

**Draft
East Helena
Subdivision Regulations**

July 2013

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DEFINITIONS

Whenever the following words or phrases appear in these regulations, they shall have the meaning assigned to them by this section. When not inconsistent with the context, words used in the present tense include the future; the singular, unless otherwise specifically defined in a particular section, includes the plural, and the plural the singular; the word “shall” is always mandatory, and the word “may” indicates use of discretion in making decisions.

1. **ACCESS (LEGAL AND PHYSICAL):**
 - a. Legal access means that each lot in a subdivision either abuts a public (city, county, state, or federal) street or road, or that the subdivider has obtained adequate and appropriate easements across all necessary properties, from a public road to each lot in the subdivision, whether or not a road has been constructed on that property, and has dedicated the easement or a private road for public use.
 - b. Physical access means that the street or road conforming to the subdivision design standards provides vehicular access from a public street or road to each lot in the subdivision, either from a public street or road, from a road constructed to local road standards in the obtained easements which is dedicated to public use, or from a private road improved to local road standards which has been dedicated to public use.
2. **ADJOINING LANDOWNER (ADJACENT PROPERTY OWNER):** The owner of record of a parcel of land that is contiguous, at any point, or land that is separated from the parcel by a road, watercourse or deeded right-of-way.
3. **AGRICULTURE:** All aspects of farming or ranching including the cultivation or tilling of soil; dairying; the production, cultivation, growing, harvesting of agricultural or horticultural commodities; raising of livestock, bees, fur-bearing animals or poultry; and any practices including, forestry or lumbering operations, incidental to or in conjunction with farming operation, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.
4. **AGRICULTURAL WATER USER FACILITIES:** Those facilities which provide water to agricultural lands for stock watering or irrigation for the production of agricultural products. These facilities include, but are not limited to, ditches, head gates, pipes, and other water conveying facilities.
5. **BLOCK:** A group of lots, tracts or parcels within well-defined and fixed boundaries.
6. **CERTIFICATE OF SURVEY:** A drawing of a field survey prepared by a professional land surveyor for the purpose of disclosing facts pertaining to boundary locations.
7. **CITY:** The incorporated City of East Helena and includes any person employed by East Helena or any person appointed or elected to represent residents of East Helena.
8. **CITY COUNCIL:** The governing authority of the City of East Helena organized pursuant to law [76-3-103 (7), MCA].

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9. **CLUSTER DEVELOPMENT:** A subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots while allowing other lands to remain undeveloped. [76-3-103(2), MCA].
10. **CONDOMINIUM:** A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project, with the land and other parts of the project held in common ownership or use with owners of the other units, pursuant to Title 70, Chapter 23, MCA.
11. **COVENANT (RESTRICTIVE COVENANT):** A limitation contained in a deed or other document that restricts or regulates the use of the real property.
12. **DEDICATION:** The deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted. [76-3-103(3), MCA].
13. **DEQ:** The Montana Department of Environmental Quality.
14. **DIVISION OF LAND:** The segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to the MSPA. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land. [76-3-103(4), MCA].
15. **DWELLING UNIT:** Any structure or portion thereof providing complete, independent and permanent living facilities for one household.
16. **EASEMENT:** Authorization by a property owner for another to use, or restriction on the right of the owner to use, all or a portion of the owner's property for a specified purpose.
17. **ENGINEER (PROFESSIONAL ENGINEER):** A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice engineering in the State of Montana.
18. **FEMA:** The Federal Emergency Management Administration is an independent agency of the United States government that provides a single point of accountability for all federal emergency preparedness and mitigation and response activities and is responsible for the preparation of floodplain maps and management of floodplains throughout the United States.
19. **FIRM:** Is an official map of a community within the United States that displays the floodplains, more explicitly special hazard areas and risk premium zones, as delineated by the Federal Emergency Management Agency (FEMA).
20. **FIRST MINOR SUBDIVISION:** A proposed minor subdivision from a tract of record that has not been subdivided or created by a subdivision under the MSPA or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA, since July 1, 1973. [76-3-609(2), MCA].

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21. FLOOD: The water of any watercourse or drainage which is above the bank or outside the channel and banks of such watercourse or drainage [76-5-103 (8), MCA].
22. FLOOD OF 100 YEAR FREQUENCY: A flood magnitude which has a one percent chance of occurring in any given year , or is a flood magnitude which is expected to recur on the average of once every 100 years [76-5-103 (9), MCA].
23. FLOODPLAIN: The area adjoining the watercourse or drainage that would be covered by the floodwater of a flood of 100 year frequency [76-5-103 (10), MCA].
24. FLOODWAY: The channel of a watercourse or drainage and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge the floodwater of any watercourse or drainage [76-5-103 (11), MCA].
25. GROWTH POLICY: An official public document adopted pursuant to Title 76, Chapter 1, MCA; the fundamental planning document for local communities, providing the present and future context for growth and development, and used by the local government as a general guide for development decisions., The growth policy is not a regulatory document but provides a framework and rationale for the regulations, programs and initiatives that communities undertake in order to realize the goals and objectives set forth in the policy.
26. IMPROVEMENT AGREEMENT: A contractual agreement that may be required by the City Council to ensure the construction of such improvements as required by local subdivision regulations. The improvement agreement may require collateral to secure the construction of such improvements, such as the direct payment of cash, deposit of certified funds, irrevocable letters of credit, performance or property bonds (only in limited circumstances and subject to approval of City Attorney), private or public escrow agreements, or similar financial guarantees.
27. INSTITUTIONAL CONTROLS: Non-engineered instruments, such as administrative and legal controls, that help minimize the potential for human exposure to contamination and/or protect the integrity of a response action. Institutional controls work by limiting land or resource use and providing information that helps modify or guide human behavior at properties where hazardous substances prevent unlimited use and unrestricted exposure. The Lewis and Clark County Environmental Health Department has developed an Institutional Controls Program for the East Helena Superfund Site.
28. LANDOWNER: All individuals, groups, or parties with a title interest in the property. For purposes of 76-3-207, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms “property owner,” “landowner,” and “owner” mean the seller of the parcel under the contract-for-deed (24.183.1104 ARM). For all other purposes of these regulations, the terms “property owner,” “landowner,” and “owner” mean both the seller and the purchaser under a contract for deed.
29. LOCAL SERVICES: Any and all services or facilities that local government entities are authorized to provide directly or through a contractor.
30. LOT: A parcel, plot, or other land area created by subdivision for sale, or transfer of title.

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31. LOT MEASUREMENT:

- a. Lot Depth -- The length of a line drawn perpendicularly to the front lot line and extending to the rear lot line.
- b. Lot Width -- The average width of the lot.
- c. Lot Frontage -- The width of the front lot line.
- d. Lot Area -- The area of a lot determined exclusive of street, highway, alley, road, or other rights-of-way or access easements.

32. LOT TYPES:

- a. Corner Lot: A lot located at the intersection of two streets.
- b. Interior Lot: A lot with frontage on only one street.
- c. Through or Double-Frontage Lot: A lot whose front and rear lines both abut on streets.
- d. Flag Lot: A lot of irregular shape, the bulk of which is normally situated to the rear of other lots, having as its frontage and access a drive connecting it to a street.

33. MAJOR SUBDIVISION: A subdivision that creates six or more lots.

34. MINOR SUBDIVISION: A subdivision that creates five or fewer lots.

35. MOBILE (MANUFACTURED) HOME: A detached residential dwelling unit, which may consist of two or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, "trailer homes," "house trailers," and "manufactured homes" whether or not the unit has been constructed after July 1, 1976, in conformance with Federal Manufactured Home Construction and Safety Standards. The term does not include "modular" or "factory-built buildings" that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.

36. MOBILE (MANUFACTURED) HOME SPACE: A designated portion of a parcel of land designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.

37. MOBILE (MANUFACTURED) HOME PARK: A tract of land that provides or will provide spaces for two or more mobile homes.

38. MOBILE (MANUFACTURED) HOME PAD: That area of a mobile home space which has been prepared for the placement of a mobile home.

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39. MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY MINIMUM STANDARDS: Minimum standards promulgated by the Montana Department of Environmental Quality, pursuant to Title 76, Chapter 4, Part 1, MCA.
40. MONUMENT (PERMANENT MONUMENT): Any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.
41. MSPA: Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA.
42. NATURAL ENVIRONMENT: The physical conditions which exist within a given area, including land, air, water, mineral, flora, fauna, sound, light and objects of historic, prehistoric, cultural, or aesthetic significance.
43. NRCS: The Natural Resources Conservation Service, formerly known as the Soil Conservation Service (SCS), is an agency of the United States Department of Agriculture (USDA) that provides technical assistance to farmers and other private landowners and managers and one of its primary responsibilities is the assessment and classification of soils throughout the United States.
44. OPEN SPACE: Land or water areas retained for use as active or passive recreation areas or for resource protection in an essentially undeveloped state.
45. OVERALL DEVELOPMENT PLAN: The plan of a subdivision design proposed to be subdivided in stages.
46. PLANNED UNIT DEVELOPMENT (P.U.D.): A land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use [76-3-103 (10), MCA].
47. PLANNING BOARD: A planning board formed pursuant to Title 76, Chapter 1, MCA.
48. PLAT: A graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.
 - a. Preliminary Plat: A neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a City Council as more specifically set forth in these regulations and the MSPA.
 - b. Final Plat: The final drawing of the subdivision and dedication required to be prepared for filing for record with the Lewis and Clark County Clerk and Recorder containing all elements and requirements set forth in these regulations and the MSPA. (Title 76, Chapter 3, MCA).
 - c. Amended Plat: The final drawing of any change to a filed platted subdivision , or any lots within a filed platted subdivision.

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- d. Vacated Plat: A plat which has been voided under the provisions of MCA 76-3-305, 7-5-2501, 7-5-2502, 7-14-2616 (1) and/or (2), 7-14-2617, 7-14-4114 (1) and/or (2), and 7-14-3115.
49. PRE-APPLICATION SKETCH (OR DRAWING): A legible drawing showing approximate boundaries, dimensions, areas, distances and other pertinent information of a proposed subdivision, all as more particularly set forth in section II-A-4(b).
50. PRIVATE IMPROVEMENT: Private improvements are the same types of improvements as defined under PUBLIC IMPROVEMENTS, except the structure or facility has not been dedicated to the public or otherwise acquired by a government entity for public use.
51. PRIVATE ROAD: A road is private if its right-of-way has neither been dedicated nor acquired for public use. A private road may be open to use by the general public or public access may be restricted. A private road is one that provides access to multiple family dwellings with access from a public road. An example would be an internal road that accesses a group of condominiums on a single lot or group of lots or an internal road that accesses a group of multiple family dwellings on a single lot or group of lots.
52. PUBLIC HEALTH AND SAFETY: The prevailing healthful, sanitary condition of well being for the community at large. Conditions that relate to public health and safety include but are not limited to: disease control and prevention; emergency services; environmental health; flooding, fire or wildfire hazards, rock falls or landslides, unstable soils, steep slopes, and other natural hazards; high voltage lines or high pressure gas lines; and air or vehicular traffic safety hazards.
53. PUBLIC IMPROVEMENT: Any structure or facility constructed to serve more than one lot in a subdivision which is dedicated to the public or otherwise acquired by a government entity for public use. Examples of typical public improvements include parks, streets or roads, sidewalks, curbs, gutters, and street lighting, utilities, and systems for water supply, sewage disposal, drainage, or fire protection.
54. PUBLIC ROAD OR STREET: A road or street is public if its right-of-way has been dedicated or acquired for public use.
55. RECREATIONAL CAMPING VEHICLE: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motor power or is mounted on or drawn by another vehicle.
56. RECREATIONAL VEHICLE PARK: A tract of land available to and principally used by the public for camping, where persons can park recreational vehicles for camping and sleeping purposes.
57. RECREATIONAL VEHICLE SPACE: A designated portion of a recreational vehicle park designed for the placement of a single recreational vehicle and the exclusive use of its occupants.
58. REVIEWING AUTHORITY: The DEQ or local Board of Health or Sanitarian as authorized under Title 76, Chapter 4, MCA.

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59. **RIGHTS-OF-WAY:** A linear public way established or dedicated for public purposes by a duly recorded plat, deed, easement, grant, prescription, condemnation, governmental authority or by operation of law, intended to be occupied by a street, non-motorized vehicle path, railroad, electric transmission lines, water line, sanitary sewer line, storm sewer line, or other similar uses.
60. **STATE:** The State of Montana.
61. **STREET TYPES:** For purposes of these regulations, street types are defined as follows:
- a. **Alley:** A public or private way reserved as a secondary means of access to the rear or side of lots which abut on and are served by public roads.
 - b. **Arterial:** A street or road having the primary function of moving traffic with emphasis on a high level of mobility for through movement and the secondary function of providing access to adjacent land. Arterials generally carry relatively large volumes of traffic. Arterials have two to four lanes of moving traffic and should provide only limited access to abutting property.
 - c. **Collector:** A street or road having the equally important functions of moving traffic and providing access to adjacent land. Collector streets have two moving traffic lanes and up to two parking lanes.
 - d. **Local Streets:** A street or road having the primary function of serving abutting properties, and the secondary function of moving traffic. Local streets have two moving lanes of traffic, up to two parking lanes, and provide access to abutting properties.
 - e. **Half-Street:** A portion of the width of a street, usually located along the perimeter of a subdivision, the remaining portion of which street must be located on adjacent property if the street is to be fully constructed.
 - f. **Cul-de-sac:** A street having only one outlet for vehicular traffic and terminating in a turn-around area.
 - g. **Loop:** A local street which begins and ends on the same street, generally used for access to properties.
 - h. **Frontage Access (Service Road):** A local or collector street, usually parallel and adjacent to an arterial or major collector, which provides access to abutting properties and controls traffic access to arterials or collectors.
62. **SUBDIVIDER:** Any person, firm or corporation, or other entity which causes land to be subdivided or which proposes a subdivision of land [76-3-103(15), MCA]. When used in these regulations, the term "subdivider" may also include the property purchaser on a contract for deed or its agent, or the landowner's agent, if the landowner has provided the subdivision administrator written notification that the landowner's agent is authorized to act on the landowner's behalf and to receive notices regarding local government decisions concerning the subdivision.
63. **SUBDIVISION:** A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United

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States government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise transferred and includes any re-subdivision and a condominium [76-3-103(16), MCA]. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

64. **SUBDIVISION ADMINISTRATOR:** The person(s) authorized by the City Council to perform the duties of review and administration set forth in these regulations.
65. **SUBSEQUENT MINOR SUBDIVISION:** Any subdivision of five or fewer parcels that is not a first minor subdivision.
66. **SURVEYOR (PROFESSIONAL LAND SURVEYOR):** A person licensed in conformance with the Montana Engineers' and Land Surveyors' Act (Title 37, Chapter 67, MCA) to practice surveying in the State of Montana.
67. **SURVEYOR (EXAMINING LAND SURVEYOR):** A professional land surveyor duly appointed by the City Council to review surveys and plats submitted for filing.
68. **SWALE:** A drainage channel or depression designed to direct surface water flow.
69. **TITLE REPORT (ABSTRACT OF TITLE, SUBDIVISION GUARANTEE, OR PLATTING REPORT):** A report from a title service company on the condition of title to the property proposed for subdivision, which identifies the owners of record of the property, lien holders, encumbrances, easements and restrictions of record, and all other conditions of title of public record, and accompanied by a guarantee of the accuracy of the report from the title insurance agent or its underwriter.
70. **TOPOGRAPHY:** General term to include characteristics of the ground surface such as plains, hills, mountains, slopes, and other physiographic features.
71. **TOWNHOUSE LOT:** Arrangement under which units share a common wall, and individuals own their own units and hold separate title to the land beneath the unit.
72. **TRACT OF RECORD:** An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the Lewis and Clark County Clerk and Recorder's office [76-3-103(17)(a), MCA].
73. **VICINITY SKETCH:** A map at a scale suitable to locate a proposed subdivision, showing the boundary lines of all adjacent properties and streets and other information necessary to determine the general location of the proposed subdivision.
74. **WILDLIFE:** Those animals that are not domesticated or tamed, or as may be defined in a Growth Policy.
75. **WILDLIFE HABITAT:** The place or type of site where wildlife naturally lives and grows.

