

ARTICLE 2. PERMITS, LEGISLATIVE ACTIONS & PROCEDURES

38.200 Jurisdiction & Scope of Authority (*current Article 34*)

Sec.38.200.010. - Review authority. (38.34.010)

- A. The city commission has the right to review and require revisions to all development proposals subject to this chapter, and delegates that authority in certain circumstances as set forth below. The purpose of this review is to prevent demonstrable adverse impacts of the development upon public safety, health or general welfare, or to provide for its mitigation; to protect public investments in roads, drainage facilities, sewage facilities, water facilities, and other facilities; to conserve the value of adjoining buildings and/or property; to protect the character of the city; to protect the right of use of property; advance the purposes and standards of this chapter and the adopted growth policy; and to ensure that the applicable regulations of the city are upheld.
1. The city commission retains to itself under all circumstances the review of the following:
 - a. Subdivisions which do not qualify as a subdivision exemption per article 2 of this chapter;
 - b. Amendments to the text of this chapter or amendment to the zoning map;
 - c. Determination to accept cash-in-lieu of park land dedications, except in the B-3 zone district;
 - d. Extensions of subdivision preliminary plat approvals for periods greater than two years;
 - e. Planned unit development preliminary plans and major amendments to planned unit developments;
 - f. Conduct public hearing for applications under 76-2-402, MCA;
 - g. Appeals from administrative interpretations and final project review decisions;
 - h. Approval of park master plans;
 - i. Large scale retail per section 38.360.190; and
 - j. Exceptions to installation of bikeways and boulevard trails per section 38.400.110.E.
- B. The planning director shall, upon recommendation from the applicable advisory bodies approve, approve with conditions or deny all applications subject to this chapter except those listed below, Decisions of the planning director are subject to the appeal provisions of division 38.250 of this chapter.
1. Projects excluded from planning director review:

- a. Those applications specifically reserved to another approval authority as stated in this section;
 - b. Development of city property which does not conform to all standards of this chapter;
 - c. Conduct public hearing for applications under 76-2-402 MCA;
 - d. Any application involving variances from this chapter;
 - e. Subdivision preliminary and final plats not meeting the requirements for a subdivision exemption per division 38.240;
 - f. Conditional use permits;
 - g. Preliminary plans and major amendments to planned unit developments;
 - h. Large scale retail per section 38.360.190;
 - i. Exceptions to design standards for transportation pathways per section 38.400.110.E;
 - j. Applications, except within the B-3 zoning district, which propose the use of cash-in-lieu of parkland per section 38.420.030;
 - k. Approval of park master plans,
 - l. Designation of historic or culturally significant signs;
 - m. Applications with deviations except that the planning director is the review authority for applications which have:
 - (1) Two or fewer deviations, which deviations may not request a more than 20 percent change in the standard for which the deviation is sought; and
 - (2) Which are not otherwise prohibited to the planning director for their review;
 - n. Amendments to the text or the zoning map per division 38.260;
 - o. Extensions to subdivision review for periods exceeding two years; and
 - p. Appeals from final administrative action on interpretations or project final decisions;
2. Exception. The city commission may, by an affirmative, simple majority, vote of its members at a regularly scheduled meeting reclaim to itself the final approval of a development normally subject to the approval of the planning director. The vote shall occur prior to the action of the planning director.
- C. When a board of adjustment has been appointed per section 2.05.2800, the board of adjustment shall, upon recommendation from the applicable advisory bodies approve, approve with conditions or deny those applications specifically delegated to it by the city commission. Decisions of the BOA are subject to the appeal provisions of division 38.250 of this chapter.
- Exception. The city commission may, by an affirmative vote of three of its members at a regularly scheduled meeting reclaim to itself the final approval of a

development normally subject to the approval of the board of adjustment. The vote shall occur prior to the action of the board of adjustment.

- D. The city engineer shall review and upon recommendation from the applicable advisory bodies as needed approve, approve with conditions or deny the following site elements and processes:
1. Site access and storm water for reuse and further development per section 38.230.140.B;
 2. Location of storm water facilities within neighborhood centers per section 38.410.020;
 3. Allow the placement of private utility easements within public rights-of-way owned or controlled by the city.
 4. The maximum length of dead end water mains per section 38.410.070;
 5. The maximum length of service lines per section 38.410.070;
 6. Exceptions to storm water controls per section 38.410.080;
 7. All modifications or proposed standards in section 38.400.101 except section 38.400.010.A.1;
 8. Approve plans and specifications for public infrastructure and infrastructure to be granted to the public per sections 38.400.060.A and B.1-3;
 9. Allow alternate curb return radii per section 38.400.090.C.2.e;
 10. Approve locations and modifications to drive accesses to public streets per sections 38.400.090.G and H;
 11. Approve street improvement standards per section 38.400.060;
 12. Backing into alleys, parking stall aisle and driveway design for surfacing and curbing per section 38.540.020.D, F and J;
 13. Protection of landscaped area per section 38.550.050.H;
 14. All actions required of the flood plain administrator per article 6 of this chapter;
 15. Approve modifications in required completion time for subdivision improvements per section 38.270.030.B.1;
 16. Permit the use of a financial guarantee for paving of streets per 38.270.060.B;
 17. Allow waiver of required information per section 38.220.080.A.2.i(3).
 18. Require preparation of a traffic impact analysis and determine its contents per section 38.220.120.A.2.c(5).
 19. Establish specifications for paving of streets and parking areas; and
 20. Designate street classifications for collectors and arterials not shown in the long range transportation plan.
 21. Allow alternate parking angles for surface and structured parking stall configurations listed in Table 38.540.020. All other numeric standards apply.

- E. The director of public service shall review and upon recommendation from the applicable advisory bodies as needed approve, approve with conditions or deny the following development elements and processes:
 - 1. A waiver of the requirement to extend water, sewer, and streets to the perimeter of property being developed per section 38.410.070;
 - 2. Water rights as authorized in section 38.410.130;
 - 3. Exceptions to the level of service standards established in section 38.400.060.B.4.
- F. The director of parks and recreation shall determine the classification of trails per 38.420.110.D.
- G. As detailed in division 38.200 of this chapter, the city commission authorizes the advisory bodies as applicable, to review and to make recommendations to the review authority regarding development proposals.
- H. The city commission or its designated representatives may require the applicant to design the proposed development to reasonably minimize potentially significant adverse impacts identified through the review required by these regulations. The city commission or its designated representatives may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the development as submitted. Recognizing that the standards of this chapter are minimum requirements and the public health, safety, and general welfare may be best served by exceeding those minimums, the city commission or planning director may require as a condition of approval, additional landscaping, screening, timing requirements, setbacks or other mitigation exceeding the minimums of this chapter.

(Ord. No. 1645, § 18.64.010, 8-15-2005; Ord. No. 1670, § 18.64.010, 8-28-2006; Ord. No. 1693, § 23(18.64.010), 2-20-2007; Ord. No. 1761, exh. M(18.64.010), 7-6-2009; Ord. No. 1809, § 2, 7-11-2011; Ord. No. 1832, § 3, 6-18-2012; Ord. No. 1827, § 5, 9-10-2012; Ord. No. 1905, § 3, 2-2-2015)

**Sec.38.200.020. - Administration and enforcement; planning director authority.
(38.34.020)**

- A. The planning director shall administer and enforce this chapter unless a specific standard is clearly assigned in section 38.200.010 to another authority. The planning director may be provided with the assistance of such other persons as the planning director may supervise and those assistants shall have essentially the same responsibilities as directed by the planning director.
- B. The planning director may in the administration of this chapter consult with other persons having expertise in relevant subject areas as in the planning director's opinion is necessary for the review of the proposed development or administration of the chapter. When an authority other than the planning director is assigned responsibility for a particular standard that authority shall coordinate with the planning director in administration of that standard.
- C. If the planning director or other administrator of standards shall find that any of the provisions of this chapter are being violated, they shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering

the action necessary to correct it. Such administrator may order discontinuance of illegal use of land, illegal additions, alterations or structural changes; may order discontinuance of any illegal work being done; or may take any other action authorized by this chapter to ensure compliance with or prevent violation of its provisions.

(Ord. No. 1645, § 18.64.020, 8-15-2005; Ord. No. 1693, § 23(18.64.020), 2-20-2007; Ord. No. 1761, exh. M(18.64.020), 7-6-2009; Ord. No. 1828, § 99, 9-10-2012)

Sec.38.200.030. - Enforcement; planning director. (38.34.030)

This chapter shall be enforced by the planning director and authorized representatives. No development approval, subdivision approval, building permit or business or occupational use license shall be issued, except in compliance with the provisions of this chapter.

(Ord. No. 1645, § 18.64.030, 8-15-2005; Ord. No. 1693, § 23(18.64.030), 2-20-2007; Ord. No. 1761, exh. M(18.64.030), 7-6-2009)

Sec.38.200.040. - Stop-work order by planning director, building official, city engineer authority. (38.34.040)

Whenever any subdivision, development or building work is being done contrary to the provisions of this chapter, the planning director shall order the work stopped by notice in writing served on any person engaged in doing or causing such work to be done, and any such person shall forthwith stop such work until authorized by the planning director to proceed with the work. The building official or city engineer may also issue a stop-work order when building work is being done contrary to the provisions of this chapter.

(Ord. No. 1645, § 18.64.040, 8-15-2005; Ord. No. 1693, § 23(18.64.040), 2-20-2007; Ord. No. 1761, exh. M(18.64.040), 7-6-2009)

Sec.38.200.050. - Permission to enter. (38.34.050)

The city commission, or its designated agents, may conduct such investigations, examinations and site evaluations as they deem necessary to verify the information supplied. The submission of material or a plat for review shall constitute a grant of permission to enter the subject property. The grant of permission shall continue until all final actions required by the approval process have been completed.

(Ord. No. 1645, § 18.64.050, 8-15-2005; Ord. No. 1693, § 23(18.64.050), 2-20-2007; Ord. No. 1761, exh. M(18.64.050), 7-6-2009)

Sec.38.200.060. - Inaccurate or incomplete information and waivers. (38.34.060)

- A. The city shall review each submitted application for completeness and sufficiency as described in sections 38.240.130 and 38.230.070.
- B. The final approval body may withdraw approval or conditional approval of a preliminary plat or other development approval if they determine that information provided by the applicant, and upon which approval or conditional approval of the preliminary plat or other development was based, is inaccurate or incomplete.
 - 1. Within 30 calendar days following approval or conditional approval of a preliminary plat or other development application, any person or agency that

claims that information provided by the applicant is inaccurate or incomplete may submit the information and proof to the planning department.

2. The planning department shall investigate the claim, the accompanying information and proof, and make a report to the final approval authority within 30 working days after receipt of the information. If the final approval authority is the city commission, the city commission shall consider the information and proof, and shall make a determination regarding the claim at a regular meeting. Notice of the meeting or presentation of the report shall be given to the claimant and the applicant.

(Ord. No. 1645, § 18.64.060, 8-15-2005; Ord. No. 1693, § 23(18.64.060), 2-20-2007; Ord. No. 1761, exh. M(18.64.060), 7-6-2009; Ord. No. 1828, § 100, 9-10-2012)

Sec.38.200.070. - Coordinated reviews. (38.34.070)

When a proposed subdivision, development or use is also proposed to be annexed to the city, the city shall coordinate the development review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible. The city commission shall also hold joint public hearings on the initial zoning and the annexation whenever possible. Based upon the circumstances of proposed development the city may require sequential review of applications.

(Ord. No. 1645, § 18.64.070, 8-15-2005; Ord. No. 1693, § 23(18.64.070), 2-20-2007; Ord. No. 1761, exh. M(18.64.070), 7-6-2009)

Sec.38.200.080. - Date of submittal and associated review standards. (38.34.080)

- A. Subdivision. Review and approval or disapproval of a subdivision under these regulations may occur only under those regulations in effect at the time a subdivision application for approval of a preliminary plat is deemed sufficient according to section 38.240.130 or for an extension under division 38.240 of this chapter is submitted to the city.
- B. Nonsubdivision. Review of nonsubdivision applications shall be under such regulations as are in effect at the time an application for approval of a preliminary site plan is deemed complete according to section 38.230.070; except that an interim zoning ordinance adopted according to MCA 76-2-306 shall apply to a nonsubdivision application without limitation to the date of completeness of the application until final action has been taken on the application. An applicant may waive, in writing, the shield from changing ordinances established by this section. In the event that such waiver is provided, the nonsubdivision application shall be reviewed under the ordinances in effect on the date of the final action on the application.

(Ord. No. 1645, § 18.64.080, 8-15-2005; Ord. No. 1693, § 23(18.64.080), 2-20-2007; Ord. No. 1761, exh. M(18.64.080), 7-6-2009)

Sec.38.200.090. - Planning director and building official; plan application checking; notice of noncompliance. (38.34.090)

- A. It is the intent of this chapter that the planning director and building official, shall check all development plans and applications for permits for compliance with this chapter both before and during construction.
- B. If, during this procedure, the planning director and/or the building official deems that the proposed plan or construction does not comply with this chapter, the planning director and/or building official shall inform the applicant of the infraction and shall stop all construction on the project until such time as the applicant, builder or principal revises such plan to conform to this chapter and/or fulfills the requirements of any mandated review procedure as set forth in this chapter.

(Ord. No. 1645, § 18.64.090, 8-15-2005; Ord. No. 1693, § 23(18.64.090), 2-20-2007; Ord. No. 1761, exh. M(18.64.090), 7-6-2009)

Sec.38.200.100. - Building permit requirements. (38.34.100)

- A. No building or other structure shall be erected, moved, added to or structurally altered and no land use shall be changed without valid permits as prescribed in this division.
 - 1. Only minor site surface preparation and normal maintenance shall be allowed prior to conditional approval by the appropriate review authority and the issuance of a building permit, providing that such activity does not include excavation for foundations or the removal of mature, healthy vegetation. Minor site surface preparation means disturbing less than one-half acre, movement of 30 cubic yards or less of material, or a cut or fill of less than cumulative one foot whichever is less. Any excavation and site disturbance must be in conformance with an approved stormwater control plan. Upon conditional approval by the appropriate review authority, excavation for foundations and the preparation of

forms may occur. However, no concrete shall be poured and no further construction shall commence until final site or sketch plan approval has been granted and until building permits have been issued. Proceeding prior to building permit issuance is at the hazard of the landowner.

- a. Exception: When construction and funding of public streets are occurring under the provisions of division 38.430 of this chapter, Planned Unit Development (PUD), the issuance of building permits may be allowed prior to completion of infrastructure improvements, pursuant to the provisions established in division 38.270 of this chapter.
2. Building permit. Within the limits of the city, building permits shall be obtained as provided by 10.02.020.
3. Based upon an approved sketch, site plan, certificate of appropriateness, conditional use permit or planned unit development (hereinafter referred to as "plan"), and after any appeals have been resolved, a building permit for the site may be requested and may be granted, provided such building permit is granted within one year of plan approval. Prior to lapse of one year, the applicant may seek an extension as allowed in divisions 38.230 and 38.430.

(Ord. No. 1645, § 18.64.100, 8-15-2005; Ord. No. 1693, § 23(18.64.100), 2-20-2007; Ord. No. 1761, exh. M(18.64.100), 7-6-2009; Ord. No. 1830, § 38, 9-24-2012)

Sec.38.200.110. - Permit issuance; conformity with regulations required. (38.34.110)

No permit or license of any type shall be issued unless in conformance with the regulations contained within this chapter. Permits issued on the basis of plans and applications approved by the building official and planning director authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this chapter, punishable as provided in this division.

(Ord. No. 1645, § 18.64.110, 8-15-2005; Ord. No. 1693, § 23(18.64.110), 2-20-2007; Ord. No. 1761, exh. M(18.64.110), 7-6-2009)

Sec. 38.200.120. - Permits issued contrary to title deemed void. (38.34.120)

Any authorization, including without limitation subdivision approval, site plan approval or building permit, issued, granted or approved in violation of the provisions of this chapter shall be null and void and of no effect without the necessity of any proceedings or a revocation or nullification thereof, and any work undertaken or use established pursuant to any such building permit or other authorization shall be unlawful.

(Ord. No. 1645, § 18.64.120, 8-15-2005; Ord. No. 1693, § 23(18.64.120), 2-20-2007; Ord. No. 1761, exh. M(18.64.120), 7-6-2009)

Sec. 38.200.130. - Expiration of permits. (38.34.130)

Every permit issued by the building official under the provisions of this chapter shall expire by limitation and become null and void in accordance with 10.02.020.

(Ord. No. 1645, § 18.64.130, 8-15-2005; Ord. No. 1693, § 23(18.64.130), 2-20-2007; Ord. No. 1761, exh. M(18.64.130), 7-6-2009; Ord. No. 1830, § 39, 9-24-2012)

Sec.38.200.140. - Fee schedule. (38.34.140)

- A. The city commission shall establish a schedule of fees, charges and expenses and a collection procedure for reviews, permits, appeals and other matters pertaining to this chapter. The schedule of fees for the procedures listed below shall be set from time to time by the city commission by resolution. The fees shall be available in the office of the planning director and may be altered or amended only by the city commission.
- B. No subdivision, permit, zone change, site plan, conditional use, special temporary use, planned unit development, deviation or variance shall be issued unless or until such costs, charges, fees or expenses have been paid in full, nor shall any action be taken on proceedings before the administrative design review staff, development review committee, the design review board, the zoning commission, the planning board or the city commission until fees have been paid in full.

(Ord. No. 1645, § 18.64.140, 8-15-2005; Ord. No. 1693, § 23(18.64.140), 2-20-2007; Ord. No. 1761, exh. M(18.64.140), 7-6-2009)

Sec. 38.200.150. - Complaints of alleged violations; filing and recording. (38.34.150)

Whenever a violation of this chapter occurs or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis thereof shall be filed with the planning director. The planning director shall record properly such complaint and immediately investigate and take action thereon as provided by this chapter.

(Ord. No. 1645, § 18.64.150, 8-15-2005; Ord. No. 1693, § 23(18.64.150), 2-20-2007; Ord. No. 1761, exh. M(18.64.150), 7-6-2009)

Sec.38.200.160. - Violation; penalty; assisting or abetting; additional remedies. (38.34.160)

The effective enforcement of adopted standards is necessary to accomplish their intended purpose. The city has a variety of options for the enforcement of this chapter. The planning director shall select the option which in their opinion is most suitable to the circumstance and violation. More than one enforcement option may be used to attain compliance with the standards of this chapter when deemed appropriate.

- A. Violation of the provisions of this chapter or failure to comply with any of its requirements including violations of conditions and safeguards established in connection with the grant of variances or conditional uses or any of the required conditions imposed by the review authority shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined or imprisoned or both, either as set forth in state law regarding subdivision and zoning, or in accordance with 1.01.210, and in addition shall pay all costs and expenses involved in the case except as stated in subsection D of this section.

1. Each day such violation continues shall be considered a separate offense and punishable as such.
 2. For violations relating to plats each sale, lease or transfer of each separate parcel of land in violation of any provision of these regulations or the Montana Subdivision and Platting Act shall be deemed a separate and distinct offense.
- B. The code compliance officer is authorized to issue a notice to appear under the provisions of MCA 46-6-310 to any violator of this chapter.
- C. The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, assists or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.
- D. If transfers not in accordance with these regulations or the Montana Subdivision and Platting Act are made, the city attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of these regulations. The cost of the action must be imposed against the party not prevailing.
- E. When a violation has not been corrected by the property owner after written notice from the city, the enforcement officer or planning director may seek approval for filing at the county clerk and recorder's office a notice of violation or noncompliance. Such notice shall serve to advise potential purchasers of existing violations of this chapter or of on-going enforcement actions regarding a property. Such notice shall clearly state that the parcel or development on the parcel is in violation of this chapter and that correction of the violation must be made prior to the city approving additional development or redevelopment of the site. The notice shall also describe the nature of the violation and applicable citations to the relevant sections of this chapter.
1. When such a notice is to be filed the enforcement officer shall either:
 - a. Through the office of the city attorney bring an action for civil and/or injunctive relief that requests a court order to record a notice of violation or noncompliance; or
 - b. Schedule a public meeting to be held before the city commission with the intention of receiving an order from the city commission confirming the validity of the violation and the need for correction, and authorizing the recording of the notice of violation or noncompliance. Notice of such a hearing shall be provided as required by division 38.220 of this chapter.
 2. When a violation has been corrected for which a notice of violation or noncompliance was filed, the city shall record a release of noncompliance indicating that the prior violation has been corrected. The property owner is responsible for notifying the planning department in writing of the correction of the violation or noncompliance. Upon receipt of such notification by the property owner, the enforcement officer shall conduct an inspection to verify correction prior to the recording of the release.

- F. The city may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of, any provision of this chapter.
- G. Violation of this chapter is a municipal infraction and may be punishable by a civil penalty as provided in section 24.02.040, in addition to other remedies of this section except that the court shall impose the following minimum civil penalties.
 - 1. Each day such violation continues shall be considered a separate offense and punishable as such. The minimum civil penalty for violation of this chapter by the same person for the same violation within a 12-month period shall be:
 - a. First citation: \$100.00.
 - b. Second citation: \$150.00.
 - c. Third and subsequent citations: \$200.00.
 - d. The determining factor with respect to the civil penalty is the receipt of service of the citation and not the judgment.
- H. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.
- I. Upon resolution of an identified instance of noncompliance with the standards of this chapter the city may record a document with the Gallatin County Clerk and Recorder to give notice of the resolution of the noncompliance.

(Ord. No. 1645, § 18.64.160, 8-15-2005; Ord. No. 1693, § 23(18.64.160), 2-20-2007; Ord. No. 1761, exh. M(18.64.160), 7-6-2009; Ord. No. 1804, § 13, 7-11-2011; Ord. No. 1828, § 101, 9-10-2012)

38.210 Development Review Committee (DRC), Design Review Board (DRB), Administrative Design Review Staff (ADR), Wetlands Review Board (WRB), Board Of Adjustment (BOA) Jurisdiction & Scope of Authority (current Article 33)

Sec. 38.210.010. - Purpose of DRC, DRB, ADR, WRB, and BOA. (38.33.010)

A. Purpose. The development review committee (DRC), design review board (DRB), administrative design review staff (ADR) and wetlands review board (WRB), if established, have been established to coordinate, expedite and ensure fair and equitable implementation of this chapter. The objective, to be implemented through their procedures and deliberations, shall be to encourage development quality that will enhance both the natural and built environments, with consideration to present and future property values, and to carry out the purposes of this chapter. All bodies authorized or referenced under this division 38.210 may call upon any city staff or other persons with technical expertise, and may testify before any board, commission or other body upon the subjects for which they have responsibility.

