "applicability" and "intent" of Section J to Historic Resources. It did not do so at the time it adopted Section J, and it did not do so at any time after adopting Section J. *See* MMC § 20.85.085.J.2.a. The Zoning Officer cannot now do what the City Council refused to do and extend Section J to Historic Resources or the District.

Seventh, the Zoning Officer is simply incorrect in concluding that his application of Section J is the only "rational conclusion." (Ex. 2 at 3). To the contrary, the only "rational" decision is that the City Council meant what it said in the plain language of Section J and that the

"applicability" of Section J is limited to that subset of historic resources "individually listed on the national register of historic places." MMC § 20.85.085.J.2.a; *see Egan Slough Community*, ¶ 22; *Hartshorne*, ¶ 29.

CONCLUSION

The Zoning Officer misinterpreted and misapplied Section J in his Opinion when he concluded that Section J applies to all Historic Resources, including all structures in the District. The plain language and legislative history of Section J both confirm that Section J's "applicability" and "intent" is limited only to the subset of Historic Resources "individually listed on the National Register of Historic Places." MMC § 20.85.085.J.1.a & J.2.a. Other Historic Resources not "individually listed" are not subject to Section J. The Board should, therefore, reverse the Zoning Officer's Opinion and confirm that Section J applies only to properties individually listed on the National Register of Historic Places.

DATED this 24th day of October, 2025.

FAE MISSOULA HOSPITAL, LLC

By: Ken Wolf
Its: Manager

CITY OF MISSOULA
CITY COUNCIL

RECORD OF DECISION ON
Appeal of Historic Preservation Commission Denial of Demolition Permit

Property: Post Hospital, 3255 Lt. Moss Rd.
Applicant: FAE Missoula, LLC
City Council Hearing Date: 9-17-2025

I. Background

1) The applicant sought a historic preservation permit to demolish the historic structure located at 3255 Lt. Moss Rd., Missoula, MT.

2) On Feb. 27, 2025, the City's Historic Preservation Officer ("HPO") recommended approval for the preliminary demolition permit application, finding that the applicant met the demolition review criteria in Missoula Municipal Code ("MMC") § 20.85.085.J.

3) On Mar. 27, 2025, the City's Historic Preservation Commission ("HPC") denied the demolition permit application, citing the failure to meet certain demolition review criteria in MMC § 20.85.085.J. The HPC additionally concluded that the permit should not be issued because the applicant had allowed Demolition by Neglect in violation of the law under MMC § 20.85.085.K and thus the applicant's inaction was a substantial cause of economic hardship to the viability of the property.

4) The applicant filed a timely appeal to the City Council.

5) The Council held a duly noticed public hearing on September 17, 2025, reviewed the complete record, heard arguments from the applicant and City staff, took public testimony, and deliberated in open session.

II. Applicable Review Criteria (MMC § 20.85.085.J)

In deciding on an application for a preliminary demolition permit for a historic structure, the Council must consider:

1) **Viable Economic Life** – Whether the structure still maintains viable economic life.
2) **Reasonable Economic Return** – Whether the structure is capable of generating a reasonable economic return if preserved, restored, or rehabilitated.
3) **Bona Fide Effort for Alternatives** – Whether the applicant has made a bona fide effort to find a reasonable alternative that would result in preservation, renovation, or rehabilitation of the structure.

III. City Council Findings

After reviewing the administrative record and testimony, the Council makes the following findings, which hereby incorporate the findings and conclusions contained in the Historic Preservation Officer's February 27, 2025 Executive Summary:

1) **Viable Economic Life**

EXHIBIT
1

a) Evidence, including the applicant's architectural analysis and cost estimates, shows that the building does not maintain viable economic life as the estimated cost to rehabilitate the building far exceed the estimated overall return on investment.

b) Extensive structural deterioration, nonfunctioning or severely outdated or decayed mechanical systems, modern code-compliance deficiencies, and escalating maintenance costs render continued occupancy or use economically infeasible.

2) **Reasonable Economic Return if Preserved**

a) Construction estimates for rehabilitation and independent market analyses demonstrate that rehabilitation or adaptive reuse would not generate a reasonable economic return, in light of the extensive rehabilitation costs, when compared to typical investment standards for similar properties.

b) Grants and other non-traditional funding sources are not substantial enough to offset the extensive costs associated with rehabilitating the building for commercial use.

3) **Bona Fide Effort for Alternatives**

a) The applicant documented a good-faith search for alternatives, including solicitation of preservation-minded buyers, exploration of adaptive reuse concepts, and evaluation of partial-preservation schemes.

b) No feasible alternative emerged that would allow preservation, renovation, or rehabilitation within reasonable economic limits.

4) **Demolition by Neglect**

a) Vandalism by third parties should not be held against the current owner of the property. Contrary to the HPC's conclusion, the current owner took reasonable steps to secure the building and prevent additional damage from vandalism. The damage caused by any vandalism during the current owner's stewardship of the building is an insignificant fraction of the cost to rehabilitate the building.

b) The evidence shows that the second and third floors of the building were largely abandoned and unmaintained since 1947. The substantial portion of damage associated with this abandonment and decay occurred during the period from 1947 to 2019 when the current owner purchased the building. While the building may have continued to decay after the current owner's purchase, that decay is insignificant compared to the decay that occurred during the more than 70 years prior to that time.

IV. Conclusion

The City Council concludes that the Historic Preservation Commission **erred in how it applied the review criteria required by the MMC** when it denied the demolition permit. The specific assignments of error include: (a) its focus on Demolition by Neglect and letting that outweigh all of the other evidence in the application; (b) its failure to compare, with evidence, the condition of the property at the time of applicant's acquisition of it in 2019 to the present condition; and (c) the failure to give any weight to the applicant's efforts to preserve and develop the property in its

prior application. The City Council finds that the City's Historic Preservation Officer was correct in the application of the review criteria in the February 27, 2025 Executive Summary Report. The record demonstrates that the application satisfies all criteria for preliminary approval:

- The structure lacks viable economic life.
- Rehabilitation would not yield a reasonable economic return.
- The applicant made a bona fide effort to find preservation alternatives.

V. Decision

The City Council reverses the decision of the Historic Preservation Commission and approves the preliminary demolition permit, subject to the following conditions:

1. Completion of the requirements for Final Approval Review found in MMC § 20.85.085.J.11 prior to final approval of the demolition permit.
2. Compliance with the applicable zoning regulations in effect at the time of the Final Approval Review.

Signed this 24th day of September

Amber Sherrill, Council President

CITY ZONING OFFICER OPINION #25-02

DATE: September 26, 2025

RE: Application of the Demolition Permit Criteria to Buildings in the Historic Fort Missoula Neighborhood Character Overlay District

---

Question:

A question has arisen as to what criteria applies to historic preservation permits required for the demolition of buildings within the Historic Fort Missoula Neighborhood Character Overlay District. A property owner in the Historic Fort Missoula Neighborhood Character Overlay District is arguing that MMC § 20.85.085.J only applies to buildings which are "individually listed on the National Register of Historic Places." The property owner points to discussion at Council during the adoption of this provision indicating the intent to limit the scope of this provision solely to "individually listed" buildings.

Relevant Code Sections:

- **20.25.070.A** "The /NC-HFM, Historic Fort Missoula Neighborhood Character Overlay district is intended to protect buildings and grounds in the Fort Missoula area from modifications that obscure or eradicate significant features of their historic character; to promote restoration and continued maintenance, and to protect the district from the effects of incompatible development."
- **20.25.070.F.1** "In order to preserve the historical integrity of the fort environs, any development or structural alteration requiring a building permit within the /NC-HFM overlay district must be reviewed by the historic preservation officer for a historic preservation permit. A historic preservation permit is required for any activity that requires a zoning compliance permit."
- **20.25.070.G** "In addition to the review criteria that apply for all historic resources (20.85.085 Historic Preservation Permit procedures), proposals in the Historic Fort Missoula Neighborhood Character Overlay district must be reviewed for compliance with the Development Guidelines and Standards for the Fort Missoula Historic District."
- **20.30.030.A** "Actions Subject to Review are… 4. Demolition of an Historic Resource, which includes the razing, destruction, or dismantling of an Historic Resource to the degree that its character defining features are substantially obliterated."
- **20.30.030.J** "Historic Resource is a property designated under Section 20.30.040."
- **20.30.040** "The City recognizes that within its jurisdiction there exists significant Historic Resources that should be protected. Accordingly, any property individually listed in the National Register of Historic Places (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. The City may also choose to classify any contributing or non-contributing property in an Historic District listed in the NRHP as an Historic Resource through adoption of a Neighborhood Character Overlay."

- **20.85.085.C.2** "Actions subject to review include alterations to an historic resource, new construction in historic overlay districts, relocation of an historic resource, and demolition of an historic resource, as defined in Section 20.30.030.A."
- **20.85.085.J.1.a** "The demolition or relocation of properties individually listed on the National Register of Historic Places are considered significant actions, as historic sites and structures are community resources and contributing elements to the character of Missoula. The removal of historic resources alters the established character of the neighborhoods of which they are a part. An application to demolish or relocate an historic resource is held to a very high standard, requiring submittal of comprehensive and detailed application materials"
- **20.85.085.J.2.a** "Any property proposed for demolition or relocation which is individually listed on the National Register of Historic Places requires an historic demolition/relocation permit."

Analysis:

As laid out below, the Missoula City Council's adoption of the Historic Fort Missoula Neighborhood Character Overlay is dispositive of the question presented. The outcome of this analysis would differ if City Council had not adopted the Historic Fort Missoula Neighborhood Character Overlay, codified at MMC § 20.25.070. This is because ordinarily only buildings or structures individually listed on the National Register of Historic Places require a demolition permit. See MMC § 20.85.085.J.2.a. However, MMC § 20.30.040 expressly authorizes the City to classify "any contributing or non-contributing property in an Historic District listed in the NRHP as an Historic Resource through adoption of a Neighborhood Character Overlay."

City Council exercised this authority when it created the Historic Fort Missoula Neighborhood Character Overlay District ("District") and designated all buildings within it as Historic Resources. See MMC § 20.25.070. The stated purpose of § 20.25.070.A is "to **protect buildings** and grounds in the Fort Missoula area from modifications that obscure or eradicate significant features of their historic character … and to protect the district from the effects of incompatible development." Emphasis added. Adoption of the Historic Fort Missoula Neighborhood Character Overlay therefore constitutes an explicit designation that the buildings in the District are Historic Resources. MMC § 20.30.040.

Because these properties are Historic Resources, their demolition requires a Historic Preservation Permit. This requirement is repeated in several sections of the City Code. MMC § 20.25.070.F.1 mandates a permit for any "development"—defined as any man-made change to real estate—within the District. Likewise, MMC § 20.30.020 requires a permit for "actions subject to review," which include "[d]emolition of an Historic Resource," meaning the razing, destruction, or dismantling of such a resource to the point that its character-defining features are substantially obliterated. MMC § 20.30.030.A.4. Finally, MMC § 20.85.085.C.2 repeats this requirement by listing "demolition of an historic resource, as defined in Section 20.30.030.A," as an action subject to review for a Historic Preservation Permit.

Allowing demolition without applying the Historic Demolition Permit process would directly contradict the express legislative intent behind creation of the District. Although MMC §§ 20.85.085.J.1.a and J.2.a specifically reference properties individually listed on the National Register, those provisions underscore the broader City policy that demolition of any Historic Resource is a "significant action" held to a "very

high standard," requiring "comprehensive and detailed application materials." The same rationale necessarily applies to Historic Resources designated through a Neighborhood Character Overlay. Accordingly, all buildings within the District—regardless of their individual National Register status—are classified as Historic Resources. Demolition of any such resource is an "action subject to review" requiring a historic preservation permit under MMC § 20.85.085.C.2. The Municipal Code directs that the timelines and procedures in MMC § 20.85.085.J govern the demolition of Historic Resources. See MMC § 20.85.085.G.1 (stating "See section 20.85.085.J for timelines and procedures associated with permits for the demolition or relocation of historic resources."). Indeed, the title of Section 20.85.085.J is: "Criteria and Procedure for Review of Relocation and Demolition of Historic Resources – Historic Demolition/Relocation Permit". There can be no rational conclusion drawn that the Code requires a historic preservation permit for the demolition of historic resources but does not apply the review criteria and procedures for the demolition of historic resources as part of that permit process. To apply Section 20.85.085.J only to "individually listed" properties would ignore the intent and express provisions of many other sections of Chapter 20.85.

Conclusion and Determination

Based on the foregoing statutory provisions and their clear legislative intent, I hereby determine as follows:

1. Historic Resource Status
   All buildings and structures located within the Historic Fort Missoula Neighborhood Character Overlay District (/NC-HFM) are Historic Resources as defined in MMC § 20.30.030.J and classified pursuant to MMC § 20.30.040.
2. Demolition Permit Requirement
   Any action meeting the definition of demolition in MMC § 20.30.030.A.4 (and MMC § 20.85.085.C.2), involving any building or structure within the /NC-HFM, constitutes the demolition of an Historic Resource. Accordingly, such action requires a Historic Demolition Permit and is subject to the review criteria and procedures set forth in MMC § 20.85.085.J.

Walter Banziger

Walter Banziger, Deputy Director
CPDI, Development Services

Ryan Sudbury

Ryan Sudbury, City Attorney

Date Zoning Officer Opinion is approved: September 26, 2025

Historic Preservation Commission Minutes

Jack Reidy Room, 140 W. Pine
August 17, 2017, 6:00 PM

Members present: Paul Filicetti, Steve Adler, James McDonald, Joshua Pollarine, Solomon Martin
Members absent: Cathy Bickenheuser, Julia McCarthy-McLaverty, Jolene Brink
Others present: Emy Scherrer, Randy Frazier, Laval Means, Gwen Jones

1. **Call to Order**

2. **Roll Call**

3. **Public Comment**

4. **New Business**

   A. **Discussion with Gwen Jones: Revisions to the HP Demolition Ordinance--**

Gwen Jones, City Council member, introduced this item and stated that it was time to have a broad discussion concerning a rewrite of the HP Demolition Ordinance.

Ms. Jones asked how often a demolition permit is requested for an historic building. Steve Adler replied that what is more often seen is a request for a partial demolition permit, which is what had originally been presented for the Missoula Mercantile building. Mr. Adler suggested looking at expanding the ordinance to include contributing buildings, not solely individually listed buildings.

Gwen Jones informed that this was a starting point to gather general thoughts on needed revisions to the HP Demolition Ordinance and that others such as City Council would be contributing to the conversation. The desired result is to have a good process; a fair process. Ms. Jones emphasized that City Council understands the need to have touchstones to anchor our community and is supportive of historic preservation.

Steve Adler said that HPC would like outreach to the decision makers in the community and that HPC is a resource to the community. Gwen Jones informed that speaking to the Committee of the Whole (COW) would be good way to get a message to all City Council members. Laval Means encouraged creating an HPC education team to develop presentations to both City Council and to interested community organizations. Ms. Jones said that because committee meeting were broadcast by MCAT, it can be received by members of the public not in attendance. Solomon Martin said that he welcomed the opportunity for community outreach and that it is a priority for HPC. Mr. Martin suggested quarterly presentations for COW.

Emily Scherrer asked the commission to identify what worked in the HP Demolition Ordinance as well as what they believed didn't work.

Steve Adler said that projects came in early and were receptive of HPC comments the process works better. Solomon Martin said a better definition of consultation is needed and the criteria should be better defined. Joshua Pollarine echoed Mr. Martin's comment. Paul Filicetti added that exploring alternatives should also be defined.

Steve Adler shared that he would like to keep HPC's judgement towards historic preservation principals versus economic feasibility. Gwen Jones cautioned that economic feasibility must be kept in the equation or there would be risk of butting into constitutional issues.

The committee discussed the difficulty of determining economic feasibility because HPC members are historic preservationists, not financial experts. Use of preservation tax credits and other funding sources should be required in the calculation when determining economic feasibility. Accessing expertise outside of what is on the board may be requested when needed and funding would need to be approved by City Council which could affect the timeline.

Solomon Martin suggested increasing the demolition delay window from 90 days to 180 days or more to provide time to research alternative options. The request for permit could be voted on earlier if the applicant has met the intent of the ordinance and provided sufficient documentation.

EXHIBIT 3

The committee discussed the pros and cons of HPC serving in the capacity of a quasi-judicial board versus as that of an advisory board. In the quasi-judicial role, HPC would have leverage that could benefit preservation; in the advisory role, they would inform Council who would vote on the approval of an application. Gwen Jones emphasized that if an applicant met criteria, an application would need to be approved.

Emily Scherrer shared that Bryan von Lossberg, City Council member, suggested mandating deconstruction if demolition is approved. Gwen Jones added that there is City policy in place to mandate deconstruction with the Missoula's Pathway to Zero Waste Resolution. Solomon Martin said that whether a building is demolished or deconstructed, in the eyes of preservation, when a building is gone, it's gone.

Gwen Jones asked if different approaches would be needed based on whether the project was for a residential building or for a commercial building. Members of HPC concluded that there was not a need to differ in the ordinance.

Paul Filicetti said when a building is replaced, the design should remain sympathetic to the neighborhood as it has an impact on the character of the neighborhood. Steve Adler agreed that it would be preferred to be able to look beyond demolition and look at the project that will be coming forward. Gwen Jones commented that development agreements could be entered into to address design and there are negotiation tools such as speeding the approval process that can help move a project forward. Laval Means commented that ordinances in other communities have language about no demolition without a project.

Solomon Martin encouraged adding a requirement for a written historic preservation plan for partial demolition projects to show an awareness of preservation.

The commission shared their enthusiasm for the process of rewriting the ordinance. Laval Means shared her appreciation for HPC.

Gwen Jones informed that there will be changes to the City Council due to upcoming elections and members retiring. There is not a solid timeline for this work, but the process could start in January at the earliest. Ms. Jones would like to refer this item to City Council with language already drafted. Solomon Martin stressed the importance of getting this right and the process should not be rushed.

5. Member Comments

6. Announcements, News & Upcoming Events

The next HPC meeting will be on September 7, 2017.

On September 20, 2017, there will be a presentation at Land Use and Planning Committee on the design guidelines community workshop that will be held September 21, 2017at the Doubletree, 5:30 p.m. Notice will be sent to members of HPC and they are encouraged to attend.

Emily Scherrer, HPO, will be out of the office August 21, 2017 through August 25, 2017.

7. Adjournment

The meeting adjourned at 8:00 p.m.

Respectfully submitted,

Randy Frazier
Administrative Assistant

DEVELOPMENT SERVICES
435 RYMAN • MISSOULA, MT 59802 - 4297 • (406) 552-6630 • FAX: (406) 552-6053

HISTORIC PRESERVATION MEMORANDUM

RE: HP Demolition Update Comments

Dear Commissioners,

Attached are the compiled comments received from the HPC for the demolition ordinance update. Paul Filicetti's comments are attached individually, as they are thorough. Please review, and we'll discuss during our March meeting with a motion to implement discussed changes.

Thank you,
Emy Scherrer
Historic Preservation Officer

EXHIBIT
4

HP DEMO – COMPILED COMMENTS 2/21/18

HPC – Historic Preservation Commission
LUP – Land Use & Planning Board
MOR – Missoula Organization of Realtors

General Comments:

Cathy B. (HPC): "Should a clause be put in regarding historic districts?"

Paul F. (HPC): - "To summarize, I think it wise to move definitions to a specific list rather than include them in the text and I also think there's a need to expand the list of definitions to include: CEH, economic feasibility, feasible alternatives(s), property, historic resource, preliminary approval, consultant, consulted/consultation, council. The 'steps for permit' item 4 seems to be missing steps from the text.."

- "What if applicant and owner are two separate entities?"

Steve A. (HPC): - "If the HPC fails to reach a preliminary decision within the time frame specified herein, and if no time extension has been granted, the application will stand approved."

- Include option for HPO to revert back to HPC in final decision.

LUP: - What is the process for holding applicants accountable?

- What is the process for the HPC to step out, i.e. bias?

---

2. Applicability:

a.

Jim M. (HPC): "Do not understand this sentence": *The removal of a façade or significant part of a structure may be eligible for a partial-demolition permit upon negotiation with the historic preservation officer.*

c.

Jim M. (HPC): "Clarify [in assessing economic feasibility] in relation to definition"

3. Definitions:

Economic Hardship

Bruce H. (HPC): - "How is a 'low-income' owner defined?"

- "How is denying an owners desire to increase return on investment defensible?"

Jim M. (HPC): "Wonder if economic hardship needs more definition as to building condition?"

Steve A. (HPC): - Define "low-income owner," "onerous"

- "Include quote 'Economic Hardship is defined as consistent with the legal standard for an unconstitutional regulatory taking…' As a/the bottom line of

decision-making. All working through the details and factors comes down to this."

Evidence

Bruce H. (HPC): "Are commission members expected to understand the legal standard?"

Jim M. (HPC): "Consult with third party?"

Steve A. (HPC): "What is the current legal standard [for an unconstitutional regulatory taking] (board education)?"

LUP: Should the definition of evidence be fleshed out further?

Relocation

Steve A. (HPC): Include "Feeling" in definition?

4. Steps for an Historic Demolition/Relocation Permit:

LUP: Add SHPO to box one, add a twelfth box with denial or final approval to bookend process.

Jolene B. (HPC): "Should we go through public notice for the second phase of approval to gain additional comments?"

5. Historic Preservation Officer Review:

a.

Bruce H. (HPC): "How would an applicant know about this requirement? Does this mean if an owner's first contact with the HPO is to request a permit they would have to wait 30 days after scheduling and participating in a pre-application meeting?"

Paul F. (HPC): "What if they [applicant] don't?"

Steve A. (HPC): "When is Special Presentation to HPC?" *add commas

d.

Steve A. (HPC): [Final approval] "Shouldn't that be Board responsibility?"

6. Historic Preservation Commission Review:

Steve A. (HPC): …*a period of … 120 days is initiated for the HPC to reach a* "preliminary or final decision?"

c.

Bruce H. (HPC): "self-created'-seems like intent would be difficult to establish?"

MOR: Demolition by neglect, deliberate neglect; how do we prove?

Paul F. (HPC): "to what measure?"

Cathy B. (HPC): "…is the evidence consistent? Perhaps a better way to say this is: Is the evidence consistently accurate or presented from consistently educated or peer-reviewed

sources? I'm thinking about opposing viewpoints from opposing contractors and how evidence is presented."

Steve A. (HPC): - "If two sides are presenting evidence, it will likely not be consistent."

- "Is the evidence competent? Is the evidence credible? = Same thing?"

LUP: Does the evaluation criteria need to be defined?

d.

Cathy B. (HPC): "I'd like to add a thought about economics versus historic preservation. I'm not sure where to put this thought though. We aren't trying to force anyone but I don't want to see any owners wussily trying to slide under a definition of economic hardship; 'The Preservation Commission shall consider the realities of economics versus the goals of historic preservation'"

7. Pre-Application Requirements:

b.

Bruce H. (HPC): "Is the letter sufficient for item 5?"

Steve A. (HPC): "… With sufficient pre-application materials for SHPO to render a well-educated opinion (not just a letter saying 'I want to…')"

8. Application Requirements for Preliminary Approval

a.

Steve A. (HPC): - *sentence structure

- "How much do we really want to regulate/investigate people's pocket books? – Don't much care about past financial records, really it's all about the future economics."

Bruce H. (HPC): "Knowing there was some discussion about these items during our last meeting, I find nothing onerous about these requirements. There is nothing requesting disclosure of personal financial information."

Jim M. (HPC): "Are these requirements appropriate as public information?"

Cathy B. (HPC): "Add 'grants' at the end of the list (8.a.10.e)

Steve A. (HPC): " " Distinguish Federal Historic Tax and MT Historic Tax

LUP: Can the required information come from previous owners?

b. (1,2)

Jim M. (HPC): "And Condition Assessment of existing building?"

LUP: Require three or four different quotes from different firms. Allow for HPO to request additional studies.

c.(1)
Cathy B. (HPC): "Add 'licensed' to real estate broker"

Jim M. (HPC): " "

c.(2)
Bruce H. (HPC): "What would be evidence of 'proof'?"

c.(3)
Cathy B. (HPC): "Is 'local' defined anywhere? If I remember right, that was an arguing point during the Merc."

Jim M. (HPC): "Or National, this does take time"

MOR: Newspapers are defunct way of advertising real estate, use a multiple listing service such as LoopNet.com

c.(4)
Steve A. (HPC): …~~meets or exceeds the listing price~~ "or, is agreed to by the current owner (scenarios)"

9. Application Requirements for Final Approval:

a.
Steve A. (HPC): "Isn't it HPC responsibility to make the final decision? If there is another presentation to the board, why can't it make final decision then?

c.(1)
Jim M. (HPC): "Need some definition [of documentation] in actual ordinance"

c.(3a)
Bruce H. (HPC): "Is there a basis for enforcement of this requirement?"

Jim M. (HPC): " "
"Define? Massing? Scale? Texture? Should we have neighborhood guidelines downtown?"

c.(3e)
Steve A. (HPC): accept or "require" a bond?

c.(4e)
Cathy B. (HPC): "If deconstruction will disturb the subsurface soils, conduct site archaeology or monitoring by an archaeologist during ground disturbing activities"

Steve A. (HPC): "Archeology? At least a site survey?"

LUP: Go further to include deconstruction of entire structure, not just the historic aspects, and tie into the City Zero-Waste policy.

20.85.085.J Criteria and Procedure for Review of Relocation and Demolition of Historic Resources - Historic Demolition/Relocation Permit

*Editor's Note: The current subsection J of 20.85.085 (**Criteria and Procedure for Review of Relocation and Demolition Historic Preservation Permit**) is proposed to be replaced in its entirety with the following language:*

1. Intent:

a. The demolition of all or portions or the relocation of properties individually listed on the National Register of Historic Places (historic resources) are considered significant actions, as they alter the character of Missoula and the neighborhoods of which they are a part. An application to demolish or relocate an historic resource is held to a very high standard, requiring submittal of comprehensive and detailed application materials.

b. To obtain an historic demolition/relocation permit for full or partial demolition, or for relocation, herein after referred to as "permit," the applicant must demonstrate that enforcement of the Historic Preservation Section (20.85.085) will cause unreasonable economic hardship to the property, and that the applicant has made a good-faith effort to find a reasonable alternative that would result in the preservation, renovation, or reuse of the historic resource, and that conditions necessary to mitigate the effects of approved demolitions are developed.

2. Applicability:

a. Any property proposed for demolition or relocation which is individually listed on the National Register of Historic Places requires an historic demolition/relocation permit. The removal of a façade or significant part of a structure may be eligible for a partial-demolition permit upon negotiation with the historic preservation officer.

b. All other provisions apply within the Historic Preservation Permit section (20.85.085) including Notice.

c. The Historic Preservation Commission and historic preservation officer reserve the right to seek outside (third-party) consult from qualified professionals in western Montana in determining whether the applicant has acted in good-faith effort, whether reasonable alternatives have been proven, and in assessing economic feasibility based on the submitted evidence.

3. Definitions:

For the purposes of this [sub]section, the following definitions apply:

Demolish, demolition, deconstruction means the razing or destruction, entirely or in significant part, of a building or structure, and includes the partial or total removal of any exterior elevation of a building or structure.

Economic Hardship means that the failure to issue a permit would amount to a taking of the owner's property without just compensation or, in the case of a low-income owner(s) failure to issue a permit would place an onerous and excessive financial burden upon such owner(s). Hardships may not be caused by the owner's negligence or intentional lack of appropriate maintenance, nor is the owner's desire to increase the property's economic return adequate grounds for relief.

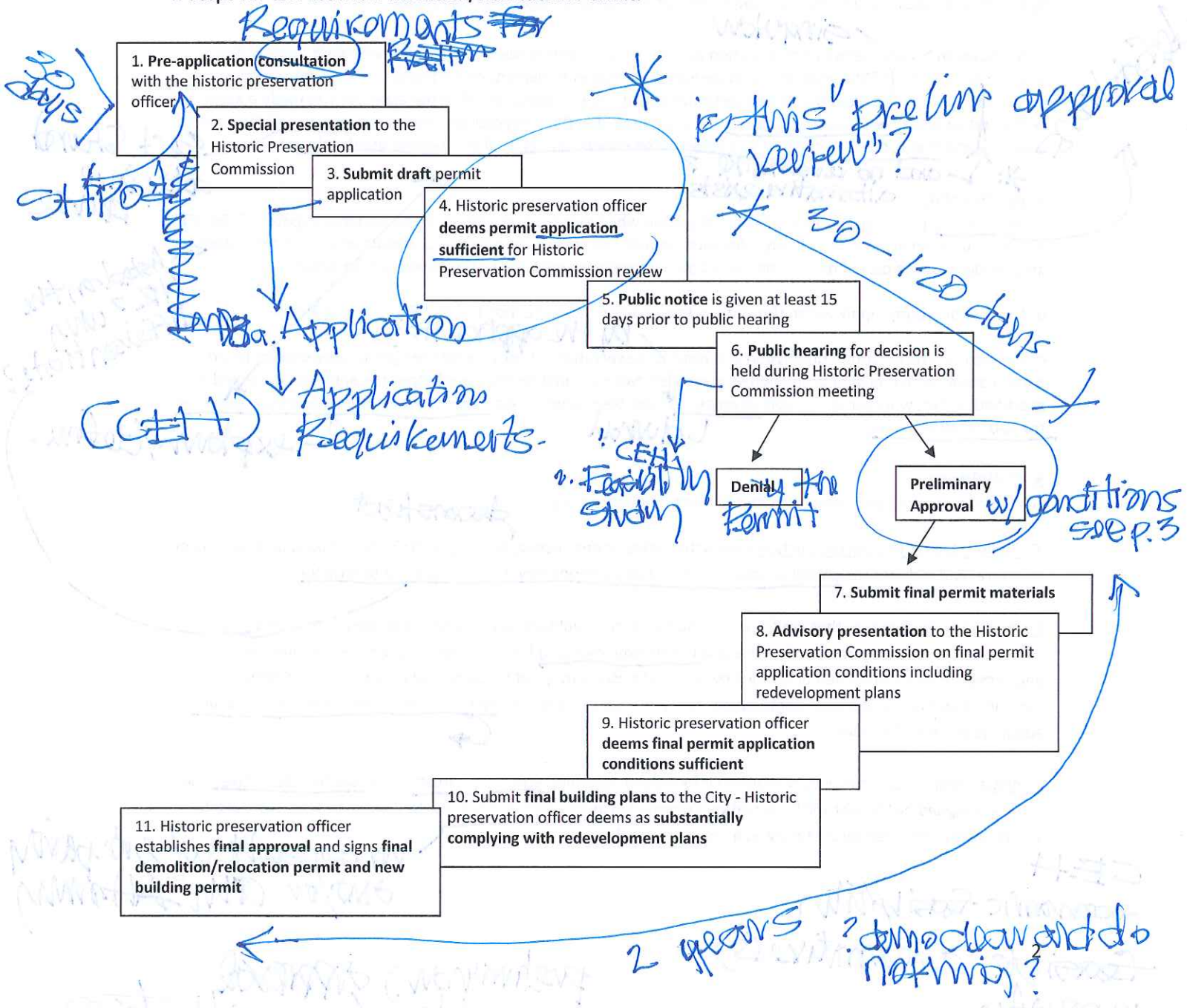
Evidence means requested and/or required information regarding economic hardship and feasible alternatives and shall be weighed by the Historic Preservation Commission as to whether it is consistent with the legal standard for an unconstitutional regulatory taking as a result of denial of a permit.

