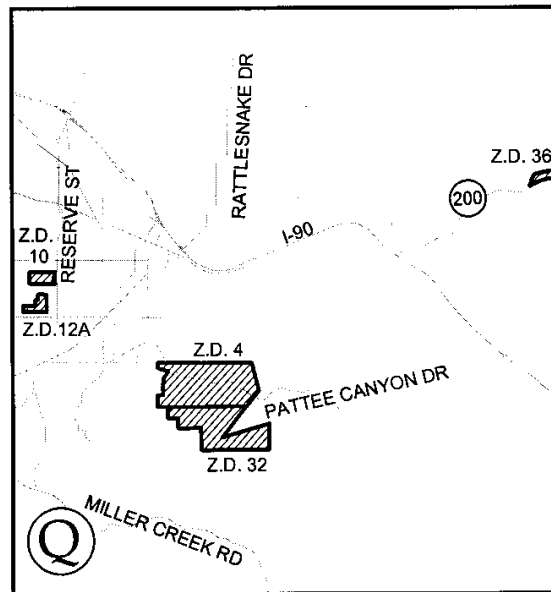


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RESOLUTION 2009- 131

A RESOLUTION TO AMEND THE DISTRICT DEVELOPMENT PATTERNS FOR PART 1 ZONING DISTRICTS #4, 10, 12A, 32, & 36, TO PERMIT HOME OCCUPATIONS AS A CUSTOMARY USE AND SPECIAL EXCEPTION, SUBJECT TO STANDARDS



WHEREAS, the Board of County Commissioners of Missoula County, Montana, adopted Resolution #81-132 on July 23, 1981; and

WHEREAS, Resolution #81-132 permits home occupations, subject to standards, in all Part 1 Zoning Districts except for Part 1 Zoning Districts #4, 10, 12A, 32, & 36; and

WHEREAS, the Board of County Commissioners of Missoula County, Montana, initiated a request for the amendment of the district development pattern of Part 1 Zoning Districts #4, 10, 12A, 32, & 36 to permit home occupations, subject to the standards shown in Attachment #1 of this resolution; and

WHEREAS, per MCA 76-2-106, notice of the public hearing was posted in at least three public places within each Part 1 Zoning District, at least 15 days prior to the public hearing held October 14, 2009; and

WHEREAS, in addition to the notification required by MCA 76-2-106, property owners within Part 1 Zoning Districts #4, 10, 12A, 32, & 36 and within 300' of the aforementioned zoning districts were notified by first class mail on September 18, 2009, which was more than 15 days prior to the public hearing held on October 14, 2009; and a legal ad was published in the *Independent* on September 24, 2009, which was 20 days prior to the public hearing held on October 14, 2009; and

WHEREAS, the Planning and Zoning Commission and the Board of County Commissioners held a public hearing on the amendments to the district development patterns to permit home occupations in Part 1 Zoning Districts #4, 10, 12A, 32, & 36, subject to the standards shown in Attachment #1 of this resolution, on October 14, 2009; and

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Vickie M Zeier, Missoula County Clerk & Recorder



WHEREAS, the Planning and Zoning Commission recommended amendment of the development patterns for Part 1 Zoning Districts #4, 10, 12A, 32, & 36, to permit home occupations, subject to the standards shown in Attachment #1 of this resolution;

NOW, THEREFORE, BE IT RESOLVED that the district development patterns of the Missoula County Part 1 Zoning Districts #4, 10, 12A, 32, & 36 are hereby amended to permit home occupations as a customary use and special exception, subject to the standards shown in Attachment #1 of this resolution.

Dated this 22nd day of October 2009.

ATTEST:

Debbie S. Mersal Chief Deputy
for Vickie Zeier, Clerk & Recorder

BOARD OF COUNTY COMMISSIONERS
Missoula County, Montana

Bill Carey
Bill Carey, Chairman

Jean Curtiss
Jean Curtiss, Commissioner

Michele Landquist
Michele Landquist, Commissioner

APPROVED AS TO FORM AND CONTENT:

D. H. L.
Deputy County Attorney



ATTACHMENT #1

Home Occupations as Customary Uses and Special Exceptions

Home occupations are permitted in Zoning Districts #4, 10, 12A, 32, & 36 as a customary use and special exception, subject to the standards below.

A. INTENT

These amendments are proposed with the following intentions:

1. To provide greater flexibility in the types of uses allowed as home occupations.
2. To set performance standards as the means to protect the residential character of neighborhoods where home occupation are located, and otherwise clearly prohibit a range of intensive non-residential uses which should not be permitted.
3. To establish this supplementary regulation as the basis for other amendments to create administrative procedures and definitions.
4. To separate home occupations into two categories:
 - a. Customary uses, which are allowed if specified criteria are met; and
 - b. Special Exceptions, which are subject to specified performance standards and a public hearing.