1. DRC. The DRC is established to evaluate all proposals subject to the provisions of this chapter. The DRC is the body charged with reviewing items relating to public health and safety. The DRC shall act as an advisory body to the review authority established by section 38.200.010 for site plans, conditional use permits, planned unit developments, divisions of land, zone map amendments, annexations and other actions as requested by review authority.
2. DRB. The DRB has the duties and responsibilities established by 2.05.3000.
3. ADR. The ADR staff is established as the review body for aesthetic considerations of smaller and less complex proposals which are less likely to produce significant community impact and to provide recommendations regarding such proposals to the review authority established by section 38.200.010, subject to the provisions of this chapter.
 - a. The ADR staff shall act as an advisory body to the review authority regarding reuse/further development permits within overlay districts; and
 - b. The ADR staff shall act as an advisory body to the review authority regarding all sketch plans and site plans not meeting one or more of the thresholds of section 38.230.040.B, for conditional use permits for accessory dwelling units, conditional use permits where no additional building area will be created, and nonPUD divisions of land;
 - c. The ADR may develop, and after adoption by the city commission, apply specific guidelines related to such concerns as architectural appearance, landscape design and signage for the construction and/or alteration of structures, sites or areas; and
 - d. The ADR may review applicable development proposal applications for zoning amendments, or applications for moving, demolition or any other kind of permit that may affect properties located within entryway corridors.

4. WRB. The WRB, if established, has the duties and responsibilities established by 2.05.2900.
 5. BOA. The BOA, if established, has the duties and responsibilities established by 2.05.2810.
- B. Development review committee procedures established. To implement this purpose, certain procedures shall be adopted to include, but not be limited to, a regularly scheduled weekly or biweekly meeting attended by representatives of each of the city departments charged with development review. Each department shall have the ability and authority to require the DRC to make a recommendation of denial when in their view the project can not meet the requirements and review criteria of this chapter and acceptable conditions do not exist to cure the identified failings of the project. Written meeting reviews, in the form of staff reports or summary reviews prepared by the planning department, shall be made setting forth the DRC's recommendation to the review authorities established in division 38.220 and reasons for requiring such conditions as may be deemed necessary by the DRC. These records shall be preserved as part of the official file for each development proposal. Lastly, the DRC shall generally follow "Robert's Rules of Order" and may prepare and adopt supplemental procedural rules that will ensure the accomplishment of the stated purpose and promote the efficiency and effectiveness of the developmental review process.
1. The DRC shall at a minimum be composed of the following personnel: city engineer, fire marshal, the streets superintendent, the sanitation superintendent, the water/sewer superintendent, the planning director and the building official. When necessary, other members of the committee may include: the director of public safety, the superintendent of facilities and public lands, the superintendent of recreation, the city manager, with other individuals to be included as necessary at the planning director's request.
 2. When applicable, the DRC may solicit the input of noncity agencies and persons including, but not limited to, the county subdivision review officer, the county sanitarian, the county road superintendent, and state or federal agencies, with other individuals to be included as necessary.
- C. Design review board procedures established. The DRB will be convened as necessary and shall follow procedures as set forth in 2.05.3020.
- D. Administrative design review staff procedures established. To implement the purposes of this chapter, procedures shall be adopted for the administrative evaluation of a proposal without public notice or comment, unless a deviation from the underlying zoning is requested. After a proposal has been evaluated by the ADR staff, they shall issue a written decision that shall include findings and may include a notice of required corrections. The ADR staff may call a conference with the applicant to determine design alternatives, or the applicant may call a conference with the ADR staff for the same purpose. Any such conference shall be conducted prior to the issuance of a building permit for the proposal.
1. ADR staff shall consist of two planning department staff members. One member shall be degreed or otherwise licensed or certified by such member's respective

professional authorities in an environmental design discipline such as architecture, landscape architecture or urban design. The second member shall be the planning director who may or may not be degreed in architecture. In the event that necessary ADR staff is not available, the DRB may act to provide design review services.

- E. Waiver of design review. In the event that neither the DRB nor the ADR staff are able to complete a quorum or have the necessary personnel to conduct the reviews otherwise required by this chapter, the requirement for review by DRB or ADR is waived. Nothing in this section shall constitute a waiver of the required review criteria established in divisions 38.340, 38.430, and 38.600 of this chapter.
- F. Wetlands review board procedures. The WRB will be convened as necessary and shall follow procedures as set forth in 2.05.2920 when a WRB has been established.
- G. Board of adjustment procedures established. The BOA will be convened as necessary and shall follow procedures as set forth in 2.05.2830 when a BOA has been established.

(Ord. No. 1645, § 18.62.010, 8-15-2005; Ord. No. 1670, § 18.62.010, 8-28-2006; Ord. No. 1693, § 22(18.62.010), 2-20-2007; Ord. No. 1761, exh. L(18.62.010), 7-6-2009; Ord. No. 1769, exh. K(18.62.010), 12-28-2009; Ord. No. 1827, § 3, 9-10-2012; Ord. No. 1828, § 98, 9-10-2012)

Sec. 38.210.020. - General procedures, notice and timing for zoning applications. (38.33.020)

- A. Informal advice and direction. A person or organization considering any construction, building or site alteration, rezoning or other development activity, may approach the DRC, DRB, ADR or WRB for informal advice and direction. Such discussion shall be treated as advisory by both parties and shall record only the fact that contact had been made. An informal review by the DRC and/or DRB may be requested by submitting a completed application form provided by the planning director along with any schematic development plans or written narrative at least one week prior to the next regularly DRC and/or DRB meeting. An informal review by the WRB may be requested by submitting a completed application form provided by the planning director along with a wetland delineation for the regulated wetland, development plans or written narrative describing the proposed regulated activity and a WRB meeting will be convened within two weeks of application submittal. A fee, set in accordance with the fee resolution adopted by the city commission, shall be charged for an informal review. No application is required for informal review or advice by the ADR staff.
- B. Formal application. An application for DRC, DRB, ADR and/or WRB consideration of a development proposal must be submitted utilizing a form available from the planning director. Material to be submitted with the application shall include the elements set forth within the requirements for the type of proposal to be considered, i.e., sketch plan, site plan, conditional use permit, certificate of appropriateness, planned unit development, divisions of land, etc., as outlined in this chapter. It is recommended that the applicant discuss the application informally with the DRC, DRB, ADR or WRB prior to formal submission to help expedite the process. Depending upon the size of the proposed project, its location and type, the applicant may be directed to one or more agencies of the city for processing.

- C. Public notice. Public notice for any proposal before the DRC, DRB, ADR or WRB that requires such notice shall be provided in accordance with division 38.220 of this chapter.
- D. DRC, DRB, ADR or WRB action. By no later than 30 working days from the date of the first regularly scheduled DRC and/or DRB meeting, or a meeting convened by the WRB, at which the applicants' proposal was initially reviewed, the DRC, DRB or WRB shall take action to recommend approval, approval with conditions, table pending submission of revised or additional materials or recommend denial of the applicant's proposal, unless the applicant grants a written extension to the review period. For proposals subject to ADR review, the ADR staff shall approve, approve with conditions, delay pending submission of revised or additional materials or deny the applicant's proposal.

(Ord. No. 1645, § 18.62.020, 8-15-2005; Ord. No. 1670, § 18.62.020; Ord. No. 1693, § 22(18.62.020), 2-20-2007; Ord. No. 1761, exh. L(18.62.020), 7-6-2009; Ord. No. 1769, exh. K(18.62.020), 12-28-2009; Ord. No. 1827, § 4, 9-10-2012)

38.220 Applications & Noticing (current Articles 38, 40 & 41)

Part 1: Submittal Materials & Requirements

Sec. 38.220.010. - Submittal materials and requirements. (38.41.010)

All applications and supplemental material, including all copies of plats and site development plans, shall be bound and folded into complete 8½- by 11-inch or 8½- by 14-inch sets ready for distribution. All plats shall be on one or more sheets either 18- by 24-inches or 24- by 36-inches in size, and shall be folded and included in the bound submittal. A digital (PDF) copy of the entire submittal (applications, supplemental material, plat and plans) shall be provided as required.

(Ord. No. 1645, § 18.78.010, 8-15-2005; Ord. No. 1693, § 28(18.78.010), 2-20-2007; Ord. No. 1709, § 15(18.78.010), 7-16-2007; Ord. No. 1761, exh. Q(18.78.010), 7-6-2009)

Sec. 38.220.020. - Streambed, streambank and/or wetlands permits. (38.41.020)

A. The developer shall provide the planning department with a copy of all required streambed, streambank or wetlands permits, or written notification from the appropriate agency that a permit is not required, prior to the commencement of any work on the site and/or final plat approval, whichever is sooner. These permits include but are not limited to:

1. Montana Stream Protection Act (SPA 124 Permit). Administered by the Habitat Protection Bureau, Fisheries Division, Montana Fish, Wildlife and Parks.
2. Stormwater discharge general permit. Administered by the water quality bureau, state department of environmental quality.
3. Montana Natural Streambed and Land Preservation Act (310 Permit). Administered by the board of supervisors, county conservation district.
4. Montana Floodplain and Floodway Management Act (Floodplain Development Permit). Administered by the city engineering department.
5. Federal Clean Water Act (404 Permit). Administered by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency.
6. Federal Rivers and Harbors Act (Section 10 Permit). Administered by the U.S. Army Corps of Engineers.
7. Short-term Water Quality Standard for Turbidity (318 Authorization). Administered by state department of environmental quality.
8. Montana Land-Use License or Easement on Navigable Waters. Administered by the state department of natural resources and conservation.
9. Montana Water Use Act (Water Right Permit and Change Authorization). Administered by the water rights bureau, state department of natural resources and conservation.

(Ord. No. 1645, § 18.78.020, 8-15-2005; Ord. No. 1693, § 28(18.78.020), 2-20-2007; Ord. No. 1709, § 15(18.78.020), 7-16-2007; Ord. No. 1761, exh. Q(18.78.020), 7-6-2009)

Sec. 38.220.030. - Subdivision preapplication plan. (38.41.030)

- A. The preapplication plan may be a freehand sketch, legibly drawn, showing approximate boundaries, dimensions, areas and distances. The plan may be drawn directly on a print of a topographic survey required for the preliminary plat and shall include:
1. Sketch map. A sketch map showing:
 - a. The names of adjoining subdivisions and numbers of adjoining certificates of survey, along with adjacent lot and tract lines.
 - b. Location, name, width and owner of existing or proposed streets, roads and easements within the proposed subdivision; existing streets, roads and easements within adjacent subdivisions and tracts; and the name of street or road that provides access from the nearest public street or road to the proposed subdivision.
 - c. Location of all existing structures, including buildings, railroads, powerlines towers, and improvements inside and within 100 feet of the proposed subdivision.
 - d. Zoning classification within the proposed subdivision and adjacent to it. The zoning proposed for the subdivision, if a change is contemplated.
 2. Topographic features. Topographic features of the proposed subdivision and adjacent subdivisions and tracts, including:
 - a. A current U.S. Geological Survey topographic map at the largest scale available with the subdivision clearly outlined.
 - b. Embankments, watercourses, drainage channels, areas of seasonal water ponding, areas within the designated floodway, marsh areas, wetlands, rock outcrops, wooded areas, noxious weeds and areas of active faults. Include copies of any permits listed in section 38.220.020 that have been obtained for the project.
 3. Utilities. The existing and proposed utilities located on and adjacent to the proposed subdivision including:
 - a. Location, size and depth of sanitary and storm sewers, water mains and gas lines.
 - b. Location of fire hydrants, electric lines, telephone lines, sewage and water treatment, and storage facilities.
 4. Subdivision layout. The proposed layout of the subdivision showing the approximate:
 - a. Subdivision block, tract, and lot boundary lines, with numbers, dimensions, and areas for each block, tract and lot.
 - b. Street location, right-of-way width, and name.
 - c. Easement location, width and purpose.

- d. Sites to be dedicated or reserved as park, common open space or other public areas, with boundaries, dimensions and areas.
 - e. Sites for commercial centers, churches, schools, industrial areas, condominiums, manufactured housing community and uses other than single-household residences.
5. Development plan. An overall development plan indicating future development of the remainder of the tract, if the tract is to be developed in phases.
 6. Name and location. A title block indicating the proposed name, quarter-section, section, township, range, principal meridian and county of subdivision.
 7. Notations. Scale, north arrow, name and addresses of owners and developers, and date of preparation.
 8. Variances. A list of variance requests which will be submitted with the application for preliminary plat application.
 9. Waivers. List of waivers requested from the requirements of section 38.220.060 shall be submitted with the preapplication. The DRC shall be responsible for granting waivers, and the planning department staff shall notify the developer in writing of any waivers granted from section 38.220.060 after the preapplication meeting or plan review.
 10. Parks and recreation facilities. The following information shall be provided for all land proposed to meet park land dedication requirements:
 - a. Park concept plan, including:
 - (1) Site plan for the entire property;
 - (2) The zoning and ownership for adjacent properties;
 - (3) The location of any critical lands (wetlands, riparian areas, streams, etc.);
 - (4) General description of land, including size, terrain, details of location and history, and proposed activities; and
 - (5) Description of trails or other recreational features proposed to connect the proposed park area to other park or open space areas.
 11. Digital (PDF) copy of entire submittal.
 12. Affordable housing. Describe how the subdivision proposes to satisfy the requirements of division 38.380.

(Ord. No. 1645, § 18.78.030, 8-15-2005; Ord. No. 1693, § 28(18.78.030), 2-20-2007; Ord. No. 1709, § 15(18.78.030), 7-16-2007; Ord. No. 1761, exh. Q(18.78.030), 7-6-2009)

Sec. 38.220.040. - Subdivision preliminary plat. (38.41.040)

- A. The preliminary plat shall be legibly drawn at a horizontal scale no smaller than 100 feet to the inch, and may show approximate boundaries, dimensions, distances and areas, unless specifically noted. The plat shall be on one or more sheets of 18- by 24-inch or 24- by 36-inch paper. Where accurate information is required, surveying and engineering data shall be prepared under the supervision of a registered engineer

or registered land surveyor, licensed in the state, as their respective licensing laws allow. The plat submittal shall include the following:

1. Preapplication information. All information required with the preapplication plan, as outlined in section 38.220.030.
2. Subdivision information. Name and location of the subdivision, scale, scale bar, north arrow, date of preparation, lots and blocks (designated by number), the dimensions and area of each lot, and the use of each lot, if other than for single-household.
3. Streets, roads and grades. All streets, roads, alleys, avenues, highways and easements; the width of the right-of-way, grades and curvature of each; existing and proposed road and street names; and proposed location of intersections for any subdivision requiring access to arterial or collector streets.
4. Adjoining subdivisions. The names of adjoining platted subdivisions and numbers of adjoining certificates of survey.
5. Adjoining owners. Names and addresses of record owners of lots and tracts immediately adjoining the proposed subdivision.
6. Perimeter survey. An approximate survey of the exterior boundaries of the platted tract with bearings, distances, and curve data indicated outside of the boundary lines. When the plat is bounded by an irregular shoreline or a body of water, the bearings and distances of a closing meander traverse shall be given.
7. Section corner. The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary.
8. Phased improvements. If the improvements required are to be completed in phases after the final plat is filed, the approximate area of each phase shall be shown on the plat.
9. Contours. Ground contours shall be provided for the tract according to the following requirements:

Table 38.220.040	
Where the average slope is:	Contour intervals shall be:
Under 10 percent	2 feet (if all lots are over one acre in size, five feet intervals may be used)
Between 10 and 15 percent	5 feet
Greater than 15 percent	10 feet

10. Waivers. List of waivers granted from the requirements of section 38.220.060 during the preapplication process shall be submitted with the preliminary plat application.
11. Request for exemption from department of environmental quality review. If the developer is proposing to request an exemption from the department of environmental quality for infrastructure plan and specification review, the preliminary plat application shall include a written request from the developer's

professional engineer, licensed in the state, that indicates the intent to request the exemption, and details the extent of water, sewer and stormwater infrastructure that will be completed prior to final plat approval. A detailed preliminary stormwater drainage plan must also be submitted with the written request.

(Ord. No. 1645, § 18.78.040, 8-15-2005; Ord. No. 1693, § 28(18.78.040), 2-20-2007; Ord. No. 1709, § 15(18.78.040), 7-16-2007; Ord. No. 1761, exh. Q(18.78.040), 7-6-2009)

**Sec. 38.220.050. - Preliminary plat supplements required for all subdivisions.
(38.41.050)**

- A. The following supplemental information shall be submitted with the preliminary plat.
1. Area map. A map showing all adjacent sections of land, subdivision, certificates of survey, streets and roads.
 2. Subdivision map. Map of entire subdivision on an 8½-by-11-inch, 8½-by-14-inch, or 11-by-17-inch sheet.
 3. Variances. A written statement describing any requested subdivision variance and the facts of hardship upon which the request is based (refer to division 38.250 of this chapter).
 4. Property owners. A certified list of adjoining property owners, their mailing addresses and property description, including property owners across public rights-of-way and/or easements. The names and addresses shall also be provided on self-adhesive mailing labels, one set of labels for first minor subdivisions or subdivisions eligible for summary review, and three sets of labels for all other subdivisions.
 5. Documents and certificates. Draft copy of the following documents, and certificates to be printed on or to accompany the preliminary plat:
 - a. Covenants, restrictions and articles of incorporation for the property owners association.
 - b. Encroachment permits or a letter indicating intention to issue a permit where new streets, easements, rights-of-way or driveways intersect state, county or city highways, streets or roads.
 - c. A letter of approval or preliminary approval from the city where a zoning change is necessary.
 - d. A draft of such other appropriate certificates.
 - e. Provision for maintenance of all streets (including emergency access), parks, and other required improvements if not dedicated to the public, or if private.
 6. Street profile sheets. Profile sheets for street grades greater than five percent.
 7. Application and fee. Completed preliminary plat application form, with the original signatures of all owners of record or their authorized representatives, and the required review fee. If an authorized representative signs on behalf of an owner of record, a copy of the authorization shall be provided.

8. Noxious weed management and revegetation plan. 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 (MCA 7-22-21). 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.
9. Sanitation information. When the subdivision does not qualify for the certification established in section 38.240.100 the subdivider shall provide the information regarding sanitation set forth in MCA 76-3-622.

(Ord. No. 1645, § 18.78.050, 8-15-2005; Ord. No. 1693, § 28(18.78.050), 2-20-2007; Ord. No. 1709, § 15(18.78.050), 7-16-2007; Ord. No. 1761, exh. Q(18.78.050), 7-6-2009)

Sec. 38.220.060. - Additional subdivision preliminary plat supplements.

(38.41.060)

- A. The following list of preliminary plat application supplements shall also be provided for all subdivisions unless waived by the development review committee during the preapplication process. The developer shall include documentation of any waivers granted by the city after the preapplication meeting or plan review. Additional relevant and reasonable information may be required to adequately assess whether the proposed subdivision complies with this chapter and the Montana Subdivision and Platting Act. The need for additional information shall be determined during the preapplication process.
 1. Surface water.
 - a. Mapping. Locate on a plat overlay or sketch map all surface waters and the delineated floodplain which may affect or be affected by the proposed subdivision including:
 - (1) Natural water systems such as natural streams, creeks, stream/ditches, drainages, waterways, gullies, ravines or washes in which water flows either continuously or intermittently and has a definite channel, bed and banks.
 - (2) Artificial water systems such as canals, ditches, ditch/streams, aqueducts, reservoirs, irrigation or drainage systems.
 - b. Description.
 - (1) Describe all surface waters which may affect or be affected by the proposed subdivision including name, approximate size, present use and time of year when water is present.
 - (2) Describe proximity of proposed construction (such as buildings, sewer systems, streets) to surface waters.

- c. Water body alteration. Describe any existing or proposed streambank or shoreline alterations or any proposed construction or modification of lake beds, watercourses or irrigation ditches. Provide information on location, extent, type and purpose of alteration. Provide a revised floodplain analysis report, in compliance with article 6 of this chapter, as appropriate.
 - d. Wetlands. If the subdivision contains wetlands, as defined in section 38.700.210 of this chapter, then a delineation of the wetland shall be shown on the preliminary and final plats.
 - e. Permits. Include copies of any permits listed in section 38.41.020 that have been obtained for the project.
2. Floodplains. A floodplain analysis report shall be submitted with the preliminary plat in compliance with article 6 of this chapter.
3. Groundwater.
 - a. Depth. Establish the seasonal minimum and maximum depth to the water table, dates on which these depths were determined, and the location and depth of all known aquifers which may be affected by the proposed subdivision. The high water table shall be determined from tests taken during the period of major concern as specified in writing by the county environmental health department. Specific locations for test holes may also be determined by the county environmental health department.
 - b. Steps to avoid degradation. Describe any steps necessary to avoid the degradation of groundwater and groundwater recharge areas.
4. Geology; soils; slopes.
 - a. Geologic hazards. Identify geologic hazards affecting the proposed subdivision which could result in property damage or personal injury due to rock falls or slides; landslides, mud or snow; surface subsidence (i.e., settling or sinking); or seismic activity.
 - b. Protective measures. Explain what measures will be taken to prevent or materially lessen the danger of future property damage or injury due to any of the hazards referred to in subsection A.4.a of this section.
 - c. Unusual features. Provide a statement describing any unusual soil, topographic or geologic conditions on the property which limit the capability for building or excavation using ordinary and reasonable construction techniques. The statement should address conditions such as shallow bedrock, high water table, unstable or expansive soil conditions, and slope. On a map, identify any slopes in excess of 15 percent grade.
 - d. Soils map. The subdivision shall be overlaid on the county soil survey maps obtained from the Natural Resource and Conservation Service (NRCS). The maps are 1:24,000 in scale. These maps may be copied without permission. However, enlargement of these maps could cause misunderstanding of the detail of mapping. Soils were mapped using a minimum delineation of five acres, and these soils reports were intended to alert developers to possible

problems and the need for a more detailed on-site investigation. The developer shall provide the following soil reports, which can be obtained from the NRCS:

- (1) The physical properties and engineering indexes for each soil type;
 - (2) Soil limitations for building and site development, and water features for each soil type;
 - (3) Hydric soils report for each soil type. If hydric soils are present, the developer shall provide a wetlands investigation by a certified consultant, using the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (January 1987); and
 - (4) The developer shall provide any special design methods planned to overcome the above limitations.
- e. Cuts and fills. Describe the location and amount of any cut or fill three or more feet in depth. These cuts and fills should be indicated on a plat overlay or sketch map. Where cuts or fills are necessary, describe any plans to prevent erosion and to promote revegetation such as replacement of topsoil and grading.
5. Vegetation.
- a. Vegetation map. On a plat overlay or sketch map:
 - (1) Indicate the distribution of the major vegetation types such as marsh, grassland, shrub, coniferous forest, deciduous forest or mixed forest.
 - (2) Identify critical plant communities such as stream bank or shoreline vegetation; vegetation on steep, unstable slopes; and vegetation on soils highly susceptible to wind or water erosion.
 - b. Protective measures. Describe measures to preserve trees and critical plant communities (e.g., design and location of streets, lots and open spaces).
6. Wildlife.
- a. Species. Describe species of fish and wildlife which use the area affected by the proposed subdivision.
 - b. Critical areas. Identify on a plat overlay or sketch map of the proposed subdivision any known critical, significant or "key" wildlife areas, such as big game winter range, waterfowl nesting areas, habitat for rare or endangered species or wetlands.
 - c. Pets/human activity. Describe the expected effects of pets and human activity on wildlife.
 - d. Public access. Describe the effects on public access to public lands, trails, hunting or fishing areas.
 - e. Protective measures. Describe any proposed measures to protect or enhance wildlife habitat or to minimize degradation (e.g., keeping building and streets back from shorelines, setting aside marshland as undeveloped open space).