1/22/2018

Bona Fide and/or Good-faith Effort consists of a diligent and honest effort on behalf of the applicant resulting in substantive and collaborative dialogue between all parties involved regarding economic and public interest, and a willingness of the applicant to provide any information requested and as required.

Relocation means moving the structure from its original location and setting to a different location and setting of any distance. For a proposed relocation, the Historic Preservation Commission and historic preservation officer shall consider setting, location, feeling, and association as it applies to its National Register nomination, whether the structure will maintain its historic significance and integrity having been relocated, and the economic and physical feasibility associated with relocating the structure.

4. Steps for an Historic Demolition/Relocation Permit:



5. Historic Preservation Officer Review:

The applicant shall submit application requirements for preliminary approval and shall work with the historic preservation officer in creating a permit application which is sufficient for Historic Preservation Commission review.

a. The applicant shall initiate consultation and schedule a pre-application meeting with the historic preservation officer at least 30 days prior to submitting a permit application.

b. The historic preservation officer shall review and deem the application sufficient regarding requirements of 20.85.085.D and this section for preliminary review. The historic preservation officer shall send a letter of sufficiency to the applicant.

c. The historic preservation officer shall review the application in accordance with 20.85.085.F as applicable.

d. If a permit is preliminarily approved by the Historic Preservation Commission pursuant to 20.85.085.J6, as listed in the following section, the applicant shall submit application requirements for final approval to the historic preservation officer for review and to be deemed as sufficient. The historic preservation officer shall determine whether the conditions of preliminary approval have been substantially met, including but not limited to redevelopment plan review, mitigation, documentation and deconstruction plan review. If the historic preservation officer finds substantial compliance, the historic preservation officer shall finally approve the permit for demolition and subsequent building redevelopment.

6. Historic Preservation Commission Review:

The Historic Preservation Commission shall review the permit application for preliminary approval. Once the historic preservation officer has deemed the permit application sufficient for preliminary approval review, a period of no less than 30 days and no more than 120 days is initiated for the Historic Preservation Commission to reach a decision.

a. Upon fully reviewing the permit application, the Historic Preservation Commission shall hold a public hearing and may: grant preliminary approval with conditions, or deny the permit. A denial of a permit shall be accompanied by a written statement of the specific reasons for the denial.

b. Preliminary approval with conditions will be established during the public hearing if the Historic Preservation Commission finds that failure to issue a permit will result in unreasonable economic hardship to the property, and that a good-faith effort has been achieved to find a reasonable alternative that would result in the preservation, renovation, or reuse of the historic resource, and no reasonable alternative exists. The preliminary approval may include conditions including, but not limited to, mitigation, documentation, and redevelopment plan review.

c. The Historic Preservation Commission shall evaluate the evidence utilizing the following questions: *Is the evidence sufficient? Is the evidence relevant? Is the evidence competent? Is the evidence credible? Is the evidence consistent?* The Historic Preservation Commission shall also consider any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property.

d. If the Historic Preservation Commission preliminarily approves the permit, the applicant shall present redevelopment plans, mitigation plans, deconstruction plans and documentation status to the Historic Preservation Commission during an advisory meeting.

7. Pre-Application Requirements:

The following criteria is required prior to submitting a permit application:

Note: This section expands the existing concept of J.1.a.

a. Proof of Mandatory Consultation: at least 30 days prior to submitting a permit application, the applicant shall initiate formal consultation with the State Historic Preservation Office and schedule a pre-application meeting with the historic preservation officer. The applicant then shall provide a special presentation at an Historic Preservation Commission meeting, in order to gather information and comments on the permit proposal.

b. At a minimum, consultation with the State Historic Preservation Office shall be in the form of a letter requesting comments on the proposal.

8. Application Requirements for Preliminary Approval:

After the completion of the pre-application requirements, the following application information must be submitted as evidence and considered as review criteria:

Note: This section expands the existing concept of J.1.d.

a. Bona Fide Attempt to Rehabilitate: Certificate of Economic Hardship (CEH):

The applicant must provide evidence that no reasonable alternative exists through the completion and submission of a CEH and the burden of proof is on the applicant. The CEH must be submitted in narrative form and must include and examine the following as it relates to current economic and market rate data for Missoula, MT:

(1) The amount paid for the property;

(2) The date of purchase, the party from whom purchased, and a description of the business or family relationship, if any, between the owner and the person from whom the property was purchased. If property was not purchased at or close to market value, an explanation of the circumstances of the sale;

(3) The cost of any improvements since purchase and the date incurred;

(4) The assessed value of the land, and improvements thereon, according to the most recent assessments;

(5) Property taxes for the previous two years and any arrearages;

(6) Annual debt service, if any, for the previous two years;

(7) All appraisals obtained within the previous five years by the owner or applicant in connection with the purchase, financing or ownership of the property;

(8) Any listing of the property, price asked and offers received in the past five years;

(9) Any consideration by the owner for profitable and adaptive reuses for the property, including renovation studies, plans, bids and;

(10) Additional requirements for income-producing property:

(a) Annual gross income from the property for the previous five years;

(b) Itemized operating and maintenance expenses for the previous five years;

(c) Annual cash flow for the previous five years;

(d) Rent charged to tenants for the previous five years and the current market rate for rent;
(e) A comparative economic assessment for the utilization of all financial incentives currently available including but not limited to: potential Missoula Redevelopment Agency funding, Historic Tax Credits, MT Historic Tax Abatement, New Market Tax Credits;
(11) Any additional supplemental information requested or considered necessary.

b. Feasibility Study Demonstrating the Resource is Incapable of Generating a Reasonable Economic Return:
The Feasibility Study must be completed by individuals not associated with the City of Missoula or the project in review. Provisions:

(1) Written statement and itemized cost list from a licensed engineer and/or a licensed architect with experience in preservation, renovation, restoration, or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration or rehabilitation.

(2) Written statement and itemized cost list from a land-use professional which includes real estate consultants, appraisers, or other real estate professionals experienced in rehabilitation, as to the economic feasibility of preservation, restoration, renovation or rehabilitation of existing historic structures.

c. Bona Fide Attempt to Rent, Sell or Relocate Resource:
Provisions:

Note: This section expands the existing concept of J.1.b, c.

(1) The applicant must advertise the historic resource for sale using a real estate broker;
(2) The applicant must prove that asking price was reasonable during time of listing;
(3) The applicant must list the property in a major local newspaper of general circulation for a period of 90 days. At least 30 of the 90 days must take place after the permit application has been deemed sufficient for review by the historic preservation officer and before a decision has been reached by the Historic Preservation Commission. Sixty of the 90 days must have taken place within one year prior to when the permit was deemed sufficient for review by the historic preservation officer;
(4) For the 30 day listing after the historic preservation officer has deemed the permit application sufficient for review, the historic resource may not be under contract unless by an interested party who will not demolish the building. A resolution of sale by an interested party is considered satisfactory if the offer for purchase meets or exceeds the listing price.

9. Application Requirements for Final Approval:

Note: This section expands the existing concept of J.3.a.

a. If a preliminary approval for the permit has been established by the Historic Preservation Commission, then the applicant shall work with the historic preservation officer to ensure conditions will be met including documentation, deconstruction and mitigation measures, redevelopment plans and any additionally requested material. The applicant shall present the following to the Historic Preservation Commission during an advisory meeting and the historic preservation officer shall deem sufficiency of the material submitted.

Project Lead: Emy Scherrer, Historic Preservation Officer, Development Services, City of Missoula

Public Hearing: MC Planning Board, June 5, 2018

City Council, to be determined

Agenda Item: An ordinance to amend Title 20.85.085 Historic Preservation Permit, Section J: Criteria and Procedure for Review of Relocation and Demolition of Historic Resources – Historic Demolition/Relocation Permit.

Applicant: This is a city council initiated text amendment request to revise Section J. of Title 20.85.085, regarding the demolition/removal of historic resources (individually listed properties on the National Register of Historic Places).

Public Hearing Legal Ad: Published in the Missoulian on May 22nd and 27th, 2018

Notification:

- Historic Preservation Commission review
- Affected property owner review via letter
- Affected property owner informational open house on April 30, 2018
- Agency and interested party memo (attached) via email
- City web site
- Two legal ads in Missoulian

Proposal: The proposed amendments expand the existing Section J. for clarity to include subsections, an increased timeline, more detailed requirements for assessing economic feasibility, consultation and mitigation, as well as a clause that the final demolition and building permit will be granted only after a final building permit application has been submitted to the City.

Recommendation: That the Missoula City Council approve an ordinance to amend Title 20.85.085 Historic Preservation Permit, Section J: Criteria and Procedure for Review of Relocation and Demolition of Historic Resources – Historic Demolition/Relocation Permit. See attachment A.

EXHIBIT 5

MISSOULA CONSOLIDATED PLANNING BOARD

I. PROPOSAL

Amend Title 20 to expand the existing section J. of Title 20.85.085, regarding the demolition/removal of historic resources (individually listed properties on the National Register of Historic Places), with revisions for clarity which include subsections, an increased timeline, more detailed requirements for assessing economic feasibility, consultation and mitigation, as well as a clause that the final demolition and building permit will be granted only after a final building permit application has been submitted to the City.

II. RECOMMENDED MOTION

That the Missoula City Council approve an ordinance to amend Title 20.85.085 Historic Preservation Permit, Section J: Criteria and Procedure for Review of Relocation and Demolition of Historic Resources – Historic Demolition/Relocation Permit.

III. BACKGROUND

Issue:

While using the historic preservation demolition permit process for the first time since the existing language was implemented, it became clear that Section J. of Chapter 20.85.085 lacked sufficient detail to guide the Historic Preservation Commission (HPC), applicants, and city staff in permit review and in making a decision regarding permit approval or denial, and that the regulations could benefit from greater clarity and refinement.

Timeline:

In the summer of 2016, the HPC was requested to review a permit for the demolition of the Missoula Mercantile, a property which was individually listed on the National Register of Historic Places. The existing ordinance regarding demolition of historic resources was unclear regarding certain procedural elements and did not provide detailed application requirements, making it difficult for the HPC to adequately review for economic hardship, and is generally broad in nature. Further, it did not clarify key terms such as consulted, good faith effort, alternative, economic use or supporting documentation. The HPC initially denied the permit application, which was appealed to City Council and was overturned.

Following the appeal, the HPC and Historic Preservation Officer (HPO) expressed the need to clarify and refine the process. On August 17th, 2017, City Council member Gwen Jones met with the HPC to gain a better understanding of their concerns. Ms. Jones has since been working with the HPO in drafting appropriate revisions. The HPO has presented proposed revisions to council members at an LUP meeting on January 17th, 2018, and council members unanimously supported bringing revisions to Planning Board. The HPO presented

the proposed revisions to the HPC during the February HPC meeting and collected comments. The HPO then presented updated draft language with HPC comments implemented and the HPC approved a motion to write a letter to planning board in favor of the proposed amendments, see attachment F. A letter seeking comment was sent to all property owners of individually listed properties on the National Register of Historic Places on April 17th, 2018, and the HPO hosted an informational open house for interested property owners on April 30th, 2018, see attachment E. No concerns were raised during this time and no comments were submitted. Agency and interested parties were sent the proposed revisions via email for review and comment on May 8th, 2018, see attachment B.

Current Regulation and Updates

The current regulation is proposed to be replaced in its entirety. It is very brief, eludes to a 90 day review period, has minimal descriptions for submittal material, includes confusing references to certain terms, and provides minimum mitigation requirements. The proposed amendments expand the existing Section J. and addresses these concerns to reflect best practices and includes:

- Additional subsections including Intent, Applicability, Definitions and Application Overview
- Definitions for Demolish, Demolition, Deconstruction, Economic Hardship, Evidence, Bona Fide, Consultation and Relocation
- A visual step by step process and timeline, and an increased maximum timeframe for HPC review from 90 days to 120 days
- More detailed pre-application requirements
- More detailed consultation requirements with the HPO, HPC and SHPO
- Expanded detail for acceptable and typical types of information that addresses economic feasibility
- Expanded detail for mitigation techniques including a redevelopment plan, documentation plan, and deconstruction plan
- And ultimately, a clause that the final demolition/relocation/and building permit will be granted only after a final building permit application has been submitted to the City, as well as evidence that all other requirements for final approval have been completed.

The draft language was written based on research regarding best practice in historic preservation demolition ordinances, and utilized preservation law educational materials from the National Trust for Historic Preservation, California's Technical Assistance Series – Drafting Effective Historic Preservation Ordinances, and borrows language from an assortment of other city's ordinances including Bozeman MT, Bellingham WA, Washington D.C., Butte MT, New Orleans LA and Oakland CA.

See the proposed language in attachment A: Title 20.85.085 Historic Preservation Permit, Section J: Criteria and Procedure for Review of Relocation and Demolition of Historic Preservation Permit, dated May 23rd, 2018.

IV. AGENCY AND PUBLIC COMMENT

Early in the drafting process comment was sought from the Missoula Organization of Realtors (MOR) as to language related to application requirements regarding an applicant's bona fide attempt to rent, sell or

relocate a historic resource. Many of the MOR comments received were taken into consideration in the current draft. See attachment C, dated April 16th, 2018.

On May 8, 2018, Development Services requested agency and interested party review and comment on the proposed amendments, see attachment B. One public comment was received as of May 22, 2018, see attachment D, and no agency comments were submitted.

V. REVIEW CRITERIA

Title 20, Section 20.85.030 (G) states "In reviewing and making decisions on zoning amendments, the Zoning Officer, Planning Board, and City Council must consider" a set of criteria. The following is a review of the proposed regulations relative to the criteria listed in Section 20.85.030 (G).

1. Whether the proposed zoning ordinance text amendment is consistent with §76-2-304(2) MCA

> MCA 76-2-304(2) requires that governing bodies, in adopting zoning regulations, must be made in accordance with a growth policy and be designed to secure safety from fire and other danger, promote public health, safety, and general welfare and facilitate the adequate provision of transportation, water, sewerage, and schools, parks and other public requirements. Also, the governing body shall consider the reasonable provision of adequate light and air; the effect on motorized and non-motorized transportation systems; the promotion of compatible urban growth, the character of the district and its peculiar suitability for particular uses, and conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

The proposed amendments are in accordance with the 2015 Our Missoula Growth Policy (Growth Policy.) The Growth Policy recognizes the need to protect and respect our historic resources and historic preservation is a key aspect of Chapter 3, Livability. Chapter 3 objectives state to "facilitate historic preservation, cultural programs and heritage preservation" and to "support sustainable development practices through historic preservation planning." Goal L1 states, "Missoula values its cultural heritage through historic preservation." The proposed amendments provide updated regulations and standards that specifically address historic preservation and appropriate review and consideration for any proposed demolition of a historic resource.

The proposed language is consistent with the framework of the existing Section J., and is intended to expand the major concepts of the ordinance including economic hardship, finding alternatives, consultation and mitigation. Applicability does not change, and applies only to individually listed buildings on the National Register of Historic Places; 55 buildings in Missoula.

This update will preserve the provision of adequate light and air and have no negative effect on motorized and non-motorized transportation. Permit applications will be reviewed administratively and by the HPC on a case-by-case basis for their compliance with zoning.

The proposed amendments including the requirement of a redevelopment plan which promotes compatible urban growth, community character, and conserves the value of buildings and considers the historic and most appropriate use of land.

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. (20.25.072)*

The existing ordinance regarding demolition of historic resources does not provide for sufficient application requirements for the HPC to adequately review for economic hardship and is generally broad in nature. The proposed amendments address the need for a clearer and more refined process for review.

3. Whether the proposed zoning ordinance amendments are in the best interests of the city as a whole. (20.25.072)

The proposed amendments address core values of the Missoula community, historic preservation and the protection and consideration of community resources and neighborhood character as stated in the 2015 Growth Policy.

VII. Attachments

A. Proposed draft amendments to Title 20.85.085 Historic Preservation Permit, Section J: Criteria and Procedure for Review of Relocation and Demolition of Historic Resources – Historic Demolition/Relocation Permit, dated May 23rd, 2018
B. Agency and public comment memo, dated May 8th, 2018
C. MOR Comment, dated April 16th, 2018
D. Public Comment, dated May 20th, 2018
E. Affected property owners comment memo, dated April 17th, 2018
F. HPC Letter to planning board, dated March 5th, 2018
G. Sire history can be accessed here: http://missoula.siretechnologies.com/sirepub/mtgviewer.aspx?meetid=2525&itemid=45412&player=silverlight

20.85.085.J Criteria and Procedure for Review of Relocation and Demolition of Historic Resources - Historic Demolition/Relocation Permit

*Editor's Note: The current subsection J of 20.85.085 (**Criteria and Procedure for Review of Relocation and Demolition Historic Preservation Permit**) is proposed to be replaced in its entirety with the following language:*

1. Intent:

a. The demolition or relocation of properties individually listed on the National Register of Historic Places are considered significant actions, as historic sites and structures are community resources and contributing elements to the character of Missoula. The removal of historic resources alters the established character of the neighborhoods of which they are a part. An application to demolish or relocate an historic resource is held to a very high standard, requiring submittal of comprehensive and detailed application materials.

b. The purpose of this permit process is to evaluate and ensure that the applicant has considered reasonable and economically feasible alternatives to demolition or relocation, and sufficiently mitigate the effects of the potential removal of a historic resource.

c. To obtain an historic demolition/relocation permit, herein after referred to as "permit," the applicant must demonstrate that:

(1) Denying the application will cause unreasonable economic hardship to the viability of the property;
(2) That the applicant has made a bona fide effort to find a reasonable alternative that would result in the preservation, renovation, or adaptive reuse of the historic resource and;
(3) That conditions necessary to mitigate the effects of approved demolition/relocation are developed.

d. This permit process also ensures that if a historic resource is removed, redevelopment of the site occurs in a way that mitigates the loss and enhances the many elements that are unique to the fabric, theme and character of each neighborhood and area within Missoula, and is sensitive to the significance of the site.

2. Applicability:

a. Any property proposed for demolition or relocation which is individually listed on the National Register of Historic Places requires an historic demolition/relocation permit.

b. Subsequent redevelopment requires a building permit and shall not include plans which leave the site without building(s) or structure(s), unless the existing character of the area does not include building(s) or structure(s).

c. All other provisions apply within the Historic Preservation Permit section (20.85.085) including Notice.

d. It is anticipated that every application will have a set of factual circumstances unique onto itself, and that proportionality of the type and scale of the proposed project will be considered during review. The Historic Preservation Commission and historic preservation officer acknowledge that requirements will vary from one context to another and should be assessed on an individual basis.

3. Definitions:

For the purposes of this [sub]section, the following definitions apply:

Bona Fide consists of a diligent effort on behalf of the applicant resulting in substantive and collaborative dialogue between all parties involved regarding economic and public interest, and a willingness of the applicant to provide any information requested and as required.

Consultation: means the act or process of formally engaging in an active and meaningful discussion in order to seek information and advice. Depending on the circumstances, further consultation may be required on matters and issues that initial consultation may not have acknowledged.

Demolish, demolition, deconstruction means the razing, destruction, or dismantling of an Historic Resource to the degree that its character defining features are substantially obliterated.

Economic Hardship means that the structure has no viable economic life remaining. "No viable economic life" means the costs of repair/and or rehabilitation to bring the structure to an occupiable condition is unreasonable. Hardships may not be caused by the owner's neglect or intentional lack of appropriate maintenance (refer to 20.85.085.K), nor is the owner's desire to increase the property's economic return adequate grounds for relief.

Evidence means requested and/or required information regarding the history of the site, economic hardship and feasible alternatives, and shall be weighed by the Historic Preservation Commission as to whether denying the application will cause unreasonable economic hardship to the viability of the property and whether reasonable alternatives exist.

Relocation, in addition to the definition in 20.30.030, means moving the structure from its original location and setting to a different location and setting of any distance. For a proposed relocation, the Historic Preservation Commission and historic preservation officer shall consider setting, location, feeling, and association as it applies to its National Register nomination, whether the structure will maintain its historic significance and integrity having been relocated, and the economic and physical feasibility associated with relocating the structure.

Unreasonable means an amount of effort and difficulty that is oppressively burdensome, onerous and/or excessive.

4. Application Overview

a. The applicant shall work with the historic preservation officer in creating and submitting a permit application which is accurate and sufficient for Historic Preservation Commission preliminary approval review and historic preservation officer final review.

b. Application sufficiency is determined based on review of accuracy and completeness of the application consistent with section 20.85.020.2 and 3.

c. The review and approval process for the permit application is developed in two stages:

(1) The first stage is preliminary approval review and requires action by the Historic Preservation Commission during a public hearing. Action shall take place in the form of preliminary approval, preliminary approval with conditions, or denial of the permit. Submittal material for preliminary approval review is described in section 20.85.085.J.10.

(2) If the permit is preliminarily approved or preliminarily approved with conditions in stage one, then the application proceeds to stage two. The second stage is final approval review and requires submittal of additional information including a redevelopment plan, and may consider advice from the Historic Preservation Commission. The historic preservation officer either finally approves or denies the permit. Submittal material for Final Approval Review is described in section 20.85.085.J.11.

d. The permit is not finalized and action on the permit cannot go forward until the final approval occurs during stage two.

e. No demolition/relocation permit shall be issued unless a permit for subsequent redevelopment is issued simultaneously under section 20.85.085.J.

f. An application filing fee is required for processing the permit application and is due at the time of preliminary review application submittal. The fee is established through Resolution and is non-refundable.

5. Application Timeline:

a. A complete and accurate application for the permit preliminary approval review must be filed with the historic preservation officer in Development Services no sooner than 30 days after a pre-application meeting.

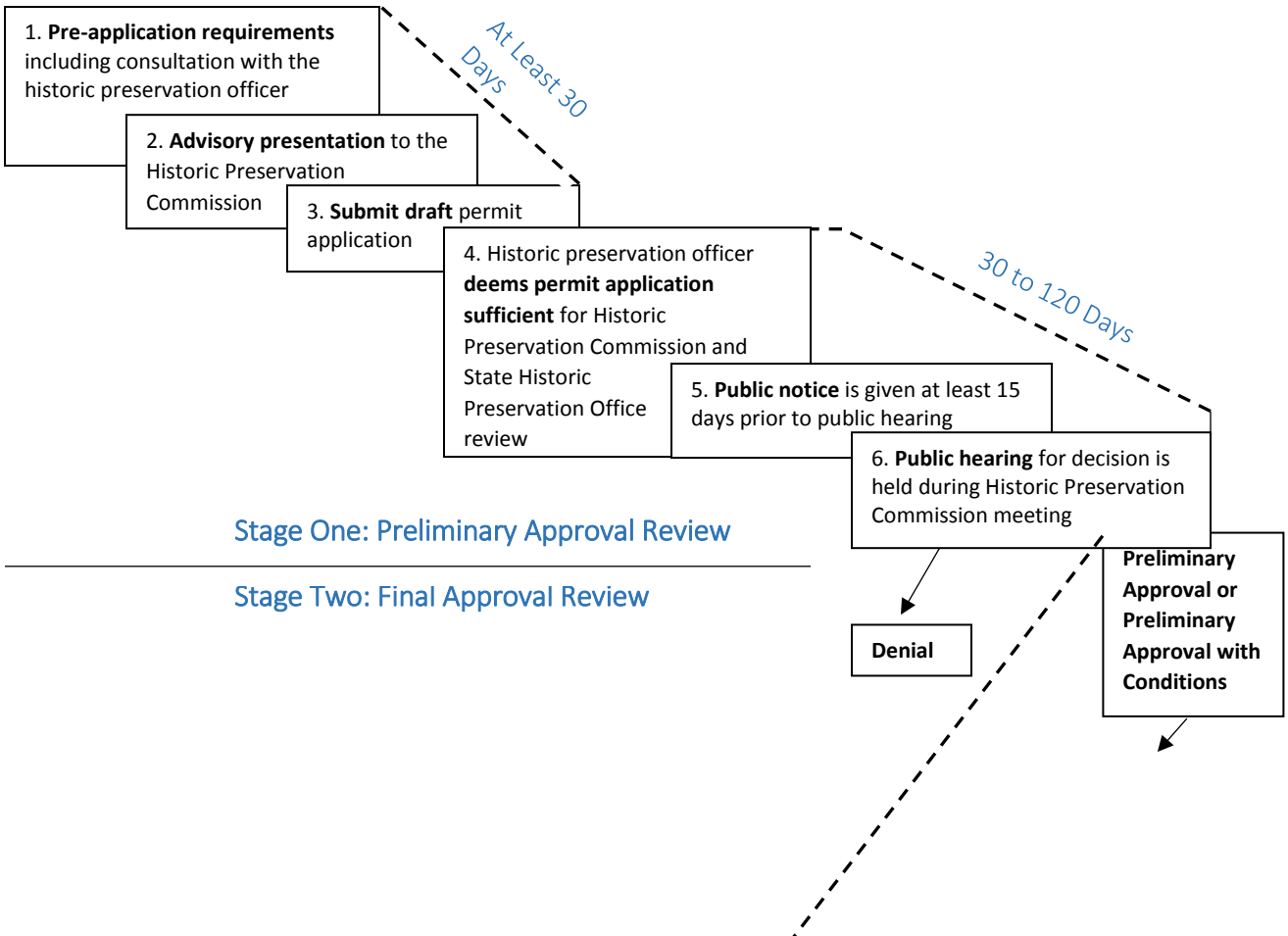
b. Once the historic preservation officer has deemed the permit application sufficient for preliminary approval review, a period of no less than 30 days and no more than 120 days is initiated for the Historic Preservation Commission to reach a decision regarding the permit application for preliminary approval.

c. The Historic Preservation Commission may request an extension of time from the applicant. If the Historic Preservation Commission fails to reach a preliminary decision within the time frame specified herein, and if no time extension has been granted, the application will stand as preliminarily approved.

d. The applicant has two years from the date of preliminary approval, or preliminary approval with conditions, to complete any preliminarily approved conditions and substantially comply with requirements for final approval. If the applicant has not continued to pursue a demolition permit at the end of the two years from the inception of the application, the application will be deemed denied by the historic preservation officer and the applicant may start the process again.

e. The applicant may request an extension from the historic preservation officer if they are unable to complete requirements for final approval within the time frame specified herein, and if no time extension has been granted, the application will stand as denied.

f. The following figure indicates the steps associated with each stage of application review:



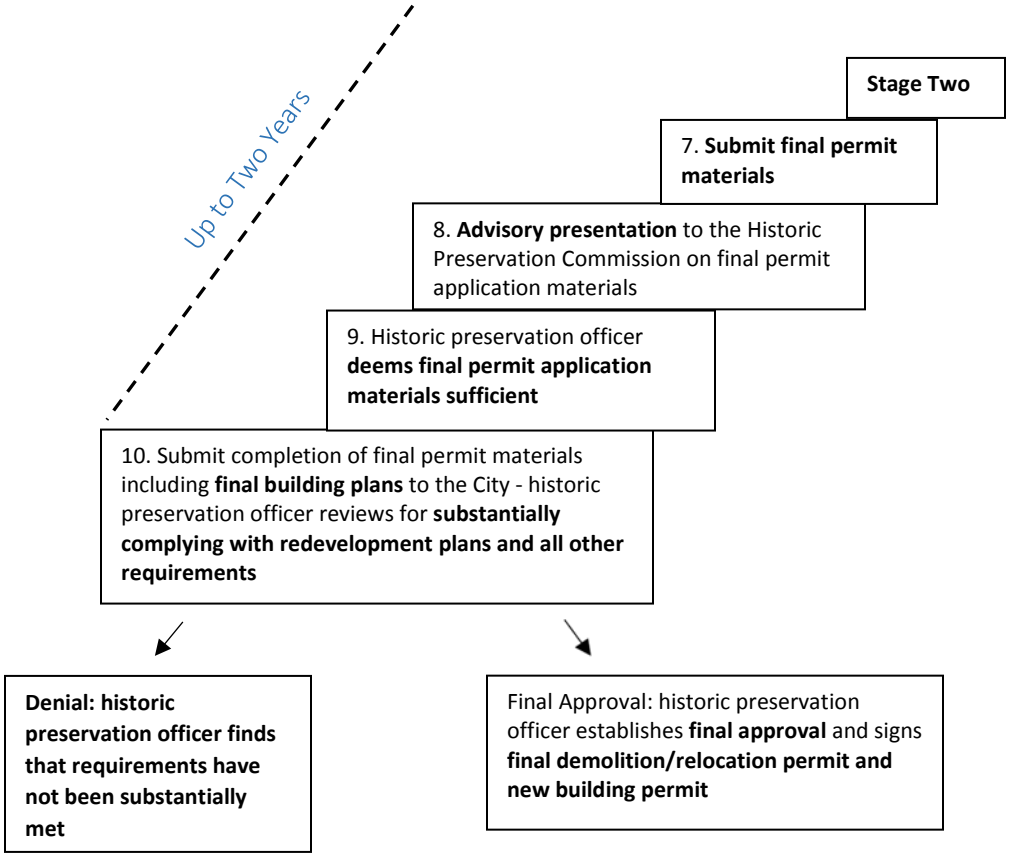


Figure 20.85.085-1

6. Pre-Application Requirements:

Note: This section expands the existing concept of J.1.a, regarding consultation.

a. The intent of pre-application requirements is to initiate active mandatory consultation, review permit application materials, and outline the review process.

b. At least 30 days prior to submitting a permit application, the applicant shall initiate consultation by scheduling a pre-application meeting with the historic preservation officer.

c. After the pre-application meeting, the applicant shall provide an advisory presentation at an Historic Preservation Commission meeting, in order to gather information and consider comments on the permit proposal.

d. After the pre-application meeting, the historic preservation officer may notify the State Historic Preservation Office that the process for a potential permit application has been initiated.

Commentary: If the applicant is not the building owner, such as an architect or consultant, it is strongly encouraged that the building owner be willing and available to work with the historic preservation officer and Historic Preservation Commission throughout the permit application process.