B. DEFINITION

Home Occupation (Defined). Any use customarily conducted entirely within a dwelling or permitted accessory building and carried on by the inhabitants thereof, which is clearly incidental and secondary to the purposes of dwelling, OR, any use which has been approved as a Special Exception after public hearing and meets the performance standards set forth in this regulation.

C. STANDARDS

1. Customary. A customary home occupation is a permitted use, provided the following limitations are met:
 - a. The activity uses less than twenty-five (25) percent of the dwelling floor space or is located in an existing residential accessory building, or portion thereof, not to exceed and area equal to twenty-five (25) percent of the dwelling floor space.
 - b. The use shall not produce light, noise, odor, traffic, parking demand or any exterior activity inconsistent with the character of the neighborhood.
 - c. The use has no displays, advertising or signs.
 - d. There are no outside employees.
 - e. There is no increased parking demand.

- f. Tradesmen such as electricians, carpenters, and plumbers may keep one work vehicle on the property. There shall be no outside storage of tools or materials.
 - g. There is no necessary or intended remodeling of existing structures or new accessory structures, to accommodate the home occupation.
2. Special Exception. Uses which cannot qualify as customary home occupations may qualify as a Special Exception provided the following standards and limitations are met:
- a. Hearing Procedure
 - 1) Hearing and Application Required. The Board of County Commissioners shall hold a public hearing. Written applications for home occupation permits shall be received thirty (30) days in advance of the hearing date and shall contain the following:
 - a) A check for the specified fee made out to the Missoula County Treasurer.
 - b) A legal description of the subject property.
 - c) A detailed description of the intended home occupation.
 - d) A site plan at a scale of not less than 1" = 20', showing the following:
 - 1. Dimensions, positions, and setbacks of all existing and proposed structures, storage areas, driveway, and parking areas.
 - 2. Present and proposed use of existing and new structures.
 - 3. Lot lines and their dimensions.
 - 4. Adjacent streets, alleys, and sidewalks.
 - 5. All structures within fifty (50) feet of the property and their current use.
 - 6. Location, height, and description of existing and proposed trees, vegetation, and decorative fences.
 - e) A landscape plan.
 - f) A listing of any Federal, State, and local licenses required of this activity.
 - g) The signature of the property owner if not the same as the applicant.
 - 2) Notice of Hearing. The Zoning Office shall give notice of the hearing as follows:
 - a) The Zoning Office shall publish a notice in a newspaper of general County circulation, which shall appear at least fifteen (15) days prior to the public hearing.
 - b) The notice shall contain:
 - 1. The type of application sought;
 - 2. The location of the property;

3. The date, time and place of the public hearing;
 4. A statement that the application is on file for public inspection at the County Zoning Office; and,
 5. A map depicting the property location.
- c) The Zoning Office shall post the notice in three (3) public places at least fifteen (15) days in advance of the hearing. 76-2-106 MCA.
- d) The Zoning Office shall send written notification to property owners according to the following procedures:
1. Mailing lists shall include all persons listed on the last completed tax assessment list who own property within three hundred (300) feet of the applicant's property.
 2. The mailing shall be made at least fifteen (15) days prior to the public hearing.
 3. The notice shall contain a brief description of the district boundaries and regulation; the nature of the application; the time, place and date of the public hearing; and, the phone number and address of the Zoning Office.
 4. The cost of the mailings shall be billed to the applicant.
- b. Standards
- 1) Structures and Alterations. New structures, remodeling and alterations shall be limited as follows:
- a) New accessory structures intended for home occupation use shall be erected as residential accessory buildings and meet the following standards:
 1. Be located in a side or rear yard and be at least ten (10) feet from the residence and three (3) feet from any property line. Stricter setbacks may apply in individual zones. See regulations.
 2. A height less than the dwelling.
 3. Design consistent with the dwelling and other buildings in the neighborhood.
 4. The ground cover area when added to the ground cover area of other detached accessory buildings shall not exceed that of the dwelling, and shall not exceed an area equal to one-half the dwelling floor space.
 - b) Homes which are built or remodeled to accommodate home occupations shall not incorporate design or mechanical features which would require extensive revisions to permit full residential use in the future.
 - c) The activity shall not occupy more than one-half of the dwelling floor area, or, if located in an accessory structure, shall not occupy an area greater than one-half the dwelling floor space.