- f. Discussion of impact; documentation. The developer shall discuss the impact of the proposed development on fish and wildlife with the state department of fish, wildlife and Parks (FWP). With the preliminary plat, the developer shall provide written documentation from FWP that:
 - (1) Verifies that FWP has reviewed the proposed plat;
 - (2) Lists any FWP recommendations; and
 - (3) Outlines any mitigation planned to overcome any adverse impacts.
- 7. Historical features.
 - a. Affected areas. Describe and locate on a plat overlay or sketch map any known or possible historic, paleontological, archaeological, or cultural sites, structures, or objects which may be affected by the proposed subdivision.
 - b. Protective measures. Describe any plans to protect such sites or properties.
 - c. Procedures. Describe procedures to be followed if any historic, paleontological, archaeological, cultural sites, structures or object are found on site during site preparation and construction.
 - d. Discussion of impact; documentation. The developer shall discuss the impact of the proposed development on any historic features, and the need for inventory, study and/or preservation with the state historic preservation office (SHPO). The developer shall provide written documentation from SHPO that:
 - (1) Verifies that SHPO has reviewed the proposed plat;
 - (2) Lists any SHPO recommendations;
 - (3) Outlines any plans for inventory, study, and/or preservation; and
 - (4) Describes any mitigation planned to overcome any adverse impacts.
 - e. Preparation of information. Information on historical sites shall be prepared by a qualified professional, including persons with a professional or educational background in history, architectural history, archaeology, art history, historic preservation, anthropology and cultural resource management.
- 8. Agriculture.
 - a. Number of acres in production and type of production.
 - b. Agricultural operations in the vicinity, and other uses of land in the general vicinity.
 - c. The productivity of the land.
 - d. Whether or not the property is part of a viable farm unit, and whether the property was under production during the last regular season.
 - e. What measures will be taken, if any, to control family pets.
 - f. Fencing of agricultural land. Describe any existing fence lines around the subdivision boundary which protect agricultural lands under an ownership other than of the developer, and describe any measure which will be taken to

ensure that the owners of the subdivision will share with the owner of the agricultural lands in the continued maintenance of the fence.

9. Agricultural water user facilities.
 - a. Type, description, ownership and users of facilities.
 - b. Written documentation demonstrating active use of facilities. If a facility is not being actively used, include a written plan for abandonment.
 - c. Describe any proposed realignment. All realignments must comply with all relevant requirements of state law.
10. Water and sewer. Provide an engineering design report and/or other documentation demonstrating that adequate water distribution systems and capacity, and sewage collection and disposal systems and capacity, exists to serve the proposed subdivision.
11. Stormwater management. A stormwater management plan shall be submitted with the preliminary plat. A system shall be designed to remove solids, silt, oils, grease and other pollutants from the runoff from the private and public streets and all lots, including:
 - a. The plan shall depict the retention/detention basin locations, and locate and provide easements for adequate drainageways within the subdivision to transport runoff to the stormwater receiving channel. Stormwater receiving channels shall be clearly identified for all ponds.
 - b. The plan shall include sufficient site grading and elevation information (particularly for the basin sites, drainageways and lot finished grades), typical stormwater retention/detention basin and discharge structure details, basin sizing calculations, and a stormwater maintenance plan.
 - c. Any necessary stormwater easements.
12. Streets, roads and alleys.
 - a. Description. Describe any proposed new public or private streets, roads or alley, or substantial improvements of existing public or private streets, roads or alleys. The developer shall demonstrate that the land to be subdivided has access onto a legal street.
 - b. Access to arterial. Discuss whether any of the individual lots or tracts have access directly to arterial streets or roads, and if so, the reason access was not provided by means of a street within the subdivision and how the access complies with section 38.400.090.
 - c. Modification of existing streets, roads or alleys. Explain any proposed closure or modification of existing streets, roads or alleys.
 - d. Dust. Describe provisions considered for dust control on alleys.
 - e. Pollution and erosion. Explain how street, road and alley maintenance will be provided to meet the department of environmental quality guidelines for prevention of water pollution and erosion.

- f. Traffic generation. Discuss how much daily traffic will be generated on existing local and neighborhood streets, roads and alleys, when the subdivision is fully developed, and provide the following information:
- (1) The report format shall be as follows:
 - (a) Trip generation, using the Institute of Transportation Engineers Trip Generation Manual;
 - (b) Trip distribution;
 - (c) Traffic assignment;
 - (d) Capacity analysis;
 - (e) Evaluation; and
 - (f) Recommended access plan, including access points, modifications and any mitigation techniques.
 - (2) The report shall include the following information:
 - (a) Land use and trip generation in the form of a table of each type of land use, the number of units or square footage, as appropriate, the trip rates used (daily and peak) and resulting trip generation.
 - (b) Traffic graphics, which show:
 - (i) A.M. peak hour site traffic;
 - (ii) P.M. peak hour site traffic;
 - (iii) A.M. peak hour total traffic;
 - (iv) P.M. peak hour total traffic;
 - (v) Total daily traffic (with site-generated traffic shown separately).
 - (c) A.M. and P.M. capacity analysis with an A.M. and P.M. peak-hour capacity analysis provided for:
 - (i) All major drive accesses that intersect collector or arterial streets or roads; and
 - (ii) All arterial-arterial, collector-collector and arterial-collector intersections within one-half mile of the site, or as required by the city engineer during the preapplication review, concept plan review, or informal project review.
 - (d) For two-way stop controlled intersections, analysis of whether the intersection would satisfy signalization warrants if the two-way stop control was removed.
- g. Capacity. Indicate the levels of service (before and after development) of existing and proposed streets and roads, including appropriate intersections, to safely handle any increased traffic. Describe any anticipated increased maintenance that will be necessary due to increased traffic and who will pay the cost of maintenance.

- h. Bicycle and pedestrian pathways, lanes and routes. Describe bicycle and pedestrian pathways, lanes or routes to be developed with the development.
 - i. Traffic calming. Detailed drawings of any proposed traffic calming installations, including locations and turning radius templates.
13. Utilities. The developer shall submit a copy of the subdivision plat to all relevant utility companies. With the preliminary plat, the developer shall provide written documentation of the following:
- a. Affected utilities. Indicate which affected utilities the subdivision plat has been submitted to for review, and include a copy of responses.
 - b. Include a description of:
 - (1) The method of furnishing electric, natural gas, cable TV, internet or telephone service, where provided.
 - (2) Estimated timing of each utility installation.
 - (3) The developer shall provide a written statement from the utility companies that the proposed subdivision can be provided with service.
14. Educational facilities. With the preliminary plat, provide a written statement from the administrator of the appropriate school system indicating whether the increased enrollment can be accommodated by the present personnel and facilities and by the existing school bus system.
15. Land use.
- a. Indicate the proposed use and number of lots or spaces in each:
 - (1) Residential area, single-household;
 - (2) Residential area, multiple-household. Types of multiple-household structures and numbers of each (e.g., duplex, four-plex);
 - (3) Planned unit development (number of units);
 - (4) Condominium (number of units);
 - (5) Manufactured housing community (number of units);
 - (6) Recreational vehicle park;
 - (7) Commercial or industrial; and
 - (8) Other (please describe).
16. Parks and recreation facilities. The following information shall be provided for all land used to meet park land dedication requirements:
- a. Park plan. A park plan, including:
 - (1) Site plan for the entire property; showing developer installed improvements on the initial park plan and proposed future improvements on the future park plan;
 - (2) Drainage areas;

- (3) Utilities in and adjacent to the property;
- (4) The zoning and ownership for adjacent properties;
- (5) The location of any critical lands (wetlands, riparian areas, streams, etc.) and location of watercourse setbacks;
- (6) Park landscaping plan, prepared by a qualified landscape professional in accordance with section 38.220.100, showing the location and specific types and species of plants, shrubs, trees as well as grass seed mixes;
- (7) General description of land, including size, terrain, details of location and history, and proposed activities;
- (8) Trail design and construction showing compliance with adopted city standards and trail classifications;
- (9) The requirement for approval of the final park plan by the review authority with a recommendation from the city recreation and parks advisory board prior to any site work;
- (10) The requirement for a preconstruction meeting prior to any site work;
- (11) Appropriate sections from the design guidelines for city parks;
- (12) Cost estimate and installation responsibility for all improvements;
- (13) If playground equipment will be provided, information including the manufacturer, installation data and specifications, installer, type of fall zone surfacing and age group intended for use shall be provided; and
- (14) Soils information and analysis.

b. Park maintenance.

- (1) Maintenance information, including levels of maintenance, a maintenance schedule, and responsible parties;
- (2) Weed control plan, including responsible parties; and
- (3) Plan for garbage collection, snow removal and leaf removal including responsible parties.

c. Irrigation information.

- (1) An irrigation system map generally showing the locations and types of lines, including depth, water source, heads, electric valves, quick couplers, drains and control box; and
- (2) If a well will be used for irrigation, a certified well log shall be submitted showing depth of well, gpm, pump type and size, voltage, water rights, etc.

d. Phasing. If improvements will be phased, a phasing plan shall be provided including proposed financing methods and responsibilities.

17. Neighborhood center plan. A neighborhood center plan shall be prepared and submitted for all subdivisions containing a neighborhood center.

18. Lighting plan. The following subdivision lighting information shall be submitted for all new subdivisions:
- a. For subdivision applications where lighting is required or proposed, lighting plans shall be submitted to the city for review and approval, and shall include:
 - (1) Isofootcandle plots for individual fixture installations, and ten-foot by ten-foot illuminance-grid plots for multifixture installations, which demonstrate compliance with the intensity and uniformity requirements as set forth in this chapter.
 - (2) Description of the proposed equipment, including fixture manufacturer's cutsheets, photometrics, glare reduction devices, lamps, on/off control devices, mounting heights, pole foundation details and mounting methods.
 - (3) The lighting plan shall be prepared, and certified for compliance with the city's design requirements and illumination standards, by a qualified lighting professional. Qualified lighting professionals include electrical engineers, architects, lighting designers and manufacturers representatives.
 - (4) Lighting calculations shall include only the illuminated areas; areas occupied by buildings or other nonlighted areas shall be excluded from calculations.
 - b. When requested by the city, the applicant shall also submit a visual-impact plan that demonstrates appropriate steps have been taken to mitigate on-site and off-site glare and to retain the city's character.
 - c. Post-approval alterations to lighting plans or intended substitutions for approved lighting shall only be made after city review and approval.

19. Miscellaneous.

- a. Public lands. Describe how the subdivision will affect access to any public lands. Where public lands are adjacent to or within 200 feet of the proposed development, describe present and anticipated uses for those lands (e.g., open space, recreation, etc.), and how public access will be preserved/enhanced.
- b. Hazards. Describe any health or safety hazards on or near the subdivision, such as mining activity or potential subsidence, high pressure gas lines, dilapidated structures or high voltage power lines. Any such conditions should be accurately described and their origin and location identified. List any provisions that will be made to mitigate these hazards. Also describe any on-site or off-site land uses creating a nuisance.

20. Affordable housing. Describe how the subdivision will satisfy the requirements of division 38.380. The description shall be of adequate detail to clearly identify those lots designated as subject to division 38.380 compliance requirements and to make the obligations placed on the affected lots readily understandable.

- a. On all lots intended to be used to satisfy the requirements of division 38.380, the allowable building envelope shall be depicted.

(Ord. No. 1645, § 18.78.060, 8-15-2005; Ord. No. 1693, § 28(18.78.060), 2-20-2007; Ord. No. 1709, § 15(18.78.060), 7-16-2007; Ord. No. 1755, § 2, 1-20-2009; Ord. No. 1761, exh. Q(18.78.060), 7-6-2009; Ord. No. 1796, § 8, 1-3-2011; Ord. No. 1828, § 112, 9-10-2012)

Sec. 38.220.070. - Final plat. (38.41.070)

A. A final subdivision plat may not be approved by the city unless all certificates, with the exception of the director of public service and the county clerk and recorder, have been complied with, signed and notarized and all subdivision regulations and conditions of preliminary plat approval have been met. A final subdivision plat may not be filed with the county clerk and recorder unless all certificates, with the exception of the county clerk and recorder, have been complied with, signed and notarized. This shall include the certification by the county treasurer that no real property taxes and special assessments assessed and levied on the land to be subdivided are delinquent.

1. A final subdivision plat may not be approved by the city commission or filed by the county clerk and recorder unless it complies with the uniform standards for final subdivision plats as established in the Administrative Rule of Montana.
2. A letter from the city engineer shall be submitted to the planning department with the final plat application, where applicable, certifying that the following documents have been received:
 - a. As-built drawings, i.e., copies of final plans, profiles, grades and specifications for public improvements, including a complete grading and drainage plan.
 - b. Copy of the state highway access or encroachment permit where a street created by the plat will intersect with a state highway.
3. Noxious weed MOU. Prior to final plat approval, a memorandum of understanding shall be entered into by the weed control district and the

developer. The memorandum of understanding shall be signed by the district and the developer prior to final plat approval, and a copy of the signed document shall be submitted to the planning department with the application for final plat approval.

4. Final park plan. For all land used to meet park land dedication requirements, a final park plan shall be submitted to the city for review and approval prior to final plat. The final park plan shall include all of the information listed in section 38.220.060.A.16 and shall include evidence of compliance with the installation requirements of division 38.270.
5. Irrigation system as-builts. The developer shall provide irrigation system as-builts, for all irrigation installed in public rights-of-way and/or land used to meet park land dedication requirements, once the irrigation system is installed. The as-builts shall include the exact locations and type of lines, including accurate depth, water source, heads, electric valves, quick couplers, drains and control box.
6. Affordable housing. The developer shall provide a description of how the subdivision has complied with division 38.380. The description shall be of adequate detail to clearly identify those lots designated as subject to division 38.380 compliance requirements and to make the obligations placed on the affected lots readily understandable.

(Ord. No. 1645, § 18.78.070, 8-15-2005; Ord. No. 1693, § 28(18.78.070), 2-20-2007; Ord. No. 1709, § 15(18.78.070), 7-16-2007; Ord. No. 1761, exh. Q(18.78.070), 7-6-2009; Ord. No. 1828, § 113, 9-10-2012)

Sec. 38.220.080. - Site plan submittal requirements. (38.41.080)

A. Applications for all site plan approvals shall be submitted to the planning department on forms provided by the planning director. The site plan application shall be accompanied by the appropriate fee and development plans showing sufficient information for the approval authority to determine whether the proposed development will meet the development requirements of the city.

1. General information.

a. Complete, signed application including the following:

- (1) Name of project/development;
- (2) Location of project/development by street address and legal description;
- (3) Name and mailing address of developer and owner;
- (4) Name and mailing address of engineer/architect, landscape architect and/or planner;
- (5) Listing of specific land uses being proposed; and
- (6) A statement signed by the owner of the proposed development of their intent to comply with the requirements of this Code and any conditions considered necessary by the approval body;

b. Location map, including area within one-half mile of the site;

c. List of names and addresses of property owners according to division 38.220 of this chapter;

- d. For all developments, excluding sketch and reuse/further development, a construction route map shall be provided showing how materials and heavy equipment will travel to and from the site. The route shall avoid, where possible, local or minor collector streets or streets where construction traffic would disrupt neighborhood residential character or pose a threat to public health and safety.
2. Site plan information. The following information is required whenever the requested information pertains to zoning or other regulatory requirements of this chapter, existing conditions on-site or conditions on-site which would result from the proposed development:
 - a. Boundary line of property with dimensions;
 - b. Date of plan preparation and changes;
 - c. North point indicator;
 - d. Suggested scale of one inch to 20 feet, but not less than one inch to 100 feet;
 - e. Parcel and site coverage information:
 - (1) Parcel size in gross acres and square feet;
 - (2) Estimated total floor area and estimated ratio of floor area to lot size (floor area ratio, FAR), with a breakdown by land use; and
 - (3) Location, percentage of parcel and total site, and square footage for the following:
 - (a) Existing and proposed buildings and structures;
 - (b) Driveway and parking;
 - (c) Open space and/or landscaped area, recreational use areas, public and semipublic land, parks, school sites, etc.; and
 - (d) Public street right-of-way;
 - f. Total number, type and density per type of dwelling units, and total net and gross residential density and density per residential parcel;
 - g. Location, identification and dimension of the following existing and proposed data, on-site and to a distance of 100 feet (200 feet for PUDs) outside site plan boundary, exclusive of public rights-of-way, unless otherwise stated:
 - (1) Topographic contours at a minimum interval of two feet, or as determined by the planning director;
 - (2) Adjacent streets and street rights-of-way to a distance of 150 feet, except for sites adjacent to major arterial streets where the distances shall be 200 feet;
 - (3) On-site streets and rights-of-way;
 - (4) Ingress and egress points;
 - (5) Traffic flow on-site;

- (6) Traffic flow off-site;
- (7) Utilities and utility rights-of-way or easements:
 - (a) Electric;
 - (b) Natural gas;
 - (c) Telephone, cable TV, and similar utilities;
 - (d) Water; and
 - (e) Sewer (sanitary, treated effluent and storm);
- (8) Surface water, including:
 - (a) Holding ponds, streams and irrigation ditches;
 - (b) Watercourses, water bodies and wetlands;
 - (c) Floodplains as designated on the federal insurance rate map or that may otherwise be identified as lying within a 100-year floodplain through additional floodplain delineation, engineering analysis, topographic survey or other objective and factual basis; and
 - (d) A floodplain analysis report in compliance with article 6 of this chapter if not previously provided with subdivision review;
- (9) Grading and drainage plan, including provisions for on-site retention/detention and water quality improvement facilities as required by the engineering department, or in compliance with any adopted storm drainage ordinance or best management practices manual adopted by the city:
 - (a) All drainageways, streets, arroyos, dry gullies, diversion ditches, spillways, reservoirs, etc., which may be incorporated into the storm drainage system for the property shall be designated:
 - (i) The name of the drainageway (where appropriate);
 - (ii) The downstream conditions (developed, available drainageways, etc.); and
 - (iii) Any downstream restrictions;
- (10) Significant rock outcroppings, slopes of greater than 15 percent or other significant topographic features;
- (11) Sidewalks, walkways, driveways, loading areas and docks, bikeways, including typical details and interrelationships with vehicular circulation system, indicating proposed treatment of points of conflict, a statement requiring lot accesses to be built to the standard contained in this section, the city design standards and specifications policy, and the city modifications to state public works standard specifications;
- (12) Provision for handicapped accessibility, including, but not limited to, wheelchair ramps, parking spaces, handrails and curb cuts, including construction details and the applicant's certification of ADA compliance;

- (13) Fences and walls, including typical details;
 - (14) Exterior signs;
 - (15) Exterior refuse collection areas, including typical details;
 - (16) A site plan, complete with all structures, parking spaces, building entrances, traffic areas (both vehicular and pedestrian), vegetation that might interfere with lighting, and adjacent uses, containing a layout of all proposed fixtures by location and type. The materials required in section 38.220.060.A.18, if not previously provided;
 - (17) Curb, asphalt section and drive approach construction details;
 - (18) Landscaping (detailed plan showing plantings, equipment, and other appropriate information as required in section 38.220.100);
 - (19) Unique natural features, significant wildlife areas and vegetative cover, including existing trees and shrubs having a diameter greater than 2.5 inches, by species;
 - (20) Snow storage areas;
 - (21) Location of city limit boundaries, and boundaries of Gallatin County's Bozeman Area Zoning Jurisdiction, within or near the development;
 - (22) Existing zoning within 200 feet of the site;
 - (23) Historic, cultural and archaeological resources, describe and map any designated historic structures or districts, and archaeological or cultural sites; and
 - (24) Major public facilities, including schools, parks, trails, etc.;
- h. Detailed plan of all parking facilities, including circulation aisles, access drives, bicycle racks, compact spaces, handicapped spaces and motorcycle parking, on-street parking, number of employee and nonemployee parking spaces, existing and proposed, and total square footage of each;
- i. The information required by section 38.220.060.A.12, subject to the following exceptions:
- (1) Such information was previously provided through a subdivision review process; or
 - (2) The provision of such information was waived in writing during subdivision review of the land to be developed; or
 - (3) The provision of such information is waived in writing by the city engineer prior to submittal of a preliminary site plan application; or
 - (4) The application for site plan approval involves the redevelopment of property located within the city's established neighborhood conservation overlay district. In such cases, the city may require the property owner to sign a waiver of right to protest creation of a special improvement district, or other form of agreement, assuring participation, on a fair share, pro-

rata basis, in future improvements to intersections in the vicinity of the development proposal; or

- (5) The application for site plan approval involves the adaptive reuse of an existing building, regardless of its location within the city, or the redevelopment of a property located within one of the city's urban renewal districts. In cases where an existing building or complex of buildings is to be torn down and replaced with a larger building or complex of buildings, the city engineer may require the information described in section 38.220.060.A.12 to evaluate the additional traffic impacts resulting from development of the larger building or complex of buildings;
- j. Building design information (on-site):
 - (1) Building heights and elevations of all exterior walls of the building or structure;
 - (2) Height above mean sea level of the elevation of the lowest floor and location of lot outfall when the structure is proposed to be located in a floodway or floodplain area;
 - (3) Floor plans depicting location and dimensions of all proposed uses and activities; and
 - (4) All on-site utilities and mechanical equipment;
- k. Description and mapping of soils existing on the site, accompanied by analysis as to the suitability of such soils for the intended construction and proposed landscaping;
- l. Temporary facilities plan showing the location of all temporary model homes, sales offices and/or construction facilities, including temporary signs and parking facilities;
- m. Unless already provided through a previous subdivision review, a noxious weed control plan complying with section 38.220.050; and
- n. Drafts of applicable supplementary documents as set forth in division 38.220 of this chapter;
- o. The information necessary to complete the determination of density change and park land provision required by section 38.420.020.B, unless such information was previously determined by the city to be inapplicable and written confirmation is provided to the applicant prior to submittal of a preliminary site plan application. If a new park will be created by the development the park plan materials of section 38.220.060.A.16, shall be provided;
- p. Affordable housing. Describe how the site plan will satisfy any requirements of division 38.380 which have either been established for that lot through the subdivision process or if no subdivision has previously occurred are applicable to a site plan. The description shall be of adequate detail to clearly identify those lots and dwellings designated as subject to division 38.380 compliance

requirements and to make the obligations placed on the affected lots and dwellings readily understandable;

q. Phased site plans:

- (1) A phasing plan showing the location of phase boundaries and that each phase will be fully functional if subsequent phases are not completed;
- (2) A utilities plan showing that each phase will be able to be fully functional if subsequent phases are not completed;
- (3) A revegetation and grading plan showing how disturbed areas will be revegetated to control weeds and site grading and drainage control will be maintained as phased construction proceeds;
- (4) If the applicant intends for multiple phases to be under construction simultaneously, evidence of financial commitment from the project lender for the completion of all phases to be undertaken at once. Evidence of financial commitment may be provided at the time the building permits for the multiple phases are sought.