7. Historic Preservation Officer Review:

a. The historic preservation officer shall meet with the applicant in a pre-application meeting to discuss the proposal, review permit application material, and outline the review process.

b. The historic preservation officer shall review and deem the application sufficient in accordance with 20.85.085.D and F as applicable, and this section for preliminary approval review (stage one). Once deemed sufficient, the historic preservation officer shall send a letter of sufficiency to the applicant.

c. The historic preservation officer shall send a copy of the application to the State Historic Preservation Office, together with a cover letter requesting review and comment. The State Historic Preservation Office shall have 15 days from the receipt of the letter to provide comment.

d. The historic preservation officer reserves the right to seek outside (third-party) consult from qualified professionals in western Montana, in determining whether the submittal material accurately and sufficiently addresses the required application information, at no cost to the applicant.

e. If a permit is preliminarily approved or preliminarily approved with conditions by the Historic Preservation Commission pursuant to 20.85.085.J8, the applicant shall submit application requirements for final approval to the historic preservation officer for review and to be deemed as sufficient (stage two, 20.85.085.J.11).

f. The historic preservation officer shall determine whether the conditions of preliminary approval and requirements of final approval have been substantially met.

g. If the historic preservation officer finds substantial compliance with the intent of mitigating adverse effect, the historic preservation officer shall finally approve the permit for demolition and subsequent redevelopment (building permit).

h. The historic preservation officer may consult with the Historic Preservation Commission Chair, the Director of Development Services and relevant city staff in reviewing final application materials and reaching a final decision.

8. Historic Preservation Commission Review:

a. The Historic Preservation Commission shall review the permit application for preliminary approval consideration (stage one). Once the historic preservation officer has deemed the permit application sufficient for preliminary approval review, a period of no less than 30 days and no more than 120 days is initiated for the Historic Preservation Commission to reach a decision regarding the permit application for preliminary approval review.

b. Upon fully reviewing the permit application, the Historic Preservation Commission shall hold a public hearing and may: grant preliminary approval, preliminary approval with conditions, or deny the permit. A denial of a permit shall be accompanied by a written statement of the specific reasons for the denial.

c. Preliminary approval will be established during the public hearing if the Historic Preservation Commission finds that failure to issue a permit will result in unreasonable economic hardship to the viability of the property, and that a bona fide effort has been made to find reasonable alternatives that would result in the preservation, renovation, or adaptive reuse of the historic resource, and no reasonable alternatives exist.

d. The Historic Preservation Commission should consider the evidence utilizing the following guiding questions: *Is the evidence sufficient? Is the evidence relevant? Is the evidence competent? Is the evidence credible? Is the evidence consistent?* The Historic Preservation Commission should also consider any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property under 20.85.085.K.

e. The Historic Preservation Commission reserves the right to seek outside (third-party) consult from qualified professionals in western Montana, in determining whether the applicant has put forth a bona fide effort, whether reasonable alternatives have been proven, and in assessing economic feasibility based on the submitted evidence.

9. Review Criteria

The following must be considered In reviewing and making decisions on demolition/relocation permit applications:

Note: This section expands the existing concept of J.1

a. Whether the structure still maintains viable economic life.
b. Whether the structure is capable of generating a reasonable economic return if preserved, restored or rehabilitated.
c. Whether the applicant has made a bona fide effort to find a reasonable alternative that would result in the preservation, renovation or rehabilitation of the structure.
d. The historic preservation officer must consider whether sufficient mitigation efforts have been met, including but not limited to, documentation, mitigation, redevelopment and deconstruction.

10. Application Requirements for Preliminary Approval Review:

After the completion of the pre-application requirements, the following application information must be submitted as evidence and considered to address the review criteria:

Note: This section expands the existing concept of J.1.d,e.

a. Certificate of Economic Hardship (CEH):

The purpose of the CEH is to provide information as to whether the structure still maintains viable economic life. The burden of proof is on the applicant. The CEH must be submitted in written form and must include and examine the following as it relates to current economic and market rate data for Missoula, MT. Provisions:

(1) The assessed value of the land, and improvements thereon, according to the most recent assessments;
(2) Property taxes for the previous two years and any arrearages;
(3) All appraisals obtained within the previous five years by the past and current owner or applicant in connection with the purchase, financing or ownership of the property;
(4) Any listing of the property, price asked and offers received in the past five years;
(5) Any environmental assessments or knowledge of environmental hazards associated with the property;
(6) Any consideration by the owner for profitable adaptive reuses for the property, including renovation studies, structure and site plans, bids and;
(7) Additional requirements for income-producing property:
(a) Annual gross income from the property for the previous five years;
(b) Itemized operating and maintenance expenses for the previous five years;
(c) Annual cash flow for the previous five years;
(d) Rent charged to tenants for the previous five years and the current market rate for rent;
(e) A comparative economic assessment for the utilization of all financial incentives currently available including but not limited to: potential Missoula Redevelopment Agency funding, Federal Historic Tax Credits, MT Historic Tax Abatement, New Market Tax Credits, historic preservation grants, and any other available funding;
(8) Optional: Additional information such as the following may be helpful in satisfying the burden of proof and in clarifying whether an economic hardship is taking place:
(a) The date of purchase

(b) If property was not purchased at or close to market value, an explanation of the circumstances of the purchase and/or sale;
(c) A detailed list with costs of any improvements since purchase and the date incurred;
(d) Annual debt service, if any, for the previous two years;
(e) Title report and current balance on all mortgages, trust indentures, and on all debts that encumber the property

b. Feasibility Study/Economic Analysis Return:

The purpose of the feasibility Study is to provide information as to whether the structure is capable of generating a reasonable economic return if preserved, restored or rehabilitated. The feasibility study must be completed by a third party not associated with the City of Missoula or the project in review, and must be completed by professionals from or experience in their field in western Montana. Provisions:

(1) Written statement and itemized cost list from a licensed engineer and/or a licensed architect with experience in preservation, renovation, restoration, or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration or rehabilitation.

(2) Written statement and itemized cost list from a land-use professional which includes real estate consultants, appraisers, or other real estate professionals experienced in rehabilitation, as to the economic feasibility of preservation, restoration, renovation or rehabilitation of existing historic structures.

c. Bona Fide Attempt to Rent, Sell or Relocate Resource:

The intent of listing the structure is to ensure that parties interested in saving the structure as opposed to demolishing it are alerted and offered a period of time to purchase the property. It is highly recommended that any individually listed property be listed on the National Trust for Historic Preservation online real estate page for the entire duration that the property is listed for sale. Provisions:

Note: This section expands the existing concept of J.1.b, c.

(1) The applicant must advertise the historic resource for sale using a licensed real estate broker;
(2) The applicant must illustrate that the asking price was comparable to the value of equivalent local structures of use and form during time of listing;
(3) The applicant must list the property on a Multiple Listing Service (such as Loopnet.com) and the National Trust for Historic Preservation online real estate page for a period of at least 90 days within the past six months prior to submitting an application.
(4) A resolution of sale by an interested party is considered satisfactory if the offer for purchase meets or exceeds the listing price, or is agreed to by the current owner.

d. Any additional supplemental information considered necessary and requested by the Historic Preservation Commission and/or historic preservation officer to address review criteria.

11. Application Requirements for Final Approval Review:

Note: This section expands the existing concept of J.3.a.

a. The intent of application requirements for final approval review is to ensure that if a preliminary approval or preliminary approval with conditions for the permit has been established by the Historic Preservation Commission, then proper mitigation, documentation, deconstruction and redevelopment plans are established and are consistent with Review Criteria.

b. The applicant shall work with the historic preservation officer to ensure requirements are met and will establish a plan for each final approval requirement and compliance with any preliminarily approved conditions established by the Historic Preservation Commission.

c. The applicant shall present the proposed plans (including documentation, mitigation, deconstruction and redevelopment) for final approval review to the Historic Preservation Commission during an advisory presentation, and the Historic Preservation Commission may provide input as to recommendations of final approval, to be considered by the historic preservation officer.

d. The following must be submitted:

(1) Documentation Plan:

All historic resources preliminarily approved for demolition or relocation must be fully documented using Historic American Building Survey (HABS) or HABS-quality procedure as defined in 20.30.030E.

(a) Documentation shall happen before the final demolition/relocation permit is issued;
(b) Documentation must be produced by a professional who satisfies professional qualification standards for history, archeology or architectural history, as established by the National Park Service and published in the Code of Federal Regulations, 36 CFR Part 61;
(c) Documentation may be submitted as early in the process as the applicant desires to support the requested action.

(2) Mitigation Plan for Demolition or Relocation:

In addition to documentation, the applicant must provide a proposal to mitigate for adverse effect caused by demolition or relocation. Possible mitigation efforts include, but are not limited to, designated interpretive space, brick and mortar projects, National Register nomination updates and additions, a preservation plan utilizing the Secretary of the Interior's Standards, a development agreement with the City, and an archeological study. Should the applicant be applying for a relocation permit, additional preservation planning documents could apply which may include plans for stabilization and/or restoration.

Note: This section expands the existing concept of J.3.b.

(3) Redevelopment Plan:

The applicant shall consult with the historic preservation officer in creating appropriate redevelopment plans for the site and may consider advice from the Historic Preservation Commission.

(a) Redevelopment should be compatible with the character of the surrounding neighborhood, reflect the historic resource to be demolished or relocated, is sensitive to the significance of the site, and must adhere to any applicable design overlays within the City of Missoula.
(b) Redevelopment plans shall be oriented with a north arrow at the top of the page and shall include exterior elevations, materials, site boundaries, street and alley frontages with names, location of all structures with distances to the nearest foot between buildings and from buildings to property lines, and must conform to all applicable regulations.

(c) The applicant must demonstrate the ability to complete the project. The City Building Official may require a bond, letter of credit or cash deposit as a demonstration that the financial backing for the replacement structure is adequate to complete the project.

(4) Deconstruction Plan:

All historic structures approved for demolition must be deconstructed in total rather than demolished, with deconstructed items to be reused. Property owners are held responsible for all costs associated with deconstruction.

(a) The applicant shall ensure that a local deconstruction specialist is consulted on the deconstruction process, for purposes of identifying opportunities for recovering and reusing materials within the structure.

(b) Prior to onset of deconstruction, the applicant and the deconstruction contractor shall meet with the historic preservation officer to identify historic features and items within the structure that are important to retain for potential reuse in the new structure or for preservation or interpretive purposes.

(c) The applicant shall submit a deconstruction plan summarizing timing and approach including a preliminary list of identified historic items, and must be approved by the historic preservation officer. The applicant shall present plans to the Historic Preservation Commission during an advisory presentation.

(d) The deconstruction specialist shall use their best effort to recover as many historic or non-historic features and items as is feasible, taking into consideration the age and condition of the materials, the safety of workers engaged in the deconstruction efforts, environmental abatement needs, and other conditions of the structure and worksite.

(5) Any additional supplemental information considered necessary and requested by the historic preservation officer to address conditions of mitigation.

12. Exceptions:

The historic preservation officer may waive items listed in 20.85.085.J if they are not applicable to the specific review requested by the ordinance. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained, the applicant shall file with the permit application a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained. The historic preservation officer shall deem whether the reasons are sufficient or not.

13: Permit Application Checklist:

Historic Demolition/Relocation Permit Checklist for Required Material

Stage One - Preliminary Permit Approval Review Requirements:

____ Certificate of Economic Hardship (CEH)

____ Feasibility Study

____ Record of Bona Fide Attempt to Rent, Sell or Relocate Property

____ Any Additional Supplemental Information Requested or Considered Necessary

Stage Two - Final Permit Approval Review Requirements:

____ HABS-Quality Documentation Plan of the Historic Resource

____ Mitigation Plan for Adverse Effect

____ Redevelopment Plan and Economic Proof

____ Deconstruction Plan

____ Any Additional Supplemental Information Requested or Considered Necessary

Existing Subsection J of 20.85.085, to be replaced in its entirety:

J. **Criteria and Procedure for Review of Relocation and Demolition Historic Preservation Permit**

[Codifier's note: A typo in this part was corrected and updated on March 22, 2016. The automatic numbering in this section was updated and corrected so the first paragraph entitled "Intent" began at "A" and all subsequent letters in the section were updated accordingly. The "J" preceding "Criteria and Procedure for Review of Relocation and Demolition Historic Preservation Permit" was "W" in the previous on line version. No other changes were made to this section. Page numbers may have changed as a result of the addition of this codification note.]

1. **Criteria for Review:**

The Historic Preservation Commission shall review the HPP application for compliance in accordance with the following criteria:

a. The applicant has consulted with the Historic Preservation 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 has advertised the Historic resource for sale in a local newspaper of general circulation for a period of 30 days ;

c. The applicant's good faith efforts to find a purchaser interested in acquiring and preserving, renovating, or reusing the historic resource have failed;

d. Denying the application would prevent all reasonable economic use of the property; and

e. The applicant shall provide the historic preservation officer supporting documentation demonstrating that the above criteria are met.

2. **Relocation and Demolition Delay:**

Upon receipt of a completed HPP application for demolition or relocation, the Historic Preservation Commission may impose a relocation or demolition delay for 90 days to allow sufficient time to explore preservation of the historic resource.

3. **Mitigation:**

a. If an HPP for relocation or demolition is approved, the applicant shall mitigate the adverse effects of relocation or demolition by providing, to the extent possible, documentation, similar to HABS/HAER, of the historic resource prior to undertaking the relocation or demolition.

b. 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.

Existing Subsection D of 20.85.085 to be amended:

D. **Application Filing**

1. Parties seeking an HPP are strongly encouraged to schedule a pre-application meeting with the historic preservation officer to obtain guidance about the application process, unless otherwise expressly stated.

Existing Subsection G of 20.85.085 to be amended:

G. **Commission Action on Historic Preservation Permit Applications.**

1. Except for historic preservation officer reviewed alterations under Section 20.85.080.F.5, the Historic Preservation Commission shall review and decide on an Historic Preservation Permit (HPP) application at a scheduled public meeting. The Commission's decision shall occur within 60 days from the date the completed application was received ~~(90 days for applications involving a demolition or relocation)~~. If the Historic Preservation Commission is unable to process the request within 60 days of receipt of the completed application, the Historic Preservation 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 requested or granted by the applicant then the Historic Preservation Permit (HPP) is approved. See section 20.85.085.J for timelines and procedures associated with permits for the demolition or relocation of historic resources.

MISSOULA
THE GARDEN CITY
HUB OF FIVE VALLEYS

DEVELOPMENT SERVICES

435 RYMAN • MISSOULA, MT 59802 - 4297 • (406) 552-6630 • FAX: (406) 552-6053

MEMORANDUM

TO: Jim Nugent, City Attorney
Marty Rehbein, City Clerk
Jason Diehl and Gordy Hughes, City Fire Department
Shannon Therriault, Health Department
Donna Gaukler and Elizabeth Erickson, City Parks Department
Mike Brady, City Police Department
Ellen Buchanan, MRA
Eran Pehan, Housing and Community Development

CC: John Engen, Mayor
City Council Members
Dale Bickell, City CAO
John Newman, Chair, Planning Board
Matt Loomis, Chair, Design Review Board
Missoula Organization of Realtors
Chamber of Commerce
Missoula Building Industry Association
Office of Neighborhoods
CAPS
Jim McDonald, Chair, Historic Preservation Commission
Missoula Downtown Association
Interested citizens

FROM: Emy Scherrer, Historic Preservation Officer, Development Services

DATE: May 8, 2018

RE: Ordinance amending Title 20 City Zoning updating Chapter 20.85.085 Section J. Criteria and Procedure for Review of Relocation and Demolition of Historic Resources

This is a City Council initiated request to amend Title 20 City Zoning Ordinance, Chapter 20.85.085 Historic Preservation Permit (HPP), updating Section J. regarding historic preservation permitting requirements for relocation and demolition of historic resources.

While recently using the historic preservation demolition permit process, it became clear that Section J. of Chapter 20.85.085 lacked sufficient detail to guide the Historic Preservation Commission (HPC), and that the regulations could benefit from greater clarity and refinement. The HPC and Historic Preservation Officer (HPO) expressed the need to clarify and refine the process. On August 17th, 2017, City Council member Gwen Jones met with the HPC to gain a better understanding of their concerns. Ms. Jones has since been working with the HPO in drafting appropriate revisions. The HPO has presented potential

revisions to council members at an LUP meeting on January 17th, 2018, and council members supported bringing revisions to Planning Board. A letter seeking comment was sent to all property owners of individually listed properties on the National Register of Historic Places on April 17th, 2018, and the HPO hosted an informational open house for interested property owners on April 30th, 2018. No concerns were raised during this time.

The proposed amendments expand the existing Section J. to include:
- Additional subsections including Intent, Applicability, Definitions and Application Overview
- Definitions for Demolish, Demolition, Deconstruction, Economic Hardship, Evidence, Bona Fide, Consultation and Relocation
- A visual step by step process and timeline, and an increased maximum timeframe for HPC review from 90 days to 120 days
- More detailed pre-application requirements
- More detailed consultation requirements with the HPO, HPC and SHPO
- Expanded detail for acceptable and typical types of information that addresses economic feasibility
- Expanded detail for mitigation techniques including a redevelopment plan, documentation plan, and deconstruction plan
- And ultimately, a clause that the final demolition/relocation/and building permit will be granted only after a final building permit application has been submitted to the City, as well as evidence that all other requirements for final approval have been completed.

The attached documents provide proposed amendment language as well as the existing language.
For additional reference, the current Historic Preservation Permit (HPP) 20.85.085, can be viewed at:
https://library.municode.com/mt/missoula/codes/code_of_ordinances?nodeId=TIT20ZO_CH20.85REAPPR_20.85.085HIPRPEHP

Agency and interested citizen comments are requested. Comments received by **Monday, May 21, 2018** will be included in an informational packet to the Planning Board prior to their public hearing. Comments will continue to be taken by Planning Board after this time until the public hearing is closed. Written comments received by noon on June 4, 2018 will be forwarded under separate cover to Planning Board prior to their meeting.

After agency input, the Planning Board will review and provide recommendations to the City Council for their final review, recommendation, and decision. Should you wish to attend, the Planning Board will hold a public hearing on **Tuesday, June 5, 2018** beginning at 7:00 p.m., in the Missoula City Council Chambers, 140 W. Pine Street, Missoula, MT. Printed material is available for inspection at Development Services, 435 West Ryman Street, Missoula, MT 59802.

Please forward your comments to Emy Scherrer, escherrer@ci.missoula.mt.us. Send a notice of *no comment* if you have none so the Planning Board and City Council are aware of your participation. If you have problems viewing the document or have questions, please contact Emy Scherrer via email or telephone at 552-6638.

Attachments
May 8 Draft, amendments to 20.85.085.J Criteria and Procedure for Review of Relocation and Demolition of Historic Resources

Missoula Organization of REALTORS®
Connecting Home & Community

April 16, 2018

Gwen and Emily,

Thank you for opportunity to comment on the Proposed Amendments to the City of Missoula's Historic Preservation Permit Ordinance. After a comprehensive review of the most recent draft available to us dated 3-23-18, we have identified several issues with the amendments and have provided suggestions as to how the city should address them. We understand and support the city's goals relative to historic preservation, and offer these comments with the intention of helping to improve the ordinance. We appreciate your work on this project and your consideration of our comments. Let me know if you have any questions.

Sincerely,

Sam Sill, Public Affairs Director

Missoula Organization of REALTORS®
724 Burlington Ave • Missoula, MT 59801 • PH 406.728.0560 • FX 406.549.4307 • **MissoulaRealEstate.com**
Connecting Home & Community

1) **The Certificate of Economic Hardship submittal requirements are overly burdensome and inconsistent with Montana's constitutional privacy protections.**

Montana is known as a "non-disclosure" state because under the state's Realty Transfer Act, the purchase price paid in a real estate transaction is not public information. Specifically, the Realty Transfer Act, M.C.A. § 15-7-301-308, requires that county clerks collect a certificate declaring the consideration paid for real property upon transfer of ownership and transmit such a certificate to the Department of Revenue. However, these certificates are not public records and must be kept confidential by the county clerk and the Department of Revenue. Confidentiality is required "because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure."

In addition, the Montana Constitution recognizes a right to privacy that is broader than that provided by the United States Constitution. Article II, Section 10 of the Montana Constitution provides that: "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."

An earlier draft of the Proposed Amendments, dated January 22, 2018, required the disclosure of the amount paid for a property in order for an owner to demonstrate economic hardship and to receive a HP Demolition or Relocation Permit. However, that requirement was deleted from the March 16th draft of the Proposed Amendments. This deletion presumably was made in order to comply with the real estate nondisclosure statute discussed above.

Nevertheless, several remaining provisions of proposed Section 20.85.085(J)(10) appear to be inconsistent with Montana's statutory nondisclosure requirement and its constitutional "demands of individual privacy." For example, the Proposed Amendments still require that a CEH include the following information:

- If property was not purchased at or close to market value, an explanation of the circumstances of the purchase and/or sale;
- A list and the cost of improvements at the property since purchase;
- The annual debt service of the property; and
- A listing of the property, price asked and offers received in the past five years.

In addition, if the property is an income producing property, the following additional financial information is required:

- Annual gross income from the property for the previous five years;
- Itemized operating and maintenance expenses for the previous five years;
- Annual cash flow for the previous five years; and
- Rent charged to tenants for the previous five years and the current market rate for rent.

The above submittal requirements would appear to be inconsistent with Montana's constitutional privacy protections. Article II, section 10, of the Montana Constitution "guarantees the sanctity of personal and private information." Generally, personal information cannot be made public when "(1) the person has an actual expectation that something is private and (2) society is willing to recognize that expectation as reasonable" (11 No. 9 Montana Employment Law Letter 3 (Oct. 2006)). By requiring the submittal of extensive financial information in order to obtain a CEH, the City would arguably infringe on an individual's reasonable expectation of privacy. At the very least, the CEH submittal requirements are contrary to Montana's strong public policy in favor of individual personal privacy protections, as stated in Article II, Section 10 of the Montana Constitution. In light of this well-established state policy, the City should carefully consider whether each item requested as part of the CEH review is necessary for the Commission make a determination on a HP Demolition or Relocation Permit according to the criteria of Proposed Amendments § 20.85.085(J)(9).

Instead of providing a mandatory list of CEH submittal requirements, a better approach would be to allow an applicant to choose what degree of financial information can reasonably be disclosed without infringing on information the applicant views as private. §20.85.085(J)(10)(a) indicates the burden of proof is on the applicant to show that a structure no longer has a reasonable economic life or cannot generate a reasonable economic return. The applicant, therefore, should have flexibility to determine precisely what information it chooses to present to the Commission in order to satisfy that burden. In Bozeman, Montana, for example, an applicant wishing to obtain a certificate of appropriateness for the demolition of a historic property must, as in Missoula, show that the structure proposed for demolition has "[n]o viable economic life remaining," which "means the costs of repair and/or rehabilitation to bring the structure to a habitable condition... exceed the costs of demolition and redevelopment to minimum standards with a building of the same type and scale." Bozeman, however, does not dictate what an applicant must submit in order to show there is no viable economic life remaining (Bozeman, MT, Unified Development Code, § 38.16.100(C)(2)).

The Proposed Amendments should be revised to allow an applicant to decide the best approach to meeting its burden and showing that a property no longer has a viable economic life. For example, if economic hardship can be established through a consultant's report demonstrating that the cost of maintaining, repairing, or rehabilitating the structure is unreasonable, then an applicant should not be required to submit financial information such as the amount of annual debt service or a discussion of the purchase price relative to market value. Moreover, this approach would better recognize Montana's constitutional commitment to personal privacy while still allowing the Commission to evaluate the reasonableness of an applicant's request.

2) **Applicants should not be required to submit a redevelopment plan in order to receive a HP Demolition or Relocation Permit because future design is irrelevant to the determination of whether a property currently has a viable economic life.**

Proposed Amendments § 20.85.085(J)(4)(e) states that a HP Demolition or Relocation Permit may not be issued "unless a permit for subsequent redevelopment is issued simultaneously under section 9.c.3 of this act." In addition, proposed Section 20.85.085(J)(11)(3) provides that a final approval will be granted only after an owner (1) prepares and submits a complete redevelopment plan; (2) applies for a building permit; and (3) demonstrates the financial ability to complete the redevelopment project. These requirements are unreasonable for the following reasons.

First, preliminary approval of a HP Demolition or Relocation Permit is based on three criteria, which are the only criteria that are relevant to a determination of whether or not demolition or relocation is the most appropriate option. The Commission must determine (1) whether a structure still maintains viable economic life; (2) whether the structure is capable of generating a reasonable economic return; and (3) whether there has been a bona fide effort to find a reasonable alternative to demolition or relocation. If each of these three criteria are met, then the applicant has sufficiently demonstrated that demolition or relocation is the only reasonable option. In other words, the future design or use of a replacement building is irrelevant to this determination.

Second, instead of making final approval for a HP Demolition or Relocation Permit contingent on a redevelopment plan, a developer should have the option of obtaining approval for any future development at a later date. This is especially important where an owner is applying for a HP Demolition or Relocation Permit in order to sell the property rather than to redevelop it. The requirement that a redevelopment plan be submitted in connection with an application for final approval would constitute an unreasonable and unnecessary expense. In these circumstances there is no justification for requiring an owner to pay the cost of preparing redevelopment plans for a property that he or she intends to sell and not to redevelop. That is particularly true in cases where the continued maintenance of an existing structure is not economically feasible and an owner is seeking to sell the property at the earliest opportunity rather than redevelop it.

Third, any new construction within an historic overlay district will still require the issuance of a Historic Preservation Permit ("HPP"), per 20.85.085(C). Also, per § 20.85.085.D(2)(f), as part of the HPP application review, the applicant must provide detailed site plan information and demonstrate compliance with all site-specific "review criteria and any applicable design guidelines."

3) **The Proposed Amendments should provide for a more flexible timeframe to allow for bona fide attempts to rent or sell a National Register property and should not restrict contracts with a potential buyer.**

MOR is concerned with provisions of the Proposed Amendments that limit the ability of owners to market or sell a property for which a HP Demolition or Relocation Permit is sought. Proposed Amendments § 20.85.085(J)(10)(c) would establish the minimum marketing efforts that an applicant must make before the HP Demolition or Relocation Permit preliminary approval may be issued. An applicant must show that he or she advertised the historic resource for sale using a licensed real estate broker; offered the property at an asking price that was reasonable during time of listing; and listed the property on a Multiple Listing Service (such as Loopnet.com) and the National Trust for Historic Preservation online Real Estate page for a period of 90 days. In addition, the 90-day listing period would have to meet the following requirements:

> At least 30 of the 90 days must take place after the permit application has been deemed sufficient for review by the historic preservation officer and before a decision has been reached by the Historic Preservation Commission. Sixty of the 90 days must have taken place within one year prior to when the permit was deemed sufficient for review by the historic preservation officer.

This provision is problematic for several reasons. It would be unreasonably difficult to comply with because an owner or their agent cannot reasonably anticipate when the HPO will deem an application sufficient for review. Further, the timing aspect of this requirement appears unreasonably rigid. If the objective is to ensure that a bona fide effort is made to rent or sell the property to a buyer who will not demolish the building, that objective could be achieved by requiring that the property be listed for any 90-day period within the past six months or year prior to application.

In addition, Proposed Amendments § 20.85.085(J)(10)(c) also requires that:

> For the 30 day listing after the historic preservation officer has deemed the permit application sufficient for review, the historic resource may not be under contract unless by an interested party who will not demolish the structure.

This requirement is unreasonable because it attempts to regulate a potential sales contract between the owner and a willing buyer. Generally, restraints on the alienation of property are disfavored by law and unreasonable restraints on the sale or disposition of property may be held void or unenforceable. Although the Proposed Amendments would limit the ability to contract for the property's sale to any willing buyer for only a 30-day period, even this limited restraint on the ability of the owner to contract for sale does not appear to have any reasonable justification. The fact that a potential buyer would seek a HP Demolition or Relocation Permit or potentially make the purchase contingent on the issuance of such a permit should not influence the Commission's consideration of the evidence presented, or its ultimate

decision. If no prospective buyer is willing to save the historic structure, even after bona fide efforts to sell, the current owner should be free to enter a contact for sale to any willing buyer.

4) **The Proposed Amendments grant the HPO too much discretionary authority, including unfettered authority when determining whether to grant or deny a final approval.**

According to Proposed Amendments § 20.85.085(J)(4)(2), the HPO is the person who either finally approves or denies the HP Demolition or Relocation Permit. No provision in the Proposed Amendments, however, lays out the criteria that the HPO should consider in making a final approval or denial decision. According to the Proposed Amendments section applicable to "Final Approval Review," an applicant must work with the HPO to ensure that any conditions of preliminary approval by the Commission are met. The applicant must also submit a documentation plan, a mitigation plan, a redevelopment plan, and a deconstruction plan to the HPO and present the same at an "advisory" meeting of the Commission. An "applicant has two years from the date of preliminary approval to substantially complete conditions for final approval," and the HPO "shall deem sufficiency [sic]of the material submitted and requirements completed and will finally approve or deny the permit application."

The "Final Approval Review" provisions of the Proposed Amendments provide wholly inadequate guidance to applicants and the HPO regarding the conditions under which a final approval will be granted. First, the purpose of the "advisory meeting" and how it might influence the HPO's final decision is unclear. Must the HPO enforce comments made by the Commission at the "advisory" meetings? Or is the HPO only required to enforce conditions of a preliminary approval? What might those conditions be? Second, there are no standards regarding how the HPO should judge the sufficiency of "the material submitted" and under what conditions the HPO should grant or deny an application. The lack of standards regarding the HPO's authority to deny or approve a final HP Demolition or Relocation Permit raises a nondelegation issue.

The nondelegation doctrine prohibits a local legislative body from delegating its legislative or policy-making power to administrative boards or officials. A local legislative body can, however, delegate to an administrative body the authority to exercise discretion in carrying out public policy, provided that the delegation is accompanied by standards and specific procedural guidelines. An improper delegation can result in unfair and arbitrary decision-making, which may expose the City to claims based on the constitutional rights to due process and equal protection.

Additional sections of the Proposed Amendments also grant the HPO unguided discretionary authority. For instance, per § 20.85.085(J)(5)(e) and §20.85.085(J)(10)(d), the HPO appears to have discretion to deny a request for more time to apply for and obtain final approval as well as the discretion to request any preliminary application material he or she considers necessary.

The HPO also has the broad discretion to waive almost any provisions of the Proposed Amendments. Section 20.85.085(J)(12) broadly states:

> The historic preservation officer may waive items listed in 20.85.085.J if they are not applicable to the specific review requested by the ordinance. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained, the applicant shall file with the permit application a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained. The historic preservation officer shall deem whether the reasons are sufficient or not and shall provide a signature of sufficiency.

Because there is no guidance in the Proposed Amendments, the HPO appears to have complete discretion to require the submittal of additional or revised material under Proposed Amendment § 20.85.085(J)(11), to waive any submittal requirements under 20.85.085(J)(12), and to ultimately approve or deny the HP Demolition or Relocation Permit. The HPO could interpret his or her authority broadly or narrowly, and potentially deny a final HP Demolition or Relocation Permit with little legislative oversight.