I. GENERAL PROVISIONS

I-A. Title

These regulations will be known and may be cited as “The Subdivision Regulations of the City of East Helena;” hereinafter referred to as “these regulations.”

I-B. Authority

Authorization for these regulations is contained in the Montana Subdivision and Platting Act (“MSPA”). [Title 76, Chapter 3, MCA.].

I-C. Purpose

The purposes of these regulations are to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; to promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services; to protect the rights of property owners; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey (76-3-102, MCA).

These regulations are intended to comply with Part 5 of the MSPA, and are intended to promote:

1. The orderly development of the jurisdictional area.
2. The coordination of roads within subdivided land with other roads, both existing and planned.
3. The dedication of land for roadways and for public utility easements.
4. The improvement of roads.
5. The provision of proper physical and legal access, including obtaining necessary easements.
6. The provision of adequate open spaces for travel, light, air, and recreation.
7. The provision of adequate transportation, water, drainage, and sanitary facilities.
8. The avoidance or minimizing of congestion.
9. The avoidance of subdivisions which would involve unnecessary environmental degradation.
10. The avoidance of subdivisions which would involve danger or injury by reason of natural hazard including but not limited to fire and wildland fire, flooding, rock falls or landslides, unstable soils, and steep slopes.

11. The avoidance of subdivisions which would involve danger or injury by reason of man-made hazard including but not limited to high voltage lines, high pressure gas lines; and air or vehicular traffic safety hazards.
12. The avoidance of subdivisions which would involve the lack of water, drainage, access, transportation, or other public improvements.
13. The avoidance of subdivisions which would involve excessive expenditure of public funds for the supply of public improvements, facilities, and services.
14. The manner and form of making and filing of any plat for subdivided lands.
15. The administration of these regulations by defining the powers and duties of approving authorities, including procedures for the review and approval of all plats of subdivisions covered by these provisions.

I-D. Jurisdiction

These regulations govern the subdivision of land within the jurisdictional area of the City Council of the City of East Helena.

When a proposed subdivision is proposed to be annexed to the City, The City will have jurisdiction over the review of the subdivision for concurrence with these regulations and the City Council will conduct public hearings and otherwise coordinate the subdivision review process and annexation procedures.

These regulations supplement all other regulations, and where they are at variance with other laws, regulations, ordinances, or resolutions, the more restrictive requirements apply. Other regulations include, but are not limited to, zoning regulations, floodplain regulations, building codes, development codes, and fire codes.

I-E. Severability

If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, that judgment will affect only the part held invalid.

II. GENERAL PROCEDURES

The provisions of this section apply to Sections III, IV, VII, IX and X.

II-A. Preliminary Plats

II-A-1. Construction Timing

Construction work shall not occur on land proposed for subdivision until the City Council has given conditional approval of the preliminary plat. Construction work undertaken prior to the preliminary plat approval subjects the subdivider to the possibility the work will have to be redone or removed. In addition, section 76-4-121, MCA, regulates subdivision activities.

II-A-2. Transfers of Title

The transfer of title shall be in compliance with Section 76-3-303, MCA and as may be amended by the Montana State Legislature.

II-A-3. Permission to Enter

The City Council or its designated agent(s) or affected agencies identified during the pre-application meeting may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider and to subsequently monitor compliance with any conditions if the preliminary plat is approved conditionally. The submission of a subdivision application constitutes a grant of permission by the subdivider for the City Council, its agents, and affected agencies to enter the subject property.

II-A-4. Pre-application Process

- A. Prior to submittal of a subdivision application, the subdivider shall request a pre-application meeting with the subdivision administrator. The preapplication meeting shall occur within 30 days after the subdivider submits a written request for the meeting to the subdivision administrator.
- B. At the time of the pre-application meeting request, the subdivider shall provide to the subdivision administrator a sketch of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions.
 - i. The sketch may be a freehand sketch drawn directly on a print of a topographic map or recent aerial photo of the area proposed for division at a scale of 1 inch to 400 feet or larger that is adequate to show the property and must include the following:
 - a. Information on the current status of the site, including:
 1. location;
 2. approximate tract and lot boundaries of existing tracts of record;
 3. description of general terrain;
 4. natural features on the land, including water bodies, floodplains geologic hazards, and soil types; soil contamination
 5. existing structures and improvements;

6. existing utility lines and facilities serving the area to be subdivided;
 7. existing easements and rights of way;
 8. Public transportation routes
 9. existing zoning or development regulation standards;
 10. existing conservation easements;
 11. existing covenants or deed restrictions;
- b. Documentation on the current status of the site, including:
1. ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide;
 2. location of Agricultural Water User Facilities;
 3. any special improvement districts; and
 4. rights of first refusal for the property.
- c. Information on the proposed subdivision, including:
1. tract and proposed lot boundaries;
 2. proposed public and private improvements;
 3. location of utility lines and facilities;
 4. easements and rights of way; and
 5. parks and open space and proposed conservation easements.
- C. At the pre-application meeting:
- i. the subdivision administrator shall identify, for informational purposes, the state laws, local regulations and growth policy provisions that may apply to the subdivision review process including, but not limited to, zoning regulations, floodplain regulations, building codes, fire codes, and institutional controls regulations;
 - ii. the subdivision administrator shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities that have an interest in the proposed subdivision and that may be contacted for comment by the subdivision administrator or planning board on the subdivision application. The subdivision administrator shall also identify the timeframes that the public utilities, agencies, and other entities are given to respond; and
 - iii. the subdivision administrator may identify particular additional information the subdivision administrator anticipates will be required for review of the subdivision application. This does not limit the ability of the subdivision administrator to request additional information at a later time.
- D. Unless the subdivider submits a subdivision application within 180 calendar days of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application.

II-A-5. Subdivision Application and Preliminary Plat Submittal

The subdivider shall submit to the City a subdivision application addressing these topics and containing the following materials, as applicable:

1. Any subdivider desiring to subdivide land pursuant to this title shall present a complete and signed preliminary plat application to the City showing all pertinent features of the proposed subdivision and all proposed improvements;
2. The full required application fee;
3. The following number of copies of the proposed preliminary plat and all application materials must be submitted to the City:
 - i. Two (2) copies of the proposed preliminary plat and all application materials for review of checklist items;
 - ii. Once the application has been determined to contain the checklist items, three (3) paper copies and one electronic PDF, or other approved format, copy of the proposed preliminary plat and all application materials for sufficiency review;
 - iii. Once the application has been determined to contain sufficient information for review:
 - a. six (6) paper copies of the proposed preliminary plat and all application materials for a major subdivision; or
 - b. five (5) copies for a minor subdivision; and
 - c. one (1) electronic PDF, or other approved format, copy;
 - d. preliminary plats must be in the format required by the Lewis and Clark County Lewis and Clark County Clerk and Recorder; and
 - e. one copy of the preliminary plat in an eleven inch by seventeen inch (11" x 17") format.
4. The subdivider shall submit to the City a preliminary plat with the following information:
 - i. The following information must be provided on the preliminary plat:
 - a. Title block to include:
 1. Name of subdivision;
 2. Location;
 3. A scale not exceeding one hundred feet per inch (100' = 1");
 4. North arrow;
 5. Date of preparation; and
 6. Name of preparer;
 - b. The exterior boundaries of the platted tract;
 - c. The location of all section corners or legal subdivision corners of sections pertinent to the subdivision's boundaries;
 - d. Perimeter survey, including gross acreage and net acreage;
 - e. All lots, blocks and applicable tracts of land, designated by numbers and the approximate dimensions and area of each lot;
 - f. An amended subdivision plat must cite the subdivision that is being amended and identify the blocks and lots being amended;
 - g. Use restrictions for lots designed for special uses, such as lots exclusively for townhouses;
 - h. Identify on the preliminary plat or overlay the locations of any existing and proposed easements affecting the subdivision;
 - i. The names of adjoining platted subdivisions and numbers of adjoining certificates of survey's previously recorded;

5. A vicinity map;
6. A topographic map;
7. A grading and drainage plan;
8. Engineering plans for all public and private improvements;
9. Overall Development plan and if improvements are to be completed in phases, the approximate area of each phase shall be shown on the plat;
10. Abstract of title (or Title Report);
11. Any existing or proposed zoning.
12. Location of utilities, railroad rights of way, watercourses, and other nearby land uses
13. A legal description of the subject property, a copy of the currently filed plat or certificate of survey, and the last recorded deed for the subject property;
14. Lienholders acknowledgement of subdivision;
15. Documentation of legal and physical access;
16. Documentation of existing easements, including those for Agricultural Water User Facilities;
17. Existing covenants and deed restrictions;
18. Existing water rights;
19. Existing mineral rights;
20. The names and addresses of owners of record of adjacent property and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat;
21. Approach/access/encroachment permits from the Montana Department of Transportation or local jurisdiction;
22. The following information must be provided on a site plan to determine compliance with the City of East Helena Zoning Ordinance:
 - i. The location of all existing structures, including dimensions and size;
 - ii. Existing and proposed use of any existing structure;
 - iii. The distance of any existing structure from proposed lot lines (setbacks);
 - iv. Location and number of any required parking spaces for existing uses; and
 - v. Location and size of any required landscaping areas for existing uses;
23. Proposed road plans;
24. Proposed easements;
25. Proposed disposition of water rights, as required by Section VI-O;
26. Proposed disposition of mineral rights;
27. Parkland dedication calculations; including a property valuation or appraisal if cash-in-lieu is proposed.
28. Visible flagging on the property adequate to determine exterior boundaries of the proposed subdivision, park land dedication, and accesses including, but not limited to, property boundary corners, perimeter of proposed park land dedication, and the entrance of access streets;
29. Describe land uses on lands adjacent to the subdivision;
30. Describe any growth policy, or other land use regulations covering the area proposed for subdivision or adjacent land;
31. Written permission for the subdivider's agent to represent the subdivider and to receive notification of the city's determination of a complete and sufficient application;
32. Written proof that all levied real property taxes and assessments have been paid;
33. Any ordinances or resolutions, such as alley or street closures, that specifically impact the plat;
34. Written plan of compliance with institutional controls, including dust management plan for construction activities and/or soil permit;
35. An environmental assessment and/or a summary of the probable impacts of the proposed subdivision based on the criteria described in MCA 76-3-608 and as defined by the City East Helena Growth Policy;

36. Submit a Traffic impact study whenever the subdivision is projected to generate two hundred (200) or more new vehicle trips per day per the estimate traffic standards of the Institute of Transportation Engineers; if less than 200 new trips per day, provide the capability of existing and proposed roads to safely accommodate this increased traffic.;
37. Fire risk rating analysis and fire prevention plan;
38. Weed Management Plan and Re-vegetation Plan;
39. Property owners association documents, including draft articles of incorporation, declaration and bylaws;
40. FIRM or FEMA panel map and/or letter identifying floodplain status and other hydrologic characteristics including surface water bodies, designated floodplain and areas of riparian resource, as required in Section VI-D of the subdivision regulations.
41. Required water and sanitation information;
42. A form of Subdivision Improvements Agreement, if proposed;
43. Letter requesting revocation of agricultural covenants, if applicable;
44. Letter indicating locations of cultural or historic resources;
45. Completed zoning and subdivision variance applications, if applicable;
46. Re-zoning application or approval;
47. When required, a flood hazard evaluation;
48. Proposed street lighting plan;
49. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
50. Such additional relevant and reasonable information as identified by the Subdivision Administrator that is pertinent to the required elements of this section.

II-A-6. Review Process

For both minor, subsequent minor, and major subdivisions, the initial review process is as follows:

- a. Element Review
 - i. A subdivision application is considered to be received on the date of delivery to the City and when accompanied by the review fee, the day of delivery is not considered a working day.
 - i. Within 5 working days of receipt of a subdivision application, the subdivision administrator shall determine whether the application contains all of the applicable materials required by section II-A-5 and shall give written notice to the subdivider of the subdivision administrator's determination.
 - A. If the subdivision administrator determines that elements are missing from the application, the subdivision administrator shall return the application and identify those elements in the notification, and no further action shall be taken on the application by the subdivision administrator until the application is resubmitted.
 - B. The subdivider may correct the deficiencies and resubmit the application.
 - C. When the subdivider corrects the deficiencies and resubmits the application the subdivision administrator shall have 5 working days to notify the subdivider whether the resubmitted application contains all the materials required by section II-A-5, as applicable.