(Ord. No. 1645, § 18.78.080, 8-15-2005; Ord. No. 1693, § 28(18.78.080), 2-20-2007; Ord. No. 1709, § 15(18.78.080), 7-16-2007; Ord. No. 1755, § 3, 1-20-2009; Ord. No. 1761, exh. Q(18.78.080), 7-6-2009; Ord. No. 1769, § 18, 12-28-2009; Ord. No. 1828, § 114, 9-10-2012)

Sec. 38.220.090. - Certificates of appropriateness; additional application requirements, review procedures and review criteria. (38.41.090)

A. Submittal requirements for certificates of appropriateness. All development proposals requiring certificates of appropriateness (i.e., located in a neighborhood conservation or entryway corridor overlay districts) shall submit the following information in addition to any sketch plan, site plan or special development submittal requirements for the proposal:

1. Neighborhood conservation overlay district. Certain information shall be provided to the appropriate review authority to review prior to granting or denying a certificate of appropriateness. The extent of documentation to be submitted on any project shall be dictated by the scope of the planned alteration and the information reasonably necessary for the appropriate review authority to make its determination. At a minimum, the following items shall be included in the submission:

- a. Completed application on form provided by the planning department;
- b. One current picture of each elevation of each structure planned to be altered and such additional pictures of the specific elements of the structure or property to be altered that will clearly express the nature and extent of change planned. Except when otherwise recommended, no more than eight pictures should be submitted and all pictures shall be mounted on letter-size sheets and clearly annotated with the property address, elevation direction (N, S, E, W) and relevant information;
- c. Sketch plan or site plan information, as per section 38.230.050 or 38.230.060;

- d. Historical information, including available data such as pictures, plans, authenticated verbal records and similar research documentation that may be relevant to the planned alteration;
 - e. Materials and color schemes to be used;
 - f. Plans, sketches, pictures, specifications and other data that will clearly express the applicant's proposed alterations;
 - g. A schedule of planned actions that will lead to the completed alterations;
 - h. Such other information as may be suggested by the planning department;
 - i. It is further suggested that the applicant seek comments from the neighborhood or area; and
 - j. Description of any applicant-requested deviation and a narrative explanation as to how the requested deviation will encourage restoration and rehabilitation activity that will contribute to the overall historic character of the community.
2. Entryway overlay district.
- a. Depending on the complexity of development, either sketch plans or site plans will be required as specified in part 1 of division 38.220.
 - b. If the proposal includes an application for a deviation as outlined in section 38.250.050, the application for deviation shall be accompanied by written and graphic material sufficient to illustrate the conditions that the modified standards will produce, so as to enable the review authority to make the determination that the deviation will produce an environment, landscape quality and character superior to that produced by the existing standards, and will be consistent with the intent and purpose of division 38.340 of this chapter.

(Ord. No. 1645, § 18.78.090, 8-15-2005; Ord. No. 1693, § 28(18.78.090), 2-20-2007; Ord. No. 1709, § 15(18.78.090), 7-16-2007; Ord. No. 1761, exh. Q(18.78.090), 7-6-2009; Ord. No. 1828, § 115, 9-10-2012)

Sec. 38.220.100. - Submittal requirements for landscape plans. (38.41.100)

- A. These landscape regulations apply to a lot or site subject to plan review and approval outlined in division 38.230 of this chapter, a separate landscape plan shall be submitted as part of the site plan application unless the required landscape information can be included in a clear and uncluttered manner on a site plan with a scale where one inch equals 20 feet.
- B. Landscape plan format. The landscape plan submittal shall include:
 - 1. Suggested scale of one inch equals 20 feet but not less than one inch equals 100 feet; and
 - 2. Standard drawing sheet of a size not to exceed 24 by 36 inches. A plan which cannot be drawn entirely on a 24- by 36-inch sheet must be drawn on two or more sheets, with match lines.
- C. Preparation of landscape plan. Landscape plans shall be prepared and certified by:

1. A state-registered landscape architect;
 2. An individual with a degree in landscape design and two years of professional design experience in the state; or
 3. An individual with a degree in a related field (such as horticulture, botany, plant science, etc.) and at least five years of professional landscape design experience, of which two years have been in the state.
- D. Contents of landscape plan. A landscape plan required pursuant to this chapter shall contain the following information:
1. Date, scale, north arrow, and the names, addresses, and telephone numbers of both the property owner and the person preparing the plan;
 2. Location of existing boundary lines and dimensions of the lot;
 3. Approximate centerlines of existing watercourses, required watercourse setbacks, and the location of any 100-year floodplain; the approximate location of significant drainage features; and the location and size of existing and proposed streets and alleys, utility easements, utility lines, driveways and sidewalks on the lot and/or adjacent to the lot;
 4. Project name, street address, and lot and block description;
 5. Location, height and material of proposed screening and fencing (with berms to be delineated by one foot contours);
 6. Locations and dimensions of proposed landscape buffer strips, including watercourse buffer strips;
 7. Complete landscape legend providing a description of plant materials shown on the plan, including typical symbols, names (common and botanical name), locations, quantities, container or caliper sizes at installation, heights, spread and spacing. The location and type of all existing trees on the lot over six inches in caliper must be specifically indicated;
 8. Complete illustration of landscaping and screening to be provided in or near off-street parking and loading areas, including information as to the amount (in square feet) of landscape area to be provided internal to parking areas and the number and location of required off-street parking and loading spaces;
 9. An indication of how existing healthy trees (if any) are to be retained and protected from damage during construction;
 10. Size, height, location and material of proposed seating, lighting, planters, sculptures, and water features;
 11. A description of proposed watering methods;
 12. Location of street vision triangles on the lot (if applicable);
 13. Tabulation of "points" earned by the plan (see section 38.550.060);
 14. Designated snow removal storage areas;
 15. Location of pavement, curbs, sidewalks and gutters;

16. Show location of existing and/or proposed drainage facilities which are to be used for drainage control;
17. Existing and proposed grade;
18. Size of plantings at the time of installation and at maturity;
19. Areas to be irrigated;
20. Planting plan for watercourse buffers, per section 38.410.100, if not previously provided through subdivision review; and
21. Front and side elevations of buildings, fences and walls with height dimensions if not otherwise provided by the application. Show open stairways and other projections from exterior building walls.

(Ord. No. 1645, § 18.78.100, 8-15-2005; Ord. No. 1693, § 28(18.78.100), 2-20-2007; Ord. No. 1709, § 15(18.78.100), 7-16-2007; Ord. No. 1761, exh. Q(18.78.100), 7-6-2009)

Sec. 38.220.110. - Sketch plan submittal requirements. (38.41.110)

A sketch plan shall be drawn to scale and in sufficient detail to demonstrate compliance with the requirements of this chapter. Sketch plans shall be oriented with north at the top of the page and shall also show site boundaries, street and alley frontages with names, and location of all structures with distances to the nearest foot between buildings and from buildings to property lines.

(Ord. No. 1645, § 18.78.110, 8-15-2005; Ord. No. 1693, § 28(18.78.110), 2-20-2007; Ord. No. 1709, § 15(18.78.110), 7-16-2007; Ord. No. 1761, exh. Q(18.78.110), 7-6-2009)

Sec. 38.220.120. - Planned unit development submittal requirements. (38.41.120)

A. The following material shall be submitted for review with each planned unit development.

1. Submittal requirements for preapplications. The following information and data shall be submitted for preapplication review. The number of copies required shall be determined by the planning department:
 - a. Data regarding site conditions, land characteristics, available community facilities and utilities and other related general information about adjacent land uses and the uses of land within one-half mile of the subject parcel of land;
 - b. Conceptual (sketch) drawing showing the proposed location of the uses of land, major streets and other significant features on the site and within one-half mile of the site; and
 - c. A computation table showing the site's proposed land use allocations by location and as a percent of total site area.
2. Submittal requirements for preliminary plans. The following information and data shall be submitted for preliminary plan review. The number of copies required shall be determined by the planning department:
 - a. Document requirements. The following information shall be presented in an 8½- by 11-inch vertically bound document. The document shall be bound so that it will open and lie flat for reviewing and organized in the following order:

- (1) Application forms;
 - (2) A list of names of all general and limited partners and/or officers and directors of the corporation involved as either applicants or owners of the planned unit development;
 - (3) A statement of planning objectives, including:
 - (a) Statement of applicable city land use policies and objectives achieved by the proposed plan and how it furthers the implementation of the city growth policy;
 - (b) Statement of:
 - (i) Proposed ownership of open space areas; and
 - (ii) Applicant's intentions with regard to future ownership of all or portions of the planned unit development;
 - (c) Estimate of number of employees for business, commercial and industrial uses;
 - (d) Description of rationale behind the assumptions and choices made by the applicant;
 - (e) Where deviations from the requirements of this chapter are proposed, the applicant shall submit evidence of successful completion of the applicable community design objectives and criteria of section 38.430.090. The applicant shall submit written explanation for each of the applicable objectives or criteria as to how the plan does or does not address the objective or criterion. The planning director may require, or the applicant may choose to submit, evidence that is beyond what is required in that section. Any element of the proposal that varies from the criterion shall be described;
 - (f) Detailed description of how conflicts between land uses of different character are being avoided or mitigated; and
 - (g) Statement of design methods to reduce energy consumption, (e.g., home/business utilities, transportation fuel, waste recycling);
 - (4) A development schedule indicating the approximate date when construction of the planned unit development, or stages of the same, can be expected to begin and be completed, including the proposed phasing of construction of public improvements and recreational and common space areas;
 - (5) One reduced version of all preliminary plan and supplemental plan maps and graphic illustrations at 8½- by 11-inches or 11- by 17-inches size.
- b. Site plan requirements. A site plan of the proposed development drawn at a scale of not less than one inch equals 100 feet, composed of one or more sheets with an outer dimension of 24 by 36 inches, showing the information required for site plans in section 38.220.080 plus the following additional information:

- (1) Notations of proposed ownership, public or private, should be included where appropriate;
 - (2) The proposed treatment of the perimeter of the planned unit development, including materials and techniques used, such as screening, fences, walls and other landscaping; and
 - (3) Attorney's or owner's certification of ownership.
- c. Supplemental plan requirements.
- (1) Viewsheds.
 - (a) Looking onto and across the site from areas around the site, describe and map the views and vistas from adjacent properties that may be blocked or impaired by development of the site;
 - (b) Describe and map areas of high visibility on the site as seen from adjacent off-site locations;
 - (2) Street cross sections if different from city standards. Street cross section schematics shall be submitted for each general category of street, including:
 - (a) The proposed width;
 - (b) Treatment of curbs and gutters, or other stormwater control system if other than curb and gutter is proposed;
 - (c) Sidewalk systems; and
 - (d) Bikeway systems, where alternatives to the design criteria and standards of the city are proposed;
 - (3) Physiographic data, including the following:
 - (a) A description of the hydrologic conditions of the site with analysis of water table fluctuation and a statement of site suitability for intended construction and proposed landscaping. The description of the hydrologic conditions shall include depth to groundwater measurements taken May 15 through September 15;
 - (i) An alternative to the actual measurement of water table depth may be offered provided that such alternative includes a detailed soil profile, including a detailed description of the soil which follows The National Cooperative Soil Survey Field Book for describing soils and which provides good and sufficient evidence to establish the presence and depth of a seasonal water table, a land form position or location, or other physiographic data which are sufficient to establish the minimum depth to groundwater. Some soils are not easily profiled to establish an off-season high water table, such as those underlain by sand or gravel, those high in organic matter and those with a high lime content. Physical monitoring of these types of soils may be necessary;

- (b) Locate and identify the ownership of existing wells or well sites within 400 feet of the site;
 - (4) Preliminary subdivision plat. If the project involves or requires platting, a preliminary subdivision plat, subject to the requirements of this chapter relative to subdivisions, shall be submitted;
 - (5) Traffic impact analysis. Notwithstanding the waiver provisions of section 38.220.080.A.2.i, the city may require that a traffic impact analysis be prepared based upon the proposed development. The analysis shall include provisions of the approved development guidelines, and shall address impacts upon surrounding land uses. The city may require the traffic impact analysis to include the information in section 38.220.060.A.12. If a traffic impact analysis has been submitted as part of a concurrent subdivision review, that analysis shall meet this requirement;
 - (6) Additional studies and plans. If the development's compliance with the community design objectives and criteria is under question, the review authority may require additional impact studies or other plans as deemed necessary for providing thorough consideration of the proposed planned unit development;
 - (7) A proposed draft of a legal instrument containing the creation of a property owner's association sufficient to meet the requirements of section 38.220.310 shall be submitted with the preliminary plan application.
3. Submittal requirements for final plans.
- a. A completed and signed application form;
 - b. A list of names of all general and limited partners and/or officers and directors of the corporation involved as either applicants or owners of the planned unit development;
 - c. Site plan submittal requirements.
 - (1) A final plan site plan shall be submitted on a 24- by 36-inch sheet at the same scale as the approved preliminary plan. If a different scale is requested or required, a copy of the approved preliminary plan shall be submitted that has been enlarged or reduced to equal the scale of the final plan. However, only the scales permitted for the preliminary plans shall be permitted for final plans;
 - (2) The final plan site plan shall show the following information:
 - (a) Land use data (same information as required on the preliminary site plan);
 - (b) Lot lines, easements, public rights-of-way as per subdivision plat;
 - (c) Attorney's or owner's certification of ownership;
 - (d) Planning director certification of approval of the site plan and its conformance with the preliminary plan; and

(e) Owner's certification of acceptance of conditions and restrictions as set forth on the site plan;

d. Supplemental plans.

- (1) Final landscape plan. A final landscape plan consistent with the conditions and restrictions of the approved preliminary plan shall be submitted. It shall also be consistent with the division 38.550 of this chapter, except that any stated conditions and restrictions of the preliminary plan approval shall supersede the provisions of division 38.550 of this chapter;
- (2) Final subdivision plat. An official final subdivision plat of the site must accompany the final planned unit development plan when applicable. City approval of the final subdivision plat shall be required before issuance of building permits;
- (3) Final utility plans. Prior to submission of the final plan to the DRC and ADR staff, engineering plans and specifications for sewer, water, street improvements and other public improvements, and an executed improvements agreement in proper form providing for the installation of such improvements, must be submitted to and approved by the city; and
- (4) Open space maintenance plan. A plan for the maintenance of open space, meeting the requirements of section 38.220.320, shall be submitted with an application for final plan approval. Open space shown on the approved final plan shall not be used for the construction of any structures not shown on the final plan.

(Ord. No. 1645, § 18.78.120, 8-15-2005; Ord. No. 1693, § 28(18.78.120), 2-20-2007; Ord. No. 1709, § 15(18.78.120), 7-16-2007; Ord. No. 1761, exh. Q(18.78.120), 7-6-2009; Ord. No. 1828, § 116, 9-10-2012)

**Sec. 38.220.130. - Submittal materials for regulated activities in wetlands.
(38.41.130)**

- A. All parties applying for activity permits proposing action affecting federal, state or city regulated wetlands, watercourses and/or buffers within the city limits shall submit the following information to the water review board:
1. A wetland and watercourse delineation report must be submitted to the city for all projects, if aquatic resources are present. If no aquatic resources are present, a letter shall be submitted to the city stating that there are no water resources within the subject property.
 - a. This wetland and watercourse delineation report shall include, but not be limited to, the following:
 - (1) Wetland and watercourse descriptions;
 - (2) Functional assessment, as determined by a state-accepted functional assessment method, i.e., Montana Department of Transportation (Berglund and McEldowney 2008) or Montana Department of Environmental Quality (Apfelbeck and Farris 2005);
 - (3) Wetland types, as determined by a state-accepted functional assessment method (i.e., Cowardin et al 1979);
 - (4) Wetland acreages (by a licensed surveyor);
 - (5) Maps with property boundaries, wetland and watercourse boundaries and acreages; and
 - (6) Wetland data forms (U.S. Army Corps of Engineers data forms).
 2. If activities are planned in and/or adjacent to aquatic resources the following information is required:
 - a. A site plan which shows the property boundary; delineated wetland and watercourse boundaries; buffer boundaries; and all existing and proposed structures, roads, trails, and easements. The site plan will include a table of existing wetland functional ratings and acreage, required buffers and acreage, and linear feet of all watercourses and ditches.
 - (1) All direct impacts to wetlands, watercourses, and buffers shall be highlighted and summarized in a table on the site plan. The water resource and buffer summary table shall include wetland/watercourse identification number; corresponding buffer width and acreage; total site, wetland, watercourse, ditch, and buffer acreages; jurisdictional status; impacts to all water resources and buffers; and, mitigation types and acreages.
 - (2) All indirect impacts (e.g., shading from boardwalks or public utility well drawdown) shall be summarized in the document.
 - b. Include a map with all proposed mitigation areas and their required buffers. The map will include a table of mitigation wetland type and acreage and required buffers and acreage. Describe the functional unit gain of the

wetland mitigation (as determined by a state-accepted functional assessment method).

- c. The source, type and method of transport and disposal of any fill material to be used, and certification that the placement of fill material will not violate any applicable state or federal statutes and regulations as listed in section 38.220.020.
 - d. The names and addresses of all property owners within 200 feet of the subject property. The names and addresses shall also be provided on self-adhesive mailing labels.
 - e. Copies of the following:
 - (1) Any Clean Water Act (CWA) section 404 and 401 permits;
 - (2) Any MT 301 permits;
 - (3) Any floodplain determinations for the proposed site known to the applicant;
 - (4) Any other applications, state or federal, for wetlands permits regarding the proposed site;
 - (5) Any U.S. Army Corps of Engineers jurisdictional determinations regarding wetlands on the proposed and adjacent site; and
 - (6) If relevant, any MT state joint applications for the proposed project site.
 - f. A completed wetland review checklist.
3. If in the preparation or review of the required submittal materials it is determined that there are unavoidable impacts to wetlands and/or watercourses that will require a Federal Clean Water Act permit, then the following information will be submitted to the city for all federal jurisdictional and city-regulated wetlands (see section 38.700.210 for definition) in a compensatory mitigation report:
- a. The descriptive portion of the compensatory mitigation report shall include, at a minimum:
 - (1) The name and contact information of the applicant; the name, qualifications, and contact information for the primary author of the compensatory mitigation report; a description of the proposal; summary of the direct and indirect impacts and proposed mitigation concept; identification of all the local, state, and federal wetland/stream-related permit required for the project; and, a vicinity map for the project.
 - (2) Description of the existing wetland, watercourse and buffer areas that will be impacted including area based on professional surveys; dominant vegetation; and functional assessments and wetland ratings for the entire wetland and the portions proposed to be impacted.
 - (3) An assessment of the potential changes in wetland hydroperiod for the proposed project and how the design has been modified to avoid, minimize or reduce impacts to the wetland hydroperiod.

- (4) A description of the proposed conceptual mitigation actions for wetland, watercourse and buffer areas. Provide specifications (including buffers) for all proposed mitigation for wetland/watercourse/buffer impacts. Include a map with all proposed mitigation areas and their required buffers.
 - (5) An assessment of existing conditions in the zone of the proposed mitigation including vegetation community structure and composition, existing hydroperiod, existing soil conditions, and existing wetland functions.
 - (6) Provide field data that was collected to document the existing conditions of the proposed mitigation sites and on which the future hydrologic and soil conditions of the mitigation wetlands are based (e.g., hydrologic conditions: piezometer data, staff/crest gage data, hydrologic modeling, visual observations; soil conditions: data from hand-dug or mechanical soil pits or boring results). Do not rely on soil survey data for establishing existing conditions.
 - (7) A planting schedule by proposed community type and hydrologic regime, size and type of plant material to be installed, spacing of plants, "typical" clustering patterns, total number of each species by community type, timing of installation, nutrient requirements, watering schedule, weed control, and where appropriate measures to protect plants from destruction. Native species shall comprise 80 percent of the plants installed or seeded within the mitigation site.
 - (8) The mitigation monitoring plan should include a period of not less than three years, and establish the responsibility for long-term removal of invasive vegetation.
 - (9) Wetland mitigation performance criteria (measurable standards reflective of expected development goals established for each year after the mitigation site is established, i.e., "At the end of three years there will be an 80 percent survival of the planted shrubs and trees.") for mitigation wetlands and buffers, a monitoring schedule, reporting requirements to the city, and maintenance schedule and actions for each year of monitoring.
 - (10) Contingency plans which clearly define course of action or corrective measures needed if performance criteria are not met.
- b. The scaled plan sheets for the compensatory mitigation must contain, at a minimum:
- (1) Existing wetland and buffer surveyed edges; proposed areas of wetland and buffer impacts; and, location of proposed wetland and buffer compensation action.
 - (2) Surveyed topography at one- to two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed in

the compensation area. Provide existing and proposed mitigation design cross section for the wetland and/or buffer compensation areas.