5) **Several provisions of the Proposed Amendments impose unreasonable financial burdens on applicants.**

It is undeniable that, in almost any community that regulates historic resources, obtaining a permit to demolish or relocate historic resources will require a substantial investment of time and money. On one hand, a property owner of a nationally listed historic resource should expect a certain degree of regulatory review and associated costs prior to demolition or relocation. As the intent provision of the Proposed Amendments makes clear, "[t]he demolition or relocation of properties individually listed on the National Register of Historic Places are considered significant actions, as historic sites and structures are community resources and contributing elements to the character of Missoula." Therefore, close municipal scrutiny of an application should be expected. On the other hand, however, several requirements in the Proposed Amendments are unnecessarily and unjustifiably burdensome. The following provisions place an unjustified cost burden on applicants:

Completeness Review: Once submitted, the HPO will determine whether an Application is complete in accordance with Sections 20.85.020.2 and .3 of Title 20. In order to make this determination, the HPO may seek the opinion of a third party consultant regarding "whether the submittal material accurately and sufficiently addresses the required application information" per § 20.85.085(J)(7)(d). Whether or not an application is complete should be a ministerial determination, that is, within the HPO's purported expertise. It appears that the applicant would be responsible for the cost of this consultation. However, whether or not an application is complete should be within the abilities of the HPO and part of his or her regular job duties—not charged to the applicant.

Up to Two-Year Review Period: An "applicant has two years from the date of preliminary approval, or preliminary approval with conditions to substantially complete conditions for final approval" per § 20.85.085(J)(5)(d). As discussed below, what constitutes "conditions for final approval" is wholly unclear. It does appear that the HPO may require an applicant for up to two years between preliminary and final permit approval, to resubmit and refine documentation, mitigation, deconstruction and redevelopment plans. Allowing an application to "remain open" for up to a two year period is patently unreasonable. The Proposed Amendments should set a reasonable period between preliminary and final approval instead of stringing an applicant along for an unreasonable period of time.

Soil disturbance: As part of the deconstruction plan requirements, the Proposed Amendments § 20.85.085(J)(11)(F)(4)(e) require that, "[i]f deconstruction will disturb subsurface soils, an archeologist shall conduct site archeology and/or monitoring during ground disturbing activities." First, it is unclear what it means to "conduct site archeology." Must the applicant hire an archeological consultant to develop some sort of report for the site? If so, what is the purpose of the report and must it be submitted to the City? Depending on how this provision is interpreted, it could impose a substantial cost on an applicant.

6) **The Proposed Amendments are poorly organized, making it difficult for an applicant to anticipate and understand the scope and application of Commission or HPO review.**

In general, the Proposed Amendments are poorly organized and include several provisions that are redundant or unclear. The City should revise the Proposed Amendments so that they are easier for an applicant to understand and anticipate their application.

Poor Organization: Overall, the Proposed Amendments are written in a confusing and poorly organized manner. The procedural and substantive requirements to obtain a HP Demolition or Relocation Permit should be stated once and in a clear manner. The Proposed Amendments, however, are repetitive and several subsections mix together the discussion of substantive requirements for pre-application, preliminary approval and final approval. For example, application requirements for final approval are stated, explained or referenced in subsections 4, 5, 7, 8 and 11. An applicant must therefore continually re-read and reference multiple sections of the Proposed Amendments in order to confirm what is required at a certain stage of application review. Subsection 7 is particularly confusing because it addresses the HPO's role in all three stages of review and also includes or repeats—in a slightly different manner—requirements that are stated elsewhere. For example, subsection 6 states that "[a]fter the preapplication meeting, the historic preservation officer shall alert the State Historic Preservation Office that the process for a potential permit application has been initiated." Subsection 7 then states that the HPO "shall send a copy of the application to the State Historic Preservation Office, together with a cover letter requesting review and comment. The State Historic Preservation Office shall have 15 days from the receipt of the letter to provide

comment." Similarly, subsection 7(f) states "[t]he historic preservation officer shall determine whether the conditions of preliminary approval and requirements of final approval have been substantially met, including but not limited to redevelopment plan review, mitigation, documentation and deconstruction plan review."

This provision is repetitive of subsection 11, "Application Requirements for Approval Final Review," does not add clarity to how final review is conducted, and is illustrative of how the Proposed Amendment are unnecessarily repetitive. Subsection 8 (Commission Review) is similarly flawed and adds to the general incongruence of the Proposed Amendments. This subsection addresses the Commission's role in preliminary approval and final permit approval, but it is unclear how subsection 8 integrates with subsections 9 (Review Criteria for Preliminary Approval), 10 (Application Requirements for Preliminary Approval), and 11 (Application Requirements for Final Approval). A better approach is to organize the Proposed Amendments by the three major application steps: (1) pre-application; (2) preliminary approval; and (3) final approval. Submittal requirements, the decision maker, and the criteria for making the decision at each step should be clearly stated. In short, the Proposed Amendments should be simplified and the decision maker and approval criteria for each stage of application review should be clearly stated.

Redundant Provisions: Proposed Amendments § 20.85.085(11)(f)(3)(c) and (f)(3)(d) are redundant, making interpretation of the provisions more difficult and adding to the Proposed Amendments' general repetitiveness. The former states that "[a] final demolition/relocation permit will be granted only after a final building permit has been submitted to the City and has been inspected by the historic preservation officer, and the historic preservation officer has found that the final building permit plans substantially comply with the redevelopment plans." The latter states, "[a] final building permit will be granted only after the historic preservation officer has found that the building permit plans substantially comply with the redevelopment plans."

Costs of Deconstruction: Proposed Amendments § 20.85.085(J)(11)(F)(4) states that "[p]roperty owners are held responsible for all costs associated with deconstruction." Presumably, this provision is meant to ensure that the City is not responsible for any costs of deconstruction (even if the City benefits from building elements "made available to the Missoula community"). If read literally, however, the provision could prevent an owner from contracting with a potential buyer or third party that may be interested in obtaining the deconstructed building parts to do the deconstruction work.

Consultants: Per § 20.85.085(J)(10)(b), an applicant must hire a consultant to develop a feasibility study as part of preliminary approval review. However, the consultant cannot be "associated with the City of Missoula or the project in review, and must be completed by professionals from western Montana." If the consultant is hired by the applicant, however, that

consultant automatically becomes "associated with" the project under review because he or she must be hired as a contractor of the applicant.

7) **The Proposed Amendments include several provisions that are vague and therefore vulnerable to challenge under the "void for vagueness" doctrine.**

Provisions in the Proposed Amendments regarding conditions of final approval and the Commission's "advisory" meeting prior to final approval are unclear, making the Proposed Amendments difficult to understand and apply. Ordinances that lack sufficient clarify may be susceptible to challenge on void for vagueness grounds. Under the "void for vagueness" doctrine, an ordinance can be held invalid if its language lacks sufficient clarity or certainty, making it subject to arbitrary interpretation, application, and enforcement. The "void for vagueness" doctrine is a constitutional doctrine rooted in the procedural due process clause of the Fourteenth Amendment to the U.S. Constitution. The U.S. Supreme Court has stated that "[a]n ordinance is unconstitutionally vague when men of common intelligence must necessarily guess at its meaning." A lack of precision and clarity in an ordinance can lead to uncertainty on the part of property owners as to what is required or desired and can make it difficult for local officials and boards to provide guidance and apply the provisions consistently. The following provision of the Proposed Amendments are unclear and subject to challenge:

Conditions for Final Approval: Per § 20.85.085(J)(11)(d), an applicant for an HP Demolition or Relocation Permit "has two years from the date of preliminary approval to substantially complete conditions for final approval." The Proposed Amendments do not define what is meant by "conditions of final approval." As noted previously, it appears that the HPO has discretion to grant or deny a final HP Demolition or Relocation Permit if the conditions of final approval are met. Nothing in the Proposed Amendments, however, defines the scope of such conditions or clarifies whether such conditions are set by the Commission, or the HPO, or both.

Advisory Presentation: After preliminary approval by the Commission, the applicant must "present redevelopment plans, mitigation plans, deconstruction plans and documentation status, as well as any conditions, to the Historic Preservation Commission during an advisory presentation," per §§ 20.85.085(J)(8)(f); (11)(c). At the presentation, the Commission "may provide input as to recommendations of final approval, to be issued by the historic preservation officer." It appears that the Commission can only make "advisory" comments, but it is unclear whether the HPO will require that an applicant comply with such comments or whether an applicant can decline to adopt such advisory comments. If the applicant can decline to follow the advice of the Commission, what is the point of requiring an advisory meeting? Further, § 20.85.085(J)(11)(d) indicates an applicant has two years to "substantially complete conditions for final approval," but it is unclear whether the Commission can require an applicant to resubmit or submit additional material throughout this timeframe. Finally, if the Commission

still is not satisfied after the two year period, may the preliminary approval be revoked? Overall, the role of the Commission in final permit approval is unclear.

Each of the above provisions contains vague language, requiring a property owner (and City officials) to "guess at its meaning," leaving the Proposed Amendments vulnerable to challenge under the constitutional "void for vagueness" doctrine. The City should clarify aspects of the Proposed Amendments that do not provide adequate guidance to property owners and others who are subject to their terms.

May 20, 2018

Ms. Emy Scherrer, Historic Preservation Officer
Development Services
City of Missoula
435 Ryman
Missoula, MT 59802

Via email: EScherrer@ci.missoula.mt.us *Original to follow via U.S. mail*

Dear Ms. Scherrer,

Thank you for providing me with the May 9, 2018 Agency Review Memorandum and proposed amendments to city ordinances concerning demolition of historic buildings. I also appreciate your providing, in response to my request, a copy of the public comments that you had received thus far.

As part of the civic conversation regarding these amendments and the public objectives in historic preservation, it is important to recognize that cities as diverse as Washington, D.C., Seattle, Portland, Charleston, New Orleans, and Denver have all demonstrated that robust historic preservation protections not only result in beautiful cities that attract tourists, businesses and residents, but they also engender dynamic environments, healthy neighborhoods, and strong local economies. Conversely, cities that may be more commonly associated with a lack of historic preservation protection often are not generally regarded as especially attractive cities to visit or live, and are not high on tourists' lists. Cityscapes such as Houston, Dallas, or Orlando aren't widely known as either attractive cities or travel destinations on their own merits.

In our regional backyard, Spokane is another good example of a city that appears to have prioritized the preservation of its downtown's historic character. Many new businesses have opened in downtown Spokane over the last 15-20 years, and most of them are located in historic old buildings that are attractive and that collectively define the unique character of the city.

Because Missoula's downtown still largely retains its historic character, with many intact old buildings and a great variety of architecture, when we look for guidance on how to best protect the public interest we should look to those municipalities that have held onto their individual character through historic preservation.

I reviewed the proposed amendments to Title 20 City Zoning Ordinance Chapter 20.85.085.J and want to register my support for them. I look forward to Missoula joining the ranks of other cities that prioritize the protection of their historic buildings, districts and neighborhoods through ordinances, and guide redevelopment in the best interests of the community.

Public Comments Submitted

The only public comment that your office had received at the time of my request was that of the Missoula Organization of Realtors (MOR). MOR submitted comments on April 16, 2018 that were based upon a draft of the proposed amendments dated 3/23/18. Amongst MOR's concerns were the constitutionality of various aspects of the proposed amendments.

MOR expressed concern that the proposed amendments' provisions regarding a certificate of economic hardship would be overly burdensome and inconsistent with privacy provisions in the Montana Constitution. I believe those concerns are misplaced for the following reasons:

1) MOR appears to take the position that, due to privacy interests, the owner of a building listed on the National Register of Historic Places (NRHP, or Register), who is proposing demolition of the building, should not have to provide information listed in Section 20.85.085.J.10.a of the proposed amendments. MOR cites no case law or authority in support of its proposition, but instead simply analogizes to the fact that Montana is a non-disclosure state that protects against public disclosure of the consideration paid for real property (see p. 1 of MOR's comment following MOR's April 16, 2018 transmittal letter).

   MOR's position seems undermined by its own admission that Montana's constitutional privacy provisions do not prevent the State from requiring that owners provide the Department of Revenue with the amount of consideration paid for real property. Montana law just requires that the government custodians of those records not disclose that information to the public. I saw nothing in the proposed amendments that would require any city officials to publicly disclose any economic data that owners, who propose to demolish NRHP-listed buildings, may be required to submit under the proposed subsection (J)(10)(a) of the amendments.
2) The economic information that the amendments would require owners of NRHP buildings to submit when requesting a demolition permit is essential to determining whether there is an economic hardship that would justify destroying, rather than preserving or rehabilitating, a historic building. The data is necessary in order for the Historic Preservation Officer (HPO) to balance the owner's interests in demolishing a building against the public's interest in maintaining the historic integrity of the city.
3) It is common for government agencies to redact parts of documents that are disclosed to the public under freedom-of-information laws if such redaction is required under those laws. Nothing would prevent that practice, if appropriate, under the proposed amendments.
4) If other cities have established ordinances that contain similar provisions regarding economic hardship in the context of historic building demolition permits, and such ordinances have withstood challenges, I see no reason why Missoula should be different. The 1972 Montana Constitution is widely viewed as a progressive, forward-thinking document, which is consistent with the nature of the proposed amendments. The Montana Constitution's objectives for public protections are consistent with the protections that the proposed amendments would provide for the public. MOR refers broadly to individual privacy protections but fails to: A) cite legal authority within the

context of the information covered in the amendments; or B) acknowledge the common tool of redactions to protect individual privacy when public documents are disclosed under right-to-know laws.

MOR asserts that, rather than being required to submit information supporting a certificate of economic hardship when seeking a demolition permit, owners of historic buildings listed on the Register should be allowed to decide for themselves what information to submit to the HPO "without infringing on information the applicant views as private." (p. 2 of MOR comment). This type of self-policing would not afford the public any real protections with respect to protecting historic preservation objectives. There is inherent conflict between an owner/applicant's self-interest in promoting a requested demolition as weighed against the public interests at stake. Assuming that an owner/applicant is going to behave in a manner upholding the public interests would be naïve and, as we recently experienced with the Missoula Mercantile, tragic. It is not a coincidence that the cities that have best retained their historic architecture and character (and, in the process, retained or built strong economies and tourism sectors) have robust historic preservation ordinances that do not rely on self-policing.

MOR insists that requiring a redevelopment plan prior to granting a permit to demolish a building listed on the Register is unreasonable and that "the future design or use of a replacement building is irrelevant to the determination [of whether to grant a demolition permit]." (p. 3 of MOR comment). I strongly disagree with that statement. The future design of a replacement building is what can maintain or destroy, or otherwise negatively alter, the historic integrity of an area. Missoula has thus far had to learn this lesson the hard way: the Verizon building that replaced the old Broadway Market is largely seen by the community as an eyesore and an embarrassment on the cityscape. The proposed amendments' redevelopment plan provisions would help prevent this from happening in the future.

MOR expresses concern that redevelopment plan requirements in the proposed amendments would somehow require an owner "to pay the cost of preparing redevelopment plans for a property that he or she intends to sell and not to redevelop." (p. 3 of MOR comment). From my read of the current draft of the amendments, an owner would not be required to prepare a redevelopment plan if she or he wanted to sell, and not redevelop, the NRHP-listed building; such owner would only be required to prepare a redevelopment plan if she or he wanted to destroy a building listed on the National Register. Under the proposed amendments, if an owner simply wanted to sell a building/property listed on the Register without redeveloping it, she or he would be free to do so. The buyer of the building would then be responsible for either keeping the historic property or, if she or he wished to demolish it, submitting a redevelopment plan to accompany an application for a demolition permit.

MOR also suggests, without citing any legal authority, that the proposed amendments could raise nondelegation issues. (p. 5 of MOR comment). As one example, MOR cites to Section 20.85.085.J.12 and claims that it includes "unguided discretionary authority." I disagree, as that particular subsection provides guidance for the HPO's waiver authority in the form of items that "are not applicable to the specific review requested", and information that "is not reasonably

available" and "cannot be obtained". The nondelegation doctrine does not require detailed and exhaustive guidance that micro-manages the discretion of executive officials.

MOR asserts, again without citing legal authority, that various provisions of the proposed amendments may be unconstitutionally vague (p. 9 of MOR comment). The examples given by MOR do not appear to necessarily support its assertion, and I assume that the proposed amendments are not dissimilar to other municipal preservation ordinances that have withstood the test of time.

MOR poses the following question: If the applicant can decline to follow the advice of the [Historic Preservation] Commission, what is the point of requiring an advisory meeting? (p. 9 of MOR comment). I would like to respond to that question from a citizen's perspective. The point of the advisory meeting is to best try to balance, through dialogue, an applicant's private interests with the public interests of safeguarding the historic character of Missoula. It is through this sort of dialogue that public interests in historic preservation can often be advanced without instituting mandatory regulatory requirements, and private interests can similarly be advanced without inflicting unnecessary or avoidable damage to the community's historic resources. This type of dialogue does not always occur when it is not required. Such dialogue also produces additional opportunity for meaningful public participation and input in the process.

Text of Proposed Amendments

I reviewed the proposed amendments and believe they would be a welcome revision to the current text of Section 20.85.085.J. I believe the amendments would address lessons that our community has learned over recent years with respect to both historic preservation and redevelopment plans.

I have the following comments regarding the proposed amendments:

1) In the proposed Section 20.85.085.J.1.c, if the intent is to require an applicant to demonstrate all three of the items listed in subsections (c)(1-3), I would recommend inserting the word "and" after the semicolon at the end of subsection (2);
2) In the proposed definitions section (20.85.085.J.3), it may be advisable to define the word "unreasonable". That term is currently used to help define the term "economic hardship" and, to the extent that the words 'reasonable' and 'unreasonable' carry with them a level of subjectivity, it may be helpful for implementation of the amendments if they provide some sort of definition of the term "unreasonable". I believe some other historic preservation ordinances do define that term, so there should be some guidance in this area;
3) The proposed subsection J.7.c, would give the State Historic Preservation Officer only 15 days to provide comment on an application. Because the SHPO has an existing workload, this seems like it may be a little too short to provide time to review an application and provide considered comments. Allowing the SHPO 21 days to provide comment may be more realistic and may be more likely to yield thoughtful comment. However, if this proposed time period has already been discussed with the SHPO, and the SHPO believe it to be sufficient, then disregard this suggestion; and

4) One minor technical comment: as a precaution, and in the interest of avoiding any potential misreadings, I would recommend inserting a comma after the word "demolished" in the first paragraph of Subsection J.4 so that it would read as follows:

> All historic structures approved for demolition must be deconstructed in total rather than demolished, with deconstructed items to be reused in the subsequent redevelopment or made available to the Missoula community.

♦ ♦ ♦

I have had past experience with competing efforts to demolish and preserve historic properties, including where city ordinances guide redevelopment of such properties. I was involved with a historic community property in Traverse City, Michigan that was on the verge of being demolished, but which was preserved and redeveloped into a dynamic neighborhood anchor that now houses dozens of businesses and residences. Based on that experience, I take an active interest in the City of Missoula's efforts in this area. For anyone reviewing this comment who may be interested in seeing how historic preservation can actually increase economic development, a link to the property (including photos) is here: https://www.thevillagetc.com/.

I want to thank you and the City of Missoula for the City's time, attention and hard work in ensuring that the community's historic preservation interests are more effectively represented and balanced in municipal proceedings with private parties and developers. Missoula has had some major losses and wake-up calls in recent years and I am encouraged that we are taking lessons from them and moving to join the ranks of the many dynamic cities that protect their civic landscapes, historic resources, and economic interests by enacting protective historic preservation and demolition permit ordinances.

Please place me on any distribution list you may have with respect to information on the proposed amendments or related issues.

Sincerely,

/s/

Brian Upton
514 Cleveland
Missoula, MT 59801

DEVELOPMENT SERVICES

435 RYMAN • MISSOULA, MT 59802 - 4297 • (406) 552-6630 • FAX: (406) 552-6053

FROM THE HISTORIC PRESERVATION OFFICE

April 17, 2018

RE: Amend Title 20 City Zoning Ordinance, Chapter 20.85.085 Historic Preservation Permit (HPP), Section J: historic preservation permitting requirements for relocation and demolition of properties listed on the National Register of Historic Places.

Dear owners of property listed on the National Register of Historic Places,

You are receiving this letter because you own a property which is listed on the National Register of Historic Places, and because of that, **we thank you, and want to keep you updated with code changes, preservation events, and local resources.**

As a Certified Local Government (CLG), the City of Missoula works to provide information, guidance and resources to community members, property owners, and elected leaders in all aspects of preservation related projects. The Historic Preservation Officer (HPO) and Historic Preservation Commission (HPC) help to facilitate appropriate preservation, restoration, rehabilitation, and adaptive reuse of Missoula's significant places (refer: Missoula City Ordinance 20.30).

In historic preservation, the one constant is change, and Missoula, is in fact, changing. With the recent growth and development, comes exciting opportunities for preservation in the Garden City. For the past year, the Historic Preservation Office has been working on updating and improving the existing demolition portion of the historic preservation permit ordinance. This is a City Council initiated request to amend Title 20 City Zoning Ordinance, Chapter 20.85.085 Historic Preservation Permit (HPP), updating Section J. regarding historic preservation permitting requirements for relocation and demolition of properties listed on the National Register of Historic Places. In the rare instance when a listed property is being contemplated for demolition, the existing code provides for a general process that must be followed in pursuit of a historic demolition permit.

While recently using the historic preservation demolition permit process, it became clear that Section J. of Chapter 20.85.085 lacked sufficient detail to guide the applicant and HPC through a decision making process, and that the regulations could benefit from greater clarity and refinement. The HPC and HPO expressed the need to clarify and refine the process. On August 17th, 2017, City Council member Gwen Jones met with the HPC to gain a better understanding of their concerns. Ms. Jones has since been working with the HPO in drafting appropriate revisions. The HPO has presented potential revisions to council members at an LUP meeting on January 17th, 2018, and the HPC on February 1st, 2018, and commission and council members supported bringing revisions to Planning Board. We are currently seeking comment in order to inform the Planning Board of considerations made by interested parties, agencies and the public.

The proposed amendments expand the existing Section J. to include what is listed below and in the attached draft, in order to restructure the process for efficiency and precision, and to aid applicants and the HPC in providing adequate information for review. Further, the proposed amendments ensure that if a historic resource is removed, redevelopment of the site occurs in a way that is sensitive to the significance of the site, provides proper mitigation for the loss, and enhances the many elements that are unique to the fabric and character of Missoula. The proposed revisions are based on comparative research of similar sized communities, resources and manuals from the National Trust for Historic Preservation and the National Parks Service, and consultation with the State Historic Preservation Office (SHPO) and the Missoula HPC.

Proposed clarifications and revisions include:

- Additional subsections including: Intent, Applicability, Definitions and Application Overview
- A visual step by step process and timeline, and an increased maximum timeframe for HPC review from 90 days to 120 days
- More detailed pre-application requirements
- More detailed consultation requirements with the HPO, HPC and SHPO
- Expanded detail for acceptable and typical types of information that addresses economic feasibility
- Expanded detail for mitigation techniques including a redevelopment plan, documentation plan, and deconstruction plan
- And ultimately, a clause that the final demolition/relocation/and building permit will be granted only after a final building permit application has been submitted to the City, as well as evidence that all other requirements for final approval have been completed.

As an owner of a property listed on the National Register of Historic Places, your comment is encouraged. Please email comments to Emy Scherrer, Historic Preservation Officer, escherrer@ci.missoula.mt.us, by Friday, May 4th. If you have questions or concerns, please call the Historic Preservation Office at 406-552-6638. In addition, you are invited to an informational meeting which will discuss the proposed updates, answer questions, and accept comments and will be held on Monday, April 30th at 5:30 PM in the Jack Reidy conference room, located in City Council Chambers, 140 W Pine Street.

Please find attached the proposed revisions to Chapter 20.85.085 Historic Preservation Permit, Section J. Criteria and Procedure for Review of Relocation and Demolition of Historic Resources – Historic Demolition/Relocation Permit. The attached draft also includes the stricken existing language which is proposed to be amended.

Thank you for your time and consideration,

Emy Scherrer
Historic Preservation Officer
Development Services, City of Missoula
435 Ryman, Missoula, MT 59802
escherrer@ci.missoula.mt.us
406-552-6638

Attachments
April 10 Draft, amendments to 20.85.085.J Criteria and Procedure for Review of Relocation and Demolition of Historic Resources

MISSOULA HISTORIC PRESERVATION
THIS PLACE MATTERS

DEVELOPMENT SERVICES
435 RYMAN • MISSOULA, MT 59802 - 4297 • (406) 552-6630 • FAX: (406) 552-6053

HISTORIC PRESERVATION MEMORANDUM

TO: Emy Scherrer, Historic Preservation Officer, Development Services, City of Missoula
435 Ryman, Missoula, MT 59802
FROM: James McDonald, Historic Preservation Commission, Chair
DATE: March 5, 2018

RE: Proposed Amendments to Title 20.85.085.D., G. and J. Historic Preservation Demolition/Relocation Permit

Dear Members of Planning Board,

At the February 1st, 2018 Historic Preservation Commission (HPC) meeting, Emy Scherrer, City of Missoula Historic Preservation Officer (HPO), presented the proposed amendments to the demolition portion of the Historic Preservation Permit chapter of Title 20. Following this presentation, the HPC reviewed the proposed amendments and submitted comments and recommendations to Ms. Scherrer. For the March 1st, 2018 HPC meeting, Ms. Scherrer compiled the HPC comments and recommendations, integrated them into an updated draft and presented the reflected changes. A motion was passed by the HPC to support the changes as presented, and to bring the proposed amendments to Planning Board. The HPC further recognizes that staff will continue to review, revise and add clarity to the draft language reviewed by the HPC, but that we support the core concepts and substance of the amendments from the March presentation.

The following HPC comments were recommended and integrated:
Overall:

- Tighten up language consistency, plurality, grammar and add clarifying language for easier reading and understanding

Specific Recommendations:

- Add commentary regarding applicant and owner representation
- Clarify/flesh out the definition of economic hardship
- Include an option for the HPO to revert back to the HPC, head of Development Services and relevant city staff, for consultation in the final decision
- Add clause, “If the HPC fails to reach a preliminary decision within the time frame specified herein, and if no time extension has been granted, the application will stand approved.”
- Request for environmental assessments or knowledge of environmental hazards related to the property
- Request information from past *and* current owners
- Require the deconstruction of the entire structure (with reference to City Zero Waste Policy), not just historic elements of the structure
- Remove low income clause
- Remove references to “partial demolition” and simplify to “alteration” or “demolition/relocation” permit
- Require an archeological study if deconstruction will disturb subsurface soils
- When demolition by neglect is mentioned, reference existing definition cited in 20.85.085.K

Thank you for this consideration.

Sincerely,
James McDonald,
Historic Preservation Commission, Chair
City of Missoula

DEVELOPMENT SERVICES

435 RYMAN • MISSOULA, MT 59802 - 4297 • (406) 552-6630 • FAX: (406) 552-6053

FROM THE HISTORIC PRESERVATION OFFICE

April 17, 2018

RE: Amend Title 20 City Zoning Ordinance, Chapter 20.85.085 Historic Preservation Permit (HPP), Section J: historic preservation permitting requirements for relocation and demolition of properties listed on the National Register of Historic Places.

Dear owners of property listed on the National Register of Historic Places,

You are receiving this letter because you own a property which is listed on the National Register of Historic Places, and because of that, **we thank you, and want to keep you updated with code changes, preservation events, and local resources.**

As a Certified Local Government (CLG), the City of Missoula works to provide information, guidance and resources to community members, property owners, and elected leaders in all aspects of preservation related projects. The Historic Preservation Officer (HPO) and Historic Preservation Commission (HPC) help to facilitate appropriate preservation, restoration, rehabilitation, and adaptive reuse of Missoula's significant places (refer: Missoula City Ordinance 20.30).

In historic preservation, the one constant is change, and Missoula, is in fact, changing. With the recent growth and development, comes exciting opportunities for preservation in the Garden City. For the past year, the Historic Preservation Office has been working on updating and improving the existing demolition portion of the historic preservation permit ordinance. This is a City Council initiated request to amend Title 20 City Zoning Ordinance, Chapter 20.85.085 Historic Preservation Permit (HPP), updating Section J. regarding historic preservation permitting requirements for relocation and demolition of properties listed on the National Register of Historic Places. In the rare instance when a listed property is being contemplated for demolition, the existing code provides for a general process that must be followed in pursuit of a historic demolition permit.

While recently using the historic preservation demolition permit process, it became clear that Section J. of Chapter 20.85.085 lacked sufficient detail to guide the applicant and HPC through a decision making process, and that the regulations could benefit from greater clarity and refinement. The HPC and HPO expressed the need to clarify and refine the process. On August 17th, 2017, City Council member Gwen Jones met with the HPC to gain a better understanding of their concerns. Ms. Jones has since been working with the HPO in drafting appropriate revisions. The HPO has presented potential revisions to council members at an LUP meeting on January 17th, 2018, and the HPC on February 1st, 2018, and commission and council members supported bringing revisions to Planning Board. We are currently seeking comment in order to inform the Planning Board of considerations made by interested parties, agencies and the public.

The proposed amendments expand the existing Section J. to include what is listed below and in the attached draft, in order to restructure the process for efficiency and precision, and to aid applicants and the HPC in providing adequate information for review. Further, the proposed amendments ensure that if a historic resource is removed, redevelopment of the site occurs in a way that is sensitive to the significance of the site, provides proper mitigation for the loss, and enhances the many elements that are unique to the fabric and character of Missoula. The proposed revisions are based on comparative research of similar sized communities, resources and manuals from the National Trust for Historic Preservation and the National Parks Service, and consultation with the State Historic Preservation Office (SHPO) and the Missoula HPC.

EXHIBIT
6

Proposed clarifications and revisions include:

- Additional subsections including: Intent, Applicability, Definitions and Application Overview
- A visual step by step process and timeline, and an increased maximum timeframe for HPC review from 90 days to 120 days
- More detailed pre-application requirements
- More detailed consultation requirements with the HPO, HPC and SHPO
- Expanded detail for acceptable and typical types of information that addresses economic feasibility
- Expanded detail for mitigation techniques including a redevelopment plan, documentation plan, and deconstruction plan
- And ultimately, a clause that the final demolition/relocation/and building permit will be granted only after a final building permit application has been submitted to the City, as well as evidence that all other requirements for final approval have been completed.

As an owner of a property listed on the National Register of Historic Places, your comment is encouraged. Please email comments to Emy Scherrer, Historic Preservation Officer, escherrer@ci.missoula.mt.us, by Friday, May 4th. If you have questions or concerns, please call the Historic Preservation Office at 406-552-6638. In addition, you are invited to an informational meeting which will discuss the proposed updates, answer questions, and accept comments and will be held on Monday, April 30th at 5:30 PM in the Jack Reidy conference room, located in City Council Chambers, 140 W Pine Street.

