

WHITEFISH CITY COUNCIL
April 10, 2023
SPECIAL MEETING AT 5:00 P.M.

1) Call to Order

The meeting was held in-person in the Council Chambers and remotely via Microsoft Teams. Councilor Feury called the meeting to order. Councilors present were Davis, Qunell, Norton and Caltabiano. Mayor Muhlfeld and Deputy Mayor Sweeney were absent. Staff present were City Manager Smith, City Clerk Howke, City Attorney Jacobs and Planning and Building Director Taylor. Approximately 8 people were in the audience and 6 attended virtually.

2) NOTICE IS HEREBY GIVEN that Mayor John Muhlfeld, pursuant to § 7-5-4102, MCA, hereby calls a special meeting of the Whitefish City Council on Monday, April 10, 2023, at 5:00 p.m. at Whitefish City Hall, 418 E. 2nd Street, Whitefish, Montana. The object of the special meeting is to discuss SB 528 (requiring municipalities to adopt certain regulations in relation to accessory dwelling units and prohibiting certain regulations in relation to accessory dwelling units) and SB 268 (revising short term rental laws).

City Manager Smith reported the City has been working actively with the Legislature, with a Lobbyist in Helena. SB 528 and SB 268, the City has been opposing through the hearings. We are reaching the end of the session transmittal for general bills and revenue bills have both been met. Any bills that are still alive are ones we are focusing on.

SB 528 is a bill that would allow Accessory Dwelling Units (ADUs) throughout cities regardless of any zoning that is currently in place. It would prohibit municipalities from requiring certain things with ADUs such as additional parking, matching the exterior design, and assessing impact fees. It would require cities not allow a single-family dwelling or the accessory dwelling unit occupancy. The size requirement would be increased to 1,000 square feet rather than 800 square feet that is currently in the city regulations and increase the height to 35 feet.

The City has opposed SB 528 on the basis these decisions should be made locally. Our zoning is created with the public and the community. The community has more public opportunity at the local level rather than at the state level. Whitefish has recently changed the ADU regulations to allow for units to be rented without an owner occupancy requirement. We have created an affordable housing workforce program within the ADU regulations to allow for larger square footage and no parking requirement if there is a deed restriction on the ADU. In general SB 528 would be impactful on the size of the units and the height of the units and parking requirements.

SB 268 is also making its way through the legislature and is scheduled for a second reading on the House floor on April 12th. SB 268 was amended to include a “Grandfather” clause to allow all short-term rentals that are in existence of the passage of SB 268 to remain in effect of additional regulations. SB 268 would allow primary residents (owner occupied for 7 months or more) to rent out the primary home and/or the ADU or adjoining parcel. With primary residents being seven months, anybody who meets that qualification could rent at least one additional dwelling unit to their home as a short-term rental.

The concern the city has, and has expressed this to the legislature, is that in Whitefish we are unique, and we have a very high number of short-term rentals. With additional ADUs by right, without owner occupancy requirement, they will potentially turn into short-term rentals.

SB 268 is scheduled for a second reading on the House Floor on April 12th. SB 528 is scheduled for a Committee hearing on April 13th. Manager Smith would like to see a member of the Council to attend virtually or in-person to provide comment.

Discussion followed:

SB 528 is really top-down forcing regulations with land use; 35 feet in height could be an imposing garage or accessory unit in the back yard; eliminates the ability to collect impact fees; eliminates parking. Our current regulations provide incentives for deed restricted units for 5-years, for 12-month lease, such as no requiring parking.

SB 268, Whitefish can still require registration of short-term rentals because of the Resort Tax and in that process confirm residency. Both bills are being supported by the Realtors Association, AIRBNB and VRBO and their operators, other than Senator Hertz who is the main sponsor for both bills. One of the challenges would be enforcement of the resident requirement. Secondary homeowners might find themselves wanting to live here seven month out of the year to then rent out the other five months. We do have a significant population of second homeowners that rent out their homes.

3) Public Comment

Mayre Flowers, Citizens for a Better Flathead (virtually) provided written comments for the meeting. She would encourage the Council to oppose SB 268, SB 528, and SB 323. This should be a local decision. She also encourages the Council to work with Representative Fern to sponsor a floor amendment for SB 382. If counties can opt out of this, cities should also be allowed to opt out.

Toby Scott, 1478 Barkley Lane suggested providing a list of all the Representatives in a mass email. A question should be presented to the legislature how they expect the cities to enforce the 7-month residency. Does the 7-month residency have to be continuous or accumulative?

Richard Hildner, 104 5th Street, member of the Flathead Families for Responsible Growth. These two bills together are a travesty to communities across the state of Montana. They do nothing to relieve the critical shortage of affordable/workforce housing. They erode the ability for local officials to make local decisions for our community. The City should expressively oppose SB 268 and SB 528. He hopes the City can have a representative(s) to weigh in either in person or virtually.

Rhonda Fitzgerald, 412 Lupfer Avenue, stated the proponents for SB 268 talked about affordability. They thought it is giving an owner the opportunity to have a revenue stream. They didn't address the fact that it raises all the cost for a house. In every hearing Senator Hertz said that the League of Cities and Towns supported the bill. It is a point to make that the League of Cities and Towns does not support this bill. They have carved out for HOA some special privileges, but neighborhoods rely on the City to be their HOA. That is very unfair treatment. This is a hotel use in a residential neighborhood. Hotels have managers 24/7 because there needs to be supervision of transient travelers. These would be unsupervised hotel rooms scattered through neighborhoods. It would be a tremendously huge law enforcement issue like human trafficking, drug deals, and smuggling of contraband. This is opening a whole can of worms for things that nobody has thought about. Neighborhoods are safe because neighbors look out for each other. If every other house has hotel use, no one will know anybody, and our neighborhoods will not be safe.

Nathan Dugan, 937 Kalispell Avenue, President of Shelter WF. Shelter WF supports SB 528 and encourages the Council to move towards solutions that begin to harness SB 528. SB 268 is widely agreed upon bad bill. He drafted an amendment to this bill that should go to the House Floor on Wednesday to exempt places in the state where short term rentals are an issue, such as Whitefish , West Yellowstone and Big Sky. Our best course action to address SB 268 if it passes is to look at running a ballot initiative to invalidate it.

Whitney Beckham, 427 Lupfer Avenue opposes these bills. She would be happy to see the list of contacts to pass on to as many people as possible.

Public Comment Closed

4) Direction to City Manager

The more concerning bill of the two is SB 268. This is being pushed by two out of state corporations that have tons of money, have disrupted the lodging industry. They shouldn't be pushing bills like this to get more beds into their system. We have done a lot of work to make sure to put short-term rentals in the right part of town. This is not what Montana is all about and Montana is mostly small towns. There is a lot of hidden cost such as law enforcement.

For SB 528, lobby for 800 square foot or less, eliminate the impact fee abatement. Potential impact to neighborhoods and the look, we should oppose it.

SB 268 is pointed at communities exactly like ours. Council will submit a letter that all Council can sign off on. We need an overwhelming groundswell from people in the community saying no. Talk about neighborhood integrity, impacts on local residents, enforceability. Encourage members of the community who has the time to testify in-person. Staff will provide a list of contacts for the Representatives to members of the Council and partnering agencies, with talking points.

5) Adjourn

Councilor Feury adjourned the Special Meeting at 6:17 p.m.

/s/Andy Feury

Councilor Feury

Attest:

/s/Michelle Howke

Michelle Howke, Whitefish City Clerk