(3) Required wetland buffers for existing wetlands and proposed mitigation areas;

c. A discussion of ongoing management practices that will protect and maintain the nonimpacted and mitigation wetland, watercourse and buffer areas in perpetuity.

(Ord. No. 1645, § 18.78.130, 8-15-2005; Ord. No. 1693, § 28(18.78.130), 2-20-2007; Ord. No. 1709, § 15(18.78.130), 7-16-2007; Ord. No. 1761, exh. Q(18.78.130), 7-6-2009)

Sec. 38.220.140. - Submittal materials for appeals of administrative project decisions. (38.41.140)

A. All appeals of administrative project decisions shall include:

1. Name and address of the appellant;
2. The legal description and street address of the property involved in the appeal;
3. A description of the project that is the subject of the appeal;
4. Evidence that the appellant is an aggrieved person as defined in section 38.700.020;
5. List of names and addresses of property owners within 150 feet of the site, using the last declared county real estate tax records;
6. Stamped, unsealed envelopes addressed with names of above property owners;
7. Required appeal filing fee; and
8. The specific grounds and allegations for the appeal, and evidence necessary to support and justify a decision other than as determined by the administrative review authority.

(Ord. No. 1645, § 18.78.140, 8-15-2005; Ord. No. 1693, § 28(18.78.140), 2-20-2007; Ord. No. 1709, § 15(18.78.140), 7-16-2007; Ord. No. 1761, exh. Q(18.78.140), 7-6-2009; Ord. No. 1828, § 117, 9-10-2012)

Sec. 38.220.150. - Administrative interpretation appeals. (38.41.150)

A. All appeals of administrative interpretations shall include:

1. Name and address of the applicant;
2. The legal description and street address of the property, if any, involved in the appeal;
3. A description of the property, if any, that is the subject of the interpretation appeal including:
 - a. A site plan drawn to scale showing the property dimensions, grading, landscaping and location of utilities, as applicable;
 - b. Location of all existing and proposed buildings; and
 - c. Drive accesses, driveways, access roads, parking spaces, off-street loading areas and sidewalks as applicable;

4. The names and addresses of the owners of the property and any other persons having a legal interest therein;
5. List of names and addresses of property owners within 150 feet of the site, using the last declared county real estate tax records;
6. Stamped, unsealed envelopes addressed with names of the above property owners;
7. Required filing fee; and
8. Evidence to prove that the decision or action of the official for which an appeal is made was incorrect or in violation of the terms of this chapter.

(Ord. No. 1645, § 18.78.150, 8-15-2005; Ord. No. 1693, § 28(18.78.150), 2-20-2007; Ord. No. 1709, § 15(18.78.150), 7-16-2007; Ord. No. 1761, exh. Q(18.78.150), 7-6-2009)

Sec. 38.220.160. - Submittal materials for variances. (38.41.160)

- A. An application for a variance shall be accompanied by a development plan showing such information as the planning director may reasonably require for purposes of this chapter. The plans shall contain sufficient information for the commission to make a proper decision on the matter. The request shall state the exceptional physical conditions and the peculiar and practical difficulties claimed as a basis for a variance. In all cases, the application shall include, and shall not be deemed filed until all of the following is submitted:
 1. Name and address of the applicant;
 2. The legal description of the property involved in the request for variance, including the street address, if any, of the property;
 3. The names and addresses of the owners of the property and any other persons having a legal interest therein;
 4. List of names and addresses of property owners within 150 feet of the site, using the last declared county real estate tax records;
 5. Stamped, unsealed envelopes addressed with names of above property owners;
 6. A site plan drawn to scale showing the property dimensions, grading, landscaping and location of utilities, as applicable;
 7. Location of all existing and proposed buildings;
 8. Drive accesses, driveways, access roads, parking spaces, off-street loading areas and sidewalks as applicable;
 9. A clear description of the variance requested and the reasons for the request;
 10. Justification, in writing of section 38.250.060.C.1, 2, 3 and, when applicable, 4;
 11. Evidence satisfactory to the review authority of the ability and intention of the applicant to proceed with actual construction work in accordance with said plans within six months after issuance of permit; and
 12. Required filing fee.

(Ord. No. 1645, § 18.78.160, 8-15-2005; Ord. No. 1693, § 28(18.78.160), 2-20-2007; Ord. No. 1709, § 15(18.78.160), 7-16-2007; Ord. No. 1761, exh. Q(18.78.160), 7-6-2009; Ord. No. 1828, § 118, 9-10-2012)

Sec. 38.220.170. - Submittal materials for telecommunications. (38.41.170)

A. The following information shall be submitted for review of wireless facilities as applicable. Failure to provide required materials will result in a determination that the application is incomplete and the application will not be processed.

1. Submittal materials.

Table 38.220.170

Telecommunication Submittal Materials	Micro-scale	Small-scale	Large-scale
A detailed written description of how the applicant has complied with, or will comply with, the applicable standards of this chapter, especially those of this article ;	X	X	X
An accurate photo simulation of the site with the proposed facility in place. The simulation shall be to scale, and depict all planned and expected antennae, including collocation of other carriers, on the facility. Landscaping which is not existing or proposed on the accompanying site plan shall not be included in the simulation unless it exists on adjoining properties;	X	X	X
A statement of whether the proposed facility is exempt or nonexempt from environmental review under the Rules of the FCC;			
If the facility is claimed to be exempt, a detailed and specific citation to the Rules of the FCC indicating the section which details the relevant exemption provisions shall be included. If the facility is not exempt from environmental review, a copy of the environmental review shall be provided with the application, and the approval from the FCC for the site shall be provided to the city prior to the final site plan approval;			
and	X	X	X
If the facility is claimed to be exempt from environmental review, a statement shall be provided, under oath and notarized, that the proposed or existing facility does or will comply with FCC radio frequency emission guidelines for both general population/ uncontrolled exposures and occupational/controlled exposures as defined in the FCC rules. The provision of false information shall result in the immediate revocation of permits or approvals granted upon the basis of the false information and the cessation of operation of the offending facilities;			
When the applicant is a wireless service provider, proof that the applicant is licensed by the FCC to provide the wireless communication services that the proposed facility is designed to support, or that licensing by the FCC is not required;	X	X	X
A report providing a description of the large scale wireless facility with technical reasons and justification for its design and placement;			X
A description of the maximum capacity of the large scale wireless facility as proposed and how the facility can be retrofitted or modified to accommodate changing user needs;			X
Documentation establishing the structural integrity for the large scale wireless facility's proposed use including documented loading calculations for wind, snow and seismic forces under circumstances of maximum capacity loading			X

Telecommunication Submittal Materials	Micro-scale	Small-scale	Large-scale
prepared by a professional structural engineer licensed to practice in the state. Loading criteria shall be those set forth in the edition of the International Building Code most recently adopted by the city; and			
A statement of how the collocation requirements of section 38.370.040.B, shall be met.			X

2. In addition to the materials required above, for all large scale wireless facilities 50 feet or greater in height, the applicant shall submit:
 - a. Propagation studies for the users of the proposed facility, including existing service coverage maps and whether the placement of the new site will require relocations of existing facilities, or a description of how and why the proposed site and facility size is required to provide service that is otherwise unavailable or substantially inadequate or is required for the introduction of a new service;
 - b. A statement of intent of how collocation on the facility will be addressed;
 - c. A statement of willingness to allow collocation at reasonable and customary rates by all technically feasible providers up to the structural capacity of the tower;
 - d. An inventory of all surrounding buildings or other structures greater than 50 feet in height within a radius of one mile of the proposed location with a listing of height and suitability for hosting the proposed users of the large scale wireless facility;
 - e. An applicant shall demonstrate in writing that there are no available openings on existing facilities which are feasible and that a new structure is necessary. Such demonstration shall address the criteria in section 38.370.040.B;
 - f. A detailed explanation of how the large scale wireless facility will be maintained and how the maintenance and operations of the large scale wireless facility will be transferred to a third party should the applicant no longer retain ownership. Unless otherwise approved by the city, the responsibility of maintenance and operations shall transfer to the owner of the underlying property;
 - g. An explanation of how the applicant will provide a financial security for the removal of the large scale wireless facility in the event that it no longer serves telecommunications carriers. The financial guarantee shall be 150 percent of the estimated cost of facility removal and must be acceptable to the city; and
 - h. A large scale wireless facility may be reviewed as a multiple phase project and be constructed over time as provided for in section 38.370.040.B. An applicant intending to construct a new large scale wireless facility shall provide letters of intent adequate to meet the requirements for leases set forth in section 38.370.040.B.

(Ord. No. 1645, § 18.78.170, 8-15-2005; Ord. No. 1693, § 28(18.78.170), 2-20-2007; Ord. No. 1709, § 15(18.78.170), 7-16-2007; Ord. No. 1761, exh. Q(18.78.170), 7-6-2009)

Part 2: Supplementary Documents

Sec.38.220.300. - General. (38.38.010)

When required, the supplementary documents described in this division, shall be submitted in draft form with the preliminary plat or plan, and signed and notarized with the final plat or plan. The proper notary block shall be used.

(Ord. No. 1645, § 18.72.010, 8-15-2005; Ord. No. 1693, § 25(18.72.010), 2-20-2007; Ord. No. 1709, § 14(18.72.010), 7-16-2007; Ord. No. 1761, exh. N(18.72.010), 7-6-2009)

Sec.38.220.310. - Property owners' association. (38.38.020)

- A. General. If common property is to be deeded to the property owners association or similar organization, of if the property owners association will be responsible for the maintenance of the development's streets, centers, landscaping in street boulevards, park land or pathways, property owners association bylaws or the declaration of covenants, conditions and restrictions shall be prepared and recorded with the final plat.
- B. Bylaws or covenants, conditions and restrictions contents. The property owners' association bylaws or declaration of covenants, conditions and restrictions shall contain the following information:
1. Membership. Automatic and mandatory membership for each property or unit buyer and any subsequent buyer.
 2. Common land/facilities. The legal description of the common land and a description of common facilities.
 3. Enforcement. Persons or entities entitled to enforce the restrictions, responsibilities and payment of assessments, including the city.
 4. Perpetual reservation. Perpetual reservation and limited use of common property.
 5. Right to use. The right of each property or unit owner to use and enjoyment of any common property or facility.
 6. Responsibility. Responsibility for liability insurance, any applicable tax assessments and the maintenance of any common property or facilities to be placed in the association.
 7. Assessments. A mechanism to assess the common expenses for the land or facilities including upkeep and maintenance expenses, real estate taxes and insurance premiums. Assessments shall require each property or unit owner to pay a pro rata share of the cost of any common expenses, with any assessment charged by the association becoming a lien where necessary on individual parcels. Safeguards against unreasonably high charges and provision to adjust assessments may be provided.
 8. A mechanism for resolving disputes among the owners or association members.
 9. The conditions and timing of the transfer of ownership and control of land facilities to the association.

10. Any other matter the developer or the city deems appropriate.

11. In the event it becomes necessary for a property owners association to retain an attorney to enforce any of the association bylaws or covenants, conditions and restrictions, then the prevailing party shall be entitled to reasonable attorney's fees and costs.

C. If the property owners association fails to install or maintain improvements according to approved plans, the city may, at its option, complete construction of improvements and/or maintain improvements in compliance with section 38.220.200 and division 38.270 of this chapter. The city's representative, contractors and engineers shall have the right to enter upon the property and perform such work, and the property owners association shall permit and secure any additional permission required to enable them to do so. The city shall bill the property owners association for any costs associated with the installation or maintenance of improvements.

(Ord. No. 1645, § 18.72.020, 8-15-2005; Ord. No. 1693, § 25(18.72.020), 2-20-2007; Ord. No. 1709, § 14(18.72.020), 7-16-2007; Ord. No. 1761, exh. N(18.72.020), 7-6-2009)

Sec.38.220.320. - Covenants. (38.38.030)

A. The city may require covenants to be recorded with the final plat when it is determined they are necessary for the protection of the public health, safety and general welfare. All covenants shall be considered to run with the land. If the covenants are not marked or noted on the final subdivision plat or other final approval document, they shall be contained in a separate instrument which shall be recorded with the final plat or prior to final approval of other applications. The covenants may be required to include, but are not limited to, the following provisions:

1. That all county declared noxious weeds will be controlled.

2. A section addressing agricultural uses of neighboring properties in the following form:

"Lot owners and residents of the subdivision are informed that adjacent uses may be agricultural. Lot owners accept and are aware that standard agricultural and farming practices can result in dust, animal odors and noise, smoke, flies, and machinery noise. Standard agricultural practices feature the use of heavy equipment, chemical sprays and the use of machinery early in the morning and sometimes late into the evening."

3. That all fences bordering agricultural lands shall be maintained by the landowners in accordance with state law.

4. The property owners association shall be responsible for the maintenance of subdivision streets, common open space, centers, pathways, landscaping in street boulevards and/or parks.

5. That any covenant which is required as a condition of the preliminary plat approval and required by the city commission may not be amended or revoked without the mutual consent of the owners in accordance with the amendment procedures in the covenants, and the city commission.

6. The condition and timing of the transfer of the property owners association from developer to the subsequent purchasers.
7. Common area and facility maintenance plan. The developer shall submit a legal instrument setting forth a plan providing for the permanent care and maintenance of common areas and facilities. These common areas and facilities shall include but are not limited to commonly owned open spaces, recreational areas, facilities, private streets and parking lots. These common areas and facilities shall also include but are not limited to public parks, squares, open space, recreation areas, trails, as well as any public streets, avenues and alleys not accepted by the city for maintenance. The same shall be submitted to the city attorney and shall not be accepted by the city until approved as to legal form and effect. If the common areas are deeded to a property owners association, the applicant shall record the proposed documents governing the association at the time of final plat filing. Such documents shall meet the following requirements:
 - a. The property owners association must be established before any residences or other properties are sold;
 - b. Membership in the association must be mandatory for each property owner with a specified method of assigning voting rights;
 - c. Open space restrictions must be permanent and not for a period of years;
 - d. The property owners association must be made responsible for liability insurance, taxes, and maintenance of common facilities;
 - e. The association must have the power to levy assessments which can become a lien on individual premises for the purpose of paying the cost of operating and maintaining common facilities; and
 - f. The governing board of any such association shall consist of at least three members who shall be owners of property in the development.
8. Common area and facility maintenance guarantee. In the event the organization or any successor organization established to own and maintain common areas and facilities, shall at any time fail to maintain the common areas or facilities in reasonable order and condition in accordance with the approved plan, the city may cause written notice to be served upon such organization or upon the owners of property in the development. The written notice shall set forth the manner in which the common areas or facilities have failed to be maintained in reasonable condition. In addition, the notice shall include the demand that the deficiencies noted be cured within 30 days thereafter and shall state the date and place of a public meeting to be held within 14 days of the notice. At the time of public meeting, the city commission may modify the terms of the original notice as to deficiencies and may extend the time within which the same may be cured. If the deficiencies set forth in the original notice or modifications are not cured within the time set, the city may enter upon such common facilities and maintain the same for a period of one year, in order to preserve the taxable values of properties within the development and to prevent the common facilities from becoming a public

nuisance. Such entry and maintenance shall not vest in the public any right to use the common facilities not dedicated to public use. Before the one year period expires, the commission shall, upon its own initiative or upon written request of the organization theretofore responsible for maintenance, call a public meeting and give notice of such meeting to the organization responsible for maintenance or the property owners of the development. At the meeting, the organization responsible for maintenance and/or the residents of the development may show cause why maintenance by the city should not be continued for a succeeding year. If the city commission determines that it is not necessary for the city to continue such maintenance, the city shall cease such maintenance at the time established by the city commission. Otherwise the city shall continue maintenance for the next succeeding year subject to a similar meeting and determination at the end of each year thereafter.

- a. The cost of maintenance by the city shall be a lien against the common facilities of the development and the private properties within the development. The city commission shall have the right to make assessments against properties in the development on the same basis that the organization responsible for maintenance of the facilities could make such assessments. Any unpaid assessment shall be a lien against the property responsible for the same, enforceable the same as a mortgage against such property. The city may further foreclose its lien on the common facility by certifying the same to the county treasurer for collection as in the case of collection of general property taxes.
 - b. Should the property owners association request that the city assume permanent responsibility for maintenance of facilities, all facilities shall be brought to city standards prior to the city assuming responsibility. The assumption of responsibility must be by action of the city commission and all costs to bring facilities to city standards shall be the responsibility of the property owners association. The city may create special financing mechanisms so that those properties within the area affected by the property owners association continue to bear the costs of maintenance.
 - c. These common areas and facilities shall include but are not limited to commonly owned open spaces, recreational areas, facilities, private streets and parking lots. These common areas and facilities shall also include but are not limited to public parks, squares, open space, recreation areas, trails, as well as any public streets, avenues and alleys not accepted by the city for maintenance.
 - d. The city shall assume permanent responsibility for maintenance of public areas and facilities when a dedicated funding mechanism is adopted.
9. Guarantee for open space preservation. Open space shown on the approved final plan or plat shall not be used for the construction of any structures not shown on the final plan.
 10. Covenants may not contain provisions which inhibit compliance with the requirements of division 38.380, for those developments subject to division 38.

380. Some examples are: privately required minimum home or lot sizes which can not be met.

(Ord. No. 1645, § 18.72.030, 8-15-2005; Ord. No. 1693, § 25(18.72.030), 2-20-2007; Ord. No. 1709, § 14(18.72.030), 7-16-2007; Ord. No. 1761, exh. N(18.72.030), 7-6-2009; Ord. No. 1830, § 40, 9-24-2012)

Part 3: Noticing

Sec.38.220.400. – Purpose. (38.40.010)

It is the intent of sections 38.220.400 to 38.220.430 provide for adequate notice of governmental actions to those affected by such actions. Notice is required in order for citizens to participate in decision making which affects their interests and provides opportunity to receive information pertinent to an application that would not otherwise be available to the decision maker. In establishing standards for providing such notice, the need for expeditious processing of applications is also recognized.

(Ord. No. 1645, § 18.76.010, 8-15-2005; Ord. No. 1693, § 27(18.76.010), 2-20-2007; Ord. No. 1761, exh. P(18.76.010), 7-6-2009)

Sec. 38.220.410. - Contents of notice. (38.40.020)

- A. The following elements shall be included in notices issued pursuant to this chapter:
1. Address of the property, or its location by approximate distances from the nearest major street intersections, or other description to identify the affected property;
 2. Legal description of the property;
 3. The name and address of the applicant;
 4. The name and address of the owner of record;
 5. The number, date, time and place of scheduled public hearings and public meetings at which final decisions will be made public hearings by the planning board or zoning commission, meetings of other review bodies established by this chapter at which final decisions shall be made, or the date of any final public comment deadline;
 6. A description of how and where additional information regarding the action may be obtained including the address and phone number of the city; and
 7. A brief description of the subject of the notice.
- B. Mailed and posted notices required for site plans, master site plans, certificates of appropriateness, conditional use permits, planned unit developments, deviations, variances and subdivisions shall also include a map of the area of the development so as to indicate its general location and proximity to surrounding properties.
- C. The following additional elements shall be included in all notices required for text amendments to this chapter:
1. A summary explanation of the intent of the change, with reference to the exact text being available for public review.

D. For site and subdivision developments, the applicant shall provide for the purposes of noticing a list of names and addresses of property owners within 200 feet of the site, using the most current known property owners of record as shown in the records of the county clerk and recorder's office and stamped, unsealed envelopes (with no return address) addressed with names of above property owners, and/or labels with the names of the above property owners, as specified on the appropriate application.

(Ord. No. 1645, § 18.76.020, 8-15-2005; Ord. No. 1670, § 18.76.020, 8-28-2006; Ord. No. 1693, § 27(18.76.020), 2-20-2007; Ord. No. 1761, exh. P(18.76.020), 7-6-2009; Ord. No. 1827, § 9, 9-10-2012; Ord. No. 1830, § 41, 9-24-2012)

Sec. 38.220.420. - Notice requirements for application processing. (38.40.030)

- A. The following minimum standards for timing, location of noticing area and type of notice shall be provided. Noticing provisions are cumulative with the maximum combination of noticing requirements being provided. When more than one newspaper notice is required, only one of the required publication dates must fall within the minimum and maximum days required.
- B. If for some reason a required property owner fails to receive mail notification of a scheduled public hearing, or if one or more of the required posted signs in the area or on the site for which the public hearing is being held is inadvertently moved through no fault of the city, this in no way shall invalidate the legal notice requirements of the scheduled public hearing.
- C. Notice may also be provided to property owners in any additional area that may be substantially impacted by the proposed change or use as determined by the planning director. The planning director may use other means in addition to posting, mailing, or publication to provide notice.

Table 38.220.420

Application	Minimum Days¹²	Maximum Days¹²	Distance¹	Notice Type
Text amendment	15	45	NA	Newspaper once
ZMA ²	15	45	200	Newspaper once, post on-site, mail 1st class
ZMA ² - Resulting from ordinance changes	15	45	None	Newspaper once
ZMA ² - Annexation w/ initial zoning	15	45	None	Newspaper once, post on-site, mail 1st class
Variance - Floodplain, zoning, and subdivision	15	45	200	Newspaper once (zoning 2 times), post on-site, mail 1st class
Noticing for 76-2-402, MCA claims	15	45	None	Newspaper 2 times, post on-site
Deviation	15	45	200	Newspaper 2 times,

Application	Minimum Days ¹²	Maximum Days ¹²	Distance ¹	Notice Type
				post on-site, mail 1st class
Appeals ³	15	45	200 ³	Newspaper 2 times, post on-site, mail 1st class
Sketch plan/reuse/change in use/further development	None	None	None	None
Sketch plan ⁴	15	45	None	Post on-site
Informal/concept plan	None	None	None	None
Preliminary site plan or master site plan	15	45	200	Post on-site, mail 1st class
Preliminary PUD ⁵	15	45	200	Newspaper 2 times, post on-site, mail 1st class
Preliminary CUP ⁶	15	45	200	Newspaper 2 times, post on-site, mail 1st class
Floodplain permit	15	45	200	Newspaper, mail 1st class
COA ⁷	None	None	None	None
Final site plan	None	None	None	None
Final PUD plan	None	None	None	None
Final CUP plan	None	None	None	None
Subdivision exemption	None	None	None	None
1st minor subdivision without variance - preliminary plat/ Extensions of subdivision approvals beyond two years	15	45	200	Mail 1st class
1st minor subdivision with variance/2nd minor/major subdivision - Preliminary plat	15 (Planning Board)	45(Commission)	200	Newspaper ⁸ , post on-site, mail 1st class ⁹ , certified mail ¹⁰
Final plat	None	None	None	None
Notice of violation ¹¹	15	45	None	Post on-site, certified mail to landowner

Notes:

1. The distance from the exterior property boundary of the site to all or part of another parcel of land whose owners must be notified of a governmental action. This distance includes the width of a right-of-way or other public ownership.
2. Zone map amendment, division 38.260 of this chapter.
3. Posting and mailing only applies to appeals taken from actions to approve, approve with conditions or deny a development proposal and not to appeals of administrative interpretations.