Please find attached the proposed revisions to Chapter 20.85.085 Historic Preservation Permit, Section J. Criteria and Procedure for Review of Relocation and Demolition of Historic Resources – Historic Demolition/Relocation Permit. The attached draft also includes the stricken existing language which is proposed to be amended.

Thank you for your time and consideration,

Emy Scherrer
Historic Preservation Officer
Development Services, City of Missoula
435 Ryman, Missoula, MT 59802
escherrer@ci.missoula.mt.us
406-552-6638

Attachments
April 10 Draft, amendments to 20.85.085.J Criteria and Procedure for Review of Relocation and Demolition of Historic Resources

MISSOULA HISTORIC PRESERVATION
THIS PLACE MATTERS

HISTORIC PRESERVATION DEMOLITION ORDINANCE

Amendments to Section 20.85.085

Emy Scherrer, Historic Preservation Officer
Development Services

City Council - July 23, 2018

All photos courtesy of Harry Miller

EXHIBIT
7

THE GARDEN CITY
MISSOULA
HUB OF FIVE VALLEYS

Proposal:

Amend Title 20 to expand the existing section J. and associated subsections of Title 20.85.085, regarding the demolition/removal of historic resources (individually listed properties on the National Register of Historic Places), with revisions for clarity which include subsections, an increased timeline, more detailed requirements for assessing economic feasibility, consultation and mitigation, as well as a clause that the final demolition and building permit will be granted only after a final building permit application has been submitted to the City.

HP Demolition Ordinance Upgrade

PROCESS

Summer, 2016	Concerns arise over the lack of information provided and clarity in the existing historic preservation demolition ordinance.
August, 2017	Historic Preservation Commission was consulted to gain a better understanding of their concerns.
January, 2018	Land Use and Planning Committee directs staff to hold a public hearing at Planning Board.
February, 2018	Historic Preservation Commission reviews draft language and makes comments which are integrated into an updated draft
April, 2018	A letter seeking comment was sent to all property owners of listed buildings on the National Register and no comments were received. On April 30th, an informational Open House was held for interested property owners and zero property owners attended.
April, 2018	Comment was sought and received from the Missoula Organization of Realtors (MOR). The current draft addresses comments and concerns raised by the MOR.
May, 2018	Agency and public comment was requested. No agency comments were submitted and one public comment was submitted.
June, 2018	Planning Board unanimously directs City Council to adopt the proposed ordinance with no amendments.
June, 2018	After two meetings, LUP directs City Council to conduct first reading and preliminarily adopt the proposed ordinance with discussed amendments as seen in the memo dated 7/17/18.

HP Demolition Ordinance Upgrade

J. Criteria and Procedure for Review of Relocation and Demolition Historic Preservation Permit ~ Existing

1. Criteria for Review:

The Historic Preservation Commission shall review the HPP application for compliance in accordance with the following criteria:

a. The applicant has CONSULTED with the Historic Preservation 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 has advertised the Historic resource for sale in a local newspaper of general circulation for a period of 30 days ;

c. The applicant's GOOD FAITH EFFORTS TO FIND A PURCHASER interested in acquiring and preserving, renovating, or reusing the historic resource have failed;

d. Denying the application would PREVENT ALL REASONABLE ECONOMIC USE of the property; and

e. The applicant shall provide the historic preservation officer SUPPORTING DOCUMENTATION demonstrating that the above criteria are met.

2. Relocation and Demolition Delay:

Upon receipt of a completed HPP application for demolition or relocation, the Historic Preservation Commission may impose a relocation or demolition delay for 90 days to allow sufficient time to explore preservation of the historic resource.

3. Mitigation:

a. If an HPP for relocation or demolition is approved, the applicant shall mitigate the adverse effects of relocation or demolition by providing, to the extent possible, documentation, similar to HABS/HAER, of the historic resource prior to undertaking the relocation or demolition.

b. 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.

HP Demolition Ordinance Upgrade

KEY CHANGES

- Additional subsections including: Intent, Applicability, Definitions, Application Overview, Timeline, and Review Criteria
- Utilize a two-stage approach – Stage One: Preliminary Application Review conducted by the HPC, followed by Stage Two: Final Approval Review conducted by the HPO
- A visual step by step process and timeline, and an increased maximum timeframe for HPC review from 90 days to 120 days
- More detailed pre-application requirements
- More detailed consultation requirements with the HPO, HPC and SHPO
- Expanded detail for acceptable and typical types of information that addresses economic feasibility
- Expanded detail for mitigation efforts including a redevelopment plan, documentation plan, and deconstruction plan
- And ultimately, a clause that the final demolition/relocation/and building permit will be granted only after a final building permit application has been submitted to the City, as well as evidence that all other requirements for final approval have been completed

HP Demolition Ordinance Upgrade

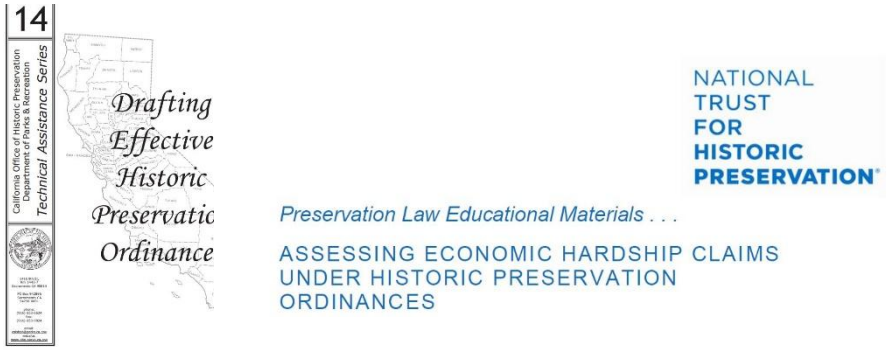
Economic Hardship and Good Practice -
Precedent shows that best practice assesses whether the property owner has been denied all reasonable beneficial use or return on the property;

- Reasonable Return
- Economically Viable
- Rehabilitation Feasibility
- New Ownership

"As required by court in Lafayette Park Baptist Church v. Board of Adjustment of City of St. Louis…

'In order for the landowner to raise the question of unconstitutional application as to property, **the property owner must prove that is impractical to rehabilitate**, and as we have stated, this contemplates not only infeasibility because of physical condition but also a negative answer to the question as to whether the property can be turned to use or account profitably. **Economic profitability contemplates restoration, and if not, then the question arises: Can it be sold profitably?** If the owner is unable to restore from an economic standpoint **he must then establish** it is impractical to sell or lease the property or **that no market exists for it at a reasonable price**. Only then is she/he entitled to a demolition permit. And only then are her/his constitutional rights denied."

- F*easibility of Profitable Alternative Uses,* Drafting Effective Historic Preservation Ordinances – CA Technical Assistance Series



1. Intent:

a. The demolition or relocation of properties individually listed on the National Register of Historic Places are considered significant actions, as historic sites and structures are community resources and contributing elements to the character of Missoula. The removal of historic resources alters the established character of the neighborhoods of which they are a part. An application to demolish or relocate an historic resource is held to a very high standard, requiring submittal of comprehensive and detailed application materials.

b. The purpose of this permit process is to evaluate and ensure that the applicant has considered reasonable and economically feasible alternatives to demolition or relocation, and sufficiently mitigate the effects of the potential removal of a historic resource.

c. **To obtain an historic demolition/relocation permit, herein after referred to as "permit," the applicant must demonstrate that:**

(1) Denying the application will cause unreasonable economic hardship to the viability of the property;

(2) That the applicant has made a bona fide effort to find a reasonable alternative that would result in the preservation, renovation, or adaptive reuse of the historic resource and;

(3) That conditions necessary to mitigate the effects of approved demolition/relocation are developed.

d. This permit process also ensures that if a historic resource is removed, redevelopment of the site occurs in a way that mitigates the loss and enhances the many elements that are unique to the fabric, theme and character of each neighborhood and area within Missoula, and is sensitive to the significance of the site.

2. Applicability:

a. Any property proposed for demolition or relocation which is individually listed on the National Register of Historic Places requires an historic demolition/relocation permit.

b. Subsequent redevelopment requires a building permit and shall not include plans which leave the site without building(s) or structure(s), unless the existing character of the area does not include building(s) or structure(s).

c. All other provisions apply within the Historic Preservation Permit section (20.85.085) including Notice.

d. It is anticipated that every application will have a set of factual circumstances unique onto itself, and that proportionality of the type and scale of the proposed project will be considered during review. The Historic Preservation Commission and historic preservation officer acknowledge that requirements will vary from one context to another and should be assessed on an individual basis.

Timeline:

a. **A complete and accurate application** for the permit preliminary application review **must be filed** with the historic preservation officer in Development Services **no sooner than 30 days after a pre-application meeting**.

b. Once the historic preservation officer has **deemed the permit application sufficient for preliminary application review**, a period of **no less than 30 days and no more than 120 days is initiated** for the Historic Preservation Commission to reach a decision regarding the permit application for preliminary approval or denial.

c. **The Historic Preservation Commission may request an extension of time from the applicant.** If the Historic Preservation Commission fails to reach a preliminary decision within the time frame specified herein, and if no time extension has been granted, the application will stand as preliminarily approved.

d. **The applicant has two years from the date of preliminary approval**, or preliminary approval with conditions, to complete any preliminarily approved conditions and substantially comply with requirements for final approval (see 20.85.085.J11). If the applicant has not continued to pursue a demolition permit at the end of the two years, the application will be deemed denied by the historic preservation officer and the applicant may start the process again.

e. If the permit is preliminarily approved, **the historic preservation officer shall take no longer than 30 days to work with the applicant in establishing sufficient mitigation efforts for final application review**, see 20.85.085.J11d for more information.

f. **The applicant may request an extension from the historic preservation officer** if they are unable to complete requirements for final approval within the time frame specified herein, and if no time extension has been granted, the application will stand as denied.

HP Demolition Ordinance Upgrade

STEPS FOR AN HISTORIC DEMOLITION/RELOCATION PE

STAGE ONE: Preliminary Application Review

1. **Pre-application requirements including consultation** with the historic preservation officer

2. **Advisory presentation** to the Historic Preservation Commission

3. **Submit draft** permit application

4. Historic preservation officer **deems permit application sufficient** for Historic Preservation Commission and State Historic Preservation Office review

5. **Public notice** is given at least 15 days prior to public hearing

Section 6. Pre-Application Requirements

*Addresses consultation

*At least 30 days prior to submitting a permit application, the applicant shall initiate consultation by scheduling a pre-application meeting with the HPO

Section 7. Historic Preservation Officer Review

(see 20.85.085.J11)

HP Demolition Ordinance Upgrade

9. Review Criteria:

The following must be considered In reviewing and making decisions on demolition/relocation permit applications:

a. Whether the structure still maintains viable economic life.

b. Whether the structure is capable of generating a reasonable economic return if preserved, restored or rehabilitated.

c. Whether the applicant has made a bona fide effort to find a reasonable alternative that would result in the preservation, renovation or rehabilitation of the structure.

d. The historic preservation officer must consider whether sufficient mitigation efforts have been met, including but not limited to, documentation, mitigation, redevelopment and deconstruction (see 20.85.085.J11).

HP Demolition Ordinance Upgrade

6. **Public hearing** for decision is held during Historic Preservation Commission meeting

→ Section 8. Historic Preservation Commission Review

Denial: see 20.85.085. J9abc

Preliminary Approval or Preliminary Approval with Conditions

Section 10. Application Requirements for Preliminary Approval Review

a. Certificate of Economic Hardship (CEH)

b. Feasibility Study Demonstrating the Resource is Incapable of Generating a Reasonable Economic Return

c. Bona Fide Attempt to Rent, Sell or Relocate Resource

d. Other documentation as requested

- A period of no less than 30 days and no more than 120 days is initiated for the Historic Preservation Commission to reach a decision.

- Addresses Rehabilitation Feasibility & Economic Hardship
- Addresses Evidence
- Addresses Bona Fide/Good-Faith Effort
- Addresses New Ownership & Listing
- Addresses Supporting Documentation
- Addresses Timing

HP Demolition Ordinance Upgrade

STAGE TWO: Final Approval Review

7. **Submit final permit materials**

8. **Advisory presentation** to the Historic Preservation Commission on final permit application materials

9. Historic preservation officer **deems final permit application requirements sufficient**

- Addresses Supporting Documentation
- Links a Redevelopment Plan to a Demolition Permit
- Strengthens Mitigation Efforts

Section 11. Application Requirements for Final Approval Review

(1) Documentation Plan

(2) Mitigation Plan

(3) Redevelopment Plan

(4) Deconstruction Plan

(5) Other documentation as requested

- The applicant has two years from the date of preliminary approval to substantially complete the following and/or any additional conditions for final approval.

HP Demolition Ordinance Upgrade

10. Submit completion of final permit materials including **final building plans** to the City – historic preservation officer reviews **for substantially complying with redevelopment plans and all other conditions in accordance with 20.85.085.J9**

Denial: historic preservation officer finds that conditions have not been substantially met

Final Approval: historic preservation officer establishes **final approval** and signs **final demolition/relocation permit and new building permit**

Section 7. Historic Preservation Officer Review

- The historic preservation officer shall determine whether any conditions of preliminary approval and requirements of final approval have been substantially met.
- Final demolition permit will not be issued until the building permit for redevelopment is approved by the historic preservation officer.
- The historic preservation officer shall finally approve the permits for demolition and subsequent building.

HP Demolition Ordinance Upgrade

10. Exceptions: The historic preservation officer may waive items listed in 20.85.085.J if they are not applicable to the specific review requested by the ordinance. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained, the applicant shall file with the permit application a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained. The historic preservation officer shall deem whether the reasons are sufficient or not.

Appeals: Appeals to decisions of the historic preservation officer and to decisions of the Historic Preservation Commission may be made to the 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.

HP Demolition Ordinance Upgrade

Comments:

-Historic Preservation Commission:
Considered HPC's expertise early in the process

-Missoula Organization of Realtors:
Changes include:
Section 5) We added language to d. in order to clarify the two year rule

Section 7) d. – clarified that this is at no cost to the applicant

Section 9) Reworked to clarify roles of HPC and HPO regarding the "unfettered authority" concern of MOR comment #4 and included a Review Criteria section.

Section 10) Reworked Certificate of Economic Hardship provisions regarding MOR comment #1 and reworked attempt to sell/rent regarding MOR comment #3

Generally, clarified advisory role of HPC in stage two, removed excess repetition, tightened up language, and added references to cross sections.

-Public Comment:
Incorporated all of Brian Upton's comments with the exception of SHPO notice timeframe.

-LUP Review:
See amendments memo dated 7/18/18 and following slide.

Additional Staff Recommendations/Amendments:

The following amendments were discussed during the June 27, 2018 Land Use and Planning meeting and are recommended to be implemented. These amendments do not alter substance, but serve to tighten up language consistency, plurality, grammar and add clarifying language for easier reading and understanding.

The following recommended amendments have been integrated into the ordinance draft for your consideration:

- Throughout the ordinance, change stage one name from "Preliminary ~~Approval~~ Review" to "Preliminary Application Review" for clearer language and consistency.

- 20.85.085J5, Application Timeline: add subsection language between 5d and e, that "if the permit is preliminarily approved, the historic preservation officer shall take no longer than 30 days to work with the applicant in establishing sufficient mitigation efforts for final approval review, see 20.85.085J11d for more information."

- In Figure 20.85.085-1, box 6, add a cross reference to 20.85.085J9abc, and for box 10, add a cross reference to 20.85.085J9d and 20.85.085J11d for further information.

- Remove ~~20.85.085J10c4~~ as it is left over from a previous iteration and is no longer necessary.

- Use "mitigation efforts" instead of "~~mitigation~~" as an umbrella term for sub-elements including, documentation, deconstruction, redevelopment, other mitigation measures and any applicable conditions, to avoid confusion. For example, amend 20.85.085J11c, "The applicant shall present the proposed ~~plans (including documentation, mitigation, deconstruction and redevelopment)~~ mitigation efforts for final approval review to the Historic Preservation Commission during an advisory presentation, and the Historic Preservation Commission may provide input as to recommendations of final approval, to be considered by the historic preservation officer."

Applicable Subsections:

Existing Subsection D of 20.85.085 to be amended:

D. **Application Filing**

1. Parties seeking an HPP are strongly encouraged to schedule a pre-application meeting with the historic preservation officer to obtain guidance about the application process, unless otherwise expressly stated.

Existing Subsection G of 20.85.085 to be amended:

G. **Commission Action on Historic Preservation Permit Applications.**

1. Except for historic preservation officer reviewed alterations under Section 20.85.080.F.5, the Historic Preservation Commission shall review and decide on an Historic Preservation Permit (HPP) application at a scheduled public meeting. The Commission's decision shall occur within 60 days from the date the completed application was received (~~90 days for applications involving a demolition or relocation).~~ If the Historic Preservation Commission is unable to process the request within 60 days of receipt of the completed application, the Historic Preservation 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 requested or granted by the applicant then the Historic Preservation Permit (HPP) is approved. See section 20.85.085.J for timelines and procedures associated with permits for the demolition or relocation of historic resources.

Recommended Motion:

Adopt a City Council initiated ordinance amending Title 20, Missoula Municipal Code, the City Zoning Ordinance, to incorporate amendments in Chapter: 20.85 Review and Approval Procedures, Section 20.85.085, entitled “Historic Preservation Permit (HPP)” amending subsections 20.85.085D, 20.85.085G and 20.85.085J as amended with staff recommendations from the memo dated 7/17/18.

Ordinance Language

HP Demolition Ordinance Upgrade

1. Intent:

a. The demolition or relocation of properties individually listed on the National Register of Historic Places are considered significant actions, as historic sites and structures are community resources and contributing elements to the character of Missoula. The removal of historic resources alters the established character of the neighborhoods of which they are a part. An application to demolish or relocate an historic resource is held to a very high standard, requiring submittal of comprehensive and detailed application materials.

b. The purpose of this permit process is to evaluate and ensure that the applicant has considered reasonable and economically feasible alternatives to demolition or relocation, and sufficiently mitigate the effects of the potential removal of a historic resource.

c. To obtain an historic demolition/relocation permit, herein after referred to as “permit,” the applicant must demonstrate that:

(1) Denying the application will cause unreasonable economic hardship to the viability of the property;

(2) That the applicant has made a bona fide effort to find a reasonable alternative that would result in the preservation, renovation, or adaptive reuse of the historic resource and;

(3) That conditions necessary to mitigate the effects of approved demolition/relocation are developed.

d. This permit process also ensures that if a historic resource is removed, redevelopment of the site occurs in a way that mitigates the loss and enhances the many elements that are unique to the fabric, theme and character of each neighborhood and area within Missoula, and is sensitive to the significance of the site.

2. Applicability:

a. Any property proposed for demolition or relocation which is individually listed on the National Register of Historic Places requires an historic demolition/relocation permit.

b. Subsequent redevelopment requires a building permit and shall not include plans which leave the site without building(s) or structure(s), unless the existing character of the area does not include building(s) or structure(s).

c. All other provisions apply within the Historic Preservation Permit section (20.85.085) including Notice.

d. It is anticipated that every application will have a set of factual circumstances unique onto itself, and that proportionality of the type and scale of the proposed project will be considered during review. The Historic Preservation Commission and historic preservation officer acknowledge that requirements will vary from one context to another and should be assessed on an individual basis.

HP Demolition Ordinance Upgrade

4. Application Overview
a. The applicant shall work with the historic preservation officer in creating and submitting a permit application which is accurate and sufficient for Historic Preservation Commission preliminary application review and historic preservation officer final review.

b. Application sufficiency is determined based on review of accuracy and completeness of the application consistent with section 20.85.020.2 and 3.

c. The review process for the permit application is developed in two stages:
(1) The first stage is preliminary application review and requires action by the Historic Preservation Commission during a public hearing. Action shall take place in the form of preliminary approval, preliminary approval with conditions, or denial of the permit. Submittal material for preliminary application review is described in section 20.85.085.J.10.

(2) If the permit is preliminarily approved or preliminarily approved with conditions in stage one, then the application proceeds to stage two. The second stage is final approval review and requires submittal of additional information including a redevelopment plan, and may consider advice from the Historic Preservation Commission. The historic preservation officer either finally approves or denies the permit. Submittal material for final approval review is described in section 20.85.085.J.11.

d. The permit is not finalized and action on the permit cannot go forward until the final approval occurs during stage two.

e. No demolition/relocation permit shall be issued unless a permit for subsequent redevelopment is issued simultaneously under section 20.85.085.J.

f. An application filing fee is required for processing the permit application and is due at the time of preliminary application review submittal. The fee is established through Resolution and is non-refundable.

HP Demolition Ordinance Upgrade

5. Application Timeline:

a. A complete and accurate application for the permit preliminary approval review must be filed with the historic preservation officer in Development Services no sooner than 30 days after a pre-application meeting.

b. Once the historic preservation officer has deemed the permit application sufficient for preliminary approval review, a period of no less than 30 days and no more than 120 days is initiated for the Historic Preservation Commission to reach a decision regarding the permit application for preliminary approval.

c. The Historic Preservation Commission may request an extension of time from the applicant. If the Historic Preservation Commission fails to reach a preliminary decision within the time frame specified herein, and if no time extension has been granted, the application will stand as preliminarily approved.

d. The applicant has two years from the date of preliminary approval, or preliminary approval with conditions, to complete any preliminarily approved conditions and substantially comply with requirements for final approval. If the applicant has not continued to pursue a demolition permit at the end of the two years from the inception of the application, the application will be deemed denied by the historic preservation officer and the applicant may start the process again.

e. The applicant may request an extension from the historic preservation officer if they are unable to complete requirements for final approval within the time frame specified herein, and if no time extension has been granted, the application will stand as denied.

f. The following figure indicates the steps associated with each stage of application review:

HP Demolition Ordinance Upgrade

6. Pre-Application Requirements:

a. The intent of pre-application requirements is to initiate active mandatory consultation, review permit application materials, and outline the review process.

b. At least 30 days prior to submitting a permit application, the applicant shall initiate consultation by scheduling a pre-application meeting with the historic preservation officer.

c. After the pre-application meeting, the applicant shall provide an advisory presentation at an Historic Preservation Commission meeting, in order to gather information and consider comments on the permit proposal.

d. After the pre-application meeting, the historic preservation officer may notify the State Historic Preservation Office that the process for a potential permit application has been initiated.

Commentary: If the applicant is not the building owner, such as an architect or consultant, it is strongly encouraged that the building owner be willing and available to work with the historic preservation officer and Historic Preservation Commission throughout the permit application process.

HP Demolition Ordinance Upgrade

7. Historic Preservation Officer Review:

a. The historic preservation officer shall meet with the applicant in a pre-application meeting to discuss the proposal, review permit application material, and outline the review process.

b. The historic preservation officer shall review and deem the application sufficient in accordance with 20.85.085.D and F as applicable, and this section for preliminary application review (stage one). Once deemed sufficient, the historic preservation officer shall send a letter of sufficiency to the applicant.

c. The historic preservation officer shall send a copy of the application to the State Historic Preservation Office, together with a cover letter requesting review and comment. The State Historic Preservation Office shall have 15 days from the receipt of the letter to provide comment.

d. The historic preservation officer reserves the right to seek outside (third-party) consult from qualified professionals in western Montana, in determining whether the submittal material accurately and sufficiently addresses the required application information, at no cost to the applicant.

e. If a permit is preliminarily approved or preliminarily approved with conditions by the Historic Preservation Commission pursuant to 20.85.085.J8, the applicant shall submit application requirements for final approval to the historic preservation officer for review and to be deemed as sufficient (stage two, 20.85.085.J.11).

f. The historic preservation officer shall determine whether the conditions of preliminary approval and requirements of final approval have been substantially met.

g. If the historic preservation officer finds substantial compliance with the intent of mitigating adverse effect, the historic preservation officer shall finally approve the permit for demolition/relocation and subsequent redevelopment (building permit).

h. The historic preservation officer may consult with the Historic Preservation Commission Chair, the Director of Development Services and relevant city staff in reviewing final application materials and reaching a final decision.

HP Demolition Ordinance Upgrade

8. Historic Preservation Commission Review:

a. The Historic Preservation Commission shall review the permit application for preliminary application consideration (stage one). Once the historic preservation officer has deemed the permit application sufficient for preliminary application review, a period of no less than 30 days and no more than 120 days is initiated for the Historic Preservation Commission to reach a decision regarding the permit for preliminary application review.

b. Upon fully reviewing the permit application, the Historic Preservation Commission shall hold a public hearing and may: grant preliminary approval, preliminary approval with conditions, or deny the permit. A denial of a permit shall be accompanied by a written statement of the specific reasons for the denial.

c. Preliminary approval will be established during the public hearing if the Historic Preservation Commission finds that failure to issue a permit will result in unreasonable economic hardship to the viability of the property, and that a bona fide effort has been made to find reasonable alternatives that would result in the preservation, renovation, or adaptive reuse of the historic resource, and no reasonable alternatives exist.

d. The Historic Preservation Commission should consider the evidence utilizing the following guiding questions: Is the evidence sufficient? Is the evidence relevant? Is the evidence competent? Is the evidence credible? Is the evidence consistent? The Historic Preservation Commission should also consider any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property under 20.85.085.K.

e. The Historic Preservation Commission reserves the right to seek outside (third-party) consult from qualified professionals in western Montana, in determining whether the applicant has put forth a bona fide effort, whether reasonable alternatives have been proven, and in assessing economic feasibility based on the submitted evidence.

HP Demolition Ordinance Upgrade

10. Application Requirements for Preliminary Application Review:

After the completion of the pre-application requirements, the following application information must be submitted as evidence and considered to address the review criteria:

a. Certificate of Economic Hardship (CEH):

The purpose of the CEH is to provide information as to whether the structure still maintains viable economic life. The burden of proof is on the applicant. The CEH must be submitted in written form and must include and examine the following as it relates to current economic and market rate data for Missoula, MT. Provisions:

(1) The assessed value of the land, and improvements thereon, according to the most recent assessments;

(2) Property taxes for the previous two years and any arrearages;

(3) All appraisals obtained within the previous five years by the past and current owner or applicant in connection with the purchase, financing or ownership of the property;

(4) Any listing of the property, price asked and offers received in the past five years;

(5) Any environmental assessments or knowledge of environmental hazards associated with the property;

(6) Any consideration by the owner for profitable adaptive reuses for the property, including renovation studies, structure and site plans, bids and;

(7) Additional requirements for income-producing property:

(a) Annual gross income from the property for the previous five years;

(b) Itemized operating and maintenance expenses for the previous five years;

(c) Annual cash flow for the previous five years;

(d) Rent charged to tenants for the previous five years and the current market rate for rent;

(e) A comparative economic assessment for the utilization of all financial incentives currently available including but not limited to: potential Missoula Redevelopment Agency funding, Federal Historic Tax Credits, MT Historic Tax Abatement, New Market Tax Credits, historic preservation grants, and any other available funding;

(8) Optional: Additional information such as the following may be helpful in satisfying the burden of proof and in clarifying whether an economic hardship is taking place:

(a) The date of purchase

(b) If property was not purchased at or close to market value, an explanation of the circumstances of the purchase and/or sale;

(c) A detailed list with costs of any improvements since purchase and the date incurred;

(d) Annual debt service, if any, for the previous two years;

(e) Title report and current balance on all mortgages, trust indentures, and on all debts that encumber the property

HP Demolition Ordinance Upgrade

b. Feasibility Study/Economic Analysis Return:

The purpose of the feasibility study is to provide information as to whether the structure is capable of generating a reasonable economic return if preserved, restored or rehabilitated. The feasibility study must be completed by a third party not associated with the City of Missoula or the project in review, and must be completed by professionals from or experience in their field in western Montana. Provisions:

(1) Written statement and itemized cost list from a licensed engineer and/or a licensed architect with experience in preservation, renovation, restoration, or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration or rehabilitation.

(2) Written statement and itemized cost list from a land-use professional which includes real estate consultants, appraisers, or other real estate professionals experienced in rehabilitation, as to the economic feasibility of preservation, restoration, renovation or rehabilitation of existing historic structures.

c. Bona Fide Attempt to Rent, Sell or Relocate Resource:

The intent of listing the structure is to ensure that parties interested in saving the structure as opposed to demolishing it are alerted and offered a period of time to purchase the property. It is highly recommended that any individually listed property be listed on the National Trust for Historic Preservation online real estate page for the entire duration that the property is listed for sale. Provisions:

(1) The applicant must advertise the historic resource for sale using a licensed real estate broker;

(2) The applicant must illustrate that the asking price was comparable to the value of equivalent local structures of use and form during time of listing;

(3) The applicant must list the property on a Multiple Listing Service (such as Loopnet.com) and the National Trust for Historic Preservation online real estate page for a period of at least 90 days within the past six months prior to submitting an application.

d. Any additional supplemental information considered necessary and requested by the Historic Preservation Commission and/or historic preservation officer to address review criteria.

HP Demolition Ordinance Upgrade

11. Application Requirements for Final Approval Review:

a. The intent of application requirements for final approval review is to ensure that if a preliminary approval or preliminary approval with conditions for the permit has been established by the Historic Preservation Commission, then proper mitigation efforts are established and are consistent with Review Criteria.

b. The applicant shall work with the historic preservation officer to ensure requirements are met and will establish a plan for each final approval requirement and compliance with any preliminarily approved conditions established by the Historic Preservation Commission.

c. The applicant shall present the proposed plans (including documentation, mitigation, deconstruction and redevelopment) for final approval review to the Historic Preservation Commission during an advisory presentation, and the Historic Preservation Commission may provide input as to recommendations of final approval, to be considered by the historic preservation officer.

d. The following must be submitted:

(1) Documentation Plan:

All historic resources preliminarily approved for demolition or relocation must be fully documented using Historic American Building Survey (HABS) or HABS-quality procedure as defined in 20.30.030E.

(a) Documentation shall happen before the final demolition/relocation permit is issued;

(b) Documentation must be produced by a professional who satisfies professional qualification standards for history, archeology or architectural history, as established by the National Park Service and published in the Code of Federal Regulations, 36 CFR Part 61;

(c) Documentation may be submitted as early in the process as the applicant desires to support the requested action.

(2) Mitigation Plan for Demolition or Relocation:

In addition to documentation, the applicant must provide a proposal to mitigate for adverse effect caused by demolition or relocation. Possible mitigation efforts include, but are not limited to, designated interpretive space, brick and mortar projects, National Register nomination updates and additions, a preservation plan utilizing the Secretary of the Interior's Standards, a development agreement with the City, and an archeological study. Should the applicant be applying for a relocation permit, additional preservation planning documents could apply which may include plans for stabilization and/or restoration.

