

## City Clerk Staff

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**From:** Jim Nugent  
**Sent:** Thursday, December 1, 2022 8:31 AM  
**To:** Grp. City Council and City Web Site; Dept. Attorney; Eran Pehan; Mary McCrea; Cassie Tripard; Dave DeGrandpre  
**Cc:** Dept. Attorney  
**Subject:** Community residential facilities as defined in Montana state law statutorily authorized in all residential zones

TO WHOM IT MAY CONCERN:

Statutorily pursuant to section 76-2-411 MCA community residential facilities are statutorily authorized in all residential zones, including single family dwelling unit residential zones. The statutory definition of community residential facility includes such land uses as:

- (1) Foster homes;
- (2) Kinship foster homes;
- (3) youth shelter care facilities;
- (4) youth group homes; operated pursuant to Montana state law requirements;
- (5) community residential facilities serving eight or fewer persons is considered a residential use of property for purposes of zoning if 24 hour care is provided; day care homes;
- (6) family day care home; group day-care home registered with the State of Montana.
- (7) Day care home serving 12 or fewer children.

The original version of the community residential facility law was enacted in 1974. Prior to my employment with the City of Missoula, the Missoula City Council elected to challenge the new Montana state law. The Montana Supreme Court ruled against the Missoula City Council holding that the new Montana state law was constitutional and supersedes City of Missoula ordinances that restrict use of residential areas to one family dwellings only.. See State ex. Rel. Thelen v. City of Missoula, 168 M 375, 543 P 2d 12273(1975).

This is one of many examples in Montana state law where the Montana State Legislature has elected to preempt local government powers.

JIM NUGENT