4. Sketch plans for adding dwellings in the neighborhood conservation overlay district, demolition of contributing structures in the neighborhood conservation overlay district, or modification of wetlands.
5. Planned unit development, division 38.430 of this chapter.
6. Conditional use permit, division 38.230 of this chapter.
7. Certificate of appropriateness, division 38.340 of this chapter.
8. When newspaper notice is required the notice shall be published in a newspaper of general circulation.
9. Mail by first class to all landowners within 200 feet except those subject to certified mail.
10. Certified mail must be sent to recorded purchasers under contract for deed in addition to owners of physically contiguous property and the subdivider.
11. Notices of violation subject to section 38.200.160.
12. Days prior to the close of the public comment period or public hearing unless otherwise specified in this chapter.

(Ord. No. 1645, § 18.76.030, 8-15-2005; Ord. No. 1670, § 18.76.030, 8-28-2006; Ord. No. 1761, exh. P(18.76.030), 7-6-2009; Ord. No. 1830, § 42, 9-24-2012)

Sec. 38.220.430. - Notice of city approval within neighborhood conservation and entryway overlay districts. (38.40.040)

In order to inform adjacent property owners and residents that an application within an overlay district has been approved by the city, any site approved for construction or alterations within an overlay district shall be posted with a notice supplied by the planning department. The notice shall be posted in a conspicuous place on the site before any construction begins and may be removed when the project is substantially complete. The notice shall specify the name of the owner of record, the address of the property, a description of the scope of work approved and the date of city approval.

(Ord. No. 1645, § 18.76.040, 8-15-2005; Ord. No. 1693, § 27(18.76.040), 2-20-2007; Ord. No. 1761, exh. P(18.76.040), 7-6-2009)

38.230 Plan Review (current Article 19)

State Law reference— Property development review, MCA 7-21-1001 et seq.

Sec. 38.230.010. - Introduction. (38.19.010)

- A. All non-subdivision development proposals within the city will be subject to plan review and approval except repair, maintenance, grading below the minimum defined limits of this chapter, and interior remodeling, or other items specifically exempted in this chapter. Depending on the complexity of development and status of proposed use in the applicable zoning district, either sketch plans, site plans, master site plans, or conditional use permits (referred to herein as a "plan") will be required as specified in this division 38.230. Although work may be exempt from zoning review it may require review for other permits before construction may begin.
- B. Special development proposals (e.g., PUDs, CUPs, variances, etc.) require other information to be submitted in conjunction with plans and are subject to requirements specific to the type of proposal. These additional submittal requirements and review procedures are outlined in section 38.230.030.
- C. When a development is proposed within a neighborhood conservation or entryway corridor overly district, or proposes signs which do not specifically conform to the requirements of this chapter, design review is required in conjunction with plan review per the authority in section 38.210.010. In such cases, additional submittal requirements and review procedures apply as outlined in section 38.220.090.
- D. Conditional uses. Certain uses, while generally not suitable in a particular zoning district, may, under certain circumstances, be acceptable. When such circumstances can be demonstrated by the applicant to exist, a conditional use permit may be granted by the review authority. Conditions may be applied to the issuance of the permit and periodic review may be required. No conditional use permit shall be granted for a use which is not specifically designated as a conditional use in this chapter.
- E. Approval shall be granted for a particular use and not for a particular person or firm.
- F. This division 38.230 is provided to meet the purposes of section 38.100.040 and all other relevant portions of this chapter.
- G. Applications subject to this division 38.230 shall be reviewed under the authority established by division 38.200 of this chapter.

(Ord. No. 1809, § 1, 7-11-2011)

Sec. 38.230.020. - Classification of plans. (38.19.020)

- A. All developments, as defined in section 38.700.050 of this chapter, within the city shall be subject to plan review procedures and criteria of this chapter and the applicable submittal requirements of division 38.220 of this chapter. For the purposes of this chapter, plans will be classified as either a site plan or a master site plan.
 - 1. Exception. Those developments specified in section 38.230.070 and other development proposals when so specifically identified require only sketch plan review.
- B. A master site plan is a generalized development plan that establishes building envelopes and overall entitlements for complex, large-scale projects that will require multiple years to reach completion. Use of a master site plan is not required unless necessary to address phasing of a proposed development (see section 38.230.090.B.3) or if required as part of the residential emphasis mixed-use district or North 19th Avenue/West Oak Street entryway corridors. A master site plan involves one or more of the following:
 - 1. One hundred or more dwelling units in a multiple household structure or structures;
 - 2. Fifty thousand or more square feet of office space, retail commercial space, service commercial space or industrial space;
 - 3. Multiple buildings located on multiple contiguous lots and/or contiguous city blocks;
 - 4. Multiple owners;
 - 5. Development phasing projected to extend beyond two years; or
 - 6. Parking for more than 200 vehicles.
- C. Any planned unit development shall be reviewed according to the regulations in division 38.430, in addition to this division 38.230.
- D. Telecommunication facilities shall be reviewed according to the regulations in division 38.370, in addition to this division 38.230.
- E. Uses identified in division 38.360 of this chapter shall be reviewed according to the standards and regulations contained in division 38.360 of this chapter, in addition to this division 38.230.

(Ord. No. 1809, § 1, 7-11-2011; Ord. No. 1832, § 1, 6-18-2012)

Sec. 38.230.030. - Special development proposals—Additional application requirements, review procedures and review criteria. (38.19.030)

- A. Application requirements. Applications for special development proposals (e.g. PUD, CUP, flood plain development permits, variances, etc.) shall include:
 - 1. The required information for plans described in section 38.220.080;
 - 2. Any additional application information required for specific reviews as listed in the following divisions of this chapter:

- a. Division 38.430, Planned Unit Development;
 - b. Division 38.360, Standards for Specific Uses;
 - c. Division 38.370, Telecommunications;
 - d. Division 38.620, Bozeman Floodplain Regulations; and
 - e. Division 38.250, Appeals, Deviations and Variance Procedures.
- B. Review procedures and review criteria. Additional review procedures and review criteria for specific development proposals are defined in the following sections and divisions of this chapter:
- 1. Section 38.230.080, Certificate of appropriateness;
 - 2. Section 38.230.110, Conditional use;
 - 3. Division 38.430, Planned Unit Development;
 - 4. Division 38.360, Standards for Specific Uses;
 - 5. Division 38.370, Telecommunications;
 - 6. Division 38.610, Floodplain Regulations; and
 - 7. Division 38.250, Appeals, Deviations and Variance Procedures.

(Ord. No. 1809, § 1, 7-11-2011)

Sec. 38.230.040. - Review authority. (38.19.040)

- A. The review authorities are established in 38.200.010 and as may be specified elsewhere in this chapter.
- B. The development review committee, design review board, administrative design review staff, and wetlands review board have the advisory authority established in division 38.200 of this chapter.
- C. Plan design review thresholds. When a development is subject to design review and meets one or more of the following thresholds the design review board shall have responsibility for conducting the design review:
 - 1. Twenty or more dwelling units in a multiple household structure or structures;
 - 2. Thirty thousand or more square feet of office space, retail commercial space, service commercial space or industrial space;
 - 3. Twenty thousand or more square feet of exterior storage of materials or goods;
 - 4. Parking for more than 90 vehicles; or
 - 5. Large scale retail per section 38.360.190.

(Ord. No. 1809, § 1, 7-11-2011; Ord. No. 1830, § 11, 9-24-2012)

Sec. 38.230.050. - Application of plan review procedures. (38.19.050)

- A. These procedures shall apply to all developments within the city unless explicitly exempted in this chapter.

- B. The preliminary plan shall be submitted and approved, and final plan approval received, prior to the issuance of any building permit.
- C. No occupancy permits shall be issued for any development for which plan review is required until certification has been provided under section 38.270.030 demonstrating that all terms and conditions of plan approval have been complied with.
- D. Unless a deviation or variance is explicitly sought and granted in association with a plan, all standards of this chapter apply whether explicitly mentioned in the record of the review or not. An omission or oversight of a nonconformity with the standards of this chapter in the site plan shall not constitute approval of such nonconformance. Any nonconformance which was not the subject of an explicitly approved deviation or variance may be required to be cured at such time the city becomes aware of the nonconforming condition's existence.
- E. In the event that the volume of site development applications submitted for review exceeds the ability of the city to process them simultaneously, preference in order of scheduling will be given to those projects which provide the most affordable housing in excess of minimum requirements, as measured by the total number of affordable units.
- F. When a development subject to this article is located within an overlay district established by division 38.340 of this chapter a certificate of appropriateness is required in addition to other required review procedures.
- G. Public notice of development proposals and approvals subject to this article shall be provided as required by division 38.220 of this chapter.
- H. Improvements depicted on an approved plan shall be installed subject to the requirements of division 38.270 of this chapter.

(Ord. No. 1809, § 1, 7-11-2011)

Sec. 38.230.060. - Special temporary use permit. (38.19.060)

- A. Generally. Uses permitted subject to a special temporary use permit are those temporary uses which are required for the proper function of the community or are temporarily required in the process of establishing a permitted use, constructing a public facility or providing for response to an emergency. Such uses shall be so conducted that they will not be detrimental in any way to the surrounding properties or to the community. Uses permitted subject to a special temporary use permit may include:
 - 1. Carnivals, circuses, special events of not over 72 consecutive hours;
 - 2. Tent revival meetings;
 - 3. Swap meets; or
 - 4. Such other uses as may be deemed to be within the intent and purpose of this section.
- B. Exception: Functions held within a park and which are subject to a park user agreement are not required to obtain a special temporary use permit.

- C. Application and filing fee. Application for a special temporary use permit may be made by a property owner or his authorized agent. A copy of the fees are available at the planning department. Such application shall be filed with the planning director who shall charge and collect a filing fee for each such application, as provided in division 38.200 of this chapter. The planning director may also require any information deemed necessary to support the approval of a special temporary use permit, including site plans per this division 38.230.
- D. Decision. Approval or conditional approval shall be given only when in the judgment of the review authority such approval is within the intent and purposes of this division 38.230.
- E. Conditions. In approving such a permit, the approval shall be made subject to a time limit, not to exceed one year per approval, and other conditions deemed necessary to assure that there will be no adverse effect upon adjacent properties. Such conditions may include, but are not limited to, the following:
 - 1. Regulation of parking;
 - 2. Regulation of hours;
 - 3. Regulation of noise;
 - 4. Regulation of lights;
 - 5. Requirement of financial security or other guarantees for cleanup or removal of structure or equipment; and/or
 - 6. Such other conditions deemed necessary to carry out the intent and purpose of this section.

(Ord. No. 1809, § 1, 7-11-2011; Ord. No. 1828, § 18, 9-10-2012)

Sec. 38.230.070. - Sketch plan review. (38.19.070)

- A. Sketch plan submittal requirements.
 - 1. Certain independent development proposals (i.e., not in conjunction with other development) are required to submit only sketch plans which include the information specified in section 38.220.110.
 - 2. Separate construction plans are necessary for building permits when the proposal requires such permits. Additional information is also necessary when the proposal requires the issuance of a certificate of appropriateness (see sections 38.230.080 and 38.220.090).
 - 3. Examples of independent projects which qualify for sketch plan review are: individual single-household including manufactured homes on individual lots, two-household, three-household, and four-household residential units, each on individual lots and independent of other site development; accessory dwelling units in the R-2, R-3 and R-4 districts; fences; signs in compliance with the requirements of this chapter; regulated activities in areas with regulated wetlands not in conjunction with a land development proposal; grading of sites disturbing more than one-eighth but less than one-half acre, or movement of more than 30 but less than 100 cubic yards of material, or cut or fill of less than

one cumulative foot, whichever is less; special temporary uses; reuse, change in use, or further development of sites per section 38.230.150, essential services Type II primarily underground with no above ground structures larger than 125 square feet; and accessory structures associated with these uses. Other similar projects may be determined by the planning director to require only sketch plan review. The planning director may determine submittal requirements in addition to those in section 38.220.110. Projects which do not require sketch plan review may still require review and permitting for nonzoning issues.

B. Sketch plan review procedures.

1. No certificate of appropriateness required. Sketch plans for projects which do not require a certificate of appropriateness shall be submitted to the planning department for a determination of compliance with the requirements of this chapter. Once compliance is achieved, the application will be approved for construction or referred to the appropriate permitting authorities. In determining whether compliance is achieved the planning department shall consider the individual circumstances of the site when the development is subject to section 38.230.150.
2. Certificate of appropriateness required. Sketch plans, including the material required by section 38.220.090, and such additional information as may be required for projects which require a certificate of appropriateness as per section 38.230.080 shall be submitted to the planning department, who shall review the proposal for compliance with this chapter, including compliance with the applicable overlay district requirements. Once compliance is achieved, the application will be approved for construction or referred to the appropriate permitting authorities.

C. Sketch plan review criteria. Sketch plans shall be reviewed for compliance with all applicable requirements of this chapter including overlay district requirements and the cessation of any current violations of this chapter, exclusive of any legal nonconforming conditions. Plan changes may be required.

(Ord. No. 1809, § 1, 7-11-2011; Ord. No. 1828, § 19, 9-10-2012; Ord. No. 1893, § 11, 8-11-2014)

Sec. 38.230.080. - Certificates of appropriateness—Additional review procedures and review criteria. (38.19.080)

- A. Sign proposals which do not specifically conform to the requirements of this chapter. Independent sign proposals (i.e., not in conjunction with other development) which do not specifically conform to the requirements of this chapter, are required to submit full site plans. Additional site design information, in sufficient detail to demonstrate compliance with the design objective plan, encompassing the property's location shall be provided.
- B. Review procedures and criteria for certificates of appropriateness.
 1. Certificates of appropriateness shall be issued according to procedures and criteria specified in divisions 38.340, 38.430 and 38.200, in addition to this chapter.

2. Sign proposals which specifically conform to the requirements of this chapter shall be reviewed according to procedures and criteria outlined in division 38.560 of this chapter.

(Ord. No. 1809, § 1, 7-11-2011)

Sec. 38.230.090. - Plan review procedures. (38.19.090)

A. Acceptability and adequacy of application.

1. The planning department shall review the application for acceptability within five working days to determine if the application is does not omit any of the submittal elements required by this chapter. If the application does not contain all of the required elements, the application, review fee and a written explanation of what the application is missing shall be returned to the property owner or their representative. The five working day review period will be considered met if the letter is dated, signed and placed in the outgoing mail within the five-day review period.
2. After the application is deemed to contain the required elements and to be acceptable, it shall be reviewed for adequacy. A determination of adequacy means the application contains all of the required elements in sufficient detail and accuracy to enable the applicable review agency to make a determination that the application either does or does not conform to the requirements of this chapter and any other applicable regulations under the jurisdiction of the City of Bozeman. The review for adequacy shall be conducted by the appropriate agency with expertise in the subject matter. The adequacy review period shall begin on the next working day after the date that the planning department determines the application to contain all the required elements and shall be completed within not more than 15 working days. The 15 working day review period will be considered met if the letter is dated, signed and placed in the outgoing mail within the 15 working day review period. If the application is inadequate, a written explanation of why the application is inadequate will be returned to the property owner. Upon a determination of adequacy the review of the development will be scheduled.
 - a. In the event the missing information is not received by the city within 15 working days of notification to the property owner of inadequacy, all application materials and one-half of the review fee shall be returned to the property owner or their representative. Subsequent resubmittal shall require payment of a review fee as if it were a new application.
 - b. A determination that an application is adequate does not restrict the city from requesting additional information during the site plan review process.
3. Should the property owner choose not to provide the required information after an application has been found unacceptable, nor to accept return of the application and accompanying fee, the application may be processed by the city with the recognition by the property owner that unacceptability is an adequate basis for denial of the application regardless of other merit of the application.

4. The DRC may grant reasonable waivers from submittal of application materials required by these regulations where it is found that these regulations allow a waiver to be requested and granted. If in the opinion of the final approval authority the waived materials are necessary for proper review of the development, the materials shall be provided before review is completed.
 5. In order to be granted a waiver the applicant shall include with the submission of the preliminary plan a written statement describing the requested waiver and the reasons upon which the request is based. The final approval body shall then consider each waiver at the time the preliminary site plan is reviewed. All waivers must be identified not later than initial submittal of the preliminary site plan stage of review.
- B. Plans shall be reviewed by the review bodies established by division 38.200 of this chapter and according to the procedures established by this chapter. After review of the applicable submittal materials required by division 38.220 of this chapter, and upon recommendation by the appropriate advisory bodies, the review authority shall act to approve, approve with conditions or deny the application, subject to the appeal provisions of division 38.250 of this chapter. The basis for the review authority's action shall be whether the application, including any required conditions, complies with all the applicable standards and requirements of this chapter, including section 38.100.050.
1. Plan. The review authority shall provide an opportunity for the public to comment upon development proposals. The duration of the initial comment period shall be included in any notice required by division 38.270 of this chapter. The comment period shall be from the date of the first consideration of the complete preliminary plan and supplementary materials by the DRC until 5:00 pm on the third working day after DRC and other review bodies as may be appropriate have taken action regarding the proposal.
 - a. The review authority after receiving the recommendations of the, advisory bodies and considering any public comment shall act to approve, approve with conditions or deny an application within ten working days of the close of the public comment period. The decision shall be in writing and shall include any special conditions which are to be applied to the development.
 - (1) After formal notice of a project review has been given, interested parties may request in writing to receive a copy of the decision regarding an application. Persons making such a request shall provide an addressed envelope for use in delivering their copy of the decision.
 2. Plan with deviations or variances or conditional use permits. The review authority shall provide an opportunity for the public to comment upon a proposed plan. The comment period shall be from the date of the first consideration of the complete preliminary plan and supplementary materials by the DRC until the decision is made.
 - a. The review authority, after receiving the recommendations of the, advisory bodies and considering any public comment shall act to approve, approve with conditions or deny an application. The decision shall be in writing and

shall include any special conditions which are to be applied to the development.

3. Phasing. The entitlement period for which a final plan is valid is specified in section 38.230.120. Preliminary single phase plan applications will only be accepted for development that can occur under building permits issued within this final plan approval period.
 - a. Any development that includes phases/buildings that would extend past the final plan approval period shall proceed under the master site plan application process with a first phase plan for those portions that can be constructed under the single phase final plan approval. The master site plan and first phase site plan may be reviewed concurrently as a single application. Each future project phase must submit a stand-alone site plan application following initial master site plan approval.
 - b. Each phase of a plan must not include more buildings than will be constructed within a one-year timeframe. These subsequent site plan applications may be expedited through the review process if they are consistent with the master site plan. Independent fees will be assessed for each required application.
 - c. A preliminary site plan application may be received where it is unclear whether the buildings/units can be constructed under building permits issued within one year of final site plan approval. In this case the planning director may request proof of a construction financing commitment prior to accepting the application for review. Applications, where it is clear that the buildings/units cannot be constructed under building permits issued within one year of final site plan approval, will be deemed unacceptable for review and directed to proceed through a master site plan with first phase site plan process.

(Ord. No. 1809, § 1, 7-11-2011; Ord. No. 1828, § 20, 9-10-2012)

Sec. 38.230.100. - Plan review criteria. (38.19.100)

- A. In considering applications for plan approval under this chapter, the review authority and advisory bodies shall consider the following criteria. When considering the criteria for future phases of a master site plan, other than those for criteria 1—3, the evaluation shall be of a more generalized demonstration of compliance, recognizing that a subsequent site plan shall be submitted in the future which shall provide evidence of specific compliance. The level of detail submitted and review conducted shall be equal with the level of entitlement being sought with the application. See division 38.220 of this chapter for required submittal materials.
 1. Conformance to and consistency with the city's adopted growth policy.
 2. Conformance to this chapter, including the cessation of any current violations;
 3. Conformance with all other applicable laws, ordinances and regulations;
 4. Relationship of plan elements to conditions both on and off the property, including:

- a. Compatibility with, and sensitivity to, the immediate environment of the site and the adjacent neighborhoods and other approved development relative to architectural design, building mass and height, neighborhood identity, landscaping, historical character, orientation of buildings on the site and visual integration;
 - b. Design and arrangement of the elements of the plan (e.g., buildings, circulation, open space and landscaping, etc.) so that activities are integrated with the organizational scheme of the community, neighborhood, and other approved development and produce an efficient, functionally organized and cohesive development;
 - c. Design and arrangement of elements of the plan (e.g., buildings circulation, open space and landscaping, etc.) in harmony with the existing natural topography, natural water bodies and water courses, existing vegetation, and to contribute to the overall aesthetic quality of the site configuration; and
 - d. If the proposed project is located within a locally designated historical district, or includes a locally designated landmark structure, the project is in conformance with the provisions of division 38.340 of this chapter;
5. The impact of the proposal on the existing and anticipated traffic and parking conditions;
 6. Pedestrian and vehicular ingress, egress and circulation, including:
 - a. Design of the pedestrian and vehicular circulation systems to assure that pedestrians and vehicles can move safely and easily both within the site and between properties and activities within the neighborhood area;
 - b. Non-automotive transportation and circulation systems design features to enhance convenience and safety across parking lots and streets, including, but not limited to, paving patterns, grade differences, landscaping and lighting;
 - c. Adequate connection and integration of the pedestrian and vehicular transportation systems to the systems in adjacent developments and general community; and
 - d. Dedication of right-of-way or easements necessary for streets and similar transportation facilities;
 7. Landscaping, including the enhancement of buildings, the appearance of vehicular use, open space and pedestrian areas, and the preservation or replacement of natural vegetation;
 8. Open space, including:
 - a. The enhancement of the natural environment;
 - b. Precautions being taken to preserve existing wildlife habitats or natural wildlife feeding areas;

- c. If the development is adjacent to an existing or approved public park or public open space area, have provisions been made in the plan to avoid interfering with public access to and use of that area;
 - d. Is any provided recreational area suitably located and accessible to the residential units it is intended to serve and is adequate screening provided to ensure privacy and quiet for neighboring residential uses;
 - e. Open space shall be provided in accordance with division 38.420 of this chapter;
 - f. Park land shall be provided in accordance with division 38.420 of this chapter;
9. Building location and height;
 10. Setbacks;
 11. Lighting;
 12. Provisions for utilities, including efficient public services and facilities;
 13. Site surface drainage and stormwater control;
 14. Loading and unloading areas;
 15. Grading;
 16. Signage;
 17. Screening;
 18. Overlay district provisions;
 19. Other related matters, including relevant comment from affected parties; and
 20. If the development includes multiple lots that are interdependent for circulation or other means of addressing requirements of this chapter, whether the lots are either:
 - a. Configured so that the sale of individual lots will not alter the approved configuration or use of the property or cause the development to become nonconforming; or
 - b. The subject of reciprocal and perpetual easements or other agreements to which the city is a party so that the sale of individual lots will not cause one or more elements of the development to become nonconforming.
 21. Compliance with division 38.380 of this chapter.
 22. Phasing of development.
- B. If the review authority, after recommendation from the applicable advisory bodies shall determine that the proposed plan will not be detrimental to the health, safety or welfare of the community, is in compliance with the requirements of this chapter and is in harmony with the purposes and intent of this chapter and the Bozeman growth policy, approval shall be granted, and such conditions and safeguards may be imposed as deemed necessary. Notice of action shall be given in writing.

