

DATE: July 15, 2022
TO: Helena Citizens' Council
FROM: Lowell Chandler – HCC District 3, Nolan Harris – HCC District 2, and Joe Lehman – HCC District 2
RE: Recommendation Regarding a Motion to Advise the City Commission to Immediately Amend the Definitions of Daycare Facilities Listed in Section 11-38-2 of the Helena City Code to be Compliant with Montana Statutory Requirements in Section 52-2-703 of the Montana Code Annotated

SUMMARY

The lack of childcare in Montana is persistent and unfortunate issue for working Helenans. Sadly, more than 60% of Montanans live in what is called a “child care desert.”¹ In our own county of Lewis & Clark, only 42% of the demand for childcare for children between 2 and 6 years old is being met.² Even worse, only 33% of the demand for childcare for children under the age of 2 is being met in Lewis & Clark County.³ In other words, Lewis & Clark County is failing to meet 58% to 67% of childcare needs and our county is either at or barely above the threshold for qualifying as a Childcare Desert. This dire situation affects Helena families and hampers our City’s economic recovery from the pandemic recession.

Unfortunately, despite the Montana Legislature passing a law (SB 142) during the 2021 legislative session that expands childcare access for Montana families,⁴ the City of Helena’s zoning regulations are noncompliant with state statute and continue to serve as an impediment to expanding childcare access to Helena families. This Motion serves to bring the City of Helena into compliance with state statute at Section 52-2-703 of the Montana Code Annotated by recommending that the City Commission and the Mayor immediately revise the City zoning regulations at Section 11-38-2 to be consistent with Montana statutory definitions.

FINDINGS

Recognizing the dire need for making childcare in our State more accessible to Montana families, as well as its importance to our economic recovery from the pandemic, the Montana Legislature during the 2021 Legislative Session successfully passed Senate Bill 142– Increase the number of children who can be present in day-care homes (Bill Sponsor: Kenneth Bognor (R – Miles City)).⁵ SB 142 successfully amended Montana Code Annotated [Section 52-2-703](#)’s definitions to increase the number of children that can be cared for in the three types of day-care facilities, including the following amendments:

¹ “Child Care Desert” is defined as: “Any geographic area where licensed child care capacity meets less than a third of potential demand.” See Montana DPHHS and Dept. of Labor & Industry, *Child Care Deserts: An Analysis of Child Care Supply and Demand Gaps in Montana*, p. 9, Available at: <https://lmi.mt.gov/docs/Publications/LMI-Pubs/Special-Reports-and-Studies/ChildCareDesertsWhitePaper-FINAL.pdf>.

² *Id.* at p. 8.

³ *Id.* at p. 9.

⁴ Montana Legislature, *Legislative History of SB 142*, available at: [http://laws.leg.mt.gov/legprd/LAW0203W\\$BSRV.ActionQuery?P_SESS=20211&P_BLTP_BILL_TYP_CD=SB&P_BILL_NO=142&P_BILL_DFT_NO=&P_CHPT_NO=&Z_ACTION=Find&P_ENTY_ID_SEQ2=&P_SBJT_SB_J_CD=&P_ENTY_ID_SEQ=](http://laws.leg.mt.gov/legprd/LAW0203W$BSRV.ActionQuery?P_SESS=20211&P_BLTP_BILL_TYP_CD=SB&P_BILL_NO=142&P_BILL_DFT_NO=&P_CHPT_NO=&Z_ACTION=Find&P_ENTY_ID_SEQ2=&P_SBJT_SB_J_CD=&P_ENTY_ID_SEQ=).

⁵ *Id.*

(3) (a) “Day-care center” means an out-of-home place in which day care is provided to ~~13~~16 or more children on a regular or irregular basis.

(6) “Family day-care home” means a private residence in which day care is provided to ~~three to six~~ three to eight children on a regular basis.

