From:	Jim Nugent
To:	Stacie Anderson; Daniel Carlino
Cc:	Jordan Hess; Gwen Jones; Grp. City Council and City Web Site; Dept. Mayors Office; Aaron Bowman; Eran Pehan; Mary McCrea; Jeremy Keene; Dept. City Clerk; Dept. Attorney
Subject:	RE: Requiring Deconstruction
Date:	Tuesday, February 8, 2022 2:02:18 PM

STACIE and DANIEL:

Since both of you have asked the same question during the past couple of days. I am addressing my response to both of you.

I have in part been waiting to receive an inquiry response from city building inspector Aaron Bowman for the legal reason that Montana state building code law explicitly states that a city building code may include only codes adopted by the Montana Department of Labor and Industry. See subsection 50-60-301(2) MCA. The only statutory exception identified in section 50-60-301 MCA to the statutory requirement that a city building code may include only building codes adopted by the State of Montana is the city may "adopt voluntary energy conservation standards for new construction for the purpose of providing incentives to encourage voluntary energy conservation".

Also, it is important to be informed of and be aware that section 7-1-113 MCA entitled CONSISTENCY WITH STATE REGULATION REQUIRED, provides that a local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.."

Montana building codes are examples of areas of Montana state law or regulations affirmative that are affirmatively subject to Montana state law or administrative regulation.

City building inspector Aaron Bowman informs me that an apparently proposed deconstruction ordinance that he is aware of doesn't directly contradict adopted building codes as the building codes are currently silent with respect to any requirements related to demolition/deconstruction. The building code reportedly provides that a demolition permit is required and the demolition site must be safe during the demolition process. Since a deconstruction ordinance would not be contradicting any state of Montana adopted building codes Aaron believes that a deconstruction ordinance could be implemented; but of course is not able to guarantee that such adoption would be acceptable with the State of Montana.

It would be important and prudent for the city to ensure that any deconstruction ordinance is reasonable, fair equitable and not unreasonably expensive or burdensome in order to reduce the likelihood that the 2023 Montana State Legislature does not preempt any city deconstruction ordinance next year, or some time thereafter.

JIM NUGENT

From: Stacie Anderson <andersons@ci.missoula.mt.us>
Sent: Monday, February 7, 2022 6:48 PM

To: Jim Nugent <NugentJ@ci.missoula.mt.us>
Cc: Jordan Hess <HessJ@ci.missoula.mt.us>; Gwen Jones <JonesG@ci.missoula.mt.us>
Subject: Requiring Deconstruction

Greetings Jim,

I wanted to follow up and inquire if we as a municipality are allowed to require deconstruction vs demolition of properties within the city limits.

Thank you.

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Stacie M. Anderson
Missoula City Council Ward 5
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Pronouns: She/Her/Hers
Email to and from this account is public and may be audited at any time