HP Demolition Ordinance Upgrade

(3) Redevelopment Plan:

The applicant shall consult with the historic preservation officer in creating appropriate redevelopment plans for the site and may consider advice from the Historic Preservation Commission.

(a) Redevelopment should be compatible with the character of the surrounding neighborhood, reflect the historic resource to be demolished or relocated, is sensitive to the significance of the site, and must adhere to any applicable design overlays within the City of Missoula.

(b) Redevelopment plans shall be oriented with a north arrow at the top of the page and shall include exterior elevations, materials, site boundaries, street and alley frontages with names, location of all structures with distances to the nearest foot between buildings and from buildings to property lines, and must conform to all applicable regulations.

(c) The applicant must demonstrate the ability to complete the project. The City Building Official may require a bond, letter of credit or cash deposit as a demonstration that the financial backing for the replacement structure is adequate to complete the project.

(4) Deconstruction Plan:

All historic structures approved for demolition must be deconstructed in total rather than demolished, with deconstructed items to be reused. Property owners are held responsible for all costs associated with deconstruction.

(a) The applicant shall ensure that a local deconstruction specialist is consulted on the deconstruction process, for purposes of identifying opportunities for recovering and reusing materials within the structure.

(b) Prior to the onset of deconstruction, the applicant and the deconstruction contractor shall meet with the historic preservation officer to identify historic features and items within the structure that are important to retain for potential reuse in the new structure or for preservation or interpretive purposes.

(c) The applicant shall submit a deconstruction plan summarizing timing and approach including a preliminary list of identified historic items, and must be approved by the historic preservation officer. The applicant shall present plans to the Historic Preservation Commission during an advisory presentation.

(d) The deconstruction specialist shall use their best effort to recover as many historic or non-historic features and items as is feasible, taking into consideration the age and condition of the materials, the safety of workers engaged in the deconstruction efforts, environmental abatement needs, and other conditions of the structure and worksite.

(5) Any additional supplemental information considered necessary and requested by the historic preservation officer to address conditions of mitigation.

399 LEGALS MNAXLP

PUBLIC NOTICE

The Missoula Consolidated Planning Board will conduct a public hearing on the following items on Tuesday, June 5th, 2018, at 7:00 p.m., in the Missoula City Council Chambers located at 140 W. Pine Street in Missoula, Montana.

Proposal to Amend Title 20.85.085 Historic Preservation Permit, Section J: Criteria and Procedure for Review of Relocation and Demolition of Historic Resources - Historic Demolition/Relocation Permit

This is a city council initiated text amendment request to revise Section J. of Title 20.85.085, regarding the demolition/removal of historic resources (individually listed properties on the National Register of Historic Places). The proposed amendments expand the existing section for clarity to include subsections, an increased timeline, more detailed requirements for assessing economic feasibility, consultation and mitigation, as well as a clause that the final demolition and building permit will be granted only after a final building permit application has been submitted to the City. The draft language has been created after consideration of comments from the HPC, affected property owners, interested parties and city agencies.

The amendments can be viewed at Development Services, City Hall, 435 Ryman, Missoula, Montana, (406) 552-6630 or at http://www.ci.missoula.mt.us/1521/Current-Projects

The Missoula City Council will conduct a public hearing on this item on a date to be determined.
#20537164 May 22 & 27, 2018

EXHIBIT
8

112 TO GIVE AWAY

Various household items, books, clothes, dishes, pictures, you haul. 327-6645

Donate your good used furniture & appliances to help fund child abuse prevention through the Parenting Place. Free pickup available. Tax deductible. **Donation Warehouse 1804 North Ave W. 240-4042**

Free pickup and removal of **Lawn Mowers**, running or not. Call 317-1483

Plumbing advice for seniors, possible help. Retired master plumber. Call Leo 251-6525

Low-income spay/neuter clinic for cats Tuesdays at the Humane Society. Sign up in person or call 549-3934.

114 LOST & FOUND

AniMeals
www.animeals.com
• Please visit the shelter at 1700 Rankin Street or log on to our website to see a complete listing of all the kitties in our care. If you have a lost or found animal please send a picture and description to info@AniMeals.com. We post all lost & found animals on our Facebook page.
• AniMeals Seniors for Seniors program waives the adoption fee for anyone 65 and older adopting a cat 9 years old and older. All cats are spayed or neutered, vaccinated, and microchipped free of cost before they're adopted. For more information call AniMeals at 721-4710.
• Fosters needed! AniMeals is in need of foster families. Fostering is a 1-2 month commitment. AniMeals supplies the food, litter, and other supplies, and you supply the love. Call 721-4710
Tuesday-Sunday 2pm-6pm
Closed Monday

Lost Cat brown tabby name Tabby Northside Msla no collar & has no front claws. 406-531-2551

Humane Society of Western Montana
www.myHSWM.org

FOUND PETS
Please visit the shelter's website or facility to view found pets. Found pets are also posted to www.craigslist.org in the Lost and Found section.

5930 Highway 93 South, Missoula, MT 59804
406-549-4796,
adoptions@myHSWM.org
Wed.-Fri. 1-6 pm,
Sat. & Sun.12-5 pm

Adoptions, Behavior Help Line, Group Dog Classes and Private Lessons, Microchipping, Pet Food Bank, Volunteer Program, Lost and Found services.

Found 1 cowboy boot in Crazy Canyon. Call 243-2142

PUBLIC NOTICES

S&S Payless Storage will sell at public sale contents of the following unit: D69. June 6th, 2018 @ 1pm. Place of sale: S&S Payless Storage 3806 South Ave W. Call 549-1234 to confirm sale status.

Tips for Safe Classified Advertising
The Missoulian wants to protect all of our customers. Please remember these few tips when buying or selling through Missoulian Classifieds
• Deal locally with people you meet in person.
• Never wire or send funds.
• Fake cashier checks & money orders are common-the bank will hold you responsible.
• Never give out financial information.
• Avoid deals involving shipping or escrow services.
Missoulian

122 PERSONALS

Romantic 62 year old Christian outdoorsman seeks attractive woman for LTR. I also enjoy cooking, movies, nature photography, dancing, card & board games. Please respond w/paragraph & photo to jhh271455@gmail.com I live in Trout Creek.

209 PROFESSIONAL POSITIONS

Stack Financial Management
Whitefish - Montana
Network and Information Technology Manager

Nationally recognized investment firm –named one of America's *"Top 100 Independent Financial Advisors"*– is looking for an IT professional to join our exceptional team in a fast-paced, dynamically-changing environment. This individual will support hardware, software, and their team members in our technologically-advanced office.

Responsibilities:
- Install, update, and manage Windows Server, SQL Server, and Domain Controller implemented in a WMware environment.
- Develop, monitor, and test server backup and disaster recovery processes using Veeam Backup and Replication software.
- Co-lead internal cybersecurity defense team.
- Oversee server/workstation security strategies utilizing antivirus and anti-malware software.
- Research, purchase, and maintain all hardware, workstations, and laptops.
- Troubleshoot and resolve all hardware/software issues.

Qualifications:
- Experience in the above listed areas of responsibility.
- Independent, organized, detail-oriented, and able to prioritize and manage diverse responsibilities in a fast-paced environment.
- Excellent written and oral communication skills.
- Preferred certifications:
  - MCSA: Microsoft Certified Solutions Associate
  - MCSE: Microsoft Certified Systems Expert
  - CCNA or CCNP: Cisco Certified Network Associate/Professional
  - VCP: VMware Certified Professional
- Bachelor's degree in Information Technology or related field.
- Minimum 10 years related experience.

Compensation: This is a high-level professional position, and a challenging and rewarding career opportunity for the right IT professional. Generous benefit package, including up to 25% tax-deferred 401k Profit Sharing retirement plan.

Qualified candidates send cover letter and resume to:
Stack Financial Management
2472 Birch Glen, Ste A Whitefish, MT 59937
careers@stackfinancialmanagement.com
- Non-smoking environment - *All inquiries will remain confidential*

208 GENERAL HELP

Missoulian
District Manager Assistant

The Missoulian has an immediate opening for a Circulation District Manager Assistant.
The successful candidate will have a variety of responsibilities including: delivery of late or down routes, carrier training, delivery of bundled newspapers and specialty publications, filling and restocking racks and other duties as assigned by a District Manager. We need a team player who enjoys working with people, is computer literate and highly organized. The ideal candidate will be self-motivated with the ability to work independently.

This is a full-time position and includes early morning hours and weekends. Reliable vehicle, proof of insurance, good driving record and ability to bend and lift is required.
This is an excellent entry level position for a company and a department with a history of promoting from within. We offer competitive compensation and an excellent benefit program including medical, dental and vision plans, paid time off, flexible spending accounts, life insurance and a 401k program.
Please apply online at Missoulian.com/workhere
EOE and drug free workplace.

124 GARAGE RUMMAGE SALES

Mark Your Calendar!
4th Annual
Bitterroot 50 Mile Garage Sale
Lolo to Darby, MT
June 29th & 30, 2018
bitterroot50milegaragesale.com
For details to attend or sell.

128 BAZAARS, BAKE SALES

DOLL SHOW & SALE! Sat. June 2 Ruby's Inn, 4825 N. Reserve, Missoula, 10am-4pm. 54 Vendors: Antique vintage modern artist dolls, toys, bears, miniatures, clothes, furniture. Door prizes, Raffles, Exhibit. Adults $5, Kids free

206 RESTAURANTS & BARS

FT **Short Order Cook** needed. Apply in person at Silvertip Casino 680 SW Higgins Ave.

208 GENERAL HELP

Missoulian
Every minute. Every day.

EARN EXTRA CASH
working just a few hours a day delivering the Missoulian newspaper. Routes are available in many areas of Missoula and surrounding communities. For more information call 406-523-0494 or go to Missoulian.com/carrier. This is an independent contractor business opportunity.

209 PROFESSIONAL POSITIONS

Missoulian
Customer Service-Front Desk

The Missoulian has an immediate opening for part-time front desk customer service representative. This position provides consumer services to our newspaper subscribers.
The ideal candidate should be enthusiastic and great with people, have excellent grammar and language skills, basic math skills, strong keyboarding skills with an emphasis on detail and accuracy, and be proficient in Microsoft Office. Furthermore they should be someone who can anticipate customer needs and promote and sell our products among a diverse pool of our customers.
This is a part-time Monday through Friday position. We offer competitive compensation and an excellent benefit program including medical, dental and vision plans, paid time off, flexible spending accounts, life insurance and a 401k program
Please apply online at Missoulian.com/workhere
EOE and drug free workplace

399 LEGALS MNAXLP

PUBLIC NOTICE

The Missoula Consolidated Planning Board will conduct a public hearing on the following items on Tuesday, June 5th, 2018, at 7:00 p.m., in the Missoula City Council Chambers located at 140 W. Pine Street in Missoula, Montana.

Proposal to Amend Title 20.85.085 Historic Preservation Permit, Section J: Criteria and Procedure for Review of Relocation and Demolition of Historic Resources - Historic Demolition/Relocation Permit

This is a city council initiated text amendment request to revise Section J. of Title 20.85.085, regarding the demolition/removal of historic resources (individually listed properties on the National Register of Historic Places). The proposed amendments expand the existing section for clarity to include subsections, an increased timeline, more detailed requirements for assessing economic feasibility, consultation and mitigation, as well as a clause that the final demolition and building permit will be granted only after a final building permit application has been submitted to the City. The draft language has been created after consideration of comments from the HPC, affected property owners, interested parties and city agencies.

The amendments can be viewed at Development Services, City Hall, 435 Ryman, Missoula, Montana, (406) 552-6630 or at http://www.ci.missoula.mt.us/1521/Current-Projects

The Missoula City Council will conduct a public hearing on this item on a date to be determined.
#20537164 May 22 & 27, 2018

399 LEGALS MNAXLP

Bonner Property Development has applied for a permit to burn untreated wood, tree limbs and branches at 8462 Highway 200 East in June, 2018. The public is invited to comment in writing. Comments must be received by 5:00 p.m. on June 11th at the Health Department, 301 West Alder, Missoula, MT 59802. Fax: (406) 258-4781. Email: scofield@missoulacounty.us More information and a copy of the application are available at the Health Department.Phone: (406) 258-4755.

SUMMONS FOR PUBLICATION
Cause No. DN-18-9
Department No.: 3
In Re the Step-Parent Adoption of:
R.P.S.S.
Minor Child's Initials,
Richard Garcia, Jr.
Petitioner
Monte Swanson,
Biological Parent.
MONTANA FOURTH JUDICIAL DISTRICT COURT MISSOULA COUNTY
THE STATE OF MONTANA SENDS GREETINGS TO THE ABOVE-NAMED BIOLOGICAL PARENT:
YOU THE PARENT, ARE HEREBY SUMMONED to answer the Petition in this action which is filed in the office of the Clerk of the above-named Court. This Summons, requires you to file your answer and serve a copy of your answer upon the Petitioner within twenty-one (21) days after the service of this Summons, exclusive of the day of service. If you fail to appear or answer, judgment will be taken against you by default for the relief demanded in the Petition. This action is brought to obtain a Step-Parent Adoption.
VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER MCA 45-5-626
Dated this 10th day of May, 2018
(SEAL)
Shirley E. Faust
Clerk of the District Court
By:
Deputy Clerk
#20536323 May 15, 22 & 29, 2018

Notice of Hearing on Name Change
Cause No. DV-18-557
Dept. No. 1
In the Matter of the Name Change of Florencio Javier Pope, Petitioner
Montana 4th Judicial District Court
Missoula County
This is notice that Petitioner has asked the District Court for a change of name from Florencio Javier Pope to Khloe Nicole Pope. The hearing will be on 06/20/2018 at 11:00 a.m. The hearing will be at the Courthouse in Missoula County.
Date: May 2, 2018
(SEAL)
Shirley E Faust
Clerk of District Court
By
Deputy Clerk of Court
#20536302 May 15, 22, 29 & June 5, 2018

Notices under this classification are required by law to be run in a newspaper of general circulation. A notarized proof of publication will be provided for all notices. Some notices may require pre-payment. **DEADLINE FOR SUBMITTALS IS NOON, THREE WORKING DAYS IN ADVANCE of the date the notice needs to be published.** The Missoulian will accept responsibility for printing errors on the first publication only. If you have questions about placing a legal ad, please **call classifieds at** 721-6200 or 1-800-332-6212, and ask for Legals. FAX: Attn: Legals, to 406-523-5221. **Email:** legals@missoulian.com. **Mail legals to:** Missoulian Legals, P.O. Box 8029, Missoula, MT 59807.
If you have questions regarding the proof of publication for a printed legal ad, please call Chris Arvish in our Legal Ad Department: 523-5236.

410 APARTMENTS UNFURNISHED

2508 Industry St. 4-plex. Msla. Large 2 Bdrm. $750/mo + $750 dep. **Heat/W/S/G Paid!** 2 parking, storage unit. No pets/smoking. **626-5889 or 360-9200**

Birchwood Meadows Apartments
2 Bed. $825/mo. 3 Bed. $995/mo.
Free Heat, DW, W/D hookups.
CARAS Call Today. 543-9798

410 APARTMENTS UNFURNISHED

CARAS
PROPERTY MANAGEMENT CO.
401 SW Higgins 543-9798
215 Main St., Polson 872-2990
Call Us About Availability & Specials

Studios	$500-$600
1Bd	$525-$700
2Bd	$625-$900
3Bd	$700+

• Houses • Apartments • HOA
• Office • Retail • Vacation Homes
caras-properties.com

411 DUPLEXES, UNFURNISHED

Large 3Bd/2Ba, 2 car gar. W/D, new carpet, paint, no pets/smoke. $1200mo. + $1400 dep. Open for viewing. 628 Whitaker Dr. **830-4514 or 844-0686**

Rattlesnake 2Bd/1Ba Duplex, excellent location, attached garage, patio, lawn, quiet street, gas heat, laundry hkups, fireplace, stove, fridge. No smoking/no dogs. $1100/mo + sec. dep. + utils. Background check req'd. **509-981-6985**

416 HOUSES, UNFURNISHED

Studio apt. 1963 S. 14th W. $625mo You pay heat & lights. No pets. Must have good credit. **Call Betty Wilkins, property manager, 880-9410**

420 ROOMS FOR RENT

FURNISHED. Nice. Missoula. $449/mo. incl. util. 866-728-2664 www.ValueAddedRentals.com

Room for rent, private home. No pets. Unfurnished. Utils pd. Near U/DT. $550mo +$100dep. **546-3699**

• **Sleepy Inn Weekly Special:** Ph., Wifi, Cable, Kitchen, **549-6484**

• **CitiLodge Weekly Special:** Micro/Fridge, Wifi Avail. **549-2358**

422 MOBILE LOT RENTAL

★ ***1/4-acre lots***: W/S/G pd. $400/mo........ **549-3111**

Doublewide lot for rent near Travalers Rest State Park, Lolo $260 a month no dogs. 926-1496.

Mobile Home Lot for Rent home not over 10 yrs old, w/s/g, $350/mo. Some pets allowed. 406-369-2751

428 OFFICE/RETAIL LEASE

2400 sq ft warehouse, 350 sq ft office, 12' insulated gar. door, restroom, central loc. $1,800/mo. 728-1675

CARAS
PROPERTY MANAGEMENT CO.
401 SW Higgins 543-9798
215 Main St., Polson 872-2990
Office/Retail
• 345 W Front 1700 sq ft 2100 sq ft -
• 2404 Washburn 1120 sq ft former salon
• 1525 South Ave 3800 sq ft Private offices and open space
• 1531 South Ave 1380 sq ft
• 1533 South Ave 1120 sq ft
• 1986 N 1st, Hamilton | 215-1040 sq.ft.
• 622 Railroad, Alberton | Great Retail Location
Warehouse/Office
• 5500 Momort Rd. - 12000 sq ft Big warehouse, office space, 1.26 acre lot
• 725 Ronan A, D 2000 sq ft each
caras-properties.com

410 APARTMENTS UNFURNISHED

LOOK!!!
Spacious 2 bedroom, hookups, cable, W/S/G paid. No pets. Linda Vista. $825/mo.
Fidelity Mgmt. 251-4707

Missoula 2 Bedroom, W/D hkups, large fenced yard, no pets/smoking, $895/mo + $800 deposit. **Call 240-6601**

Spruce Street Plaza
$600 Off 1st Month's Rent
Modern 1 & 2 bd apts near downtown
* Secure bld w/key code entry
* W/D, micro, DW provided
* Energy efficient heat/AC
* Elevator access
* Roof-top terrace
Missoula Property Management
406-251-8550
www.rentinmissoula.com

Martin's Property Mgmt LLC
Wolf Glen Apts. 1825 Wyoming
• **2Bd upstairs units. Avail now. $885/mo**
• **3Bd units. Avail now & pre-leasing. $1025/mo**
All units include W/D, DW, carport & garbage disposal. Cats OK.
Call 406-549-2062
www.martinspropertymgmt.com

Real Estate

JE JOY EARLS REAL ESTATE
Are you thinking of selling? Joy Earls is the Key!
Call me today.......
• I will tour your property.
• Discuss your options.
• Research and prepare a Market Analysis
• Present a thorough plan including staging
• Work Hard for you to Meet your Goals

Joy Earls MPA, BS
Broker/Owner
406-531-9811
We're Independent Like You!

503 FLATHEAD PROPERTY

BERKSHIRE HATHAWAY
35120 Rocky Point Road
Polson - $595,000
Now is the time to plan your Flathead Lake home build. 180 feet of frontage and 1.25 acres with amazing views of the lake and the whole Mission Mountain range. Conveniently located 2 miles from Polson and all its amenities. mls#21701864
Lewis Matelich - 880-3332

505 SEELEY SWAN, BLACKFOOT

RealEstateAuctions.com
213 Alpine Dr.
Condon
Well maintained home just yards away from Holland Lake boat ramp. 3 plus bedroom and 2 bath. Additional room built on to this home with lots of windows and great morning views. Two car garage and a separate shop. Lots of covered space and a screened in patio. Easy access to Bob Marshall trailhead with Owl Creek Packer camp just down the road. $249,900. MLS#21612048
BRUCE A WOLD
(406) 677-4149

399 LEGALS MNAXLP

PUBLIC NOTICE

The Missoula Consolidated Planning Board will conduct a public hearing on the following items on Tuesday, June 5th, 2018, at 7:00 p.m., in the Missoula City Council Chambers located at 140 W. Pine Street in Missoula, Montana.

Proposal to Amend Title 20.85.085 Historic Preservation Permit, Section J: Criteria and Procedure for Review of Relocation and Demolition of Historic Resources - Historic Demolition/Relocation Permit

This is a city council initiated text amendment request to revise Section J. of Title 20.85.085, regarding the demolition/removal of historic resources (individually listed properties on the National Register of Historic Places). The proposed amendments expand the existing section for clarity to include subsections, an increased timeline, more detailed requirements for assessing economic feasibility, consultation and mitigation, as well as a clause that the final demolition and building permit will be granted only after a final building permit application has been submitted to the City. The draft language has been created after consideration of comments from the HPC, affected property owners, interested parties and city agencies.

The amendments can be viewed at Development Services, City Hall, 435 Ryman, Missoula, Montana, (406) 552-6630 or at http://www.ci.missoula.mt.us/1521/Current-Projects

The Missoula City Council will conduct a public hearing on this item on a date to be determined.
#20537164 May 22 & 27, 2018

EXHIBIT
9

F8 - Missoulian Classified, Sunday, May 27, 2018

213 HEALTH CARE/ SCIENCE

EmpRes Healthcare

Now Hiring

- C.N.A- FT/PT Hiring for all shifts $750.00 sign on for FT
- Dietary Aide FT/PT
- Housekeeping FT/PT

Offering competitive wages and benefits.
Contact Karrie Rich or Sari Wolff at
406-549-0988
krich@empres.com
Missoula Health and Rehab.

213 HEALTH CARE/ SCIENCE

Building a DREAM TEAM

Join us for our Job Fair!

Thursday, June 14 | 10 a.m. - 2 p.m.
Kootenai Health Classrooms 1 and 2 on our Coeur d'Alene campus

- Tuition assistance for continued education
- Magnet designation
- Competitive salaries
- Employer-paid health insurance premiums for full-time employees
- Robust and incentive-driven wellness program
- Named a Gallup Great Workplace
- Family-friendly community
- Relocation packages available

To speak to a recruiter and learn more about job opportunities call (208) 625-4620 or visit us online at kh.org/careers

GALLUP GREAT WORKPLACE AWARD | Follow us at KootenaiHealthCareers

KootenaiHealth
2003 Kootenai Health Way | Coeur d'Alene, ID 83814

209 PROFESSIONAL POSITIONS

REMEDIAL MATH TEACHER
TWO EAGLE RIVER SCHOOL

The successful applicant must possess a bachelor's degree and Montana State certification in secondary education relevant to the position. Must pass a background check and fingerprinting (no violence against children or other individuals, no sexual abuse against children). Must be willing to promote a program of drug and alcohol free education. Must be willing to be a team member of active staff and demonstrate cooperative behavior. Experience teaching remedial math, middle school math or credit recovery preferred. Experience working with Native American youth and/or knowledge of Native American culture preferred but not required. All applicants must submit a current Tribal employment application, a completed supplemental questionnaire for background investigations, a certified copy of relevant academic transcript, a copy of Montana State certification, three (3) letters of reference, proof of enrollment in a federally recognized Tribe if other than CSKT, and if claiming veteran's preference, a copy of DD214 must be submitted. **This is a Testing Designated Position (TDP) within the definition of the CSKT Drug Testing policy. The successful applicant, if not already employed by the Tribes must pass a pre-hire drug test and serve a mandatory six (6) month probationary period.** Salary is according to TERS pay scale beginning at $27,791. To apply, contact Personnel at 406-675-2700 Ext. #1043 for an application. Tribal applications are also available on-line at: cskthoa.org. This position will be opened until filled.
CSKT IS A TRIBAL MEMBER PREFERENCE EMPLOYER

209 PROFESSIONAL POSITIONS

MISSOULA COUNTY

- ADMINISTRATIVE SECRETARY PT (ELIGIBLE FOR BENEFITS) $13.39 HR CL 6/4/18
- FAIR OCCASIONAL LABORER SHORT TERM $10.10 HR DOE, CL 5/30/18
- JUSTICE COURT MANAGER FT $18.45 HR, DOQ CL 6/11/18
- LICENSED PRACTICAL NURSE (SUPERIOR CLINIC) FT $17.71 HR CL 5/25/18
- PATIENT SERVICES REPRESENTATIVE FT $13.70 HR CL 5/29/18
- REGISTERED NURSE (SUPERIOR CLINIC) FT $23.07 HR, DOE CL 5/25/18

Requires Missoula County online application at www.missoulacounty.us
See online posting for REQUIRED additional application materials and detailed job requirements. Submit all req materials online by 5:00 p.m. on specified closing date. Human Resources Office; phone 406-258-4874; gbrown@missoulacounty.us. EOE

209 PROFESSIONAL POSITIONS

Missoulian
Customer Service-Front Desk

The Missoulian has an immediate opening for part-time front desk customer service representative. This position provides consumer services to our newspaper subscribers.
The ideal candidate should be enthusiastic and great with people, have excellent grammar and language skills, basic math skills, strong keyboarding skills with an emphasis on detail and accuracy, and be proficient in Microsoft Office. Furthermore they should be someone who can anticipate customer needs and promote and sell our products among a diverse pool of our customers.
This is a part-time Monday through Friday position. We offer competitive compensation and an excellent benefit program including medical, dental and vision plans, paid time off, flexible spending accounts, life insurance and a 401k program.
Please apply online at Missoulian.com/workhere.
EOE and drug free workplace

300 LEGALS MNAXLP

Notices under this classification are required by law to be run in a newspaper of general circulation. A notarized proof of publication will be provided for all notices. Some notices may require pre-payment. **DEADLINE FOR SUBMITTALS IS NOON, THREE WORKING DAYS IN ADVANCE of the date the notice needs to be published.** The Missoulian will accept responsibility for printing errors on the first publication only. If you have questions about placing a legal ad, please **call classifieds at** 721-6200 or 1-800-332-6212; and ask for Legals. FAX: Attn: Legals, to 406-523-5221. **Email:** legals@missoulian.com. **Mail legals to:** Missoulian Legals, P.O. Box 8029, Missoula, MT 59807
If you have questions regarding the proof of publication for a printed legal ad, please call Chris Arvish in our Legal Ad Department: 523-5236.

Destination Missoula invites you to submit a proposal for strategy and creative development, research, design, print/digital media and marketing, call center, telemarketing and fulfillment professional services for Destination Missoula to provide comprehensive marketing and fulfillment to promote Missoula as a travel destination to state, regional, national and international markets. The successful offeror must demonstrate extensive knowledge and understanding of each bid service outlined in the RFP to promote and support Missoula as a travel destination. For detailed info, visit www.destinationmissoula.org/rfppostal.
#20537479 May 24, 27, 30, June 3 & 6, 2018

602 ANTIQUES & COLLECTIBLES

Creamery Antique Mall
4072 Eastside Hwy.
Stevensville, MT
Your destination for unique, rare and fine antiques.
creameryantiques@gmail.com

SELL IT in the **Missoulian** It Works.

300 LEGALS MNAXLP

PUBLIC NOTICE

The Missoula Consolidated Planning Board will conduct a public hearing on the following items on Tuesday, June 5th, 2018, at 7:00 p.m., in the Missoula City Council Chambers located at 140 W. Pine Street in Missoula, Montana.

Proposal to Amend Title 20.85.085 Historic Preservation Permit, Section J: Criteria and Procedure for Review of Relocation and Demolition of Historic Resources - Historic Demolition/Relocation Permit

This is a city council initiated text amendment request to revise Section J. of Title 20.85.085, regarding the demolition/removal of historic resources (individually listed properties on the National Register of Historic Places). The proposed amendments expand the existing section for clarity to include subsections, an increased timeline, more detailed requirements for assessing economic feasibility, consultation and mitigation, as well as a clause that the final demolition and building permit will be granted only after a final building permit application has been submitted to the City. The draft language has been created after consideration of comments from the HPC, affected property owners, interested parties and city agencies.

The amendments can be viewed at Development Services, City Hall, 435 Ryman, Missoula, Montana, (406) 552-6630 or at http://www.ci.missoula.mt.us/1521/Current-Projects

The Missoula City Council will conduct a public hearing on this item on a date to be determined.
#20537164 May 22 & 27, 2018

300 LEGALS MNAXLP

INVITATION TO BID

Notice is hereby given that sealed bids shall be received at the office of the City Clerk, 435 Ryman Street, Missoula, Montana, until 11:00 a.m. MST, Friday June 8, 2018, and shall then be opened and publicly read in the Mayor's Conference Room for the furnishing of all labor, equipment and materials for construction of the following:

City of Missoula Project #2010-034
England Boulevard Safety Improvements
Pedestrian Crossings

This project shall consist of the following work:
Removal of existing asphalt, curb & gutter, and sidewalk Installation of curb & gutter, sidewalk, and ADA curb ramps
Installation of street lighting
Installation of traffic signage and road markings
Surface restoration including sod

Bidders shall submit sealed bids as prescribed in the Project Manual addressed to the City Clerk, City of Missoula, enclosed in sealed envelopes plainly marked on the outside **"Proposal for City of Missoula Project #2010-034: England Boulevard Safety Improvements."**

The envelope shall also be marked with the Bidder's Name, Address and Montana Contractor's Registration Number.

Proposals shall be accompanied by cash, cashier's check, certified check, or bank money order drawn and issued by a national banking association bank located in the State of Montana, or by any banking corporation incorporated in the State of Montana, or by a bid bond or bonds executed by a surety corporation authorized to do business in the State of Montana in the amount of ten (10%) percent of the total bid as a guarantee that the successful bidder shall enter into the required contract. The bid security shall identify the same firm as is noted on the bid proposal form. Performance and Payment Bonds shall be required of the successful bidder in the amount of one hundred (100%) percent of the aggregate of the proposal for the faithful performance of the contract, and protection of the City of Missoula against liability.

A complete set of the Contract Documents and Project Manual shall be furnished the Contractors making application therefore from:
City of Missoula
Development Services Department
Engineering Division
435 Ryman Street
Missoula, MT 59802

Upon payment of twenty-five dollars ($25.00), which is not refundable by company check, cashier's check, or bank money order (cash cannot be accepted). In addition, the bid proposal may also be examined at the following location:

Missoula Plans Exchange Phone: (406) 549-5002 Email: mpe@ceicomc.com

Contractor and any of the contractor's subcontractors performing / executing Work on this project shall be required to obtain registration with the Montana Department of Labor and Industry (MT DLI) except as listed in Montana Code Annotated (M.C.A.), Section 39-9-211. Information on registration can be obtained from the Montana Department of Labor and Industry by calling 1-406-444-7734. The Contractor is required to have registered with the MT DLI prior to bidding on this project. All laborers and mechanics employed by contractor or subcontractors in performance of this construction work shall be paid wages at rates as may be required by law.