(7) “Group day-care home” means a private residence or other structure in which day care is provided to ~~7 to 12~~9 to 15 children on a regular basis.

However, despite the Montana legislature recognizing the need for expanded childcare access and amending Montana law in 2021, the City of Helena’s zoning regulations at [Section 11-38-2](#) that define various types of childcare facilities are noncompliant⁶ with Montana statutory requirements at § 52-2-703(3), (6), and (7), MCA, and presently serve as an impediment to Helena families receiving the benefit of expanded childcare access that SB 142 aimed to provide. Unfortunately for Helena families, Section 11-38-2 of the Helena City Code limits “Family Daycare Home” facilities to “six (6) or fewer” children, “Group Daycare Home” to “seven (7) to twelve (12) children,” and “Daycare Center” to “thirteen (13) or more children.” Many of Helena’s childcare facilities are located in residential areas and pursuant to [City Ordinance 3222](#), Family and Group Daycare Home facilities are permitted throughout residentially zoned areas, whereas the larger Daycare Centers need a conditional use permit as depicted in the below figure.

Use	OSR	RU	R-1/R-2	R-3	R-4/R-O	B-1	B-2	B-3	CLM	M-I	PLI	Airport	Supplemental Requirements
Daycare center (13 or more children)	NP	CUP	CUP	CUP	CUP	P	P	P	CUP	NP	P	CUP	See chapter 38 of this title
Daycare, family	P	P	P	P	P	P	P	P	CUP	NP	NP	NP	
Daycare, group	P	P	P	P	P	P	P	P	CUP	NP	NP	NP	

Due the City’s noncompliance with the changes in state law, Helena families that would otherwise be able to receive high quality childcare are left without care, which has impacts on

⁶ Pursuant to [Section 7-1-113](#), MCA, the City of Helena is required to be consistent with state law and administrative regulations on this matter. As Section 7-1-113(1), MCA, provides: “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 are affirmatively subjected by law to state regulation or control.” *See also City of Helena v. Svec*, 2014 MT 311, P 16 n. 2 (holding that a City of Helena ordinance was “invalid” under Section 7-1-113, MCA, because “[i]n areas affirmatively subjected to state regulation or control, local governments with self-government powers are expressly prohibited from exercising power that is inconsistent with state law or administrative regulation”) (emphasis added). Given that childcare is an area that is “affirmatively subjected to state regulation or control,” pursuant to Section 52-2-701, et seq., MCA, and that Section 52-2-704, MCA, expressly delegates authority to the Montana Department of Public Health and Human Sciences to implement state law governing childcare facilities, the City of Helena’s current zoning code at 11-38-2 and City Ordinance 3222 which serve to limit the size of childcare facilities is presently in conflict with state law and DPHHS regulations. Action is needed to bring the City into compliance with state law and DPHHS regulations governing the allowable sizes of childcare facilities.

not only Helena children but also parents and Helena businesses given the impacts to the labor force as a result of the shortage. As mentioned in the summary above and depicted in Figure 4 and 5 below,⁷ Lewis and Clark County is facing a 58% shortage for childcare for children between two and six and a 67% shortage for children two and under. Bringing our City Code into compliance with state law is a commonsense step that must be done without delay to help reduce the childcare shortage in the City of Helena.