- D. This process shall be repeated until the subdivider submits an application containing all the materials required by section II-A-5, or the application is withdrawn.

b. Sufficiency Review

- i. Within 15 working days after the subdivision administrator notifies the subdivider that the application contains all of the required elements as provided in subsection (a) above, the subdivision administrator shall determine whether the application and required elements contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under these regulations and shall give written notification to the subdivider of the subdivision administrator's determination.
 - A. If the subdivision administrator determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the subdivision administrator shall identify specific required information in its notification and return the application to the subdivider, and no further action shall be taken on the application by the subdivision administrator until the material is resubmitted.
 - B. The subdivider may correct the deficiencies and resubmit the application, or withdraw the application.
 - C. When the subdivider corrects the deficiencies and resubmits the application in accordance with (i)(B) above, the subdivision administrator shall have 15 working days to notify the subdivider whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under these regulations.
 - D. This process shall be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of these regulations, or the application is withdrawn.
 - E. If substantial changes to the subdivision application materials and/or preliminary plat are made by the subdivider during sufficiency review or in the process of responding to sufficiency deficiencies, the subdivider may be required to resubmit the subdivision application and fee as determined by the Subdivision Administrator.
- ii. A determination that an application contains sufficient information for review as provided in this subsection (b) does not ensure that the proposed subdivision will be approved or conditionally approved by the City Council and does not limit the ability of the subdivision administrator, planning board, or the City Council to request additional information during the review process.
- iii. A determination of sufficiency by the subdivision administrator pursuant to this subsection does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

c. Applicable Regulations

Subdivision review and approval, conditional approval or denial shall be based on those regulations in effect at the time a subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the element or sufficiency review, the determination of whether the application contains the required elements and sufficient information, and the subdivision review, shall be based on the new regulations.

II-B. Final Plats

II-B-1. Final Plat Contents

The final plat submitted for approval must conform to the preliminary plat as previously reviewed and approved by the City Council and must incorporate all required modifications and comply with all conditions imposed at the time of subdivision application and preliminary plat approval. The final plat and accompanying documents must comply with the Montana Uniform Standards for Final Subdivision Plats. Final plats of subdivisions approved for phased development shall be filed sequentially in accordance with the approval.

II-B-2. Final Plat Initial Review

a. Final Plat Submittal

The final plat approval application form and all supplementary documents must be submitted to the subdivision administrator at least 60 working days prior to the expiration of preliminary plat approval. The submittal shall include, as applicable:

- i. The final plat application;
- ii. The final plat review fee;
- iii. A statement outlining how each condition of approval has been satisfied;
- iv. A Title Report or updated Abstract of Title dated no less than 30 days prior to the date of submittal;
- v. Approach/access/encroachment permits from Montana Department of Transportation or the local jurisdiction;
- vi. The DEQ Subdivision Approval or a Municipal Facilities Exclusion if approved by the City Council;
- vii. A final Grading and Drainage Plan, including all road plans, as built information, and profiles, and state or local encroachment permits;
- viii. All engineering plans;
- ix. Any homeowner association documents, including bylaws, covenants, and/or declarations;
- x. City attorney approvals; and
- xi. One 11" x 17" and one 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats set forth in Appendix A.
- xii. At a minimum the following improvements shall be installed prior to final plat approval:
 - a. water and sanitary sewer mains;
 - b. water and sewer services into all lots within the subdivision;c.

- c. all storm water infrastructure shall be installed; and
 - d. the roads shall be installed to a minimum of the top of the base course gravel;
 - e. All other required improvements shall be financially guaranteed and the subdivider shall enter into a subdivision improvements agreement with the City for installation of remaining infrastructure.
 - xiii. County Treasurer certification that no real property taxes and special assessments assessed and levied on the land to be subdivision are delinquent.
 - xiv. Proof of closure.
- b. Review by Subdivision Administrator
- i. The subdivision administrator shall review the final plat to ascertain that all conditions and requirements for final plat approval have been met. The subdivision administrator will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee, and copies of the final plat have been received. Final plat applications will not be considered complete by the subdivision administrator until all conditions of preliminary approval have been satisfied.
 - ii. If the subdivision administrator determines that the final plat differs from the approved or conditionally approved preliminary plat, the applicant shall be required to submit an amended application pursuant to Section II-B-5.
 - iii. The subdivision administrator may require that final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Lewis and Clark County Lewis and Clark County Clerk and Recorder. When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped signed certificate on the plat.
 - iv. Proof from the Lewis and Clark County Examining Land Surveyor that the subdivision plat has been reviewed for closure and is in compliance with the survey requirements of the Montana Subdivision and Platting Act.

II-B-3. Restrictive Covenants – Approval, Content and Enforcement by City Council

- a. The City Council may require that some or all restrictive covenants governing the use of land within the subdivision, whether proposed by the subdivider or required by the City Council, be set forth in a separate heading identifying them as plat approval covenants, and indicating: “These covenant(s) may not be repealed or amended without prior written consent of the (name of the East Helena City Council).”
- b. Covenants not specifically required by the City cannot be enforced by the City, therefore if covenants are proposed they shall be accompanied by homeowner’s association articles of incorporation, declaration, and bylaws. All homeowner’s association documents and proposed covenants shall be submitted to the City for review and approval by the City Council.
- c. No proposed covenants shall be in conflict with any City of East Helena code or ordinance, including the City Zoning Ordinance.

II-B-4. Public Improvements Agreement; Guaranty

- a. As a condition of approval of the final plat, the subdivider must have installed all required improvements specified in II-B-2(a)(xii) and have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all remaining required improvements [76-3-507, MCA]. No construction or placement of structures on the lots may occur until improvements related to public health and safety, such as roads or firefighting facilities, have been installed and engineering plans have been filed.
- b. A model subdivision improvements agreement and alternative methods of guaranteeing public improvements, the procedures and requirements for securing an agreement, and suggested conditions for maintenance are provided in Administrative Materials D.
- c. If the subdivider chooses to enter into a subdivision improvements agreement, financially guaranteeing the public improvements, three bids for the cost of installation of the public improvements shall be obtained by the subdivider. The amount of the guarantee shall be calculated by multiplying 130% by the highest bid. As the public improvements are installed, the subdivider shall provide a letter to the City Council indicating such, and including a copy of the as-built drawings stamped by a professional engineer in the State of Montana. Prior to release of the guarantee, all public improvements shall be certified by the subdivider and a professional engineer in the State of Montana as having been installed in conformance with the approved plans and specifications and a copy of the record drawings shall be submitted to the City.

II-B-5. Amending Approved Preliminary Plats Before Final Plat Approval

- a. If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes to the subdivision administrator for review.
 - a. The subdivision administrator shall determine whether the changes to the preliminary plat are material pursuant to subsection (b) below.
 - ii. If the subdivision administrator determines the changes are material, the subdivision administrator may require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee.
 - iii. If the subdivision administrator determines the changes are not material, the subdivision administrator shall accept the changes, notify the subdivider and identify those changes to the City Council during final plat review for acceptance.
- b. The following changes, although not an exhaustive list, may be considered material:
 - i. Increase in the number of lots;
 - ii. Changes in access or street layout;
 - iii. Water and wastewater capacity;
 - iv. Configuration of park land or open spaces;

- v. Easement provisions;
 - vi. Designated access;
 - vii. Changes to conditions of approval; or
 - viii. Changes in use.
- c. A subdivider whose proposed changes to the preliminary plat have been deemed material by the subdivision administrator may appeal the subdivision administrator's decision to the City Council in writing within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
- d. If the subdivider and subdivision administrator determine that a condition of approval is illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the City Council through a properly noticed public hearing in order to determine if the condition may be waived or amended.

II-B-6. Final Plat Approval

a. Approval by the City Council

The City Council shall examine every final subdivision plat and shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations, or deny it pursuant to (ii) below.

- i. If the final plat is approved, the City Council shall certify its approval on the face of the final plat. When applicable, a certificate of the City Council expressly accepting any dedicated land, easements, or improvements will be filed with the final plat.
- ii. If the final plat is denied, the City Council shall write a letter stating the reason for denial and forward a copy to the subdivider. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

b. Inaccurate Information

The City Council may withdraw approval of a final plat if it determines that material information by the subdivider is inaccurate.

II-B-7. Final Plat Filing

After it is approved, the final plat may not be altered in any manner except as provided in II-B-8. The Lewis and Clark County Clerk and Recorder may not accept any plat for filing that does not bear the City Council's approval in proper form or that has been altered.

II-B-8. Amending Filed Plats

- a. Changes that materially alter any portion of a filed plat, its land divisions or improvements, or that will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration which increases the number of lots or

modifies six or more lots in a platted subdivision, or abandons or alters a public road right-of-way or parkland dedication must be reviewed and approved by the City Council.

- b. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The City Council may not approve an amended final plat without the written consent of the owners and lienholders of all lots which will be modified by the proposed amendment.
- c. The City Council may not approve an amendment that will place a lot in non-conformance with the standards contained in Section VI of these regulations or with local zoning regulations unless the City Council holds a public hearing on the amendment and issues a written variance from the standards pursuant to Section XI-B, Variances.
- d. The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Uniform Standards for Filing Final Plats (Appendix A).

III. REVIEW AND APPROVAL PROCEDURES FOR MINOR SUBDIVISIONS

Subdivisions containing five or fewer parcels shall be reviewed as set forth in this section.

First minor subdivisions, when legal and physical access to all lots is provided (76-3-609(2), MCA), shall be reviewed pursuant to section III-A and subsequent minor subdivisions shall be reviewed pursuant to section III-B.

III-A. First Minor Subdivision Review

The pre-application process and initial review process set forth in Section II, General Procedures, apply to this section.

III-A-1. First Minor Subdivision Application and Preliminary Plat Submittal

- a. The subdivider shall submit to the City a subdivision application containing the materials identified in section II-A-5 and in the pre-application meeting;
- b. Sufficient documentary evidence from the public records demonstrating that the subdivision will be the first minor subdivision from a tract of record; and
- c. Applicable review fees;
- d. The subdivider may not request a variance to any aspect of legal and/or physical access.

III-A-2. First Minor Subdivision Exceptions

The following do not apply to first minor subdivisions:

- a. preparation of an environmental assessment;
- b. parkland dedication;
- c. public hearing requirements.

III-A-3. First Minor Subdivision Review Process

- a. Time Period for Approval, Conditional Approval, or Denial

Within 35 working days, the City Council shall approve, conditionally approve or deny the proposed subdivision according to Section III-A-6 of these regulations, unless the subdivider and the City agrees to an extension or suspension of the review period, not to exceed one year. The review period of 35 working days begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.

b. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the City Council's action on the subdivision application beyond the 35-working day review period. The City Council will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

If a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body's review, the comment or opinion may be included in the governing body's written statement under 76-3-620 and IV-A-8 only if the comment or opinion provides scientific information or a published study that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring interest in the real property identified in the subdivision application shall disclose that the entity has been involved with that effort prior to submitting a comment, an opinion, or information as provided in this section.

c. Planning Board Delegation of Review

Under 76-1-107(2), MCA, the Planning Board delegates to the subdivision administrator its responsibility to advise the City Council on First Minor Subdivisions.

III-A-4. Subdivider's Preference for Mitigation

The subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's preference for mitigation of any impact identified in the review process. The City Council will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preferences regarding mitigation [76-3-608(5)(b), MCA].

III-A-5. First Minor Subdivision City Council Decision and Documentation

a. Prerequisites to Approval

The City Council may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

- i. provides easements for the location and installation of any planned utilities, both on and off site;
- ii. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;
- iii. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section II-B-4 of these regulations;

- iv. assures that the requirements of 76-3-504 (1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Section VI-O have been considered and will be accomplished before the final plat is submitted; and
- v. assures that the requirements of 76-3-504(1)(k), MCA, regarding watercourse and irrigation easements as set forth in Section VI-N have been considered and will be accomplished before the final plat is submitted.

b. Consideration – Standards

In approving, conditionally approving, or denying a first minor subdivision application, the City Council shall consider subsection (a) above and whether the proposed subdivision complies with:

- i. these regulations, including but not limited to, the standards set forth in Section VI;
- ii. applicable zoning regulations;
- iii. other applicable regulations;
- iv. the MSPA, including but not limited to the following impacts:
 - A. impact on agriculture;
 - B. impact on agricultural water user facilities;
 - C. impact on local services;
 - D. impact on the natural environment;
 - E. impact on wildlife and wildlife habitat; and
 - F. impact on public health and safety.
- v. proposed mitigation.

c. Consideration – Evidence

In making its decision to approve, conditionally approve, or deny a proposed first minor subdivision the City Council may consider and weigh the following, as applicable:

- i. the subdivision application and preliminary plat;
- ii. the summary of probable impacts and proposed mitigation;
- iii. an officially adopted growth policy;
- iv. subdivision administrator's staff report and recommendations;
- v. any additional information authorized by law.

d. Water and Sanitation-Special Rules

- i. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the City Council finds that the application does not comply with previously adopted subdivision, zoning, floodplain or other regulations.
- ii. For a proposed subdivision that will create one or more parcels, the subdivider shall obtain approval by the DEQ and the City for water and sewer main extensions as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that water and sewer main mains extensions will be approved to service the proposed lots. The City shall require either DEQ approval of the proposed subdivision or require that a Municipal Facilities Exclusion be approved by the City Council and DEQ prior as a condition of approval of the final plat.
- iii. A subdivision cannot be approved if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not provided for under Title 76, Chapter 3 and Chapter 4 or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment.
- vi. If the water supply or wastewater treatment systems are shared, multiple user or public, the subdivider must provide a statement of whether the systems will be public utilities as defined in Section 69-3-101 and subject to public service commission jurisdiction or exempt from public service commission jurisdiction. If exempt, an explanation for the exemption must be provided.

e. Documentation of City Council Decision

- i. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision the City Council shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the above subsections.
- ii. When the City Council approves, denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
 - A. contain information regarding the appeal process for the denial or imposition of conditions;
 - B. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - C. provide the facts and conclusions that the City Council relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and

D. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.

