

## **PUBLIC COMMENT**

After the initial public hearing on the proposed zone changes for the Conditional Use Permit process staff was directed to solicit comments on the proposal. Staff sent an email on December 20, 2019 to the members of the architecture community, HBIA, and realtors and received two (2) comments in response which are included below. The two (2) comment received were regarding Section 11-3-8 (B) which indicates that a property's CUP may be revoked if not used for its purpose for 30 continuous business days. Those expressing concerns included situations where a property may be vacant such as time between rental/sale occupants or maintenance situations.

In response staff would like to clarify that this 30-day requirement is not new; the section has only been reworded and the language simplified. The entire section reads *"A property is considered to no longer be used for the purpose for which the conditional use permit was granted if the property is not used for that purpose for at least thirty (30) continuous business days during each calendar year. This presumption may be rebutted by evidence that the lack of use is temporary and the owner does not intend to abandon the use."*

The last sentence addresses situations, such as those submitted as examples, where the use is temporally suspended but not abandoned. The 30-day time frame only applies when a use is intentionally abandoned; time for remodeling, maintenance or new owner/tenants does not indicate abandonment provided the same use is continued after the vacant period.

The email sent and the responses received are copied below.

**Sent: Friday, December 20, 2019 11:48 AM**

**Subject: RE: Request for Comment on Proposed Zoning Code Changes**

Hello,

We wish to inform you all that on December 16, 2019, the City Commission approved first passage of two ordinances amending Title 11, the City's zoning ordinance. The first of the two ordinances has been drafted to remove some of the regulatory barriers to housing development in City Code by amending district dimensional standards in Title 11, Ch. 4. The second ordinance has been drafted to amend the conditional use permit (CUP) process to make it more robust by incorporating a broader array of standards and criteria against which to assess applications. The City Commission has requested staff to do additional community outreach on these two issues. We are sending this information to solicit any comments you may have on the proposals ahead of the January 13, 2020 final passage meeting for both ordinances. We welcome you sharing any relevant thoughts, questions, or concerns you may have with both myself and Hillary Taylor (htaylor@helenamt.gov). Please also feel free to distribute this e-mail to others that may be interested that may wish to comment.

Many thanks in advance to all of you for your assistance in this matter!

Best,

Ellie Ray

Planner II/Grants Coordinator, City of Helena

## Community Development Department

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**From:** Kory Kennaugh <[kk@cwg-architects.com](mailto:kk@cwg-architects.com)>  
**Sent:** Tuesday, December 24, 2019 10:50 AM  
**To:** Ellie Ray <[ERAY@helenamt.gov](mailto:ERAY@helenamt.gov)>  
**Cc:** Hillary Taylor <[HTAYLOR@helenamt.gov](mailto:HTAYLOR@helenamt.gov)>  
**Subject:** RE: RE: Request for Comment on Proposed Zoning Code Changes

Hi Ellie;  
Thanks for sending the information for review. I have a comment regarding the CUP process amendments:

Section 11-3-8 indicates that a property's CUP may be revoked if not used for its purpose for 30 continuous business days. This is a fairly common occurrence for rental properties when they are vacant in between tenants. Inactivity would also occur during the sale of a property. What evidence does the property owner need to provide to rebut revocation of the CUP? Seems like these common circumstance should be exempt from revocation of a CUP.

Thanks,  
Kory Kennaugh

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**From:** Jeff Downhour <[jeff@mosaicarch.com](mailto:jeff@mosaicarch.com)>  
**Sent:** Friday, December 20, 2019 3:20 PM  
**To:** Ellie Ray <[ERAY@helenamt.gov](mailto:ERAY@helenamt.gov)>  
**Cc:** Sharon Haugen <[shaugen@helenamt.gov](mailto:shaugen@helenamt.gov)>; Lucy Morell-Gengler <[LGENGLER@helenamt.gov](mailto:LGENGLER@helenamt.gov)>; Hillary Taylor <[HTAYLOR@helenamt.gov](mailto:HTAYLOR@helenamt.gov)>  
**Subject:** RE: Request for Comment on Proposed Zoning Code Changes

Thanks for requesting feedback. I would offer the following:

- I am fully supportive off the proposed changes to Residential Zoning Districts. I am particularly glad to see the height limitations revised. The old (current code) was completely at odds with the verticality we see in many of the historic neighborhoods and was often at odds with current construction practices. It was difficult to do a 2 story house, raised up enough for windows into a basement, with 9' plate heights, 24" floor trusses and energy heal trusses and fit within the 24 height limit. I think the 30 ft limit in R1/R2, the 36 ft in R-3, and the 42 ft in R-4 are reasonable heights and will encourage more vertical design. The R-3 will allow the kind of multi-family development needed to increase densities.
- CUP process: I can see the need to tighten language in the CUP process but I would take care to not make these unobtainable. There is one item I see as troubling – 11-3-8: Discontinuation of use limits of 30 days seems ridiculous. If someone sells a business that was developed based on a CUP, it can often has business suspended for over 30 days to complete the sale or to do even the most modest remodel/renovation to suit the new owners. In business terms 30 days is nothing. A burst pipe could literally put someone out of business for 30 days and then, if operating under a CUP, they would not be allowed to reopen? Seems like not a well considered limit. I think 60 days is much more reasonable, even 90. The proposal then goes on to say that this can be rebutted by evidence that the lack of use is temporary. It just seems more leeway given before having to go through some rebuttal process is warranted.

Thanks,

Jeff

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