The Contractor performing / executing Work on a "Public Works Contract" shall not pay less than the latest Montana Labor Standard Provisions minimum wage as determined by the U.S. Secretary of Labor. A copy of said wage rate is attached as part of the contract documents. The provisions of this part do not apply in those instances in which the standard prevailing rate of wages is determined by federal law. "Public Works Contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for non-construction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of twenty-five thousand ($25,000.00) dollars.

The Contractor shall ensure that employees and applicants for employment are not discriminated against on the basis race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

Successful Contractors and vendors shall be required to comply with all City of Missoula Business Licensing requirements.

The City of Missoula reserves the right to waive informalities, to reject any and all bids, and, if all bids are rejected, to re advertise under the same or new specifications, or to make such an award as in the judgment of its officials, best meets the City's requirements.

Any objections to published specifications shall be filed in written form with the City Clerk prior to the bid opening at 11:00 a.m. on Friday June 8, 2018.

The City of Missoula provides accommodations for any known disability that may interfere with a person's ability to participate in any service, program, or activity of the City. To request an accommodation, please contact the City of Missoula Clerk's Office at (406) 552-6079.

Bid announcements and bid results are posted on the city's website at www.ci.missoula.mt.us/bids.

Martha L. Rehbein, CMC
City Clerk
#20536901 May 20 & 27, 2018

SELL IT in the **Missoulian** It Works.

JOBS, JOBS and MORE JOBS!

No Resume? No Problem! Monster Match assigns a professional to hand-match each job seeker with each employer!
This is a FREE service!
Simply create your profile by phone or online and, for the next 90-days, our professionals will match your profile to employers who are hiring right now!
CREATE YOUR PROFILE NOW
BY PHONE OR WEB FREE!
1-866-304-0620
or
Missoulian.com/jobs
No Resume Needed!
Call the automated phone profiling system or use our convenient Online form today so our professionals can get started matching you with employers that are hiring - NOW!

Choose from one of the following main job codes to enter your information:
#10: Accounting / Finance
#11: Airline/Airport
#12: Arts
#13: Banking
#14: Call Center/Customer Service
#15: Childcare
#16: Computers / IT
#17: Counseling & Social Services
#55: Dental
#45: Drivers/Transportation
#18: Education
#19: Engineering
#20: Environmental
#24: Factory & Warehouse
#67: Health Care Assistants
#44: Hotel & Hospitality
#23: Human Resources
#21: Insurance/Financial Services
#22: Janitorial & Grounds Maintenance
#26: Legal
#27: Management
#28: Materials & Logistics
#53: Medical Therapists
#52: Nursing
#31: Office Administration
#32: Operations
#33: Personal Care
#54: Pharmacy
#46: Printing
#34: Protective Services
#35: Quality Control
#48: Real Estate
#36: Research & Development
#37: Restaurant
#38: Retail
#39: Sales
Skilled Trades:
#51: Building General
#42: Construction
#40: Building Prof.
#41: Manufacturing
#50: Specialty Services
#42: Telephone/Cable
#49: Travel and Recreation
#43: Trucking

208 GENERAL HELP

LEGAL ADVERTISEMENT

The City of Missoula Design Review Board will conduct a public hearing on Wednesday, June 13, 2018 in the City Council Chambers, 140 W. Pine Street,Missoula, at 6:00 p.m. to consider the following applications:

1. A request from the Jeanette Rankin Peace Center; Review by the Design Review Board, Building Graphics. The subject property is located at 515 S Higgins Ave. (Map K).

2. A request from Tony Moretti – Gavin Hanks Architects, representing Mercantile Investors, Inc., the owners of the Residence Inn Hotel; for a Review by the Design Review Board, Signs as Part of Building. The subject property is located at 125 Pattee St (Map M).

3. A request from WRM Enterprises Corp; Review by the Design Review Board, Signs as Part of Building. The subject property is located at 1609 W Broadway St (Map N).

Your attendance and your comments are welcome and encouraged. E-mails can besent todscheppke@ci.missoula.mt.us. Project filesmay be viewed in personat Missoula Development Services,435 Ryman St., Missoula or by visiting http://www.ci.missoula.mt.us/1638/Private-Development-Projects If anyone attending this meeting needs special assistance, provide advance notice by calling 552-6630. The City of Missoula will provide auxiliary aids and services.

NATIONAL REGISTER OF HISTORIC PLACES

CITY OF MISSOULA

Apartment Building at 116 W. Spruce St
116 W. Spruce St

Atlantic Hotel
519 N. Higgins Ave

Bellows Residence
1637 S. Higgins Ave

Belmont Hotel
430 N. Higgins Ave

Bluebird Building
220-224 N. Higgins Ave

Brunswick Hotel
223 Railroad St

Carnegie Public Library
335 N. Pattee St

Dixon – Duncan Block
232-240 N. Higgins Ave

Florence Hotel
111 N. Higgins Ave

Forkenbrock Funeral Home
234 E. Pine St

Garden City Drug
118 N. Higgins Ave

Gibson, A. J., House
402 S. 2nd St.

Gleim Building
265 W. Front St

Gleim Building II
255-257 W. Front St

Grand Pacific Hotel
118 W. Alder

Hammond Arcade
101 S. Higgins Ave

Headquarters Building and Daily Company Annex
113-119 W. Front St

Hellgate Lodge 383 BPOE
120 N. Pattee St

Herzog, J. M., House
1210 Toole Ave

Higgins Block
202 N. Higgins Ave

Independent Telephone Company Building
207 E. Main St

Johnston, John S., House
412 W. Alder St

Keith, John M., House
1110 Gerald Ave

Knowles Building
200-210 S. Third St W

Labor Temple
208 E. Main St

Lenox Flats
300-306 W. Broadway

Lincoln School
1209 Lolo St

Lucy Building
330 N. Higgins Ave

Marsh and Powell Funeral Home
224 W. Spruce St

Masonic Lodge
120-136 E. Broadway Ave

Milwaukee Depot
250 Station Dr.

Missoula County Courthouse
220 W. Broadway

Missoula Laundry Company
111 E. Spruce St

Missoula Mercantile Warehouse
221 229 and 231 E Front St

Model Laundry and Apartments
131 W. Alder St

Montgomery Ward
201 N. Higgins Ave

EXHIBIT
10

Mrs. Lydia McCaffery's Furnished Rooms
501 W. Alder

Northern Pacific Railroad Depot
Railroad and Higgins Ave

Orange Street Underpass
Orange St. between N. 2nd St. W., & W. Alder St.

Palace Hotel
147 W. Broadway

Paxson, Edgar, House
611 Stephens Ave

Prescott, Clarence R., House
University of Montana

Reid Residence
526 E. Front

Simons Block
314 N. Higgins Avenue

St. Francis Xavier Church
420 W. Pine St

Sterling, Fred T., House
310 Gerald Ave

Studebaker Building
216 W. Main St

Target Range Elementary School
4095 South Ave. W

Thomas J. Christie House
401 McLeod Ave

Toole, John R., House
1005 Gerald Ave

U.S. Post Office
200 E. Broadway St

University Apartments
400-422 Roosevelt Ave

Wilma Theatre
104 S. Higgins Ave

Zip Auto
251 W. Main St

City Council

City of Missoula, Montana

Item to be Referred to City Council Committee

Committee: Land Use and Planning

Item: Revised Historic Preservation Ordinance Draft Regarding Demolition Permit

Date: January 19, 2018

Sponsor: Gwen Jones

Prepared by: Gwen Jones

Wards affected: All

Action Required: Discuss and recommend direction.

Recommended Motion: Move to direct Development Services staff to distribute draft amendments to the City of Missoula's Historic Preservation Ordinance for comment from all city agencies, the Historic Preservation Commission, conduct a Planning Board public hearing, and then return to City Council for consideration and a public hearing.

Timeline:
Referred to committee: January 19, 2018
Committee discussion: January 24, 2018

Background and Alternatives Explored: During the spring and summer of 2016, both the Historic Preservation Commission and City Council heard and rendered decisions on an application for a Demolition Historic Preservation Permit for the Mercantile building, a property individually listed on the National Register of Historic Places. The City of Missoula's Historic Preservation Ordinance section encompassing a Demolition Historic Preservation Permit proved to be difficult to apply, and accordingly revisions are hereby proposed for clarity and efficiency in application.

Key considerations of this amendment include providing definitions, a Purpose and Intent statement, requiring pre-application consultation, an extended review period, sketch plans for redevelopment, and a mandatory deconstruction plan. The amendment enables the City to charge a fee in order to cover some of the costs associated with permit processing. Staff will propose a $200 fee under a separate referral that amends the Development Services fee resolution. There is currently no fee to cover any of the costs to conduct meetings, publish notices, or to cover staff time and production of meeting documents associated with processing these applications.

This amendment replaces language in 20.85.085.J. The potential location of this amendment continues to be explored and may wholly replace the existing 20.85.085.J. or it may be proposed as a new section.

Alternatives Explored: N/A

Financial Implications:
$200 application fee

HISTORIC PRESERVATION DEMOLITION UPGRADE HPC COMMENTS

Subsection J of 20.85.085

Emy Scherrer, Historic Preservation Officer
Development Services
HPC Presentation - March 1, 2018
All photos courtesy of Harry Miller

EXHIBIT
12

THE GARDEN CITY
MISSOULA
HUB OF FIVE VALLEYS

HP Demolition Upgrade Comments

Overall:

- Tighten up language consistency, plurality, grammar: building/structure, good-faith/bona fide, permit/permit application
- Clause for Historic Districts/Contributing would require re-writing HP ordinance in it's entirety, not just J.

Additions:

- Add commentary on applicant and owner representation
- Add commentary as to the definition of regulatory taking
- Option for HPO to revert back to HPC, head of Dev. Services and relevant city staff for consultation in final decision
- Add clause, "If the HPC fails to reach a preliminary decision within the time frame specified herein, and if no time extension has been granted, the application will stand approved."
- Request for environmental assessments or knowledge of environmental hazards
- Request information from past *and* current owners
- Deconstruction of entire structure (with reference to City Zero Waste Policy), not just historic elements
- Archeological study if deconstruction will disturb subsurface soils
- When demolition by neglect is mentioned, reference existing definition cited in 20.85.085K

HP Demolition Upgrade Comments

3. Definitions (pg. 1)

<u>Economic Hardship:</u>

- Add commentary as to the definition of regulatory taking

- Remove low income clause

-Refer to existing definition of demolition by neglect 20.85.085K

4. Steps for an Historic Demolition/Relocation Permit (pg. 2)

-Generally flesh out

-Add Preliminary Review and Final Review headers

-Add timeline

-Add additional details to boxes; including SHPO consultation

-Bookend process with final Deny or Approve boxes

HP Demolition Upgrade Comments

5. Historic Preservation Officer Review (pg. 3)

- Match box 4 in Steps for consistency
- Applicants will learn about pre-application timeline from the front desk at Dev. Services
- d. add for clarity, "If a permit is preliminarily approved 'by the Historic Preservation Commission pursuant to 20.85.085.J6, as listed in the following section'…"

6. Steps for an Historic Demolition/Relocation Permit (pg. 2)

- Add reference to existing definition found in 20.85.085K

- Definitions are available in resources for: is the evidence *sufficient, relevant, competent, credible, consistent?*

- d. change "meeting" to "presentation" for consistency, add language such as, "and the Historic Preservation Commission may provide input regarding possible conditions regarding final approval, to be issued by the historic preservation officer."

HP Demolition Upgrade Comments

8. Application Requirements for Preliminary Approval (pg. 4)

- Add grants, distinguish federal historic tax and MT historic tax credits

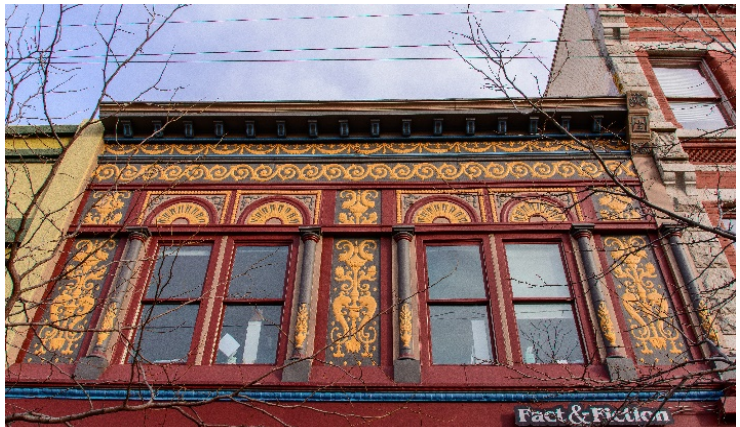
- Require and clarify that assessments be conducted by professionals from western MT

- Section c. will be rewritten and clarified – consulting with land use attorney and MOR
    - Instead of local newspaper which is no longer used for real estate listings, posting will take place on a Multiple Listing Services ("MLS" - loopnet.com) and on the National Trust for Historic Preservation Real Estate page

9. Application Requirements for Final Approval (pg. 5)

- Flesh out Documentation Plan re: HABS to include plans, elevations, photography etc.

- Regarding the redevelopment plan, Downtown Design Guidelines will be implemented by the end of this year - add language, "and any applicable design guidelines within the City of Missoula."



HP Demolition Upgrade Comments

Next Steps:

- Recommended Motion – *Approve, approve with edits, or deny discussed changes/comments regarding updates to the Historic Preservation Demolition Permit Draft and write a letter to planning board on behalf of the Historic Preservation Commission regarding comments/changes*
- Updated draft will go out for agency and public comment
- Planning Board presentation on April 17th

Tentative Following Steps:

- Land Use and Planning Board update and motion to set public hearing on May 2nd
- City Council First Reading on May 7th
- City Council Public Hearing on May 21st

20.85.085.J Criteria and Procedure for Review of Relocation and Demolition of Historic Resources - Historic Demolition/Relocation Permit

*Editor's Note: The current subsection J of 20.85.085 (**Criteria and Procedure for Review of Relocation and Demolition Historic Preservation Permit**) is proposed to be replaced in its entirety with the following language:*

1. Intent:

a. The demolition of all or portions or the relocation of properties individually listed on the National Register of Historic Places (historic resources) are considered significant actions, as they alter the character of Missoula and the neighborhoods of which they are a part. An application to demolish or relocate an historic resource is held to a very high standard, requiring submittal of comprehensive and detailed application materials.

b. To obtain an historic demolition/relocation permit for full or partial demolition, or for relocation, herein after referred to as "permit," the applicant must demonstrate that enforcement of the Historic Preservation Section (20.85.085) will cause unreasonable economic hardship to the property, and that the applicant has made a good-faith effort to find a reasonable alternative that would result in the preservation, renovation, or reuse of the historic resource, and that conditions necessary to mitigate the effects of approved demolitions are developed.

2. Applicability:

a. Any property proposed for demolition or relocation which is individually listed on the National Register of Historic Places requires an historic demolition/relocation permit. The removal of a façade or significant part of a structure may be eligible for a partial-demolition permit upon negotiation with the historic preservation officer.

b. All other provisions apply within the Historic Preservation Permit section (20.85.085) including Notice.

c. The Historic Preservation Commission and historic preservation officer reserve the right to seek outside (third-party) consult from qualified professionals in western Montana in determining whether the applicant has acted in good-faith effort, whether reasonable alternatives have been proven, and in assessing economic feasibility based on the submitted evidence.

3. Definitions:

For the purposes of this [sub]section, the following definitions apply:

Demolish, demolition, deconstruction means the razing or destruction, entirely or in significant part, of a building or structure, and includes the partial or total removal of any exterior elevation of a building or structure.

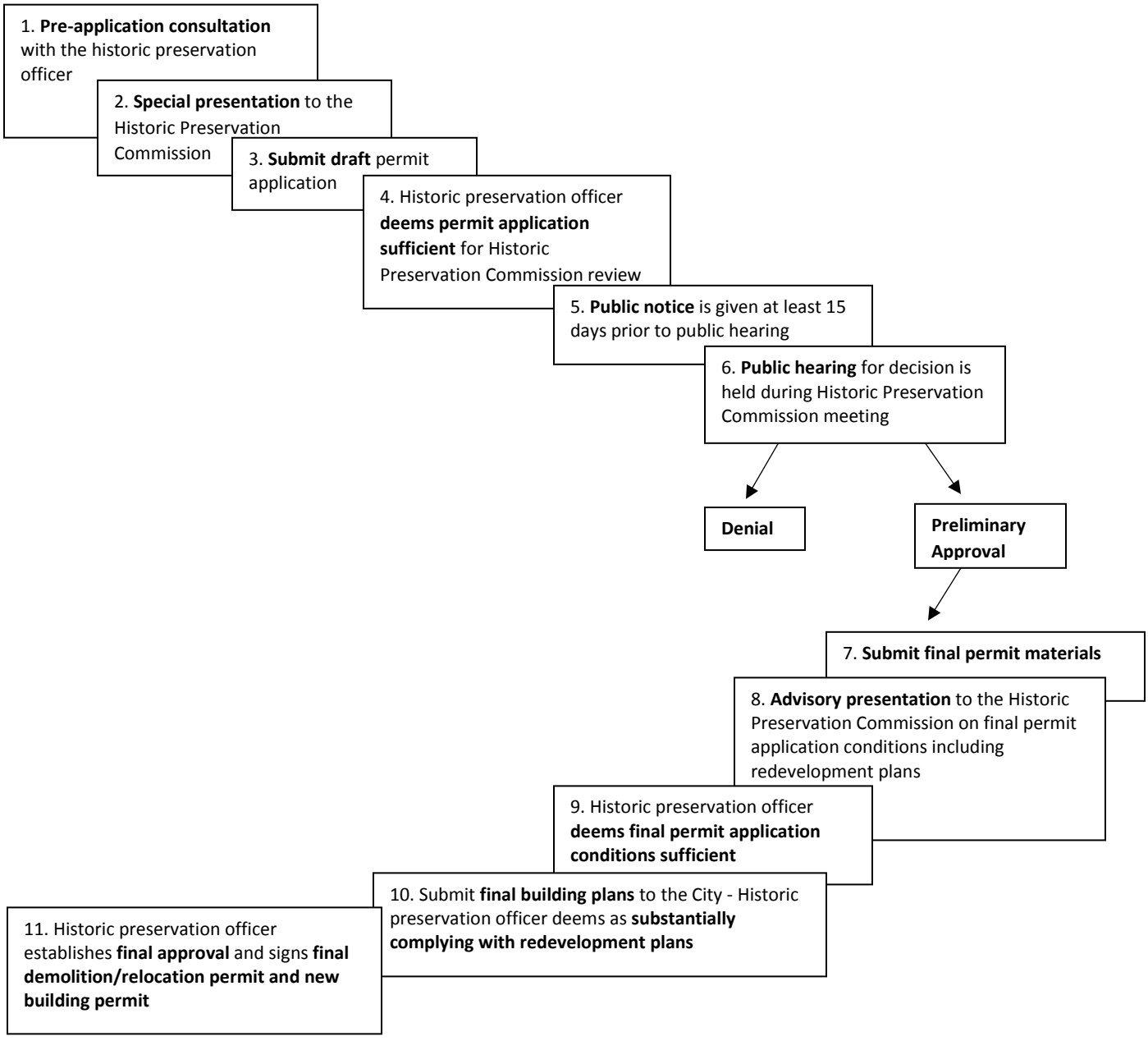
Economic Hardship means that the failure to issue a permit would amount to a taking of the owner's property without just compensation or, in the case of a low-income owner(s) failure to issue a permit would place an onerous and excessive financial burden upon such owner(s). Hardships may not be caused by the owner's negligence or intentional lack of appropriate maintenance, nor is the owner's desire to increase the property's economic return adequate grounds for relief.

Evidence means requested and/or required information regarding economic hardship and feasible alternatives and shall be weighed by the Historic Preservation Commission as to whether it is consistent with the legal standard for an unconstitutional regulatory taking as a result of denial of a permit.

Bona Fide and/or Good-faith Effort consists of a diligent and honest effort on behalf of the applicant resulting in substantive and collaborative dialogue between all parties involved regarding economic and public interest, and a willingness of the applicant to provide any information requested and as required.

Relocation means moving the structure from its original location and setting to a different location and setting of any distance. For a proposed relocation, the Historic Preservation Commission and historic preservation officer shall consider setting, location, feeling, and association as it applies to its National Register nomination, whether the structure will maintain its historic significance and integrity having been relocated, and the economic and physical feasibility associated with relocating the structure.

4. Steps for an Historic Demolition/Relocation Permit:



5. Historic Preservation Officer Review:

The applicant shall submit application requirements for preliminary approval and shall work with the historic preservation officer in creating a permit application which is sufficient for Historic Preservation Commission review.

a. The applicant shall initiate in consultation and schedule a pre-application meeting with the historic preservation officer at least 30 days prior to submitting a permit application.

b. The historic preservation officer shall review and deem the application sufficient regarding requirements of 20.85.085.D and this section for preliminary review. The historic preservation officer shall send a letter of sufficiency to the applicant.

c. The Historic Preservation Commission shall review the application in accordance with 20.85.085.F as applicable.

d. If a permit is preliminarily approved, the applicant shall submit application requirements for final approval to the historic preservation officer for review and to be deemed as sufficient. The historic preservation officer shall determine whether the conditions of preliminary approval have been substantially met, including but not limited to redevelopment plan review, mitigation, documentation and deconstruction plan review. If the historic preservation officer finds substantial compliance, the historic preservation officer shall finally approve the permit for demolition and subsequent building redevelopment.

6. Historic Preservation Commission Review:

The Historic Preservation Commission shall review the permit application for preliminary approval. Once the historic preservation officer has deemed the permit application sufficient for preliminary approval review, a period of no less than 30 days and no more than 120 days is initiated for the Historic Preservation Commission to reach a decision.

a. Upon fully reviewing the permit application, the Historic Preservation Commission shall hold a public hearing and may: grant preliminary approval with conditions, or deny the permit. A denial of a permit shall be accompanied by a written statement of the specific reasons for the denial.

b. Preliminary approval with conditions will be established during the public hearing if the Historic Preservation Commission finds that failure to issue a permit will result in unreasonable economic hardship to the property, and that a good-faith effort has been achieved to find a reasonable alternative that would result in the preservation, renovation, or reuse of the historic resource, and no reasonable alternative exists. The preliminary approval may include conditions including, but not limited to, mitigation, documentation, and redevelopment plan review.

c. The Historic Preservation Commission shall evaluate the evidence utilizing the following questions: *Is the evidence sufficient? Is the evidence relevant? Is the evidence competent? Is the evidence credible? Is the evidence consistent?* The Historic Preservation Commission shall also consider any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property.

d. If the Historic Preservation Commission preliminarily approves the permit, the applicant shall present redevelopment plans, mitigation plans, deconstruction plans and documentation status to the Historic Preservation Commission during an advisory meeting.

7. Pre-Application Requirements:

The following criteria is required prior to submitting a permit application:

Note: This section expands the existing concept of J.1.a.

a. Proof of Mandatory Consultation**:** at least 30 days prior to submitting a permit application, the applicant shall initiate formal consultation with the State Historic Preservation Office and schedule a pre-application meeting with the historic preservation officer. The applicant then shall provide a special presentation at an Historic Preservation Commission meeting, in order to gather information and comments on the permit proposal.

b. At a minimum, consultation with the State Historic Preservation Office shall be in the form of a letter requesting comments on the proposal.

8. Application Requirements for Preliminary Approval:

After the completion of the pre-application requirements, the following application information must be submitted as evidence and considered as review criteria:

Note: This section expands the existing concept of J.1.d.

a. Bona Fide Attempt to Rehabilitate: Certificate of Economic Hardship (CEH):

The applicant must provide evidence that no reasonable alternative exists through the completion and submission of a CEH and the burden of proof is on the applicant. The CEH must be submitted in narrative form and must include and examine the following as it relates to current economic and market rate data for Missoula, MT:

(1) The amount paid for the property;

(2) The date of purchase, the party from whom purchased, and a description of the business or family relationship, if any, between the owner and the person from whom the property was purchased. If property was not purchased at or close to market value, an explanation of the circumstances of the sale;

(3) The cost of any improvements since purchase and the date incurred;

(4) The assessed value of the land, and improvements thereon, according to the most recent assessments;

(5) Property taxes for the previous two years and any arrearages;

(6) Annual debt service, if any, for the previous two years;

(7) All appraisals obtained within the previous five years by the owner or applicant in connection with the purchase, financing or ownership of the property;

(8) Any listing of the property, price asked and offers received in the past five years;

(9) Any consideration by the owner for profitable and adaptive reuses for the property, including renovation studies, plans, bids and;

(10) Additional requirements for income-producing property:

(a) Annual gross income from the property for the previous five years;

(b) Itemized operating and maintenance expenses for the previous five years;

(c) Annual cash flow for the previous five years;

(d) Rent charged to tenants for the previous five years and the current market rate for rent;
(e) A comparative economic assessment for the utilization of all financial incentives currently available including but not limited to: potential Missoula Redevelopment Agency funding, Historic Tax Credits, MT Historic Tax Abatement, New Market Tax Credits;

(11) Any additional supplemental information requested or considered necessary.

b. Feasibility Study Demonstrating the Resource is Incapable of Generating a Reasonable Economic Return:
The Feasibility Study must be completed by individuals not associated with the City of Missoula or the project in review. Provisions:

(1) Written statement and itemized cost list from a licensed engineer and/or a licensed architect with experience in preservation, renovation, restoration, or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration or rehabilitation.

(2) Written statement and itemized cost list from a land-use professional which includes real estate consultants, appraisers, or other real estate professionals experienced in rehabilitation, as to the economic feasibility of preservation, restoration, renovation or rehabilitation of existing historic structures.

c. Bona Fide Attempt to Rent, Sell or Relocate Resource:
Provisions:

Note: This section expands the existing concept of J.1.b, c.

(1) The applicant must advertise the historic resource for sale using a real estate broker;
(2) The applicant must prove that asking price was reasonable during time of listing;
(3) The applicant must list the property in a major local newspaper of general circulation for a period of 90 days. At least 30 of the 90 days must take place after the permit application has been deemed sufficient for review by the historic preservation officer and before a decision has been reached by the Historic Preservation Commission. Sixty of the 90 days must have taken place within one year prior to when the permit was deemed sufficient for review by the historic preservation officer;
(4) For the 30 day listing after the historic preservation officer has deemed the permit application sufficient for review, the historic resource may not be under contract unless by an interested party who will not demolish the building. A resolution of sale by an interested party is considered satisfactory if the offer for purchase meets or exceeds the listing price.

9. Application Requirements for Final Approval:

Note: This section expands the existing concept of J.3.a.

a. If a preliminary approval for the permit has been established by the Historic Preservation Commission, then the applicant shall work with the historic preservation officer to ensure conditions will be met including documentation, deconstruction and mitigation measures, redevelopment plans and any additionally requested material. The applicant shall present the following to the Historic Preservation Commission during an advisory meeting and the historic preservation officer shall deem sufficiency of the material submitted.

b. The applicant has two years from the date of preliminary approval to substantially complete conditions for final approval.

c. The following must be submitted as evidence:

(1) Documentation Plan:

All historic resources preliminarily approved for demolition, partial-demolition or relocation must be fully documented using Historic American Building Survey (HABS) or HABS-quality procedure.

(a) Documentation shall happen before the final demolition/relocation permit is issued;

(b) Documentation must be produced by a professional who satisfies professional qualification standards for history, archeology or architectural history, as established by the National Park Service and published in the Code of Federal Regulations, 36 CFR Part 61;

(c) Documentation may be submitted as early in the process as the applicant desires to support the requested action.

(2) Mitigation Plan for Demolition, Partial-Demolition or Relocation:

In addition to documentation, the applicant must provide a proposal to mitigate for adverse effect caused by demolition, partial-demolition or relocation. Possible mitigation efforts include, but are not limited to, designated interpretive space, brick and mortar projects, National Register nomination updates and additions, a preservation plan utilizing the Secretary of the Interior's Standards, and a development agreement with the City. The applicant shall work with the historic preservation officer in establishing a proposal and shall present plans to the Historic Preservation Commission during an advisory meeting. Should the applicant be applying for a partial-demolition or relocation permit, additional preservation planning documents could apply which may include plans for stabilization and/or restoration.

(3) Redevelopment Plan:

The applicant shall submit redevelopment plans to the historic preservation officer and shall present plans to the Historic Preservation Commission during an advisory meeting. The applicant shall consult with the historic preservation officer in creating appropriate redevelopment plans for the site and shall consider advice from the Historic Preservation Commission.

(a) Redevelopment should be compatible with the character of the surrounding neighborhood and must reflect the historic resource to be demolished or relocated.

(b) Redevelopment plans shall be oriented with a north arrow at the top of the page and shall include exterior elevations, materials, site boundaries, street and alley frontages with names, location of all structures with distances to the nearest foot between buildings and from buildings to property lines, and must conform to all applicable regulations.

(c) A final demolition/relocation permit will be granted only after a final building permit has been submitted to the City and has been inspected by the historic preservation officer, and the historic preservation officer has found that the final building permit plans substantially comply with the redevelopment plans.

(d) A final building permit will be granted only after the historic preservation officer has found that the building permit plans substantially comply with the redevelopment plans.

(e) The applicant must demonstrate the ability to complete the project. The City Building Official may accept a bond, letter of credit or cash deposit as a demonstration that the financial backing for the replacement structure is adequate to complete the project.

(4) Deconstruction Plan:

All historic structures approved for partial or full demolition must be deconstructed rather than demolished with deconstructed items to be reused in the subsequent redevelopment or made available to the Missoula community. Property owners are held responsible for all costs associated with deconstruction.

(a) The applicant shall ensure that a local deconstruction specialist is consulted on the deconstruction process, for purposes of identifying opportunities for recovering and reusing materials within the structure.

(b) Prior to onset of deconstruction, the applicant and the deconstruction contractor shall meet with the historic preservation officer to identify historic features and items within the structure that are important to retain for potential reuse in the new structure or for preservation or interpretive purposes.

(c) The applicant shall submit a deconstruction plan summarizing timing and approach including a list of identified historic items, and must be approved by the historic preservation officer.

(d) The deconstruction specialist shall use their best effort to recover as many historic features and items identified by the historic preservation officer as is feasible, taking into consideration the age and condition of the materials, the safety of workers engaged in the deconstruction efforts, environmental abatement needs, and other conditions of the structure and worksite.

10. Exceptions:

The historic preservation officer may waive items listed in 20.85.085.J if they are not applicable to the specific review requested by the ordinance. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained, the applicant shall file with the permit application a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained. The historic preservation officer shall deem whether the reasons are sufficient or not and shall provide a signature of sufficiency.