E. set forth the time limit for approval, pursuant to subsection (f) below.

f. **Subdivision Application and Preliminary Plat Approval Period**

i. Upon approval or conditional approval of the preliminary plat, the City Council shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.

A. At least 30 days prior to the expiration of the preliminary plat approval, the City Council may, at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year.

B. The City Council may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the City Council and the subdivider.

ii. After the application and preliminary plat are approved, the City Council may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires.

iii. The City Council may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

III-A-6. First Minor Subdivisions – Amended Applications

a. If the subdivider changes the subdivision application or preliminary plat before the City Council makes its decision, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.

i. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material, as determined in subsection (c) below.

ii. The 35-working day review period is suspended while the subdivision administrator considers the amended application or preliminary plat.

iii. If the subdivision administrator determines the changes are not material, the 35-working day review period resumes when the subdivision administrator mails notice of the decision to the subdivider.

iv. If the subdivision administrator determines the changes are material, the subdivision administrator shall either require the subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application, and new review fee's or require the subdivider to present the changes to the Planning Board for consideration of the changes, only.

- b. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsection (a)(ii).
- c. The following changes, although not an exhaustive list, may be considered material:
 - i. configuration or number of lots;
 - ii. access layout;
 - iii. water, sewer, and/or stormwater proposals;
 - iv. configuration of park land or open spaces;
 - v. easement provisions;
 - vi. designated access; or
 - vii. change in use.
- d. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the City Council. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
 - i. The 35-working day review period is suspended until the City Council decision on the appeal is made.
 - ii. If the City Council concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the City Council shall require the subdivision application and preliminary plat to be resubmitted pursuant to subsection (a)(iv).
 - iii. If the City Council concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the 35-working day review period resumes as of the date of the decision.
 - iv. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the 35-working day review period provided in subsection (d)(i).

III-A-7. First Minor Subdivision Final Plat

The final plat must include the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Section II-B, Final Plats.

III-B. Subsequent Minor Subdivisions

A Subsequent Minor Subdivision is any subdivision with five or fewer lots that is not a first minor subdivision. Subsequent minor subdivisions shall be reviewed using the process for minor subdivisions. All the requirements and procedures of Section IV of these regulations must be followed for subsequent minor subdivisions.

IV. REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS

IV-A. Review and Approval Procedures for Major Subdivisions

Subdivisions that qualify for major subdivision review are those divisions of land containing six or more lots, or subdivisions of five or fewer lots that do not otherwise qualify for review as first minor subdivisions under 76-3-609, MCA and these regulations.

The pre-application process and initial review process set forth in Section II, General Procedures, apply to this section.

IV-A-1. Subdivision Application and Preliminary Plat Submittal

- a. The subdivider shall submit to the City a subdivision application containing the materials identified in Section II-A-5 and in the pre-application meeting.

IV-A-2. Time Period for Approval, Conditional Approval, or Denial

- a. For subdivisions that create 50 lots or less, within 60 working days, the City Council shall approve, conditionally approve or deny the proposed subdivision and for subdivisions that create over 50 lots, within 80 working days the City Council shall approve, conditionally approve or deny the proposed subdivision according to Section IV-A-8 of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to Section IV-A-7 of these regulations. The review period begins the day after the subdivision administrator notifies the subdivider or the subdivider's agent in writing that the subdivision application is sufficient for review.

b. Public Agency and Utility Review

Review and comment by public agencies or utilities may not delay the City Council's action on the subdivision application beyond the 60-working day review period. The City Council will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

If a federal or state governmental entity submits a written or oral comment or an opinion regarding wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of assisting a governing body's review, the comment or opinion may be included in the governing body's written statement under 76-3-620 and IV-A-8 only if the comment or opinion provides scientific information or a published study that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring interest in the real property identified in the subdivision application shall disclose that the entity has been involved with that effort prior to submitting a comment, an opinion, or information as provided in this section.

IV-A-3. Public Hearings and Notices – In General

a. Hearings

The planning board and the City Council shall each hold a public hearing on the subdivision application when a hearing is required by these regulations.

b. Notice

- i. The planning board and City Council shall give notice of the times, dates and locations of the hearings by publication in a newspaper of general circulation in the city not less than 15 days prior to the dates of the hearings.
- ii. At least 15 days prior to the date of the required public hearing, the City Council shall give notice of the hearing by certified mail to the subdivider, each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.

IV-A-4. Planning Board Hearing, Consideration and Recommendation

a. Hearing

After the subdivision application is deemed to have all the required elements and contain detailed, supporting information that is sufficient to allow for review, and the subdivision administrator has prepared a staff report, the planning board shall schedule and hold a public hearing on the subdivision application.

b. Recommendation

i. Consideration-Standards

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board shall base its recommendation on compliance of the subdivision application with the following:

- A. these regulations, including but not limited to the standards set forth in Section VI;
- B. applicable zoning regulations;
- C. The MSPA, including but not limited to 76-3-608(3), as delineated in sections IV-A-8(a) and (b)(iv) of these regulations; and
- D. other applicable regulations.

ii. Consideration-Evidence

In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the planning board may consider, without limitation, the following (as applicable):

- A. the subdivision application and preliminary plat;
- B. the environmental assessment;
- C. the summary of probable impacts and proposed mitigation ;
- D. an officially adopted growth policy;
- E. information provided at public hearing(s);
- F. subdivision administrator's staff report and recommendation; and
- G. any additional information authorized by law.

iii. Written Recommendation

Within 10 working days after the public hearing, the planning board shall submit the following, in writing, to the subdivider and the City Council:

- A. recommended findings of fact based on the evidence in subsection (b)(ii) above that discuss and consider the subdivision's compliance with and impact on the items listed in subsection (b)(i) above of these regulations; and
- B. a recommendation for approval, conditional approval (including any recommended conditions and/or mitigation measures), or denial of the subdivision application and preliminary plat.
- C. a recommendation for approval or denial of any requested variances. (see Section XI-B).

c. Water and Sanitation Information

The planning board or subdivision administrator shall collect public comment regarding the water and sanitation information required by the MSPA and these regulations. The planning board shall forward all comments regarding water and sanitation to the City Council.

IV-A-5. Subdivider's Preference for Mitigation

The subdivider is encouraged to submit in writing to the subdivision administrator the subdivider's preference for mitigation of impacts identified through the subdivision review process. The City Council will consult with the subdivider and will give due weight and consideration to the subdivider's expressed preference regarding mitigation.

IV-A-6. City Council Hearing

- a. After the planning board makes its recommendation, the City Council shall hold a public hearing on the subdivision application.
- b. All comments and documents regarding the subdivision shall be submitted to the subdivision administrator, rather than to the City Council directly, to be forwarded to the City Council.
- c. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to submitting a comment, opinion or information.
- d. Upon an objection made at the hearing, the City Council shall determine whether public comments or documents presented for consideration at the City Council's public hearing constitute either:
 - i. information or analysis of information that was presented at the planning board hearing on the subdivision application that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment, in which case the City Council shall proceed to its decision whether to approve, conditionally approve, or deny the proposed subdivision; or
 - ii. new information or analysis of information that has never been submitted as evidence or considered by the planning board at a hearing on the subdivision application, in which case the City Council shall proceed as set forth in subsection (d) below.
- e. If the City Council determines that public comments or documents presented at the hearing constitute new information or an analysis of information regarding the subdivision application that has never been submitted as evidence or considered by the planning board at the public hearing on the subdivision application, the City Council shall determine whether the public comments or documents are relevant and credible with regard to the City Council's decision, pursuant to subsections (e) and (f) below.
 - i. If the City Council determines the information or analysis of information is either not relevant or not credible, then the City Council shall approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information or analysis of information; or
 - ii. If the City Council determines the new information or analysis of information is relevant and credible, then the City Council shall schedule or direct the planning board to schedule a subsequent public hearing pursuant to Section IV-A-7.
 - iii. At the subsequent hearing the planning board or City Council shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the City Council will rely upon in making its decision on the proposed subdivision.

- f. New information or analysis of information is considered to be relevant if it may have an impact on the findings and conclusions that the City Council will rely upon in making its decision on the proposed subdivision.
- g. New information or analysis of information is considered to be credible if it is based on one or more of the following:
 - i. physical facts or evidence;
 - ii. personal observations supported by objective facts;
 - iii. evidence provided by a person with professional competency in the subject matter; or
 - iv. scientific data supported by documentation.

IV-A-7. Subsequent Public Hearing

- a. If a subsequent public hearing is held pursuant to section IV-A-6, it must be held within 45 days of the City Council's determination to schedule a subsequent hearing. The planning board or City Council shall consider only the new information or analysis of information that may have an impact on the findings and conclusions that the City Council will rely upon in making its decision on the proposed subdivision.
 - i. Notice of the time, date and location of the subsequent hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the subsequent hearing.
 - ii. At least 15 days prior to the date of the subsequent hearing, notice of the subsequent hearing before the City Council shall be given by certified mail to the subdivider, each adjoining landowner to the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
- b. If a subsequent public hearing is held, the review period is suspended as of the date of the City Council's decision to schedule a subsequent hearing. The review period resumes on the date of the City Council's next scheduled public meeting for which proper notice for the public meeting on the subdivision application can be provided.

IV-A-8. City Council Decision and Documentation

a. Prerequisites to Approval

The City Council may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:

- i. provides easements for the location and installation of any planned utilities;
- ii. provides legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel;

- iii. assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by section II-B-4 of these regulations;
- iv. assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Section VI-O have been considered and will be accomplished before the final plat is submitted;
- v. assures that the requirements of 76-3-504(1)(k), MCA, regarding watercourse and irrigation easements as set forth in Section VI-N have been considered and will be accomplished before the final plat is submitted; and
- vi. provides for the appropriate park dedication or cash-in-lieu.

b. Consideration-Standards

In approving, conditionally approving, or denying a subdivision application and preliminary plat, the City Council shall consider subsection (a) above, and whether the proposed subdivision complies with:

- i. these regulations, including, but not limited to, the standards set forth in Section VI;
- ii. applicable zoning regulations;
- iii. other applicable regulations;
- iv. the MSPA, including but not limited to the following impacts:
 - A. impact on agriculture;
 - B. impact on agricultural water user facilities;
 - C. impact on local services;
 - D. impact on the natural environment;
 - E. impact on wildlife
 - F. impact on wildlife habitat;
 - G. impact on public health and safety; and
- v. proposed mitigation.

c. Consideration-Evidence

In making its decision to approve, conditionally approve, or deny a proposed subdivision, the City Council may consider and weigh the following, as applicable:

- i. the subdivision application and preliminary plat;
- ii. the environmental assessment;
- iii. the summary of probable impacts and mitigation;
- iv. an officially adopted growth policy;
- v. comments, evidence and discussions at the public hearing(s). Federal or state entities submitting written or oral comments on wildlife, wildlife habitat or the natural environment must provide scientific information or a published study that supports the comment or opinion;
- vi. subdivision administrator's staff report and recommendations;
- vii. planning board recommendation; and
- viii. any additional information authorized by law.

Notwithstanding the foregoing, the City Council may not consider any information regarding the subdivision application that is presented after the final public hearing (which may include a subsequent hearing if any) when making its decision to approve, conditionally approve, or deny the proposed subdivision.

d. Water and Sanitation-Special Rules

- i. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the City Council finds that the application does not comply with previously adopted subdivision, zoning, floodplain or other regulations.
- ii. For a proposed subdivision that will create one or more parcels containing less than 20 acres, the subdivider shall obtain approval by the DEQ and the City for water and sewer main extensions as a condition of approval of the final plat. This approval applies to the development of lots at the time of the approval and is no guarantee that a source of water or a location for a septic system or drain fields will be available when the lots are actually developed. Water and sewer main extensions will be approved to service the proposed lots. The City shall require either DEQ approval of the proposed subdivision or require that a Municipal Facilities Exclusion be approved by the City Council and DEQ prior as a condition of approval of the final plat.
- iii. A subdivision cannot be approved if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not provided for under Title 76, Chapter 3 and Chapter 4 or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment.
- iv. If the water supply or wastewater treatment systems are shared, multiple user or public, the subdivider must provide a statement of whether the systems will be public utilities as defined in Section 69-3-101 and subject to public service commission jurisdiction or

exempt from public service commission jurisdiction. If exempt, an explanation for the exemption must be provided.

e. Documentation of City Council Decision

- i In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the City Council shall issue written findings of fact that discuss and weigh the proposed subdivision's compliance with the preceding subsections.
- ii. When the City Council approves, denies, or conditionally approves the proposed subdivision, it shall within 30 working days following the oral decision send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:
 - A. contain information regarding the appeal process for the denial or imposition of conditions;
 - B. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - C. provide the facts and conclusions that the City Council relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
 - D. provide the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved.
 - E. set forth the time limit for approval, pursuant to subsection (f) below.

f. Subdivision Application and Preliminary Plat Approval Period

- i. Upon approval or conditional approval of the preliminary plat, the City Council shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.
 - A. At least 30 days prior to the expiration of the preliminary plat approval, the City Council may.
 - B. The City Council may extend the approval for more than one year if a longer approval period is included as a specific condition of a written Subdivision Improvements Agreement between the City Council and the subdivider.
 - C. Federal or state entities submitting written or oral comments on wildlife, wildlife habitat or the natural environment must provide scientific information or a published study that supports the comment or opinion in order for the governing body to include the agency comment in its written statement

- ii. After the application and preliminary plat are approved, the City Council may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required.
- iii. The City Council may withdraw approval or conditional approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

IV-A-9. Amended Applications

- a. If the subdivider changes the subdivision application or preliminary plat after the subdivision administrator makes a determination of sufficiency pursuant to section II-A-6 but before the Planning Board hearing, the subdivider shall submit the amended application to the subdivision administrator for review.
 - i. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material, pursuant to subsection (d) below.
 - ii. The review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.
 - iii. If the subdivision administrator determines the changes are not material, the review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
 - iv. If the subdivision administrator determines the changes are material, the subdivision administrator shall either require the subdivider to schedule a new pre-application meeting, resubmit the application as a new subdivision application, and require payment of a new application fee or obtain written permission from the subdivider for an additional 15-working day period to evaluate the sufficiency of the proposed changes.
- b. If the subdivider changes the subdivision application or preliminary plat after the Planning Board hearing but before the City Council hearing, the subdivider shall submit the amended application or preliminary plat to the subdivision administrator for review.
 - i. Within 5 working days of receiving the amended application or preliminary plat, the subdivision administrator shall determine whether the changes to the subdivision application or preliminary plat are material pursuant to subsection (d) below.
 - ii. The review period is suspended while the subdivision administrator considers whether the changes to the subdivision application or preliminary plat are material.
 - iii. If the subdivision administrator determines the changes are not material, the review period resumes when the subdivision administrator mails notice of the decision to the subdivider.
 - iv. If the subdivision administrator determines the changes are material, the subdivision administrator shall either:

- A. require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee; or
 - B. schedule a new Planning Board hearing to take comment on the amended application or preliminary plat. Notice of the subdivision administrator's determination to schedule a new planning board hearing shall be provided as set forth in section IV-A-3. A supplemental staff report shall be prepared to address the changes to the original application
- v. If a new Planning Board hearing is held pursuant to subsection (b)(iv)(B) above, the review period is suspended for the time period between notice of the subdivision administrator's determination and 10 working days after the date of the second Planning Board hearing.
- c. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsections (a)(ii) and (b)(ii).
- d. The following changes, although not an exhaustive list, may be considered material:
- i. configuration or number of lots;
 - ii. street layout;
 - iii. water sewer, or stormwater proposals;
 - iv. configuration of park land or open spaces;
 - v. easement provisions;
 - vi. designated access; or
 - vii. change in use.
- e. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the subdivision administrator may appeal the subdivision administrator's decision to the City Council by written notice within 10 working days. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.
- i. The review period is suspended until the City Council decision on the appeal is made.
 - ii. If the City Council concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are material, the City Council shall determine whether the subdivision application should be resubmitted or scheduled for rehearing in front of the planning board pursuant to subsections (b)(iv)(A) or (B).