2) Storage

- a) Outside storage shall be restricted to less than one-half of the rear yard, but not to exceed an area equal to the ground cover of the dwelling, and meet the following:
 - 1. Such areas shall be enclosed by a vegetative or decorative screen not less than five (5) feet high and having one-hundred (100) percent opacity if the screen is decorative and seventy-five (75) percent opacity at planting if the screen is vegetative.
 - 2. Stored materials shall not be visible from adjacent dwellings or lots. If necessary, canopies shall be used.
 - 3. Stored materials shall be at least ten (10) feet from the dwelling.
 - 4. Outside storage of vehicles not in regular use, heavy equipment, scrap materials, salvage auto parts, used lumber or bricks, refuse material, toxic or controlled substances, flammable liquids and explosives is prohibited.
 - 5. The Fire Department may approve the storage of a limited amount of flammable liquids in approved containers.

3) Signs and Advertising

- a) One sign on larger than four (4) square feet and mounted flush to a wall is permitted.
- b) On-site displays and advertising are prohibited.
- c) Advertising in TV, radio, publications and telephone books is permitted.

4) Landscaping

- a) All non-residential activity, including customer parking, home occupation accessory structures and outside storage areas shall be landscaped and screened from view on adjacent lots, public streets and lots located across alleys and streets.
- b) A proposed landscape plan shall be submitted with the application and is subject to modification by the governing body.
- c) Landscaping and required vegetative screens shall be installed within the first growing season after approval and shall be maintained thereafter.

5) General Standards

- a) Hours of operation are restricted to between 7:00 a.m. and 6:00 p.m. Monday through Saturday. The Commissioners may set expanded hours of operation.
- b) Two paved off-street parking spaces and a paved access drive are required. This condition shall not be satisfied by off-street parking required of the dwelling; however, the access drive may be shared. The parking requirement may be waived by the Board if it is evident no parking demand exists, or if the property is located outside of the designated air quality non-attainment area and area affecting non-attainment.

- c) There shall be no more than one (1) employee who is not a resident on the property.
- c. Prohibited Uses
 - 1) Any use which generates a parking demand for more than two (2) vehicles, inclusive of spaces to be used by non-resident employees, is prohibited. Section 3.02 B. of Resolution 76-113 shall be used to determine parking demand.
 - 2) Any use which depends on pick-up and delivery by trucks other than those operated by the U.S. Post Office or parcel delivery services is prohibited. The Board may allow pick-up and delivery by trucks other than those operated by the U.S. Post Office or parcel delivery services provided the following issues are addressed and found acceptable to maintaining public safety and preserving residential character:
 - a) The lot's functional location relative to collector and arterial streets.
 - b) The routing of trucks relative to homes, schools, and playgrounds.
 - c) Frequency and timing of pick-up and deliveries.
 - d) The size of the truck relative to street width and the existence of sidewalks.
 - e) Truck noise relative to maintaining the tranquility of residential areas.
- d. Decision. The Board of County Commissioners shall approve, approve with modifications or deny the application within fifteen (15) day of the public hearing. In reaching their decision, the Board gives consideration to the following:
 - 1) Full compliance to standards and limitation set forth in this section.
 - 2) The extent to which the concerns of adjacent property owners are addressed.
 - 3) Testimony for and against the application received during the public hearing.
 - 4) The recommendation of the Missoula Planning Office.
- e. Compliance
 - 1) Upon approval of the application, the applicant may request a home occupation permit from the County Zoning Office. Operation will not begin until the permit is issued.
 - 2) A permit will not be issued until the following are complete and filed with the County Zoning Office:
 - a) The site and landscape plans as submitted or revised in accordance with the decision.
 - b) Copies of required Federal, State and local licenses.
 - c) Written clearances by the Fire Department, City-County Health Department, and Building Inspector.

- 3) Installation of paved parking and landscaping shall be inspected within one (1) year of the decision or at any earlier date specified by the Board of County Commissioners.

f. Appeal and Interpretation

- 1) Home occupation permits shall run with the property, and not the owner, in perpetuity; however, the following limitations apply:
 - a) If the use ceases for more than one-hundred and eighty (180) days, the home occupation permit is voided, and all signs, improvements, materials, and alterations related to the use shall be removed or converted within sixty (60) days.
 - b) The fact that a home occupation permit has been granted will not be recognized as the basis for granting or denying variances or rezonings.
 - c) Home occupation permits are granted for specific use with specific conditions. Any change in use, however similar, shall be resubmitted for review and action by the Board as set forth in Section 2a.
 - d) The action of the Board of County Commissioners may be appealed to a court within thirty (30) days of the decision. 76-2-110 MCA.
- 2) Nothing in this Resolution shall restrict the right of property owners to request use variances based on hardship.
- 3) Applications for uses which are specifically prohibited in the individual district regulations shall not be considered under the provisions of this Resolution.