Figure 4. Child Care Capacity as a Percent of Children Under 6 by County

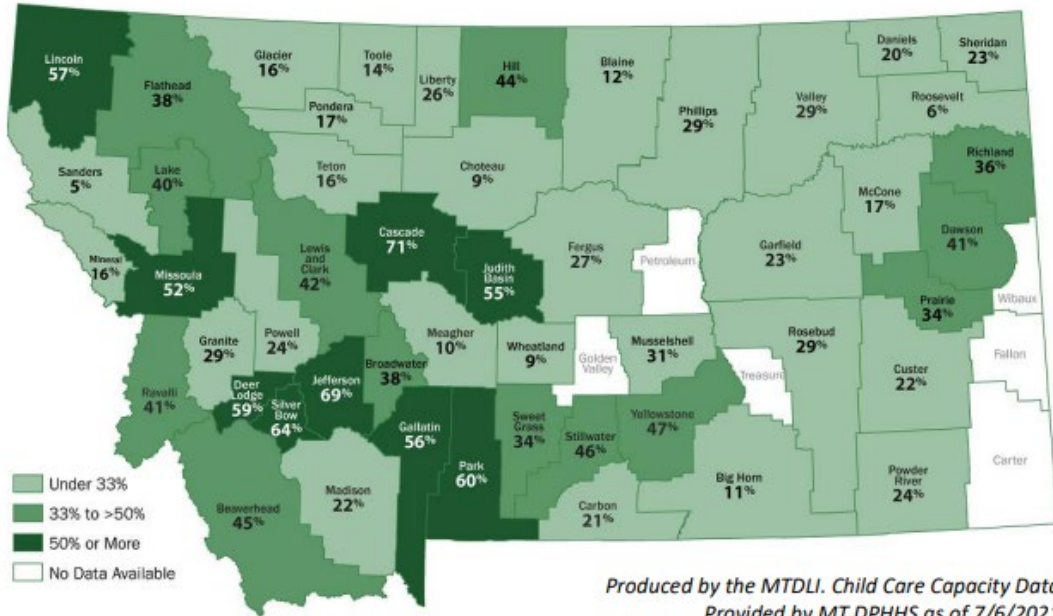
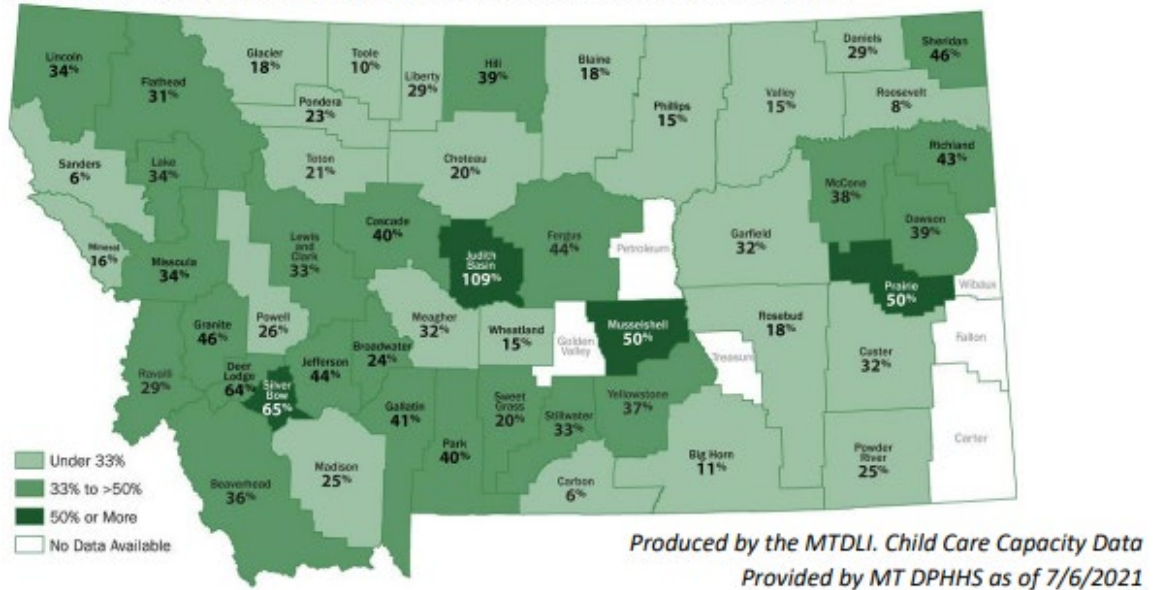


Figure 5. Infant Child Care Capacity as a Percent of Children Under Age 2



⁷ See Montana DPHHS and Dept. of Labor & Industry, *Child Care Deserts: An Analysis of Child Care Supply and Demand Gaps in Montana*, pp. 8-9, Figures 4 and 5, Available at: https://lmi.mt.gov/_docs/Publications/LMI-Pubs/Special-Reports-and-Studies/ChildCareDesertsWhitePaper-FINAL.pdf.