- iii. If the City Council concludes that the evidence and information demonstrate that the changes to the subdivision application or preliminary plat are *not* material, the review period resumes as of the date of the decision.
- iv. By appealing the decision of the subdivision administrator, the subdivider agrees to suspension of the review period provided in subsection (i) above.

IV-B. Major Final Plats

The final plat must have the contents, and be submitted and reviewed in accordance with the appropriate requirements contained in Section II-B, Final Plats.

V. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW

V-A. Purpose

The MSPA provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade the MSPA. The exemptions are found in Part 2 of Title 76, Chapter 3. These regulations address the more commonly used exemptions.

V-B. General Criteria to Determine Whether a Proposal is an Attempt to Evade the MSPA

The City Council and its agents, when determining whether an exemption is claimed for the purpose of evading the MSPA, shall consider all of the surrounding circumstances. These circumstances include the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

V-C. Divisions of Land Exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act [76-3-201, MCA]

The City Council will examine the divisions of land set forth in this section to determine whether or not the requirements of the MSPA and these regulations apply to the division. The fee for this examination is set forth in Section XI-A. The requirements of these regulations and the MSPA do not apply unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, or as otherwise specifically provided, when:

- a. A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30. Before a court of record orders a division of land, the court shall notify the City Council of the pending division and allow the City Council to present written comments on the subdivision.
- b. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.
 - i. This Exemption Applies:
 - A. to a division of land of any size;
 - B. if the land that is divided is only conveyed to the financial or lending institution to which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time the land was divided, to any party other than those identified in the preceding sentence subjects the division of land to the requirements of the MSPA and these regulations.
 - C. to a parcel that is created to provide security under this subsection. The remainder of the tract of land, if applicable, is subject to the provisions of the MSPA and these regulations.

ii. Statement of Intent

Under policies by many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a person who is buying a tract using financing or contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.

iii. Use of Exemption

This exemption is not available to simply create a parcel without review by claiming that the parcel will be used for security to finance construction of a home or other structure on the proposed lot.

This exemption may not be properly invoked unless (1) the claimant is purchasing a larger tract through financing or a contract for deed (and thus does not hold title) and (2) a lending institution requires the landowner to hold title to a small parcel of the tract because the smaller tract is required as security for a building construction loan.

iv. Required Materials

When this exemption is to be used, the landowner must submit to the subdivision administrator:

- A. a statement of how many interests within the original tract will be created by use of the exemption;
- B. the deed, trust indenture or mortgage for the exempted interest (which states that the interest is being created only to secure a construction mortgage, lien or trust indenture);
- C. a statement explaining who will have title to and possession of the balance of the original parcel after title to the exempted interest is conveyed; and
- D. a signed statement from a lending institution that the creation of the interest is necessary to secure a loan.

v. Rebuttable Presumptions

The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:

- A. it will create more than one new building site;
- B. the financing is not for construction or improvements on the exempted parcel, or for re-financing;

- C. the person named in the “statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed” is anyone other than the borrower of funds for construction;
 - D. title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs;
 - E. there exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;
 - F. it appears that the principal reason the interest is being created is to create a building site and using the interest to secure a loan is a secondary purpose;
 - G. the division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien or trust indenture; or
 - H. if the resulting lots would not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- c. A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
 - d. A division of land creates cemetery lots;
 - e. A division of land is created by the reservation of a life estate;
 - f. A division of land is created by lease or rental for farming and agricultural purposes;
 - g. A division of land is in a location over which the state does not have jurisdiction; or
 - h. A division of land is created for public rights-of-way or public utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of the MSPA and these regulations.

V-D. Divisions of Land Which May be Exempt from Review and Surveying

- a. Condominiums, townhomes, or townhouses, as those terms are defined in 70-23-102, MCA, constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:
 - i. The approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in 76-3-621, MCA, is complied with; or
 - ii. The condominium, townhomes, or townhouses proposal is in conformance with applicable zoning regulations where local zoning regulations are in effect.

- b. A division of land created by lease or rental of contiguous airport related land owned by a city, county, the state, or a municipal or regional airport authority is not subject to the MSPA or these regulations, provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities.
- c. A division of state-owned land is not subject to the MSPA or these regulations unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.
- d. The MSPA and these regulations do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.
- e. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA, and are exempted from the surveying and platting requirements of the MSPA and these regulations. A survey or plat for the recordation of an instrument transferring title to a remainder that was created when the state obtained property for a highway right-of-way is not required. [44 A.G. Op. 25 (1992)]. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

V-E. Divisions of Land Exempt from Review but Subject to Survey Requirements and Zoning Regulations

Unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, the following divisions of land are not subdivisions under these regulations and the MSPA, but are subject to the surveying requirements of 76-3-401, MCA, and zoning regulations adopted under Title 76 chapters 2 or 3. A division of land may not be made under this section unless the County Treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid. The Lewis and Clark County Clerk and Recorder shall notify the subdivision administrator if a land division described in this section or 76-3-207(1), MCA, is submitted to the Lewis and Clark County Clerk and Recorder prior to the survey being submitted to the subdivision administrator for evasion review. The divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions.

V-E-1. Relocation of Common Boundary [76-3-207(1)(a), MCA]

a. Statement of Intent

The intended purpose of this exemption is to allow a change in the location or the elimination of a boundary line between adjoining properties outside of a platted subdivision and to allow a one-time transfer of a tract to effect that relocation or elimination without subdivision review.

b. Required Information

Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and, in case of a relocation, the new boundary. This must be accomplished by representing the existing boundary with a dashed line and the new boundary, if applicable, with a solid line. The appropriate certification set forth in ARM 24.183.1104 (1)(f) [Appendix A] must

be included on the certificate of survey. Certificates of survey showing the relocation of common boundary lines must be accompanied by a quit claim or warranty deed or recordable agreement from adjoining property owners for the entire newly described parcel(s) or that portion of the tract(s) that is being affected.

c. Use of Exemption

The proper use of the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land outside of a platted subdivision, without creating an additional parcel. The exemption may not be used if the division of land would result in the permanent creation of one or more additional parcels of land.

d. Rebuttable Presumptions

The use of this exemption is presumed to have been adopted for the purpose of evading the MSPA if:

- i. the reviewing agent determines that the documentation submitted according to this section does not support the stated reason for relocation; or
- ii. the proposed relocation creates a parcel of less than 160 acres which, prior to the relocation included more than 160 acres.

V-E-2. A Gift or Sale to a Member of the Immediate Family [76-3-207(1)(b), MCA]

a. Statement of Intent

The intent of this exemption is to allow a landowner to convey one parcel outside of a platted subdivision to each member of his or her immediate family, without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property. The term “immediate family” means the spouse, children (by blood or adoption), or parents of the grantor [76-3-103(8), MCA]. This exemption may be used only by grantors who are natural persons and not by non-corporal legal entities such as corporations, partnerships, and trusts.

b. Required Information

A certificate of survey (or recording of an instrument of conveyance) that uses this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner’s certification of compliance [ARM 24.183.1104(1)(f)] found in Appendix A. Also, the certificate of survey or instrument of conveyance must be accompanied by a deed or other conveying document.

c. Use of Exemption

One conveyance of a parcel to each member of the landowner’s immediate family is eligible for exemption from subdivision review under the MSPA and these regulations. However, the use of the exemption may not create more than one new parcel per eligible family member.

d. Rebuttable Presumptions

- i. Any proposed use of the family gift or sale exemption to divide a tract that was previously created through the use of an exemption will be presumed to be adopted for purposes of evading the MSPA.
- ii. The use of the family gift or sale exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the MSPA.
- iii. A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption will result in the presumption the method of disposition is adopted for the purpose of evading the MSPA and these regulations.
- iv. The use of the exemption to create more than one additional or remaining parcel of less than 160 acres in size is presumed to be adopted for the purpose of evading the MSPA and these regulations.

V-E-3. Divisions of Land Proposed for Agricultural Use Only [76-3-207(1)(c), MCA]

a. Statement of Intent

This exemption is intended to allow a landowner to create a parcel for gift, sale, or agreement to buy and sell, outside a platted subdivision, without local review if the parcel will be used only for the production of livestock or agricultural crops and no residential, commercial or industrial buildings, which require water or sewer, will be built on it.

a. Required Information

A certificate of survey that uses this exemption to create a parcel for agricultural use only requires a covenant running with the land in accordance with 76-3-207(1)(c), MCA, and a signed and acknowledged recitation of the covenant on the face of the survey. [ARM 24.183.1104(f)(iii) in the Appendix] The certificate of survey must be accompanied by a separate, recordable, document reciting the covenant.

c. Use of Exemption.

- i. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock, or timber, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.
- ii. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a minor subdivision.

- iii. Residential, commercial, or industrial structures, including facilities for commercial processing of agricultural products, may not be utilized, constructed or erected on parcels created under this exemption unless the covenant is revoked.

d. Rebuttable Presumptions.

The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA:

- i. The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the City Council and the property owner that the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer, and the members of the City Council.
- ii. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial, or industrial buildings have been or will be built on it.
- iii. The parcel must meet the criteria for an agricultural designation under section 15-7-202, MCA.

V-E-4. Relocation of Common Boundaries Involving Platted Subdivisions [76-3-207 (1)(d), (e) and (2)(a), MCA]

a. Statement of Intent

- i. The MSPA allows certain revisions to subdivisions platted since July 1, 1973, which include relocation of common boundaries and the aggregation of lots for five or fewer lots within a platted subdivision or the relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision, but a restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas, without review.
- ii. If a change is made to a platted subdivision which results in an increase in the number of lots or redesigns or rearranges six or more lots, the City Council must review and approve the amended plat and an amended plat must be filed with the Lewis and Clark County Clerk and Recorder.

b. Use of exemption

Relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision [76-3-207(1)(e), MCA] is allowed, because no additional parcels are created. Subdivision review is not necessary because the relocation does not create any additional division of land.

c. Rebuttable presumption

- i. If the resulting lots are inconsistent with the approved subdivision and the uses in it, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

- ii. If the resulting lots do not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

V-E-5. Aggregation of Lots or Parcels

a. Statement of Intent

Aggregation of parcels on a certificate of survey or of lots on a subdivision plat is allowed provided the boundaries of the original parcel or lot are eliminated and the boundaries of the larger aggregated parcel or lot are established.

b. Use of exemption

This exemption may be used without a boundary line relocation but a restriction or requirement on the original platted lot or original unplatted parcel continues to apply. A notarized statement on the amended plat or certificate of survey must reflect these restrictions/requirements, including any applicable zoning, covenants and/or deed restrictions.

c. Rebuttable presumption

- i. If a resulting lot is inconsistent with the approved conditions of subdivision approval, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- ii. If the resulting lot or parcel does not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- iii. If the amended plat or certificate or survey does not show fewer lots of parcels than originally, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

V-F. Procedures and Review of Subdivision Exemptions

V-F-1. Submittal

Any person seeking exemption from the requirements of the MSPA shall submit to the subdivision administrator (1) a certificate of survey or, if a survey is not required, an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption. For purposes of 76-3-207, MCA, when a parcel of land for which an exemption from subdivision review is claimed is being conveyed under a contract-for-deed, the terms “property owner,” “landowner,” and “owner” mean the seller of the parcel under the contract-for-deed (ARM 24.183.1104)

V-F-2. Review

When a division of land for which an exemption is claimed is submitted to the subdivision administrator, the subdivision administrator shall cause the documents to be reviewed by the designated agents of the

City Council (e.g., city attorney, city engineer, public works, treasurer, and Lewis and Clark County Clerk and Recorder). The subdivision administrator and City Council agents shall review the claimed exemption to verify that it is the proper use of the claimed exemption and complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these regulations.

- a. Landowners or their agents are encouraged to meet with the subdivision administrator to discuss whether a proposed land division or use of an exemption is in compliance with the criteria in this Section V.
- b. The subdivision administrator shall make a written determination of whether the use of the exemption is intended to evade the purposes of the MSPA, explaining the reasons for the determination.
- c. If the subdivision administrator finds that the proposed use of the exemption complies with the statutes and the criteria set forth in this section, the subdivision administrator shall notify the City Council and advise the Lewis and Clark County Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If the subdivision administrator finds that the proposed use of the exemption does not comply with the statutes and the criteria in this Section V, the subdivision administrator shall advise the Lewis and Clark County Clerk and Recorder not to file or record the documents, and the materials will be returned to the landowner.
- d. The subdivision administrator shall consider all of the surrounding circumstances when determining whether an exemption is claimed for the purpose of evading the MSPA. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review .