- C. Plan approval may be denied upon a determination that the conditions required for approval do not exist. Persons objecting to the recommendations of review bodies carry the burden of proof. A denial of approval shall be in writing.
- D. Following approval of a master site plan, the applicant shall submit to the planning department, sequential individual site plans for specific areas within the master site plan. Each subsequent application for a site plan shall be consistent with the approved master site plan and subject to the review criteria set forth in subsection A above. Evidence that the review criteria have been met through the master site plan review process may be incorporated by reference in order to eliminate duplication of review.

(Ord. No. 1809, § 1, 7-11-2011)

Sec. 38.230.110. - Conditional use permit. (38.19.110)

- A. The person applying for a conditional use permit shall fill out and submit to the planning department the appropriate form with the required fee. The request for a conditional use permit shall follow the procedures and application requirements of this division 38.230.
- B. In consideration of all conditional use permit applications, a public hearing shall be conducted by the review authority. Notice of the public hearing shall be provided in accordance with article 2 of this chapter.
- C. If a rezoning is required prior to approval of a conditional use permit, the application for rezoning and the conditional use permit may be filed and acted upon simultaneously, however the conditional use permit shall not be effective until the rezoning has been implemented by ordinance.
- D. The review authority, in approving a conditional use permit, shall review the application against the review requirements of section 38.230.100.
- E. In addition to the review criteria of section 38.230.100, the review authority shall, in approving a conditional use permit, determine favorably as follows:
 - 1. That the site for the proposed use is adequate in size and topography to accommodate such use, and all yards, spaces, walls and fences, parking, loading and landscaping are adequate to properly relate such use with the land and uses in the vicinity;
 - 2. That the proposed use will have no material adverse effect upon the abutting property. Persons objecting to the recommendations of review bodies carry the burden of proof;
 - 3. That any additional conditions stated in the approval are deemed necessary to protect the public health, safety and general welfare. Such conditions may include, but are not limited to:
 - a. Regulation of use;
 - b. Special yards, spaces and buffers;
 - c. Special fences, solid fences and walls;
 - d. Surfacing of parking areas;
 - e. Requiring street, service road or alley dedications and improvements or appropriate bonds;
 - f. Regulation of points of vehicular ingress and egress;
 - g. Regulation of signs;
 - h. Requiring maintenance of the grounds;
 - i. Regulation of noise, vibrations and odors;
 - j. Regulation of hours for certain activities;
 - k. Time period within which the proposed use shall be developed;

- I. Duration of use;
 - m. Requiring the dedication of access rights; and
 - n. Other such conditions as will make possible the development of the city in an orderly and efficient manner.
- F. In addition to all other conditions, the following general requirements apply to every conditional use permit granted:
 - 1. That the right to a use and occupancy permit shall be contingent upon the fulfillment of all general and special conditions imposed by the conditional use permit procedure; and
 - 2. That all of the conditions shall constitute restrictions running with the land use, shall apply and be adhered to by the owner of the land, successors or assigns, shall be binding upon the owner of the land, his successors or assigns, shall be consented to in writing, and shall be recorded as such with the county clerk and recorder's office by the property owner prior to the issuance of any building permits, final plan approval or commencement of the conditional use.
- G. Applications for conditional use permits may be approved, conditionally approved or denied by motion of the review authority. If an application is denied, the denial shall constitute a determination that the applicant has not shown that the conditions required for approval do exist.
- H. The applicant shall be notified in writing of the final action taken within seven working days of the action. If the conditional use permit has been granted the notification shall include any conditions, automatic termination date, period of review or other requirements. If the conditional use permit has been granted, the permit shall be issued upon the signature of the planning director after completion of all conditions and final plan.
- I. Termination/revocation of conditional use permit approval.
 - 1. Conditional use permits are approved based on an analysis of current local circumstances and regulatory requirements. Over time these things may change and the use may no longer be appropriate to a location. A conditional use permit will be considered as terminated and of no further effect if:
 - a. After having been commenced, the approved use is not actively conducted on the site for a period of two continuous calendar years;
 - b. Final zoning approval to reuse the property for another principal or conditional use is granted;
 - c. The use or development of the site is not begun within the time limits of the final site plan approval in section 38.230.120.
 - 2. A conditional use which has terminated may be reestablished on a site by either, the review and approval of a new conditional use permit application, or a determination by the planning director that the local circumstances and regulatory requirements are essentially the same as at the time of the original approval. A denial of renewal by the planning director may not be appealed. If

the planning director determines that the conditional use permit may be renewed on a site then any conditions of approval of the original conditional use permit are also renewed.

3. If activity begins for which a conditional use permit has been given final approval, all activities must comply with any conditions of approval or code requirements. Should there be a failure to maintain compliance the city may revoke the approval through the procedures outlined in section 38.200.160.

(Ord. No. 1809, § 1, 7-11-2011; Ord. No. 1828, § 21, 9-10-2012; Ord. No. 1830, § 12, 9-24-2012)

Sec. 38.230.120. - Final plan. (38.19.120)

- A. No later than six months after the date of approval of a preliminary plan, the applicant shall submit to the planning department a final plan with accompanying application form and review fee. The number of copies of the final plan to be submitted shall be established by the planning director. The final plan shall contain the materials required in sections 38.220.080 and 38.220.090 and whatever revisions to the preliminary site plan or master site plan are required to comply with any conditions of approval. Prior to the passage of six months, the applicant may seek an extension of not more than an additional six months from the planning director.
- B. In addition to the materials required in subsection A of this section, the owner shall submit a certification of completion and compliance stating that they understand any conditions of approval and the submitted final plans have complied with any conditions of approval or corrections to comply with code provisions.
- C. In addition to the materials required in subsections A and B of this section, the owner shall submit a statement of intent to construct according to the final plan. Such statement shall acknowledge that construction not in compliance with the approved final plan may result in delays of occupancy or costs to correct noncompliance.
- D. Following approval of a final site plan, the final site plan shall be in effect for one year. Prior to the passage of one year, the applicant may seek an extension of not more than one additional year from the planning director. In such instances, the planning director shall determine whether the relevant terms of this chapter and circumstances have significantly changed since the initial approval. If relevant terms of this chapter or circumstances have significantly changed, the extension of the approval shall not be granted.
- E. Following approval of a final master site plan, the final master site plan shall be in effect for not less than three but not more than five years with the initial duration to be specified during the final action of the review authority. Owners of property subject to the master site plan may seek extensions to not exceed five years in a single extension. Approval of an extension shall be made by the planning director. Approval shall be granted if the planning director determines that the criteria of subsection F of this section are met.
- F. Any request for an extension must be in writing and be dated and signed by the owner of the undeveloped area or incomplete development for which the extension is sought. More than one extension may be requested for a particular development. Each request shall be considered on its individual merits. An extension of the development approval under this division 38.230 does not extend other city or non-city agency approvals, e.g. for design of infrastructure extensions, necessary to complete the project. When evaluating an extension request, the city shall consider:
 - 1. Changes to the development regulations since the original approval and whether the development as originally approved is compliant with the new regulations;
 - 2. Progress to date in completing the development as a whole and any phases;

3. Phasing of the development and the ability for existing development to operate without the delayed development;
 4. Dependence by other development on any public infrastructure or private improvements to be installed by the development;
 5. For extensions of approval greater than one year, the demonstrated ability of the developer to complete the development;
 6. Overall maintenance of the site;
 7. Whether mitigation for impacts of the development identified during the preliminary plan review remain relevant, adequate, and applicable to the present circumstances of the development and community.
- G. Upon approval of the final plan by the planning director the applicant may obtain a building permit as provided for by division 38.220 of this chapter.
1. Subsequent site plan approvals are required to implement a master site plan, and approval of a master site plan only does not entitle an applicant to obtain any building permits.

(Ord. No. 1809, § 1, 7-11-2011)

Sec. 38.230.130. - Amendments to plans. (38.19.130)

- A. It is the intent of this section to assure that issues of community concern are addressed during the redevelopment, reuse or change in use of existing facilities in the community. Specific areas of community concern include public safety, mitigation of off-site environmental impacts and site character in relation to surroundings. The following procedures for amendments to approved plans, reuse of existing facilities and further development of sites assure that these concerns are adequately and expeditiously addressed.
- B. Any amendment to or modification of a plan approved under the ordinance codified in this division 38.230 (September 3, 1991 — Ordinance 1332) shall be submitted to the planning director for review and possible approval. Proposals for further development, reuse or change in use of sites developed pursuant to this chapter shall be reviewed as an amendment to an approved plan. All amendments shall be shown on a revised plan drawing. Amendments to approved plans shall be reviewed and may be approved by the planning director upon determining that the amended plan is in substantial compliance with the originally approved plan. If it is determined that the amended plan is not in substantial compliance with the originally approved plan, the application shall be resubmitted as a new application and shall be subject to all standards and plan review and approval provisions of this chapter. Substantial compliance may be shown by demonstrating that the amendments do not exceed the thresholds established in section 38.230.140.C.
- C. Modifications or amendments to a master site plan at the time an extension of approval is sought may be proposed by either the applicant or the review authority, and shall be based on substantive current information that indicates that relevant circumstances have changed and that such circumstances support the proposed modifications. Such circumstances may include market analyses, economic conditions, changes in surrounding land uses, changes in ownership, etc.

Sec. 38.230.140. - Reuse, change in use or further development of sites developed prior to the adoption date of the ordinance from which this chapter is derived. (38.19.140)

- A. It is the policy of the city to work with owners of property during the reuse, change in use, or further development process to correct existing violations of the city's and other agency's regulations, to encourage reinvestment and renewal of existing developed sites, and to move existing sites toward compliance with current standards while recognizing the limitations that may exist in relation to an existing site.
- B. Sites legally developed prior to the adoption of the ordinance codified in this chapter (September 3, 1991 — Ordinance 1332) shall be considered to have developed under an approved plan. Proposals for reuse, change in use or the further development of sites legally developed prior to the adoption of the ordinance codified in this chapter may be approved by the review authority upon determining that no significant alteration of the previous use and site are proposed, and upon a determination that adequate access and site surface drainage are provided. All such proposals shall be shown on a plan drawing as required by section 38.220.110.
- C. The criteria for determining that no significant alteration of the previous use and site will result from the proposed reuse, change in use or further development of a site shall include but not be limited to the following:
 - 1. The proposed use is allowed under the same zoning district use classification as the previous use, however replacement of nonconforming uses must comply with the provisions of division 38.270 of this chapter;
 - 2. Changes proposed for the site, singly or cumulatively, do not increase lot coverage by buildings, storage areas, parking areas or impervious surfaces and/or do not result in an increase in intensity of use as measured by parking requirements, traffic generation or other measurable off-site impacts;
 - a. By more than 20 percent for developments not meeting one or more of the criteria of section 38.230.040.C; or
 - b. By more than ten percent for developments meeting or exceeding one or more of the criteria of section 38.230.040.C;
 - 3. The proposed use does not continue any unsafe or hazardous conditions previously existing on the site or associated with the proposed use of the property.
- D. If it is determined that the proposed reuse, change in use or further development of a site contains significant alterations to the previous use and/or site, the application shall be resubmitted as a new application and shall be subject to all plan review and approval provisions of this division 38.230.
- E. When proposals for reuse, change in use or further development of a site are located in the neighborhood conservation or entryway corridor overlay districts,

review by ADR staff or the DRB may be required to determine whether resubmittal as a new application is necessary.

(Ord. No. 1809, § 1, 7-11-2011; Ord. No. 1828, § 22, 9-10-2012)

Sec. 38.230.150. - Improvements to existing developed sites independent of site plan review. (38.19.150)

The continued improvement of existing developed sites is desired to increase the level of compliance with the provisions of this chapter and to encourage maintenance and viability of the site. An applicant may propose improvements, not in association with a plan review, to increase conformity with the standards of this chapter for landscaping, lighting, parking or similar components of a site to occur over a defined period of time, not to exceed three years. Such improvements shall be depicted on a site plan drawn to scale and which shall be sufficiently detailed to clearly depict the current conditions, the intended end result of the proposed improvements and any phasing of work. Such improvements shall be reviewed by and approved at the discretion of the review authority which may require surety in accordance with the terms of division 38.270 of this chapter for work performed. A certificate of appropriateness may be required if the site is located within the entryway overlay district or the neighborhood conservation overlay district.

(Ord. No. 1809, § 1, 7-11-2011)

Sec. 38.230.160. - Building permits based upon approved sketch or site plans. (38.19.160)

Based upon the approved sketch or final plan and after any appeals have been resolved, a building permit for the site may be requested and may be granted pursuant to division 38.220 of this chapter. No building permit may be granted on the basis of an approved sketch or other plan whose approval has expired.

(Ord. No. 1809, § 1, 7-11-2011)

Sec. 38.230.170. - Appeals. (38.19.170)

Appeals of decisions rendered in conjunction with this division 38.230 may be taken as set forth in division 38.250 of this chapter.

(Ord. No. 1809, § 1, 7-11-2011)

38.240 Subdivision Procedures (Articles 2-6)

FOOTNOTE(S):

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State Law reference— Montana Subdivision and Platting Act, MCA 76-3-101 et seq.

Part 1: Subdivision and Platting Administrative Procedures

Sec. 38.240.010. - Transfers of title. (38.02.010)

- A. Unless the plat is located in an area where the state or the city does not have jurisdiction, every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. After a preliminary subdivision plat has been approved or conditionally approved, the developer may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:
1. Under the terms of the contracts, the purchasers of lots in the proposed subdivision shall make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the state;
 2. Under the terms of the contracts and the escrow agreement, the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the developer until the final plat of the subdivision is filed and of record with the county clerk and recorder;
 3. The contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payment made under the contract;
 4. The county treasurer has certified that no real property taxes and special assessments assessed and levied on the land to be divided are delinquent; and
 5. The contracts shall contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner."
- B. Unless the plat is located in an area where the state or the city does not have jurisdiction, the county clerk and recorder may not record any instrument that purports to transfer title to or possession of a parcel or tract of land that is required to be surveyed by the Montana Subdivision and Platting Act (MCA 76-3-101 et seq.) unless the required certificate of survey or subdivision plat has been filed with the county clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat. This provision does not apply if the parcel or tract to be transferred was created before July 1, 1973, and the instrument of transfer for the parcel or tract includes a reference to a previously recorded instrument of transfer or is accompanied by documents that, if recorded, would otherwise satisfy the requirements of this subsection B. The reference or document must demonstrate that the parcel or tract existed before July 1, 1973. However,

these references or documents do not constitute a legal description of the property and may not be substituted for a legal description of the property.

(Ord. No. 1645, § 18.04.010, 8-15-2005)

State Law reference— Land transfers, MCA 76-3-301 et seq.

Sec. 38.240.020. - Effect of recording complying plat. (38.02.020)

The recording of any plat made in compliance with the Montana Subdivision and Platting Act (MCA 76-3-101 et seq.) shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat, properly certified by the county clerk and recorder as being a true copy thereof, shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

(Ord. No. 1645, § 18.04.020, 8-15-2005)

State Law reference— Similar provisions, MCA 76-3-304.

Sec. 38.240.030. - Correction of errors, amendments or vacation of recorded final plats. (38.02.030)

- A. Correction of errors. Correction of errors that, in the opinion of the city, will not materially alter the plat may be made by the submission of a corrected final plat for the city's approval. The plat may be filed under the procedures for first minor subdivision plats. The plat shall be entitled "amended plat of the (name of subdivision) subdivision," and the reason for the correction shall be stated on the face of the plat.
- B. Material alterations. Amendments that materially alter the final plat, or any portion thereof, shall be made by the filing of an amended plat showing all alterations. The amended plat shall be approved by the city under the major or minor subdivision procedure, as is appropriate. Prior to such approval, the amended plat shall be reviewed by the planning department. The city may not approve an amendment which will place the plat in nonconformance with the standards contained herein unless a public hearing is held on the plat and a written variance from the standards issued pursuant to procedures contained herein for such variances is granted. The plat shall be entitled "amended plat of (the name) subdivision," and the reason for the amendment shall be stated on the face of the plat.
- C. Vacating recorded plats. Any plat prepared and recorded as provided by this chapter may be vacated, in whole or in part, as provided by MCA 7-5-2501, 7-5-2502, 7-14-2616(1) and (2), 7-14-2617, 7-14-4114(1) and (2), and 7-14-4115. Upon vacation, the city, or the district court, as provided in MCA 7-5-2502, shall determine to which properties the title to the streets and alleys of the vacated portions must revert. The city, or the district court, as provided in MCA 7-5-2502, shall take into consideration the previous platting; the manner in which the right-of-way was originally dedicated, granted or conveyed; the reasons stated in the petition requesting the vacation; the parties requesting the vacation; and any agreements between the adjacent property owners regarding the use of the vacated area. The title to the streets and alleys of the vacated portions may revert to one or more of the owners of the properties within the platted area adjacent to the vacated portions.

1. Utility easements. When any poleline, pipeline or any other public or private facility is located in a vacated street or alley at the time of the reversion of the title to the vacated street or alley, the owner of the public or private utility facility has an easement over the vacated land to continue the operation and maintenance of the public or private utility facility.

(Ord. No. 1645, § 18.04.030, 8-15-2005; Ord. No. 1828, § 2, 9-10-2012)

State Law reference— Vacation of plats, utility easements, MCA 76-3-305.

Sec. 38.240.040. - Correction of recorded plat by governing body. (38.02.040)

When a recorded plat does not definitely show the location or size of lots or blocks, or the location or width of any street or alley, the city may at its own expense cause a new and correct survey and plat to be made and recorded in the office of the county clerk and recorder. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the resurvey shall endorse the corrected plat referring to the original plat, and noting the defect existing therein and the corrections made.

(Ord. No. 1645, § 18.04.040, 8-15-2005)

State Law reference— Similar provisions, MCA 76-3-614.

Sec. 38.240.050. - Disposition of water rights. (38.02.050)

A. When a subdivision creates parcels with lot sizes averaging less than five acres, the developer shall:

1. Reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by the landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;
2. If the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
3. Reserve and sever all surface water rights from the land proposed for subdivision.

(Ord. No. 1645, § 18.04.050, 8-15-2005)

State Law reference— Mandate for this section, MCA 76-3-504(1)(j).

FOOTNOTE(S):

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State Law reference— Local review procedure for subdivisions, MCA 76-3-601 et seq.

Part 2: Review Procedures for Subdivisions

Sec. 38.240.100. - General review procedure. (38.03.010)

Every plat of subdivision must be reviewed, approved and filed for record with the county clerk and recorder in accordance with the procedures contained herein before title to the subdivided land can be sold or transferred in any manner. Subdivisions containing six or more lots shall be considered major subdivisions. A subdivision containing five or fewer lots, in which proper access to all lots is provided and in which no land is to be dedicated to public use for parks and playgrounds, shall be a minor subdivision.

(Ord. No. 1645, § 18.06.010, 8-15-2005; Ord. No. 1693, § 2(18.06.010), 2-20-2007; Ord. No. 1769, exh. B(18.06.010), 12-28-2009)

Sec. 38.240.110. - Presubmittal meeting and preapplication plan review.
(38.03.020)

A. The purpose of a preapplication plan review is to discuss this chapter and these standards, to familiarize the developer with the standards, goals and objectives of applicable plans, regulations and ordinances, and to discuss the proposed subdivision as it relates to these matters.

1. Minor subdivisions. Prior to the submittal of a subdivision application for a minor subdivision, the developer shall submit an application for subdivision preapplication review.
2. Major subdivisions. Prior to the submittal of a subdivision application for a major subdivision, the developer shall submit an application for subdivision preapplication review. The developer is encouraged to have a presubmittal meeting with the planning department prior to submitting a subdivision preapplication.
3. Preapplication plan review. For subdivision preapplication review, the developer shall submit a complete application for preapplication plan review, the appropriate review fee, and copies of all required preapplication information as set forth in section 38.220.030.

a. Planning department review. The planning department shall review the preapplication plan and advise the developer as to whether the plans and data meet the goals and objectives of applicable plans and this chapter.

(1) Agency review. The planning department will distribute the preapplication information to appropriate county and city departments and state and federal agencies for review and written comment. All written comments received from various agencies, along with the planning department's comments regarding whether the plans and data meet the standards, goals and objectives of applicable plans, ordinances, and this chapter, and for informational purposes identification of local regulations, state laws, and growth policy provisions that may apply to the subdivision process, will be forwarded to the applicant to aid in the preparation of the subdivision application. The planning department shall provide a list of the public utilities, agencies of government, and other parties who may be contacted and their timeframes for comment on the subdivision application. The comments collected by the planning department shall be provided in person or by letter to the subdivider or their agent within 30 calendar days of a complete application being received by the city. The 30 calendar day review period shall be considered met if the letter is dated, signed and placed in the outgoing mail within the 30 calendar day review period.