RECOMMENDATION

We recommend that the Helena Citizens' Council unanimously approve the following motion:

The Helena Citizens' Council advises the City Commission to immediately amend the definitions of daycare facilities listed in Section 11-38-2 of the Helena City Code to be compliant with Montana statutory requirements in Section 52-2-703 of the Montana Code Annotated.

Specifically, the Helena Citizens' Council recommends that the definitions listed in Section 11-38-2 should simply refer to Section 52-2-703 of the Montana Code Annotated. This drafting change will allow for City Code to automatically update upon further statutory changes on the state level and allow the City to automatically remain in compliance with State law in the event of any changes.

Accordingly, the Helena Citizens' Council advises and recommends the following revisions to the definitions found in Section 11-38-2 of the City of Helena Code, which are consistent with the Montana Department of Public Health and Human Sciences definitions found in Montana Administrative Rule 37.95.102:

For purposes of this chapter, the following definitions are applicable:

DAYCARE CENTER: Is defined in Section 52-2-703, MCA. ~~A place in which supplemental parental care is provided on a regular basis for thirteen (13) or more children.~~

DAYCARE FACILITY: Is defined in Section 52-2-703, MCA. ~~A place registered or licensed by an agency of the state of Montana that provides supplemental care on a regular basis, operated by a public or private entity, including, but not limited to, the following: preschools, kindergartens, nursery schools, day nurseries and childcare centers.~~

FAMILY DAYCARE HOME: Is defined in Section 52-2-703, MCA. Overlap Care is permitted and does not affect the zoning status of a Family Daycare Home. ~~A private residence or other structure in which supplemental care is provided on a regular basis for six (6) or fewer persons.~~

GROUP DAYCARE HOME: Is defined in Section 52-2-703, MCA. Overlap Care is permitted and does not affect the zoning status of a Group Daycare Home. ~~A private residence or other structure in which supplemental parental care is provided on a regular basis for seven (7) to twelve (12) children.~~

OVERLAP CARE: Is defined and governed by Montana Administrative Rule 37.95.102 and 37.95.718.

POSITIVE OUTCOMES

As already discussed in the above summary and findings, Montana faces a critical shortage of childcare services with much of the state sadly qualifying as a childcare desert. Unfortunately, Lewis & Clark County and the City of Helena are not immune from the woes of the childcare shortage. By bringing the City of Helena's code into compliance with state statutory requirements, more Helena families will be able to access childcare facilities, which will in turn allow the Helena labor force to expand and help Helena's economy recover from the pandemic recession. As the report by the Montana Department of Labor and Industry and the Montana Department of Public Health and Human Services appropriately summarized:⁸

Access to child care is essential to a healthy economy, allowing parents of young children to engage in the labor force and preparing the state's future workforce through high-quality early childhood education.

Let's get this commonsense amendment to our City Code passed without delay so that the intent in Section 11-38-1 can be better met and the City can come into compliance with Montana law.

Respectfully submitted,

/s/ Lowell J. Chandler

Lowell Chandler
HCC District 3

/s/ Nolan Harris

Nolan Harris
HCC District 2

/s/ Joe Lehman

Joe Lehman
HCC District 2

⁸ See Montana DPHHS and Dept. of Labor & Industry, *Child Care Deserts: An Analysis of Child Care Supply and Demand Gaps in Montana*, p. 1, Available at: https://lmi.mt.gov/_docs/Publications/LMI-Pubs/Special-Reports-and-Studies/ChildCareDesertsWhitePaper-FINAL.pdf.