V-F-3. Appeals

- a. Any person whose proposed use of an exemption has been denied by the subdivision administrator because the proposed division of land has been deemed an attempt to evade the MSPA, and these regulations, may appeal the subdivision administrator's decision to the City Council. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is not intended to evade the MSPA or these regulations, and, thereby rebut a presumption.
- b. If the City Council concludes that the evidence and information overcome the presumption that the exemption is being invoked to evade the MSPA or these regulations, it may authorize the use of the exemption in writing. A certificate of survey claiming an exemption from subdivision review, which otherwise is in proper form, and which the City Council has found not to be an attempt to evade the MSPA or these regulations, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the City Council.
- c. If the person proposing to use an exemption chooses not to rebut a presumption when the subdivision administrator deems the use of the exemption an attempt to evade the MSPA and these regulations, or if the City Council determines that the proposed use of an exemption was for the purpose of evading the MSPA or these regulations, the landowner proposing to use the exemption may submit a subdivision application for the proposed land division.

V-G. Remaining Parcels of Land

Occasionally parcels of land are created after the rest of the land has been subdivided or after an exemption is used to divide the land. The term “remainder” has been used to refer to that portion of an original tract which is not itself created for transfer but which is left after other parcels are segregated for transfer.

A “remainder” less than 160 acres in size, contiguous to a proposed subdivision, will be considered a lot in that subdivision and will not evade review as a “remainder.” If an exemption by a certificate of survey is used, the remaining tract of land is a separate parcel which must be surveyed.

Lewis and Clark County Clerk and Recorder ~~Lewis and Clark County Clerk and Recorder~~

a. Remainders of Phased Subdivisions

The remainder of each phase of the subdivision shall be platted as an undevelopable tract, with the following language placed on the face of the final plat. No public improvements shall be required for the undevelopable tract until it is subdivided as a lot which is not subject to this restriction

NOTICE IS HEREBY GIVEN to all potential purchasers of Tract X of XXXXX Subdivision Phase X, City of East Helena, Lewis and Clark County, Montana, that the final plat of the subdivision was approved by the East Helena City Council without completion of on and off-site improvements required under the East Helena Municipal Code.

As such, this Restriction is filed with the final plat that stipulates that any use of this lot is subject to further subdivision, and no development of this lot shall occur until all on and off-site improvements are completed as required under the East Helena Municipal Code.

THEREFORE, BE ADVISED, that Zoning and Building Permits will not be issued for Tract X of XXXXX Subdivision Phase X City of East Helena, Lewis and Clark County, Montana until all required on and off-site improvements are completed and accepted by the City of East Helena. No building or structure requiring water or sewer facilities shall be utilized on this lot until this restriction is lifted. This restriction runs with the land and is revocable only by further subdivision or the written consent of the City of East Helena.

VI. DESIGN AND IMPROVEMENT STANDARDS

All subdivisions approved by the City Council must comply with the provisions of this section, except where granted a variance pursuant to Section XI-B, Variances. The City Council may not grant variances from the provisions of Section VI-D, Floodplain Provisions. For subdivisions created by rent or lease, planned unit developments, and condominiums, refer to sections VII, VIII, and IX of these regulations.

VI-A. Conformance with Regulations

The design and development of a subdivision must conform with any applicable zoning regulations.

VI-B. Natural Environment

The design and development of subdivisions must provide satisfactory building sites, which are properly related to topography, and should, to the extent possible, preserve the natural terrain, natural drainage, existing topsoil, trees and other existing vegetation.

VI-C. Lands Unsuitable for Subdivision

Land that the City Council determines is unsuitable for subdivision because of natural or human caused hazards such as flooding, land slides, excessive slope, rock falls, subsidence, high water table, presence of wetlands; or because of unreasonable burdens on the general public such as requirements for the excessive expenditure of public funds, environmental degradation, or congestion in the streets or roads may not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction techniques.

VI-D. Floodplain Provisions

Land located in the floodway of a 100-year flood event as defined by Title 76, Chapter 5, MCA, or other land determined by the City Council to be subject to flooding may not be subdivided for building or residential purposes or other uses that may increase or aggravate flood hazards to life, health or welfare, or that may be prohibited by state or local floodplain or floodway regulations.

If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider shall provide in detail to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC), a flood hazard evaluation, including the calculated 100 year frequency water surface elevations and the 100 year floodplain boundaries. This detailed evaluation must be performed by a licensed professional engineer experienced in this field of work. The evaluation must follow the “guidelines for obtaining 100-year flood elevations in Approximate Zone A or unmapped areas”

The subdivider shall be responsible for assuring the DNRC submits its report to the subdivision administrator, prior to the hearing or meeting on the subdivision application.

The above requirement is waived if the subdivider contacts the Water Resources Division and that agency states in writing that available data indicate that the proposed subdivision is not in a flood hazard area. However, the DNRC may require additional information following the above guidelines to ensure there are no flood hazards.

VI-E. Improvement Design

Engineering and survey plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the City Council must be prepared by a professional engineer or a professional land surveyor as their respective licensing laws allow in accordance with the MSPA and these regulations.

VI-F. Lots

Each lot must contain a satisfactory building site and conform with applicable zoning regulations and these regulations.

- a. No lot may be divided by a municipal or county boundary line.
- b. No lot may be divided by a public road, alley or utility right-of-way or easement.
- c. Each lot must abut and have access to a public right-of-way. Alleys may not be used to provide the primary access to a lot.
- d. No lot may have an average depth greater than three times its average width.
- e. Side lot lines must be at right angles to street or road lines and radial to curved street or road lines.
- f. Through lots are prohibited except when they are essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography or orientation.

VI-G. Blocks

- a. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.
- b. Unless impractical, block length must not be more than 800 feet.
- c. Rights-of-way for adequate and safe pedestrian access, at least 20 feet wide, must be provided where deemed essential to provide circulation to schools, playgrounds, shopping, transportation, and other community facilities.

VI-H. Streets and Roads

- a. Design
 - i. The arrangement, type, extent, width, grade, and location of all streets must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.

- ii. Roads must meet the design specifications in Table 1.
- iv. Where streets terminate, either a cul-de-sac or “T” turnaround must be provided at the terminus. Cul-de-sacs and “T” turnarounds must conform to the design specifications in Table 1.
- iv. All streets must either be dedicated to the public or be private streets to be owned and maintained by an approved property owners’ association. The lands included in all streets, avenues, and alleys, must be dedicated to the public for public use, but the City accepts no responsibility for maintaining the same. The City has no obligation to maintain the lands included in all streets, avenues, and alleys dedicated to public use unless the City specifically accepts responsibility for maintenance. Unless the City specifically accepts responsibility for maintenance, the lands included in all streets, avenues, and alley shall be owned and maintained by an approved property owners’ association.
- v. Residential driveways must not have direct access to State Highways, unless approved by the Montana Department of Transportation, and shall not have direct access onto arterial or collector streets. Any subdivision road access onto a state highway must be approved by the Montana Department of Transportation.
- vi. Whenever a subdivision abuts or contains an existing or proposed arterial highway or major thoroughfare, the City Council may require frontage roads or other treatment as may be necessary to adequately protect residential properties and to separate arterial and local traffic.
- vii. Half streets are prohibited. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
- viii. The alignment of all streets and roads must provide adequate sight distances.
- ix. The following requirements apply to intersections:
 - A. streets must intersect at 90 degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 60 degrees to the center line of the roadway being intersected.
 - B. two streets meeting a third street from opposite sides must be offset at least 125 feet for local roads and 300 feet for arterials or collectors.
 - C. no more than two streets may intersect at one point.
 - D. intersections of local streets with major arterials or highways is discouraged.
 - E. intersections must be designed to provide adequate visibility for traffic safety based on the designed operating speeds of the intersecting roadways.
 - F. hilltop intersections are prohibited, unless no alternatives exist. Intersections on local roads within 100 feet of a hilltop are prohibited. Intersections on arterial

and collector roads within 200 feet of a hilltop are prohibited. If no alternative to a hilltop intersection exists, additional traffic control devices will be required.

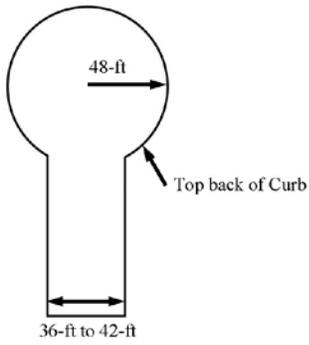
- G. the grade of approaches to major highways may not exceed five percent.
 - x. Names of new streets or roads aligned with existing streets must be the same as those of the existing streets. Proposed street names may not duplicate or cause confusion with existing street names.
- b. Improvements
- i. All public roads shall be paved and provided with curb and gutter, boulevards, and sidewalks. All private roads shall be paved, excepting roads accessing one single family residential lot. All roadway improvements including pavement, curbs, gutters, sidewalks, and drainage must be constructed in accordance with the Montana Public Works Standard Specifications, most current edition.
 - ii. Streets and roads must be designed to ensure proper drainage.
 - iii. A Traffic impact study shall be submitted whenever the subdivision is projected to generate two hundred (200) or more new vehicle trips per day per the estimated traffic standards of the Institute of Transportation Engineers; if less than 200 new trips per day, provide the capability of existing and proposed roads to safely accommodate this increased traffic. The traffic impact study shall be prepared by a professional engineer in the State of Montana and shall be prepared in accordance with accepted standards of practice for preparation of traffic impact studies. The traffic impact study shall evaluate the capacity of the existing road systems that will serve the proposed subdivision and shall make recommendations for any improvements that may be necessary to the existing road system to accommodate the increased traffic from the proposed development.
 - iv. The traffic impact study shall be submitted for review and approval by the City Council or designee.
 - v. Plans for road improvements shall be prepared by a professional engineer in the State of Montana and submitted for review and approval by the City Council or designee.
 - vi. All street improvements shall be certified by a professional engineer in the State of Montana as having been constructed in accordance with the Montana Public Works Standard Specifications and the approved plans and specifications prior to acceptance by the City.
 - vii. All subdivision improvements shall be warranted by the subdivider for one (1) year after final acceptance of improvements by the City.
 - viii. Where access from a public road to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain proper easements of sufficient width to satisfy the requirements of Table 1. Easements must be granted by each property owner in a signed and notarized document.

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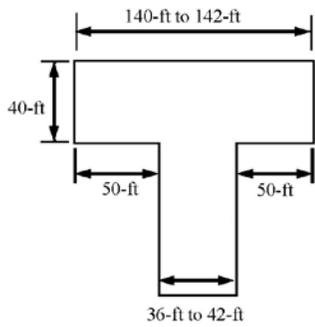
- ix. The location of any road easement must be shown on the plat or on a supplemental map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.
- x. Street lights shall be required in all proposed subdivisions. A street lighting plan shall be submitted for review and approval by the City.
- xi. Street or road signs and traffic control devices of the size, shape, and height approved by the City of East Helena must be placed at all intersections. Traffic control devices must conform to the standards contained in the Manual on Uniform Control Devices, most current edition.
- xii. When required by the United States Postal Service, the developer must provide an off-street area for mail delivery.

TABLE 1: Road Design Standards for Subdivisions

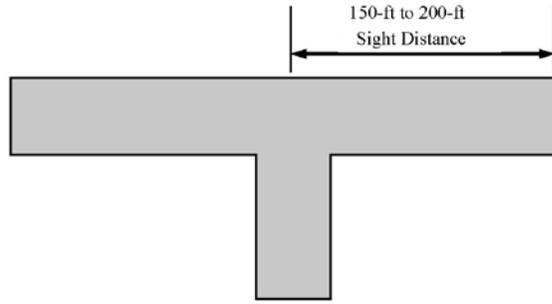
<u>Minimum Design Standards</u>	<u>Private Roads</u>	<u>Collector Roads</u>	<u>Local Roads</u>
1. Minimum right-of-way width	N/A	60-ft	60-ft
2. Minimum roadway width (from top back of curb to top back of curb)	36-ft	42-ft	40-ft.
3. Minimum boulevard width	N/A	3-ft	4-ft
4. Minimum sidewalk width	N/A	5-ft	5-ft
5. Minimum distance from back of sidewalk to right-of-way line	N/A	1-ft	1-ft
6. Minimum curb radius or edge of pavement at intersections	15-ft	25-ft	15-ft
7. Maximum grades	10%	8%	10%
8. Minimum grades	0.5%	0.5%	0.5%
9. Minimum crown cross slope	2%	3%	3%
10. Approaches onto Public Roads			
a. minimum sight distance	150-ft	200-ft	150-ft
b. minimum width	36-ft	42-ft	40-ft
c. maximum grade for 20'	5%	5%	5%
11. Curvature			
a. design speed	N/A	30 mph	20 mph
b. maximum curve	N/A	23	53.5
c. minimum radius	N/A	249-ft	107-ft
12. Cul-de-sacs/Turnarounds			
a. maximum road length	N/A	N/A	800-ft
b. cul-de-sac: minimum outside right-of-way radius	N/A	N/A	58-ft
c. cul-de-sac: minimum outside roadway radius	48-ft	N/A	48-ft
d. "T" turnaround: backup lengths (2 required)	50-ft each	N/A	50-ft each
13. New bridges			
a. curb-to-curb widths	36-ft	42-ft	40-ft
b. boulevard	N/A	N/A	N/A
c. sidewalk	N/A	5-ft	5-ft



Cul-de-sac

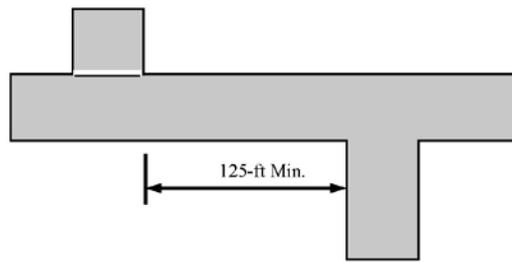


"T" Turnaround

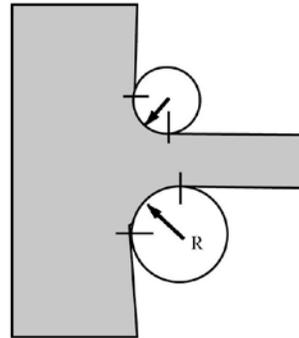


Sight Distance Diagram

(See Table 1, Section VI-H for Minimum Sight Distance Requirements)