11: Permit Application Checklist:

Historic Demolition/Relocation Permit Checklist for Required Material

Preliminary Permit Approval Requirements:

___ Certificate of Economic Hardship (CEH)

____ Economic Return Analysis

____ Feasibility Study

____ Record of Bona Fide Attempt to Rent, Sell or Relocate Property

Final Permit Approval Requirements:

____ HABS-Quality Documentation Plan of the Historic Resource

____ Mitigation Plan for Adverse Effect

____ Redevelopment Plan and Economic Proof

____ Any Additional Supplemental Information Requested or Considered Necessary

Existing Subsection J of 20.85.085, to be replaced in its entirety:

J. **Criteria and Procedure for Review of Relocation and Demolition Historic Preservation Permit**

[Codifier's note: A typo in this part was corrected and updated on March 22, 2016. The automatic numbering in this section was updated and corrected so the first paragraph entitled "Intent" began at "A" and all subsequent letters in the section were updated accordingly. The "J" preceding "Criteria and Procedure for Review of Relocation and Demolition Historic Preservation Permit" was "W" in the previous on line version. No other changes were made to this section. Page numbers may have changed as a result of the addition of this codification note.]

1. **Criteria for Review:**

The Historic Preservation Commission shall review the HPP application for compliance in accordance with the following criteria:

a. The applicant has consulted with the Historic Preservation 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 has advertised the Historic resource for sale in a local newspaper of general circulation for a period of 30 days ;

c. The applicant's good faith efforts to find a purchaser interested in acquiring and preserving, renovating, or reusing the historic resource have failed;

d. Denying the application would prevent all reasonable economic use of the property; and

e. The applicant shall provide the historic preservation officer supporting documentation demonstrating that the above criteria are met.

2. **Relocation and Demolition Delay:**

Upon receipt of a completed HPP application for demolition or relocation, the Historic Preservation Commission may impose a relocation or demolition delay for 90 days to allow sufficient time to explore preservation of the historic resource.

3. **Mitigation:**

a. If an HPP for relocation or demolition is approved, the applicant shall mitigate the adverse effects of relocation or demolition by providing, to the extent possible, documentation, similar to HABS/HAER, of the historic resource prior to undertaking the relocation or demolition.

b. 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.

Existing Subsection G of 20.85.085:

G. **Commission Action on Historic Preservation Permit Applications.**

1. Except for historic preservation officer reviewed alterations under Section 20.85.080.F.5, the Historic Preservation Commission shall review and decide on an Historic Preservation Permit (HPP) application at a scheduled public meeting. The Commission's decision shall occur within 60 days from the date the completed application was received (90 days for applications involving a demolition or relocation no less than 30 days and no more than 120 days for applications involving demolition, partial-demolition or relocation). If the Historic Preservation Commission is unable to process the request within 60 days of

receipt of the completed application, the Historic Preservation Commission may request an extension of time from the applicant. If an application is not processed within 60 days of submittal ~~(90 days~~ within 120 days for applications involving a demolition or relocation~~)~~ and no extension of time is requested or granted by the applicant then the Historic Preservation Permit (HPP) is approved.

20.85.085.J Criteria and Procedure for Review of Relocation and Demolition of Historic Resources - Historic Demolition/Relocation Permit

*Editor's Note: The current subsection J of 20.85.085 (**Criteria and Procedure for Review of Relocation and Demolition Historic Preservation Permit**) is proposed to be replaced in its entirety with the following language:*

1. Intent:

a. The demolition or relocation of properties individually listed on the National Register of Historic Places are considered significant actions, as historic sites and structures are community resources and contributing elements to the character of Missoula. The removal of historic resources alters the established character of the neighborhoods of which they are a part. An application to demolish or relocate an historic resource is held to a very high standard, requiring submittal of comprehensive and detailed application materials.

b. The purpose of this permit process is to evaluate and ensure that the applicant has considered reasonable and economically feasible alternatives to demolition or relocation, and sufficiently mitigate the effects of the potential removal of a historic resource.

c. To obtain an historic demolition/relocation permit, herein after referred to as "permit," the applicant must demonstrate that:

(1) Denying the application will cause unreasonable economic hardship to the viability of the property;
(2) That the applicant has made a bona fide effort to find a reasonable alternative that would result in the preservation, renovation, or adaptive reuse of the historic resource and;
(3) That conditions necessary to mitigate the effects of approved demolition/relocation are developed.

d. This permit process also ensures that if a historic resource is removed, redevelopment of the site occurs in a way that mitigates the loss and enhances the many elements that are unique to the fabric, theme and character of each neighborhood and area within Missoula, and is sensitive to the significance of the site.

2. Applicability:

a. Any property proposed for demolition or relocation which is individually listed on the National Register of Historic Places requires an historic demolition/relocation permit.

b. Subsequent redevelopment requires a building permit and shall not include plans which leave the site without building(s) or structure(s), unless the existing character of the area does not include building(s) or structure(s).

c. All other provisions apply within the Historic Preservation Permit section (20.85.085) including Notice.

d. It is anticipated that every application will have a set of factual circumstances unique onto itself, and that proportionality of the type and scale of the proposed project will be considered during review. The Historic Preservation Commission and historic preservation officer acknowledge that requirements will vary from one context to another and should be assessed on an individual basis.

3. Definitions:

For the purposes of this [sub]section, the following definitions apply:

Bona Fide consists of a diligent effort on behalf of the applicant resulting in substantive and collaborative dialogue between all parties involved regarding economic and public interest, and a willingness of the applicant to provide any information requested and as required.

Consultation: means the act or process of formally engaging in an active and meaningful discussion in order to seek information and advice. Depending on the circumstances, further consultation may be required on matters and issues that initial consultation may not have acknowledged.

Demolish, demolition, deconstruction means the razing, destruction, or dismantling of an Historic Resource to the degree that its character defining features are substantially obliterated.

Economic Hardship means that the structure has no viable economic life remaining. "No viable economic life" means the costs of repair/and or rehabilitation to bring the structure to an occupiable condition is unreasonable. Hardships may not be caused by the owner's neglect or intentional lack of appropriate maintenance (refer to 20.85.085.K), nor is the owner's desire to increase the property's economic return adequate grounds for relief.

Evidence means requested and/or required information regarding the history of the site, economic hardship and feasible alternatives, and shall be weighed by the Historic Preservation Commission as to whether denying the application will cause unreasonable economic hardship to the viability of the property and whether reasonable alternatives exist.

Relocation, in addition to the definition in 20.30.030, means moving the structure from its original location and setting to a different location and setting of any distance. For a proposed relocation, the Historic Preservation Commission and historic preservation officer shall consider setting, location, feeling, and association as it applies to its National Register nomination, whether the structure will maintain its historic significance and integrity having been relocated, and the economic and physical feasibility associated with relocating the structure.

Unreasonable means an amount of effort and difficulty that is oppressively burdensome, onerous and/or excessive.

4. Application Overview

a. The applicant shall work with the historic preservation officer in creating and submitting a permit application which is accurate and sufficient for Historic Preservation Commission preliminary approval review and historic preservation officer final review.

b. Application sufficiency is determined based on review of accuracy and completeness of the application consistent with section 20.85.020.2 and 3.

c. The review and approval process for the permit application is developed in two stages:

(1) The first stage is preliminary approval review and requires action by the Historic Preservation Commission during a public hearing. Action shall take place in the form of preliminary approval, preliminary approval with conditions, or denial of the permit. Submittal material for preliminary approval review is described in section 20.85.085.J.10.

(2) If the permit is preliminarily approved or preliminarily approved with conditions in stage one, then the application proceeds to stage two. The second stage is final approval review and requires submittal of additional information including a redevelopment plan, and may consider advice from the Historic Preservation Commission. The historic preservation officer either finally approves or denies the permit. Submittal material for Final Approval Review is described in section 20.85.085.J.11.

d. The permit is not finalized and action on the permit cannot go forward until the final approval occurs during stage two.

e. No demolition/relocation permit shall be issued unless a permit for subsequent redevelopment is issued simultaneously under section 20.85.085.J.

f. An application filing fee is required for processing the permit application and is due at the time of preliminary review application submittal. The fee is established through Resolution and is non-refundable.

5. Application Timeline:

a. A complete and accurate application for the permit preliminary approval review must be filed with the historic preservation officer in Development Services no sooner than 30 days after a pre-application meeting.

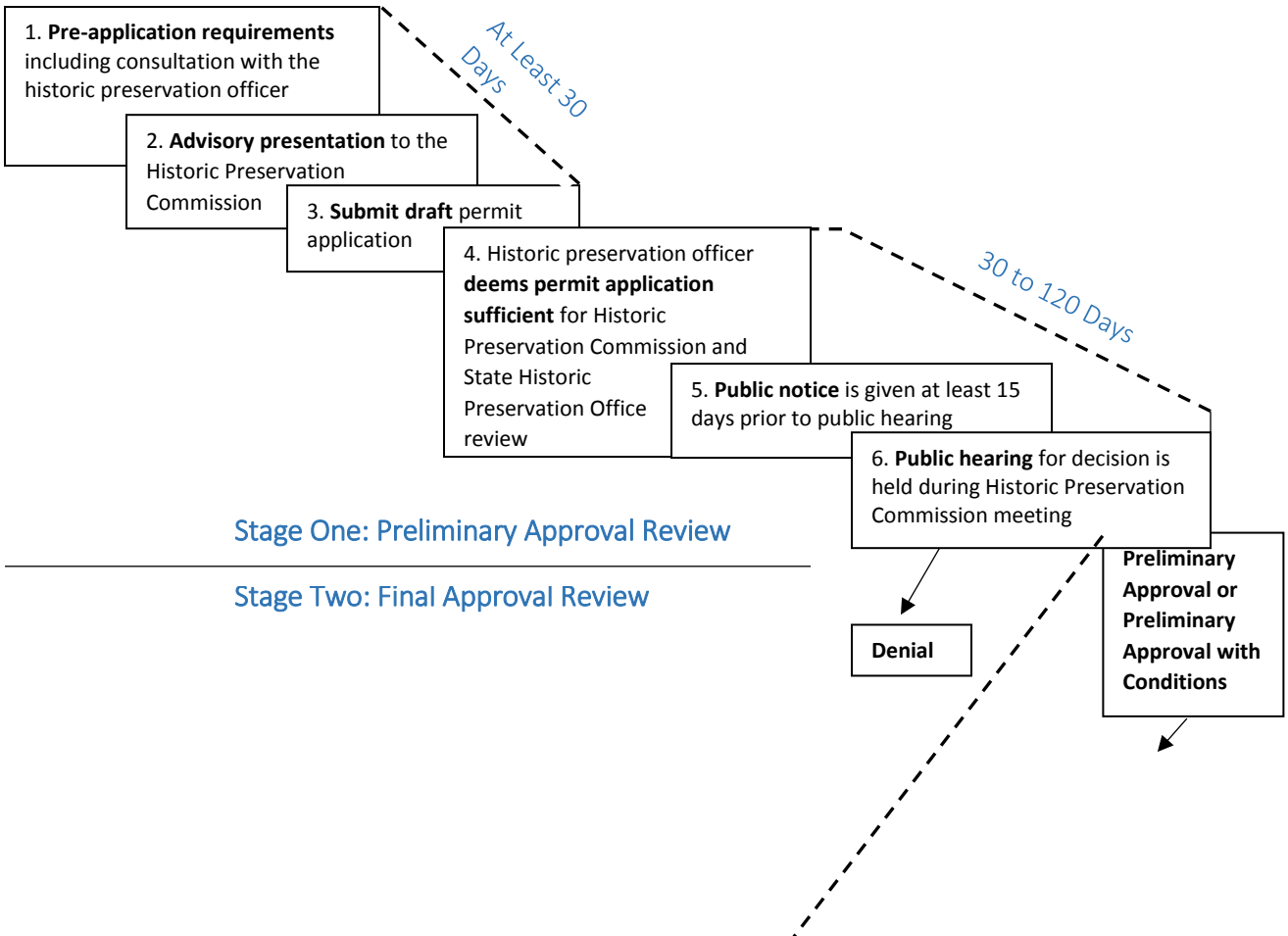
b. Once the historic preservation officer has deemed the permit application sufficient for preliminary approval review, a period of no less than 30 days and no more than 120 days is initiated for the Historic Preservation Commission to reach a decision regarding the permit application for preliminary approval.

c. The Historic Preservation Commission may request an extension of time from the applicant. If the Historic Preservation Commission fails to reach a preliminary decision within the time frame specified herein, and if no time extension has been granted, the application will stand as preliminarily approved.

d. The applicant has two years from the date of preliminary approval, or preliminary approval with conditions, to complete any preliminarily approved conditions and substantially comply with requirements for final approval. If the applicant has not continued to pursue a demolition permit at the end of the two years from the inception of the application, the application will be deemed denied by the historic preservation officer and the applicant may start the process again.

e. The applicant may request an extension from the historic preservation officer if they are unable to complete requirements for final approval within the time frame specified herein, and if no time extension has been granted, the application will stand as denied.

f. The following figure indicates the steps associated with each stage of application review:



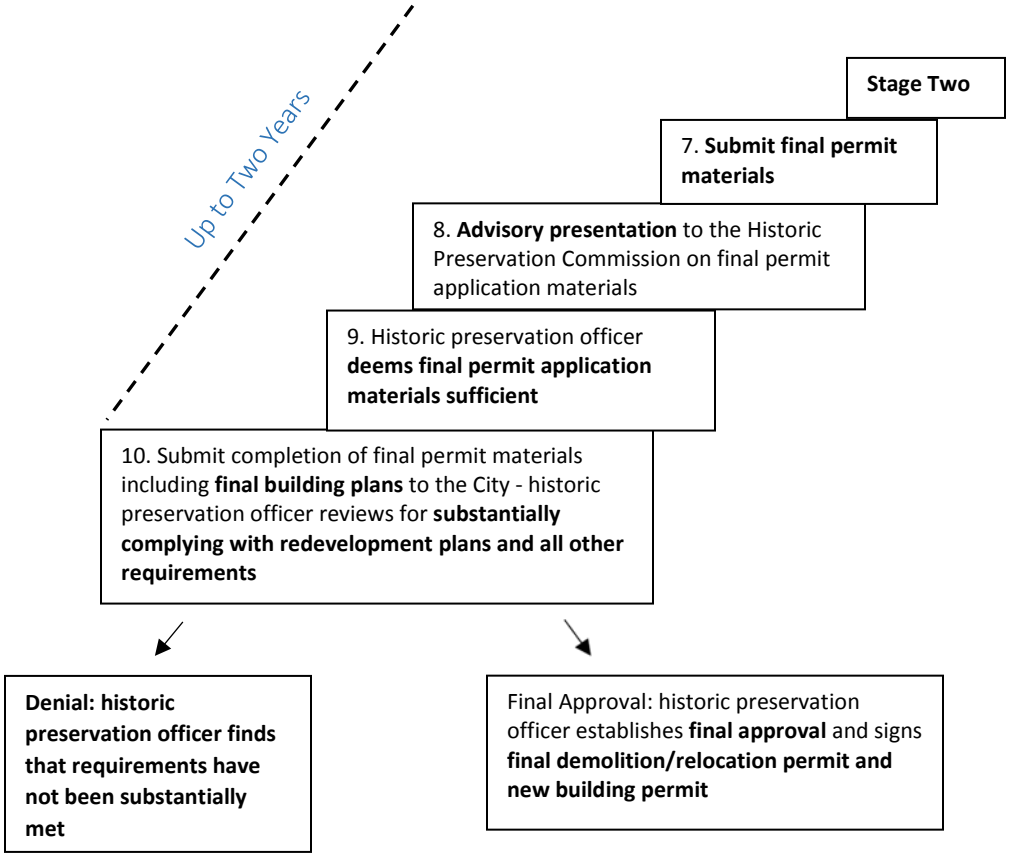


Figure 20.85.085-1

6. Pre-Application Requirements:

Note: This section expands the existing concept of J.1.a, regarding consultation.

a. The intent of pre-application requirements is to initiate active mandatory consultation, review permit application materials, and outline the review process.

b. At least 30 days prior to submitting a permit application, the applicant shall initiate consultation by scheduling a pre-application meeting with the historic preservation officer.

c. After the pre-application meeting, the applicant shall provide an advisory presentation at an Historic Preservation Commission meeting, in order to gather information and consider comments on the permit proposal.

d. After the pre-application meeting, the historic preservation officer may notify the State Historic Preservation Office that the process for a potential permit application has been initiated.

Commentary: If the applicant is not the building owner, such as an architect or consultant, it is strongly encouraged that the building owner be willing and available to work with the historic preservation officer and Historic Preservation Commission throughout the permit application process.

7. Historic Preservation Officer Review:

a. The historic preservation officer shall meet with the applicant in a pre-application meeting to discuss the proposal, review permit application material, and outline the review process.

b. The historic preservation officer shall review and deem the application sufficient in accordance with 20.85.085.D and F as applicable, and this section for preliminary approval review (stage one). Once deemed sufficient, the historic preservation officer shall send a letter of sufficiency to the applicant.

c. The historic preservation officer shall send a copy of the application to the State Historic Preservation Office, together with a cover letter requesting review and comment. The State Historic Preservation Office shall have 15 days from the receipt of the letter to provide comment.

d. The historic preservation officer reserves the right to seek outside (third-party) consult from qualified professionals in western Montana, in determining whether the submittal material accurately and sufficiently addresses the required application information, at no cost to the applicant.

e. If a permit is preliminarily approved or preliminarily approved with conditions by the Historic Preservation Commission pursuant to 20.85.085.J8, the applicant shall submit application requirements for final approval to the historic preservation officer for review and to be deemed as sufficient (stage two, 20.85.085.J.11).

f. The historic preservation officer shall determine whether the conditions of preliminary approval and requirements of final approval have been substantially met.

g. If the historic preservation officer finds substantial compliance with the intent of mitigating adverse effect, the historic preservation officer shall finally approve the permit for demolition and subsequent redevelopment (building permit).

h. The historic preservation officer may consult with the Historic Preservation Commission Chair, the Director of Development Services and relevant city staff in reviewing final application materials and reaching a final decision.

8. Historic Preservation Commission Review:

a. The Historic Preservation Commission shall review the permit application for preliminary approval consideration (stage one). Once the historic preservation officer has deemed the permit application sufficient for preliminary approval review, a period of no less than 30 days and no more than 120 days is initiated for the Historic Preservation Commission to reach a decision regarding the permit application for preliminary approval review.

b. Upon fully reviewing the permit application, the Historic Preservation Commission shall hold a public hearing and may: grant preliminary approval, preliminary approval with conditions, or deny the permit. A denial of a permit shall be accompanied by a written statement of the specific reasons for the denial.

c. Preliminary approval will be established during the public hearing if the Historic Preservation Commission finds that failure to issue a permit will result in unreasonable economic hardship to the viability of the property, and that a bona fide effort has been made to find reasonable alternatives that would result in the preservation, renovation, or adaptive reuse of the historic resource, and no reasonable alternatives exist.

d. The Historic Preservation Commission should consider the evidence utilizing the following guiding questions: *Is the evidence sufficient? Is the evidence relevant? Is the evidence competent? Is the evidence credible? Is the evidence consistent?* The Historic Preservation Commission should also consider any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property under 20.85.085.K.

e. The Historic Preservation Commission reserves the right to seek outside (third-party) consult from qualified professionals in western Montana, in determining whether the applicant has put forth a bona fide effort, whether reasonable alternatives have been proven, and in assessing economic feasibility based on the submitted evidence.

9. Review Criteria

The following must be considered In reviewing and making decisions on demolition/relocation permit applications:

Note: This section expands the existing concept of J.1

a. Whether the structure still maintains viable economic life.
b. Whether the structure is capable of generating a reasonable economic return if preserved, restored or rehabilitated.
c. Whether the applicant has made a bona fide effort to find a reasonable alternative that would result in the preservation, renovation or rehabilitation of the structure.
d. The historic preservation officer must consider whether sufficient mitigation efforts have been met, including but not limited to, documentation, mitigation, redevelopment and deconstruction.

10. Application Requirements for Preliminary Approval Review:

After the completion of the pre-application requirements, the following application information must be submitted as evidence and considered to address the review criteria:

Note: This section expands the existing concept of J.1.d,e.

a. Certificate of Economic Hardship (CEH):

The purpose of the CEH is to provide information as to whether the structure still maintains viable economic life. The burden of proof is on the applicant. The CEH must be submitted in written form and must include and examine the following as it relates to current economic and market rate data for Missoula, MT. Provisions:

(1) The assessed value of the land, and improvements thereon, according to the most recent assessments;
(2) Property taxes for the previous two years and any arrearages;
(3) All appraisals obtained within the previous five years by the past and current owner or applicant in connection with the purchase, financing or ownership of the property;
(4) Any listing of the property, price asked and offers received in the past five years;
(5) Any environmental assessments or knowledge of environmental hazards associated with the property;
(6) Any consideration by the owner for profitable adaptive reuses for the property, including renovation studies, structure and site plans, bids and;
(7) Additional requirements for income-producing property:
(a) Annual gross income from the property for the previous five years;
(b) Itemized operating and maintenance expenses for the previous five years;
(c) Annual cash flow for the previous five years;
(d) Rent charged to tenants for the previous five years and the current market rate for rent;
(e) A comparative economic assessment for the utilization of all financial incentives currently available including but not limited to: potential Missoula Redevelopment Agency funding, Federal Historic Tax Credits, MT Historic Tax Abatement, New Market Tax Credits, historic preservation grants, and any other available funding;
(8) Optional: Additional information such as the following may be helpful in satisfying the burden of proof and in clarifying whether an economic hardship is taking place:
(a) The date of purchase

(b) If property was not purchased at or close to market value, an explanation of the circumstances of the purchase and/or sale;
(c) A detailed list with costs of any improvements since purchase and the date incurred;
(d) Annual debt service, if any, for the previous two years;
(e) Title report and current balance on all mortgages, trust indentures, and on all debts that encumber the property

b. Feasibility Study/Economic Analysis Return:

The purpose of the feasibility Study is to provide information as to whether the structure is capable of generating a reasonable economic return if preserved, restored or rehabilitated. The feasibility study must be completed by a third party not associated with the City of Missoula or the project in review, and must be completed by professionals from or experience in their field in western Montana. Provisions:

(1) Written statement and itemized cost list from a licensed engineer and/or a licensed architect with experience in preservation, renovation, restoration, or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration or rehabilitation.

(2) Written statement and itemized cost list from a land-use professional which includes real estate consultants, appraisers, or other real estate professionals experienced in rehabilitation, as to the economic feasibility of preservation, restoration, renovation or rehabilitation of existing historic structures.

c. Bona Fide Attempt to Rent, Sell or Relocate Resource:

The intent of listing the structure is to ensure that parties interested in saving the structure as opposed to demolishing it are alerted and offered a period of time to purchase the property. It is highly recommended that any individually listed property be listed on the National Trust for Historic Preservation online real estate page for the entire duration that the property is listed for sale. Provisions:

Note: This section expands the existing concept of J.1.b, c.

(1) The applicant must advertise the historic resource for sale using a licensed real estate broker;
(2) The applicant must illustrate that the asking price was comparable to the value of equivalent local structures of use and form during time of listing;
(3) The applicant must list the property on a Multiple Listing Service (such as Loopnet.com) and the National Trust for Historic Preservation online real estate page for a period of at least 90 days within the past six months prior to submitting an application.
(4) A resolution of sale by an interested party is considered satisfactory if the offer for purchase meets or exceeds the listing price, or is agreed to by the current owner.

d. Any additional supplemental information considered necessary and requested by the Historic Preservation Commission and/or historic preservation officer to address review criteria.

11. Application Requirements for Final Approval Review:

Note: This section expands the existing concept of J.3.a.

a. The intent of application requirements for final approval review is to ensure that if a preliminary approval or preliminary approval with conditions for the permit has been established by the Historic Preservation Commission, then proper mitigation, documentation, deconstruction and redevelopment plans are established and are consistent with Review Criteria.

b. The applicant shall work with the historic preservation officer to ensure requirements are met and will establish a plan for each final approval requirement and compliance with any preliminarily approved conditions established by the Historic Preservation Commission.

c. The applicant shall present the proposed plans (including documentation, mitigation, deconstruction and redevelopment) for final approval review to the Historic Preservation Commission during an advisory presentation, and the Historic Preservation Commission may provide input as to recommendations of final approval, to be considered by the historic preservation officer.

d. The following must be submitted:

(1) Documentation Plan:

All historic resources preliminarily approved for demolition or relocation must be fully documented using Historic American Building Survey (HABS) or HABS-quality procedure as defined in 20.30.030E.

(a) Documentation shall happen before the final demolition/relocation permit is issued;
(b) Documentation must be produced by a professional who satisfies professional qualification standards for history, archeology or architectural history, as established by the National Park Service and published in the Code of Federal Regulations, 36 CFR Part 61;
(c) Documentation may be submitted as early in the process as the applicant desires to support the requested action.

(2) Mitigation Plan for Demolition or Relocation:

In addition to documentation, the applicant must provide a proposal to mitigate for adverse effect caused by demolition or relocation. Possible mitigation efforts include, but are not limited to, designated interpretive space, brick and mortar projects, National Register nomination updates and additions, a preservation plan utilizing the Secretary of the Interior's Standards, a development agreement with the City, and an archeological study. Should the applicant be applying for a relocation permit, additional preservation planning documents could apply which may include plans for stabilization and/or restoration.

Note: This section expands the existing concept of J.3.b.

(3) Redevelopment Plan:

The applicant shall consult with the historic preservation officer in creating appropriate redevelopment plans for the site and may consider advice from the Historic Preservation Commission.

(a) Redevelopment should be compatible with the character of the surrounding neighborhood, reflect the historic resource to be demolished or relocated, is sensitive to the significance of the site, and must adhere to any applicable design overlays within the City of Missoula.
(b) Redevelopment plans shall be oriented with a north arrow at the top of the page and shall include exterior elevations, materials, site boundaries, street and alley frontages with names, location of all structures with distances to the nearest foot between buildings and from buildings to property lines, and must conform to all applicable regulations.

(c) The applicant must demonstrate the ability to complete the project. The City Building Official may require a bond, letter of credit or cash deposit as a demonstration that the financial backing for the replacement structure is adequate to complete the project.

(4) Deconstruction Plan:

All historic structures approved for demolition must be deconstructed in total rather than demolished, with deconstructed items to be reused. Property owners are held responsible for all costs associated with deconstruction.

(a) The applicant shall ensure that a local deconstruction specialist is consulted on the deconstruction process, for purposes of identifying opportunities for recovering and reusing materials within the structure.

(b) Prior to onset of deconstruction, the applicant and the deconstruction contractor shall meet with the historic preservation officer to identify historic features and items within the structure that are important to retain for potential reuse in the new structure or for preservation or interpretive purposes.

(c) The applicant shall submit a deconstruction plan summarizing timing and approach including a preliminary list of identified historic items, and must be approved by the historic preservation officer. The applicant shall present plans to the Historic Preservation Commission during an advisory presentation.

(d) The deconstruction specialist shall use their best effort to recover as many historic or non-historic features and items as is feasible, taking into consideration the age and condition of the materials, the safety of workers engaged in the deconstruction efforts, environmental abatement needs, and other conditions of the structure and worksite.

(5) Any additional supplemental information considered necessary and requested by the historic preservation officer to address conditions of mitigation.

12. Exceptions:

The historic preservation officer may waive items listed in 20.85.085.J if they are not applicable to the specific review requested by the ordinance. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained, the applicant shall file with the permit application a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained. The historic preservation officer shall deem whether the reasons are sufficient or not.

13: Permit Application Checklist:

Historic Demolition/Relocation Permit Checklist for Required Material

Stage One - Preliminary Permit Approval Review Requirements:

____ Certificate of Economic Hardship (CEH)

____ Feasibility Study

____ Record of Bona Fide Attempt to Rent, Sell or Relocate Property

____ Any Additional Supplemental Information Requested or Considered Necessary

Stage Two - Final Permit Approval Review Requirements:

____ HABS-Quality Documentation Plan of the Historic Resource

____ Mitigation Plan for Adverse Effect

____ Redevelopment Plan and Economic Proof

____ Deconstruction Plan

____ Any Additional Supplemental Information Requested or Considered Necessary

Existing Subsection J of 20.85.085, to be replaced in its entirety:

J. **Criteria and Procedure for Review of Relocation and Demolition Historic Preservation Permit**

[Codifier's note: A typo in this part was corrected and updated on March 22, 2016. The automatic numbering in this section was updated and corrected so the first paragraph entitled "Intent" began at "A" and all subsequent letters in the section were updated accordingly. The "J" preceding "Criteria and Procedure for Review of Relocation and Demolition Historic Preservation Permit" was "W" in the previous on line version. No other changes were made to this section. Page numbers may have changed as a result of the addition of this codification note.]

1. **Criteria for Review:**

The Historic Preservation Commission shall review the HPP application for compliance in accordance with the following criteria:

a. The applicant has consulted with the Historic Preservation 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 has advertised the Historic resource for sale in a local newspaper of general circulation for a period of 30 days ;

c. The applicant's good faith efforts to find a purchaser interested in acquiring and preserving, renovating, or reusing the historic resource have failed;

d. Denying the application would prevent all reasonable economic use of the property; and

e. The applicant shall provide the historic preservation officer supporting documentation demonstrating that the above criteria are met.

2. **Relocation and Demolition Delay:**

Upon receipt of a completed HPP application for demolition or relocation, the Historic Preservation Commission may impose a relocation or demolition delay for 90 days to allow sufficient time to explore preservation of the historic resource.

3. **Mitigation:**

a. If an HPP for relocation or demolition is approved, the applicant shall mitigate the adverse effects of relocation or demolition by providing, to the extent possible, documentation, similar to HABS/HAER, of the historic resource prior to undertaking the relocation or demolition.

b. 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.

Existing Subsection D of 20.85.085 to be amended:

D. **Application Filing**

1. Parties seeking an HPP are strongly encouraged to schedule a pre-application meeting with the historic preservation officer to obtain guidance about the application process, unless otherwise expressly stated.

Existing Subsection G of 20.85.085 to be amended:

G. **Commission Action on Historic Preservation Permit Applications.**

1. Except for historic preservation officer reviewed alterations under Section 20.85.080.F.5, the Historic Preservation Commission shall review and decide on an Historic Preservation Permit (HPP) application at a scheduled public meeting. The Commission's decision shall occur within 60 days from the date the completed application was received ~~(90 days for applications involving a demolition or relocation)~~. If the Historic Preservation Commission is unable to process the request within 60 days of receipt of the completed application, the Historic Preservation 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 requested or granted by the applicant then the Historic Preservation Permit (HPP) is approved. See section 20.85.085.J for timelines and procedures associated with permits for the demolition or relocation of historic resources.