Intersection Offset Diagram



Curb Radius Diagram

(See Table 1, Section VI-H for Minimum Curb Radius Requirements)

VI-I. Drainage Facilities

- a. The drainage system and facilities required for any surface run-off affecting the subdivision are subject to approval by the City Council or designee. Subdivisions containing lots less than 20 acres in size must also be reviewed and approved under Title 76, Chapter 4, MCA, by the DEQ.
- b. A grading and drainage plan as required by Section II-A-5(6) is subject to approval by the City Council or designee.
- c. Curbs and gutters are required for all public streets. Curbs and gutters of adjoining properties must be extended in conformance with current specifications of local and state authorities.
- d. Culverts and bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts and bridges must be constructed and installed according to applicable local and state standards. Culverts, inlets, storm water conveyance pipe, ditches, swales and other drainage facilities must be sized to accommodate the 25-yr, 24-hr storm for the upstream drainage area without overtopping the roadway. Further, the culvert and other drainage facilities must be analyzed for impacts to adjacent properties and the roadway for the 100-yr, 24-hr storm for the upstream drainage area.
- e. Storm water inlet spacing in any roadway must be designed so that the water spread shall not exceed half the distance to the centerline of the road from the gutter flow line for the 25-yr, 24-hr storm event. Further, an analysis of the impacts to adjacent property and the roadway must be provided for the 100-yr, 24-hr storm event.
- f. Storm water detention systems must be provided that detains the 25-yr, 24-hr storm event. Detention systems must provide an adequate outlet system via a pipe outlet or spillway and the must provide for adequate dispersal of water from the outlet to surface water without flooding or adversely affecting adjacent or downstream properties. An analysis of all detention systems for the 100-yr, 24-hr storm event must be provided that shows what the impacts to downstream property owners.
- g. Plans for the conveyance and detention of storm water shall be prepared by a professional engineer in the State of Montana and shall be submitted for review and approval by the City Council or designee.
- h. The subdivider must provide suitable drainage facilities for any surface run-off affecting the subdivision. These facilities must be located in street rights-of-way or in perpetual easements of appropriate widths.
- i. Drainage systems must not discharge into any sanitary sewer facility.
- j. Drainage systems must be designed and certified by a professional engineer.
- k. The City Council may require the subdivider to grant easements to prevent encroachment or disruption of drainageways or facilities. Drainage easements must be shown on the plat and a signed statement granting the easements must appear on the plat.

- l. All storm water drainage improvements shall be certified by a professional engineer in the State of Montana as having been constructed in accordance with the Montana Public Works Standard Specifications and the approved plans and specifications prior to acceptance by the City.
- m. All storm water improvements shall be warranted by the subdivider for one (1) year after final acceptance of improvements by the City.

VI-J. Water Supply Systems

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of supplying domestic water to each lot in the subdivision must comply with the design standards adopted by the Montana DEQ and contained in the Administrative Rules of Montana (ARM) 17.36 and the Montana Public Works Standard Specifications most current edition. By this reference these DEQ standards and the Montana Public Works Standard Specifications are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.
- b. The City Council may not approve the final plat of a subdivision containing lots of less than 20 acres in size, unless the subdivision has been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA.
- c. All lots created within the City of East Helena shall be served by the City of East Helena public water supply system. No separate water supply systems are permitted within the City of East Helena.
- d. The subdivider shall submit an engineering report for review and approval by the City Council or designee that demonstrates the City of East Helena has adequate water capacity in its system to accommodate the proposed development. The report shall include an analysis of all existing water infrastructure that will be impacted by the proposed subdivision and if existing infrastructure does not have adequate capacity to serve the proposed subdivision, the report shall make recommendations for improvements to the existing system. The report and design must also provide adequate and accessible water for fire protection.
- e. Plans for any proposed water system shall be prepared by a professional engineer in the State of Montana and submitted for review and approval of the City Council or designee.
- f. All water improvements shall be certified by a professional engineer in the State of Montana as having been constructed in accordance with the Montana Public Works Standard Specifications, DEQ, and the approved plans and specifications prior to acceptance by the City.
- g. All water improvements shall be warranted by the subdivider for one (1) year after final acceptance of improvements by the City.

VI-K. Sewage Treatment Systems

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of disposing of sewage from each lot in the subdivision must comply with the design standards adopted by the DEQ and contained in the Administrative Rules of Montana (ARM) 17.36 and the Montana Public Works Standard Specifications most current edition. By this reference these DEQ standards and the Montana Public Works Standard Specifications are incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.101.
- b. For subdivisions that will create one or more parcels containing less than 20 acres, the subdivision must have been approved by DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act, sections 76-4-101 *et seq.*, MCA before the City Council can approve the final plat.
- c. All lots created within the City of East Helena shall be served by the City of East Helena public sanitary sewer system. No separate sanitary sewer systems are permitted within the City of East Helena.
- d. The subdivider shall submit an engineering report for review and approval by the City Council or designee that demonstrates the City of East Helena has adequate capacity in its sanitary sewer system to accommodate the proposed development. The report shall include an analysis of all existing sanitary sewer infrastructure that will be impacted by the proposed subdivision and if existing infrastructure does not have adequate capacity to serve the proposed subdivision, the report shall make recommendations for improvements to the existing system.
- e. Plans for any proposed sanitary sewer system shall be prepared by a professional engineer in the State of Montana and submitted for review and approval of the City Council or designee.
- f. All sanitary sewer improvements shall be certified by a professional engineer in the State of Montana as having been constructed in accordance with the Montana Public Works Standard Specifications, DEQ, and the approved plans and specifications prior to acceptance by the City.
- g. All sanitary sewer improvements shall be warranted by the subdivider for one (1) year after final acceptance of improvements by the City.

VI-L. Solid Waste

- a. For subdivisions that will create one or more parcels containing less than 20 acres, the proposed method of must comply with the standards adopted by the DEQ and contained in the Administrative Rules of Montana (ARM) 17.36. By this reference this DEQ standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in ARM 17.36.

- b. Before the City Council will approve the final plat of a subdivision containing lots of less than 20 acres in size, the subdivision must have been approved by the DEQ or other authorized reviewing authority under the Sanitation in Subdivisions Act sections 76-4-101, *et seq.*, MCA.
- c. All solid waste within the City of East Helena is collected and disposed of by the City of East Helena. The subdivider shall provide a plan for the collection of garbage waste for review and approval of the City Council or designee.

VI-M. Non-Municipal Utilities

- a. The subdivider must provide adequate and appropriate easements for the construction and maintenance of non-municipal utilities, such as telephone, electric power, gas, internet, cable television or other similar utility or service within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.
- b. Utilities must be placed underground, wherever practical. Underground utilities must be located in a 10-ft utility easement adjacent to the road right-of-way to simplify location and repair of lines, unless otherwise requested by the utility. Underground facilities must be installed after the street has been brought to grade and before it is surfaced and conduit shall be provided under all streets at proposed utility crossings to facilitate utility maintenance. The subdivider shall coordinate with all affected utilities to determine the appropriate locations of all road crossings.
- c. Where practical, overhead utility lines must be located at the rear property line.
- d. Utility facilities must be designed by utility firms in cooperation with the subdivider. These facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities.
- e. Utility easements located between adjoining lots must be centered on lot lines. If easements are placed in the street, they must be located between the roadway and the right-of-way line.
- f. Utility easements must be 10 feet wide unless otherwise specified by a utility company.
- g. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the City, or local or state highway department.
- h. In addition to showing the location of utility easements on the plat with dashed lines, the following statement must appear on the final plat:

“The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, electric power, gas, internet, cable television, water or sewer service or other similar utility or service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as ‘Utility Easement’ to have and to hold forever.”

VI-N. Water Course and Irrigation Easements

- a. Except as noted in subsection (b), below, the subdivider shall establish within the subdivision ditch easements that:
 - i. are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
 - ii. are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - iii. prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- b. The subdivider need not establish irrigation easements as provided above if:
 - i. the average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the City Council, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots; or
 - ii. the water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights from the subdivided land; and
 - iii. the fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.
- c. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the Lewis and Clark County Clerk and Recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights. A minimum width of 10 feet is required on each side of irrigation canals and ditches for maintenance purposes.

VI-O. Disposition of Water Rights

If a subdivision will create lots averaging less than five acres in size, the subdivider shall submit evidence with the final plat that the subdivider has:

- a. reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to the City of East Helena for use by the City of East Helena who have a legal right to the water and reserved and severed any remaining surface water rights from the land;
- b. if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
- c. reserved and severed all surface water rights from the land proposed for subdivision.

VI-P. Park Land Dedication – Cash in Lieu – Waivers -- Administration

- a. Except as provided below, the final plat of a residential subdivision must show that the subdivider has dedicated to the City Council a cash or land donation equal to:
 - i. 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
 - ii. 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than one acre;
 - iii. 5% of the area of the land proposed to be subdivided into parcels larger than one acre and not larger than three acres; and
 - iv. 2.5% of the area of the land proposed to be subdivided into parcels larger than three acres and not larger than five acres.
 - v. 0.03 acres per dwelling unit of subdivisions for multifamily housing, recreational camping vehicles, mobile homes, or condominiums.
- b. A park dedication is not required for:
 - i. minor subdivisions;
 - ii. subdivision lots larger than five acres;
 - iii. nonresidential subdivision lots;
 - iv. subdivisions in which parcels of land will not be created, other than subdivisions that will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
 - v. subdivisions which will create only one additional parcel.

- c. The City Council, in consultation with the subdivider and the planning board, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.
- d. The City Council may waive the park dedication requirement if it determines that:
 - i. the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and
 - ii. the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection VI-P (a);
 - iii. the proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and
 - iv. the provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under subsection VI-P(a) above;
 - v. the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (d)(i) and (ii) above, is reduced by an amount equal to or exceeding the area of the dedication required under subsection VI-P(a); or
 - vi. the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and
 - vii. the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection VI-P(a).
- e. The City Council may waive the park dedication requirement if:
 - i. the subdivider provides land outside the subdivision that affords long-term protections of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and
 - ii. The area of land to be subject to long-term protection, as provided in subsection (e)(i), equals or exceeds the area of dedication required under subsection VI-P(a).
- f. Subject to the approval of the local City Council and acceptance by the school district trustees, a subdivider may dedicate a land donation provided under subsection VI-P(a) to a school district, adequate to be used for school facilities or buildings.

- g. The City Council will administer funds dedicated to the public under this section in accordance with 76-3-621, MCA.
- h. For the purposes of this park dedication requirement:
 - i. “cash donation” means the fair market value of the unsubdivided, unimproved land; and
 - ii. “dwelling unit” means a residential structure in which a person or persons reside.

VI-Q. Fire Protection

All subdivisions must be planned, designed, constructed, and maintained so as to minimize the risk of fire and to permit the effective and efficient suppression of fires in order to protect persons, property, and forested areas. Measures must include:

- a. The placement of structures so as to minimize the potential for flame spread and to permit adequate access for firefighting equipment.
- b. The presence of adequate firefighting facilities on site, including an adequate water supply and water distribution system.
- c. The availability of the East Helena Volunteer Fire Department for fire protection services adequate to respond to fires that may occur within a subdivision.
- d. All fire protection for subdivisions shall be in compliance with the current adopted City of East Helena fire code.

VI-R. Special Requirements for Subdivisions Proposed in Areas of High Fire Hazard

For areas identified as wildfire hazard areas by the United States Forest Service, the Montana Department of Natural Resources and Conservation, a local fire protection authority, or a local growth policy, the following apply:

- a. A Fire Prevention and Control Plan must accompany the submission of any application for preliminary plat approval.
- b. The Fire Prevention and Control Plan must include the following items:
 - i. an analysis of the wildfire hazards on the site, as influenced by existing vegetation and topography;
 - ii. a map showing the areas that are to be cleared of dead, dying, or severely diseased vegetation;
 - iii. a map of the areas that are to be thinned to reduce the interlocking canopy of trees;

- iv. the identification of roads, driveways, and bridges that are sufficient for emergency vehicle access and fire suppression activities. Slopes of all roads and driveways must be provided.
- c. At least two entrances/exits must provide escape routes for residents and access to the subdivision by fire-fighting vehicles. Bridges providing access to the subdivision must be built to a design load of 20 tons and constructed of non-flammable materials. Road rights-of-way must be cleared of slash.
- d. Building sites may not be located on slopes greater than 25 percent or at the apex of “fire chimneys” (topographic features, usually drainageways or swales, which tend to funnel or otherwise concentrate fire toward the top of steep slopes).
- e. The Fire Prevention and Control Plan must be implemented before the City Council will approve the final plat, and will be considered part of the subdivider’s obligations for land development. The local fire chief, or designee, will inspect and approve the implementation of the Fire Prevention and Control Plan. The Plan will not be considered fully implemented until the fire chief has given written notice to the City Council that the Plan has been completed as approved by the City Council.
- f. Provisions for the maintenance of the Fire Prevention and Control Plan shall be included in the covenants, conditions, and restrictions for the development. A property owners’ association must be formed and designated to enforce the covenants, conditions, and restrictions.
- g. Open space, park land, and recreation areas (including green belts, riding or hiking trails) should be located, where appropriate, to separate residences and other buildings from densely forested areas.
- h. A water supply of sufficient volume for effective fire control must be provided in accordance with standards set by The East Helena Volunteer Fire Department.

VI-S. Noxious Weeds

A weed control plan shall be developed and implemented for every new subdivision. The weed control plan shall be in compliance with the City of East Helena weed control Ordinance. Noxious weeds shall be controlled in all developments as directed by the County Weed Control District (district) in accordance with the Montana County Noxious Weed Control Act (§7-22-21, MCA). The developer shall have any noxious weeds identified and their location mapped by a person with experience in weed management and knowledgeable in weed identification. A noxious weed management and revegetation plan approved by the district for control of noxious weeds shall be submitted with the preliminary plat application. This plan shall ensure the control of noxious weeds upon preliminary plat approval and the revegetation of any land disturbed during the construction of subdivision improvements.

VII. AREAS THAT WILL PROVIDE MULTIPLE SPACES FOR RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES

VII-A. Definition

A subdivision of an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed. The land is owned, however, as one parcel under single ownership (which can include a number of persons owning property in common). Plans, not plats, are submitted to the subdivision administrator for review. The plan shows spaces, not lots. The plan must comply with applicable zoning.

VII-B. Subdivisions That Will Provide Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes

a. Recreational Camping Vehicles

Developments which are subject to subdivision review because they will provide two or more spaces for recreational camping vehicles will be reviewed under section VII-F Recreational Vehicle Park Standards, below.

b. Mobile/Manufactured Homes

Developments which are subject to subdivision review because they will provide two or more spaces for mobile/manufactured homes will be reviewed under section VII-E Mobile/Manufactured Home Park Standards, below.

c. Mobile Home/Recreational Vehicle Parks

i. Mobile home and recreational vehicle parks will be reviewed under the procedures described in Section IV, Major Subdivisions, or Section III, Minor Subdivisions, as may be appropriate, except that the subdivider shall submit an unsurveyed final plan drawn to scale, rather than a final plat, following the Final Plat procedure in Section II.

ii. Mobile home and recreational vehicle parks are subject to the applicable standards contained in Section VI.

d. Subdivisions for Lease or Rent, Not Subject to Subdivision Review

i. Land subdivision created by rent or lease for the purpose of erecting cell towers are not subject to subdivision review.

ii. Tower subdivision created by rent or lease for the purpose of co-location of antennae are not subject to subdivision review.

iii. Buildings for lease or rent, a structure or unit of a structure with a roof supported by columns or walls for the permanent or temporary housing or enclosures of persons or property or for the operation of a business, where the title to the parcels may not be sold or otherwise transferred, are not subject to subdivision review. Condominiums or townhomes are not buildings for lease or rent.

VII-C. Procedures for Review

VII-C-1. Review and Approval

Subdivisions which will provide multiple spaces for recreational camping vehicles or mobile homes are exempt from the surveying and filing requirements of the MSPA. However, they must be submitted for review and approved by the City Council before spaces may be rented or leased.

a. Submittal

The subdivider shall submit a completed application in accordance with Section II-A-5 and a plan of the proposed development, conforming to the requirements for preliminary plats.

b. Review

The procedure used to review mobile home and recreational vehicle parks will depend on the number of spaces within the proposed subdivision. Proposed subdivisions containing six or more spaces must be reviewed pursuant to Section IV of these regulations. Proposed subdivisions containing five or fewer spaces must be reviewed pursuant to Section III of these regulations. The subdivider shall submit to the subdivision administrator the preliminary plans, profiles, tentative grades, and specifications for proposed improvements. The plan must show the space layout and the proposed location of the mobile home, recreational vehicle, or other unit on the land included in the plan.

VII-C-2. Improvements

The subdivider shall install all required improvements before renting or leasing any portion of the subdivision. The City Council or its agents will inspect all required improvements in order to assure conformance with the approved construction plans and specifications.

VII-C-3. Final Plan Review

In lieu of filing a final plat, the subdivider shall submit a final plan to the subdivision administrator complying with the requirements of Final Plats in Section II. The final plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan shall be filed with the Lewis and Clark County Clerk and Recorder.

VII-C-4. DPHHS License

If a subdivision that will provide multiple spaces for recreational camping vehicles or mobile homes is also a “trailer court,” “work camp,” “youth camp,” or “campground” as those terms are defined in section 50-52-102, MCA, the City Council will not grant final approval of the subdivision until the subdivider obtains a license for the facility from the Montana Department of Public Health and Human Services under Title 50, Chapter 52, MCA.

VII-D. Design Standards for Subdivision Spaces Created by Rent or Lease

VII-D-1. Design Standards

Subdivisions created by rent or lease must comply with the provisions of Section VI.

VII-D-2. Additional Provisions

The City Council may require provision for:

- a. storage facilities on the lot or in compounds located within a reasonable distance;
- b. a central area for storage or parking of boats, trailers, or other recreational vehicles;
- c. landscaping or fencing to serve as a buffer between the development and adjacent properties;
- d. an off-street area for mail delivery; and
- e. street lighting.

VII-E. Mobile/Manufactured Home Park Standards

Mobile/Manufactured home parks shall meet the requirements of the Administrative Rules of Montana (ARM) Chapter 37.111, Subchapter 2. Information shall be submitted to the City that shows all the requirements of ARM 37.111.2 can be met.

VII-E-1. Mobile/Manufactured Home Spaces

- a. Mobile/manufactured home spaces must be arranged to permit the safe and practical placement and removal of mobile homes.
- b. All mobile/manufactured homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from other boundary lines of the park.
- c. The mobile/manufactured home pad must be located at least 10 feet from the edge of pavement of the street that serves it.
- d. The size of the mobile/manufactured home pad must be suitable for the general market to be served and must fit the dimensions of mobile/manufactured homes anticipated.
- e. A mobile/manufactured home pad may not occupy more than one-third (1/3) of the area of its space. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a space.
- f. The City Council may require that the mobile/manufactured home pad be improved to provide adequate support for the placement and tie-down of the mobile home.

- g. No mobile/manufactured home or its attached structures, such as awnings and carports, may be located within 20 feet of any other mobile home or its attached structures.
- h. No detached structure, such as a storage shed, may be located within five feet of any mobile/manufactured home or its attached structures.
- i. A minimum of two off-street parking spaces must be provided on or adjacent to each mobile/manufactured home space. The driveway must be located to allow for convenient access to the mobile/manufactured home, and be a minimum of 10 feet wide.
- j. One guest parking space must be provided for each 5 mobile/manufactured home spaces. Group parking may be provided. Guest parking may be provided by providing sufficient street width to allow for on street parking.
- k. The limits of each mobile/manufactured home space must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of space limits on the ground must be approximately the same as those shown on the approved plans. Precise engineering of space limits is not required either on the plans or on the ground.
- l. Each mobile/manufactured home must be skirted within 30 days after it is moved to a space within the mobile/manufactured home park. The skirting must be of a fire-resistant material similar to that of the mobile/manufactured home exterior.

VII-E-2. Streets

Streets within a mobile/manufactured home park must meet the standards specified in Section VI-H Streets and Roads. Streets must be designed to allow safe placement and removal of mobile homes.

- a. Streets must be designed to provide safe access to public roads.
- b. Roads within the mobile/manufactured home park must be designed to provide safe traffic circulation and parking. To provide adequate room for emergency vehicle access a minimum 20-ft paved width shall be provided.
- c. One-way roads must be at least 20 feet wide; two-way roads must be at least 24 feet wide. Additional width for on-street parking shall be provided on all streets and shall be a provided as a minimum 6-ft shoulder on each side of the required road width specified above. The 6-ft shoulder shall be finished with gravel, asphalt concrete pavement, or other approved surfacing.

VII-E-3. Electrical Systems

Electrical systems must be designed and installed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installations must be designed and constructed in accordance with the applicable state electrical standards.

VII-E-4. Gas Systems

- a. Gas equipment and installations must be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. Where the state or other political subdivision does not assume jurisdiction, such installation must be designed and constructed in accordance with the applicable provisions of the “National Fuel Gas Code” (NFPA Pamphlet 54-1981) and the “Standard for the Storage and Handling of Liquefied Petroleum Gases” (NFPA Pamphlet 58-1981).
- b. A readily accessible and identified shutoff valve controlling the flow of gas to the entire gas piping system must be installed near to the point of connection of the liquefied petroleum gas container.
- c. Each mobile/manufactured home lot must have an accessible, listed gas shutoff installed. This valve must not be located under a mobile home. Whenever the mobile home lot gas outlet is not in use, the shutoff valve must be plugged to prevent accidental discharge.

VII-F. Recreational Vehicle Park Standards

Recreational vehicle parks shall meet the requirements of the Administrative Rules of Montana (ARM) Chapter 37.111, Subchapter 2. Information shall be submitted to the City that shows all the requirements of ARM 37.111.2 can be met.

VII-F-1. Recreational Vehicle Spaces

- a. Spaces in recreational vehicle parks must be arranged to allow for the safe movement of traffic and access to spaces.
- b. Roads within recreational vehicle parks must be designed to provide safe traffic circulation and parking.
- c. Recreational vehicles must be separated from each other and from other structures by at least 15 feet. Any accessory structures such as attached awnings must, for purposes of this separation requirement, be considered part of the recreational vehicle.
- d. All recreational vehicle spaces shall be located at least 25 feet from any street.

VII-F-2. Density

The density of a recreational vehicle park must not exceed 25 recreational vehicle spaces per acre of gross site area.

VIII. PLANNED UNIT DEVELOPMENTS

VIII-A. Purpose

The purpose of this section is to provide flexibility in applying certain subdivision standards, allowing the subdivider innovation and creativity in subdivision design. Section 76-3-103(10), MCA defines a planned unit development as “a land development project consisting of residential clusters, industrial parks, shopping centers or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.” Specifically, with regard to the improvement and protection of public health, safety and general welfare, it shall be the intent of this section to promote the City’s pursuit of the community goals and objectives described in the East Helena Growth Policy.

VIII-B. Procedures

If the subdivision administrator designates a proposed development plan as a PUD, the preliminary plat may then be submitted for review. Submittal must comply with requirements and procedures contained in the following Sections:

IV. Major Subdivisions

II-B Applicable sections for Final Plats

VIII-C. Standards

VIII-C-1. Design Standards

PUDs must comply with the standards contained in Section VI Design and Improvement Standards. However, the City Council may modify the design and improvement standards contained in Section VI-F Lots, Section VI-G Blocks, Section VI-H Streets and Roads, and Section VI-P Park Land Dedication upon request of the subdivider when the plan for a PUD includes provisions for efficient traffic circulation, adequate light, air, and open space. In such cases, no application for a variance under Section XI-B Variances of these regulations is necessary.

VIII-C-2. Streets

The arrangement, type, extent, width, grade and location of all streets must be considered in their relation to existing and planned streets, to topographical conditions, and to public convenience and safety.

VIII-C-3. Open Space

Each PUD must comply with the requirements of Section VI-P(d) of these regulations. The open space must be:

- a. Owned by a property owners’ association; or
- b. Dedicated to public use, if acceptable to the City Council; or
- c. A combination of (a) and (b) above.

The City Council may waive dedication or cash donation requirements when the subdivider agrees to create a property owners' association for the proposed subdivision and deed to the association land to be held in perpetuity for use as parks or playgrounds.

VIII-C-4. City Council Determination

The City Council shall make a determination that the requested modification(s) will produce an environment, landscape quality and character superior to that produced by the existing standards of this title, and which will be consistent with the intent and purpose of this chapter, with the adopted goals of the East Helena growth policy. Upon deciding in favor of the modification request, the City Council may grant modification(s), above or below minimum or maximum standards respectively as established in this title, including the complete exemption from a particular standard. If the City Council does not determine that the proposed modified standards will create an environment, landscape quality and character superior to that produced by the existing standards of this title, and which will be consistent with the intent and purpose of this chapter, then no modification shall be granted.

IX. ADMINISTRATIVE PROVISIONS

IX-A. Fee Schedule

IX-A-1. Preliminary Plat Review

To cover costs of reviewing plans, advertising, holding public hearings, and other activities associated with the review of a subdivision proposal, the subdivider shall pay a non-refundable fee at the time of application for preliminary plat approval. The fees, payable to the City, shall be as established by the City Council.

IX-A-3. Final Plat Review and Inspection

To cover the cost of on-site inspection of the subdivision and review of the final plat and supplementary materials, the subdivider shall pay a non-refundable fee at the time of application for final approval to the City. The fees, payable to the City, shall be as established by the City Council.

IX-B. Variances

IX-B-1. Variances Authorized

The City Council may grant variances from Section VI, Design and Improvement Standards, of these regulations when, due to the characteristics of land proposed for subdivision, strict compliance with these standards would result in undue hardship and would not be essential to the public welfare. A variance will not be granted if it would have the effect of nullifying the intent and purpose of these regulations.

The City Council will not approve a variance unless it finds that:

- a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
- b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship that is self imposed;
- c. The variance will not cause a substantial increase in public costs; and
- d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

IX-B-2. Variances from Floodway Provisions Not Authorized

The City Council will not by variance permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, Chapter 5, MCA.

IX-B-3. Procedure

The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The planning board will consider the requested variance and recommend its approval or denial to the City Council.

IX-B-4. Conditions

In granting variances, the City Council may impose reasonable conditions to secure the objectives of these regulations.

IX-B-5. Statement of Facts

When a variance is granted, the motion to approve the proposed subdivision must contain a statement describing the variance and the facts and conditions upon which the issuance of the variance is based.

IX-C. Amendment of Regulations

Before the City Council amends these regulations it will hold a public hearing on the proposed amendment. Notice of the time and place of the public hearing must be published in a newspaper of general circulation in the county not less than 15 days or more than 30 days before the date of the hearing.

IX-D. Administration

IX-D-1. Enforcement

Except as provided in 76-3-303, MCA, and these regulations, every final subdivision plat must be filed for record with the county Lewis and Clark County Clerk and Recorder before title to the subdivided land can be sold or transferred in any manner. If unlawful transfers are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of the MSPA and these regulations. The cost of this action shall be imposed against the party not prevailing.

IX-D-2. Violation and Penalties

Any person, firm, corporation, or other entity who violates any of the provisions of the MSPA or these regulations is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale, lease, or transfer, or offer of sale, lease, or transfer of each separate parcel of land in violation of any provision of the MSPA or these regulations shall be deemed a separate and distinct offense.

IX-D-3. Appeals

- a. A person who has filed with the City Council an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the City Council to recover actual damages caused by a final action, decision, or order of the City Council or a regulation adopted pursuant to the MSPA that is arbitrary or capricious.
- b. A party identified in subsection (d) below who is aggrieved by a decision of the City Council to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.
- c. For the purposes of this section, “aggrieved” means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

- d. The following parties may appeal under the provisions of subsection (b) above:
 - i. the subdivider;
 - ii. a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;
 - iii. the county commissioners of the county where the subdivision is proposed; and
 - iv. one of the following municipalities:
 - A. a first-class municipality as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;
 - B. a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits;
 - C. a third-class municipality, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.