(2) Time for review. The planning department shall review the preapplication plan and within 30 working days advise the developer as to whether the plans and data meet the goals and objectives of applicable plans and this chapter. Every effort shall be made by the planning department to obtain department and agency comment within this time period.

- b. Optional planning board review. If the developer so wishes, the developer may request in writing that the planning board review preapplication plans. The letter of request and additional copies of the preapplication materials are required for this optional review.
 - (1) The request must be received at least 30 working days prior to the planning board meeting at which it is to be considered. The application will be submitted to the planning board at their next available meeting. A copy of the approved minutes of the planning board meeting will be forwarded to the developer.
- c. Time for follow-up submittal. A complete subdivision preliminary plat application shall be submitted to the planning department within one calendar year of the date the planning office dates, signs and places in the outgoing mail.
- d. The property owner will not receive formal written notification on the acceptability or adequacy of a subdivision preapplication plan submittal.

(Ord. No. 1645, § 18.06.020, 8-15-2005; Ord. No. 1693, § 2(18.06.020), 2-20-2007; Ord. No. 1769, exh. B(18.06.020), 12-28-2009)

State Law reference— Mandate for preapplication process, MCA 76-3-504(1)(q).

Sec. 38.240.120. - Concurrent review. (38.03.030)

The developer has the option of submitting a state department of environmental quality (DEQ)/local government joint application form in the place of a preliminary plat application form, and to request concurrent subdivision review by the state department of environmental quality and the city, pursuant to MCA 76-4-129.

(Ord. No. 1645, § 18.06.030, 8-15-2005; Ord. No. 1693, § 2(18.06.030), 2-20-2007; Ord. No. 1769, exh. B(18.06.030), 12-28-2009; Ord. No. 1828, § 3, 9-10-2012)

Sec. 38.240.130. - Preliminary plat. (38.03.040)

- A. After the requirement for a preapplication review has been satisfied, the developer may submit a subdivision application. Subdivision applications shall be submitted, along with the appropriate review fee and all required subdivision application information as set forth in division 38.220 of this chapter to the planning department and must conform to the requirements of this chapter. The preliminary plat shall be prepared by a surveyor licensed to practice in the state.
 - 1. Acceptability and adequacy of application. The time limits in subsections 1.a and b of this section apply to each successive submittal of the application until a determination is made that the application contains the required materials and is adequate for review and the subdivider or their agent is notified.
 - a. The planning department shall review a subdivision application within five working days of receipt of the application and applicable fee submitted in accordance with any deadlines established for submittal to determine if the application is acceptable. An application is acceptable only if it contains all of the information required by this chapter. If the application is unacceptable, the application, the review fee and a written explanation of why the application is unacceptable will be returned to the subdivider, who is the

property owner. If the application is acceptable the subdivider shall be so notified. The property owner may designate in writing another party to receive notifications regarding acceptability. The five working day review period shall be considered met if the letter is dated, signed and placed in the outgoing mail within the five day review period.

b. After the application is deemed acceptable it shall be reviewed for adequacy. The review for adequacy shall be conducted by the appropriate agency with expertise in the subject matter. The adequacy review period shall begin on the next working day after the date that the planning department determines the application is acceptable and sends the required notice to the subdivider; and shall be completed within not more than 15 working days. The 15 working day review period shall be considered met if the letter is dated, signed and placed in the outgoing mail within the 15 working day review period. If the application is inadequate, a written explanation of why the application is inadequate will be returned to the subdivider, who is the property owner. If the application is adequate the subdivider shall be so notified. The property owner may designate in writing another party to receive notifications regarding adequacy.

(1) In the event the missing information is not received by the city within 15 working days of notification to the subdivider of inadequacy, all application materials and one-half of the review fee shall be returned to the subdivider or their representative. Subsequent resubmittal shall require payment of a review fee as if it were a new application.

(2) A determination that an application is adequate does not restrict the city from requesting additional information during the subdivision review process. A determination of adequacy establishes the applicable review criteria as specified in section 38.200.080.A.

c. The DRC may grant reasonable waivers from submittal of application materials required by these regulations where it is found that these regulations allow a waiver to be requested and granted. If in the opinion of the final approval authority the waived materials are necessary for proper review of the development, the materials shall be provided before review is completed.

d. In order to be granted a waiver the applicant shall include with the submission of the subdivision application a written statement describing the requested waiver and the reasons upon which the request is based. The final approval body shall then consider each waiver at the time the subdivision application is reviewed. All waivers must be initially identified with the preapplication stage of review.

2. Review by affected agencies. After an application is deemed acceptable, the planning department may submit copies of the preliminary plat and supplementary information to relevant public utilities and public agencies for review and comment, and for major subdivisions to the planning board for its advice pertaining to the approval or denial of the subdivision application. Review by public agencies or utilities shall not delay the city commission's consideration of the subdivision application beyond the statutorily specified

review period. If the planning department shall request review by a public utility, agency of government, and other parties regarding the subdivision application that was not identified during the pre-application review the planning department shall notify the subdivider.

3. Planning board review. At a regularly noticed public hearing, the planning board shall review all major subdivision applications, together with required supplementary plans and information, and determine whether the plat is in compliance with the city's growth policy. The planning board shall hold a public hearing on all major subdivisions. Pursuant to MCA 76-1-107, the planning board has delegated its review of all minor subdivisions from a tract of record to the planning director.
 - a. Public testimony. All written public comment received at or prior to a public hearing shall be incorporated into the written record of the review. Minutes shall be taken of verbal comment received during the public hearing or public meeting before the planning board and shall be incorporated into the written record of the review. Copies of the minutes and written comments shall be included in any recommendation made to the city commission by the planning board.
 - b. Planning board recommendation. Within ten working days of their review, the planning board shall submit in writing to the city commission, a resolution forwarding its advice regarding compliance with the city's growth policy, and a recommendation for approval, conditional approval or denial of the subdivision application.
4. Planning director review. The planning director shall review all minor subdivision applications, together with required supplementary plans and information, and determine whether the plat is in compliance with the city's growth policy. The planning director shall make a written recommendation including a summary of the agency review and analysis of the review criteria established in this chapter and a recommendation for approval, conditional approval or denial of the subdivision application.
 - a. Public testimony. All written public comment received during the planning director's review shall be incorporated into the written record of the review. Copies of written comments shall be included in any recommendation made to the city commission by the planning director.
5. City commission review. The city commission shall review and take action on all proposed subdivisions.
 - a. The following requirements for a public hearing or a public meeting, and for statutory review periods, shall be met:
 - (1) First minor subdivision created from a tract of record. The city commission shall consider the subdivision application and the planning director's recommendation during a regular public meeting of the commission. The city commission, when legal and physical access is provided to all lots shall approve, conditionally approve or deny the subdivision application of a first minor subdivision within 35 working days of the determination that

the application is adequate, unless there is a written extension from the developer for a period not to exceed one year. A minor subdivision must be reviewed as a second or subsequent minor subdivision if the tract has been previously subdivided or created by a subdivision; or the tract has descended from a tract of record which has previously been divided by exemption or other means into 6 or more tracts of record since July 1, 1973.

- (a) Variance requests for minor subdivisions. If the developer of a minor subdivision is requesting a variance from any requirement of this chapter, the procedures of section 38.250.070 must be followed except that a public hearing shall not be held.
- (2) Subdivisions eligible for summary review. The city commission shall consider the application and the planning director's recommendation during a regular public meeting of the commission. The city commission shall approve, conditionally approve or deny a proposed subdivision that is eligible for summary review within 35 calendar days of determination that the application is adequate, unless there is a written extension from the developer. Minor subdivisions are eligible for summary review if the plat has been approved by the state department of environmental quality whenever approval is required by MCA 76-4-101 et seq.
- (3) Second or subsequent minor subdivision created from a tract of record. For the second or subsequent minor subdivision created from a tract of record, the city commission shall hold a public hearing on the subdivision application. The city commission shall approve, conditionally approve or deny the subdivision application of a second or subsequent minor subdivision within 60 working days of the determination that the application is adequate for review, unless there is a written extension from the developer, not to exceed one year.
- (4) Major subdivisions. For a major subdivision, the city commission shall hold a public hearing on the subdivision application. The city commission shall approve, conditionally approve or deny the subdivision application within 60 working days of the determination that the application is adequate for review if the subdivision has less than 50 lots, and within 80 working days of the determination that the application is adequate for review if the subdivision has 50 or more lots, unless there is a written extension from the developer, not to exceed one year.
- (5) Public testimony. All written public comment received at a public meeting or public hearing prior to a decision to approval, approve with conditions, or deny a subdivision application shall be incorporated into the written record of the review. Minutes shall be taken of verbal comments received during the public hearing before the city commission and shall be incorporated into the written record of the review maintained by the city.
- (6) New and credible information. The city commission shall determine whether public comments or documents presented to the city

commission at a public hearing regarding a subdivision application held pursuant to section 38.240.130.A.44 constitute:

- (a) Information or analysis of information that was presented at a public hearing held pursuant to section 38.240.130.A.44 that the public has had a reasonable opportunity to examine and on which the public has had a reasonable opportunity to comment; or
- (b) New information regarding a subdivision application that has never been submitted as evidence or considered by either the city commission, planning board or by city staff at a hearing during which the subdivision application was considered.
- (c) If the city commission determines that the public comments or documents constitute new information not previously considered at a public hearing, the city commission may:
 - (i) Approve, conditionally approve, or deny the proposed subdivision without basing its decision on the new information if the governing body determines that the new information is either irrelevant or not credible; or
 - (ii) Schedule or direct its agent or agency to schedule a subsequent public hearing before the city commission for consideration of only the new information that may have an impact on the findings and conclusions that the governing body will rely upon in making its decision on the proposed subdivision.
 - (iii) In deciding whether the information is both new and credible the city commission shall consider:
 - (A) Whether the topic of the information has previously been examined or available for examination at a public hearing on the subdivision application;
 - (B) Whether the information is verifiable, and if applicable developed by a person with professional competency in the subject matter;
 - (C) Whether the information is relevant to a topic within the jurisdiction of the city.
- (d) If a subsequent public hearing is held to consider new and credible information, the 60 working day review period required in section 38.240.130.A.4. is suspended and the new hearing must be noticed and held within 45 days of the governing body's determination to schedule a new hearing. After the new hearing, the otherwise applicable time limit for review resumes at the governing body's next scheduled public meeting for which proper notice for the public hearing on the subdivision application can be provided. The governing body may not consider any information regarding the subdivision application that is presented after the hearing when

making its decision to approve, conditionally approve, or deny the proposed subdivision.

(7) When the subdivision does not qualify, pursuant to MCA 76-4-125(2), for the certification established in section 38.240.100 the city shall at any public hearing collect public comment given regarding the information required by section 38.220.050.A.9. regarding sanitation. The city shall make any comments submitted or a summary of the comments submitted available to the subdivider within 30 days after conditional approval or approval of the subdivision application.

(a) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the comments or the summary provided by the governing body to the:

(i) Reviewing authority provided for in MCA tit. 76, ch. 4, for subdivisions that will create one or more parcels containing less than 20 acres; and

(ii) Local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres.

(b) Parcel size.

(i) For a proposed subdivision that will create one or more parcels containing less than 20 acres, the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.

(ii) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to MCA 76-3-604, that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

b. Criteria for city commission action. The basis for the city commission's decision to approve, conditionally approve or deny the subdivision shall be whether the subdivision application, public hearing if required, planning board advice and recommendation and additional information demonstrates that development of the subdivision complies with this chapter, the city's growth policy, the Montana Subdivision and Platting Act and other adopted state and local ordinances, including, but not limited to, applicable zoning requirements. The city commission may not deny approval of a subdivision based solely on the subdivision's impacts on educational services. When deciding to approve, conditionally approve or deny a subdivision application, the city commission shall:

(1) Review the preliminary plat, together with required supplementary plans and information, to determine if it meets the requirements of this chapter, the development standards and policies of the city's growth policy, the

Montana Subdivision and Platting Act, and other adopted state laws and local ordinances, including but not limited to applicable zoning requirements.

- (2) Consider written comments from appropriate public agencies, utilities or other members of the public.
 - (3) Consider the following:
 - (a) Relevant evidence relating to the public health, safety and welfare;
 - (b) Other regulations, code provisions or policies in effect in the area of the proposed subdivision;
 - (c) The recommendation of the advisory bodies; and
 - (d) Any relevant public testimony.
 - (4) When the subdivision does not qualify, pursuant to MCA 76-4-125(2), for the certification established in section 38.240.100 the city commission may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to section 38.220.050.A.9. or public comment received pursuant to MCA 76-3-604 on the information provided pursuant to section 38.220.050. A conditional approval or denial shall be based on existing subdivision, zoning, or other regulations that the city commission has the authority to enforce.
- c. City commission action. If the city commission denies or conditionally approves the subdivision application, it shall forward one copy of the plat to the developer accompanied by a letter over the appropriate signature stating the reason for disapproval or enumerating the conditions that must be met to ensure approval of the final plat. This written statement must include:
- (1) The reason for the denial or condition imposition;
 - (2) The evidence that justifies the denial or condition imposition; and
 - (3) Information regarding the appeal process for the denial or condition imposition.
- d. Mitigation. The city commission may require the developer to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review required by this chapter. The city commission shall issue written findings to justify the reasonable mitigation required by this chapter. The city commission may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat. When requiring mitigation under this subsection, the city commission shall consult with the developer and shall give due weight and consideration to the expressed preference of the developer.
- e. Findings of fact. Within 30 working days of the final action to approve, deny, or approve with conditions a subdivision, the city commission shall issue written

findings of fact that discuss and weigh the following criteria, as applicable (pursuant to MCA 76-3-608):

(1) Criteria.

- (a) Compliance with the survey requirements of the Montana Subdivision and Platting Act;
- (b) Compliance with this chapter and the review process of these regulations;
- (c) The provision of easements to and within the subdivision for the location and installation of any necessary utilities;
- (d) The provision of 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; and
- (e) For major subdivisions, the findings of fact shall also address the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety.

(2) Required components. The written findings of fact shall contain at a minimum:

- (a) Information regarding the appeal process for the denial or imposition of conditions;
- (b) Identifies the regulations and statutes used in reaching the decision to deny or impose conditions and explains how they apply to the decision;
- (c) Provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions. The documents, testimony, or other materials that form the basis of the decision and support the conclusions of the governing body may be incorporated into the written findings by reference.

f. Initial subdivision application approval period. Upon approving or conditionally approving a subdivision application, the city commission shall provide the developer with a dated and signed findings of fact and order. This approval shall be in force for not more than one calendar year for minor subdivisions, two years for single-phased major subdivisions and three years for multi-phased major subdivisions after the date of the findings of fact and order. At the end of this period, the city may, at the written request of the developer, extend its approval for a mutually agreed-upon period of time.

g. Extensions of preliminary plat approval period. Any mutually agreed upon extension must be in writing and dated and signed by the subdivider or their authorized agent and by the city commission or their authorized agent. More than one extension may be requested for a particular subdivision. Each request shall be considered on its individual merits. An extension of the subdivision approval under this chapter does not extend other city or non-city

agency approvals, e.g. for design of infrastructure extensions, necessary to complete the project. Review authority for extensions is established in division 38.220. When evaluating an extension request, the city shall consider:

- (1) Changes to the development regulations since the original approval and whether the subdivision as originally approved is essentially compliant with the new regulations;
 - (2) Progress to date in completing the subdivision as a whole and any phases, including maintenance of the remainder of the site in good condition;
 - (3) Phasing of the subdivision and the ability for existing development to operate without the delayed development;
 - (4) Dependence by other development on any public infrastructure or private improvements to be installed by the subdivision;
 - (5) Demonstrated ability of the subdivider to complete the subdivision;
 - (6) Whether mitigation for impacts of the subdivision identified during the preliminary plat review and findings of fact and order remain relevant, adequate, and applicable to the present circumstances of the subdivision and community.
- h. Changes to conditions after approval. Upon written request of the developer, the city commission may amend conditions of subdivision application approval where it can be found that errors or changes beyond the control of the developer have rendered a condition unnecessary, impossible or illegal. Changes to conditions that are not unnecessary, impossible or illegal shall be subject to the provisions of section 38.100.070.
- (1) The written request shall be submitted to the planning department.
 - (2) The written consent of all purchasers of land (via contract for deed, etc.) shall be included with the written request to amend conditions.
 - (3) If it is an application for a major subdivision, the city commission shall conduct a public hearing on the request. If it is an application for a minor subdivision, the city commission shall consider the request at a regularly scheduled meeting.
 - (a) If a public hearing is held, public notice of the hearing shall be given in accordance with this chapter.
 - (4) The city commission may approve the requested change if it meets the criteria set forth in this chapter.
 - (5) The city commission shall issue written findings of fact as required in this chapter.

(Ord. No. 1645, § 18.06.040, 8-15-2005; Ord. No. 1693, § 2(18.06.040), 2-20-2007; Ord. No. 1769, ex. B(18.06.040), 12-28-2009; Ord. No. 1808, § 1, 7-11-2011; Ord. No. 1828, §§ 4, 5, 9-10-2012)

State Law reference— Review of subdivision application, MCA 76-3-604.

Sec. 38.240.140. - Notice of certification that water and waste services will be provided by local government. (38.03.050)

A. If the developer is proposing to request an exemption from the department of environmental quality (DEQ) for infrastructure plan and specification review, the subdivision application shall include a written request from the developer's professional engineer, licensed in the state, that indicates the intent to request the exemption, and details the extent of water, sewer and stormwater infrastructure that will be completed prior to final plat approval. A detailed preliminary stormwater drainage plan must also be submitted with the written request. The director of public service shall, prior to final plat approval, send notice of certification to the DEQ per MCA 76-4-127.

1. The notice of certification shall include the following:

- a. The name and address of the applicant;
- b. A copy of the preliminary plat included with the application for the proposed subdivision or a final plat where a preliminary plat is not necessary;
- c. The number of proposed parcels in the subdivision;
- d. A copy of any applicable zoning ordinances in effect;
- e. How construction of the sewage disposal and water supply systems or extensions will be financed;
- f. Certification that the subdivision is within a jurisdictional area that has adopted a growth policy pursuant to title 76, chapter 1, Montana Code Annotated (MCA 76-1-101 et seq.) and a copy of the growth policy, when applicable;
- g. The relative location of the subdivision to the city;
- h. Certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within the time provided in MCA 76-3-507;
- i. If water supply, sewage disposal or solid waste facilities are not municipally owned, certification from the facility owners that adequate facilities are available; and
- j. Certification that the city commission has reviewed and approved plans to ensure adequate stormwater drainage.

(Ord. No. 1645, § 18.06.050, 8-15-2005; Ord. No. 1693, § 2(18.06.050), 2-20-2007; Ord. No. 1769, exh. B(18.06.050), 12-28-2009)

Sec. 38.240.150. - Final plat application. (38.03.060)

A. After the conditions of preliminary approval and the requirements for the installation of improvements have been satisfied, the developer shall cause to be prepared a final plat. The final plat shall conform to the uniform standards for final subdivision plats as set forth in 24.183.1107 ARM. Plans and data shall be prepared under the supervision of a registered surveyor, licensed in the state, as their licensing laws allow.

1. Final plat submittal. The final plat and all supplementary documents shall be submitted to the planning department at least 30 working days prior to the expiration of subdivision application approval or any extension thereto. The submittal shall include a final plat application form, the appropriate review fee, all information required by 38.220.070 and a written explanation of how each of the conditions of subdivision application approval has been satisfied.
 - a. The final park plan, if one is associated with the plat, shall be reviewed and approved, after a recommendation from the city recreation and parks advisory board, prior to or simultaneously with the final plat. The installation of any park improvements to meet minimum development standards or conditions of approval shall comply with division 38.270 of this chapter.
2. County treasurer certification. A final plat will not be accepted as complete until the county treasurer has certified that no real property taxes and special assessments assessed and levied on the land to be subdivided are delinquent.
3. Review of abstract and covenants. With the final plat, the developer shall submit to the planning department a certificate of a licensed title abstractor showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land, and the written consent to the subdivision by the owners of the land, if other than the developer, and any lienholders or claimants of record against the land. The certificate of licensed title abstractor shall be dated no earlier than 30 calendar days prior to submittal. Covenants shall also be submitted to the planning department with the final plat application. The planning department staff will obtain the city attorney's approval of the covenants and the city attorney's certificate.
4. Review by the planning department. The planning department will then review the final plat application to ascertain that all conditions and requirements for final approval have been met. If all conditions and requirements for final approval have been met, the planning department shall forward a report to the city commission for their action.
5. Final plat approval. The city commission shall examine every final plat, and within 45 working days of the date of submission to the planning department, shall approve it if it conforms to the conditions of preliminary approval and the terms of this chapter. The city commission shall examine every final plat at a regular meeting.
 - a. If the final plat is approved, the director of public service shall so certify the approval in a printed certificate on the plat.
 - b. If the final plat is denied, the city commission shall cause a letter to be written to the developer stating the reasons therefor.
6. Filing. The developer shall file the approved, signed final plat and all other required certificates and documents with the county clerk and recorder within 60 days of the date of final approval.

(Ord. No. 1645, § 18.06.060, 8-15-2005; Ord. No. 1693, § 1(18.06.060), 2-20-2007; Ord. No. 1769, exh. B(18.06.060), 12-28-2009; Ord. No. 1830, § 5, 9-24-2012)

Sec. 38.240.160. - Changes to filed subdivision plats. (38.03.070)

Changes to a filed subdivision plat must be filed with the county clerk and recorder as an amended plat. An amended plat may not be filed unless it meets the filing requirements for a final subdivision plat specified in these regulations.

(Ord. No. 1645, § 18.06.070, 8-15-2005; Ord. No. 1693, § 1(18.06.070), 2-20-2007; Ord. No. 1769, exh. B(18.06.070), 12-28-2009)

Part 3: Land Divisions Created by Rent or Lease

Sec. 38.240.200. – General. (38.04.010)

- A. Land subdivisions created by rent or lease, rather than sale, refer to areas that provide multiple spaces for manufactured homes, mobile homes or recreational camping vehicles regardless of the size of the area or whether the spaces will be made available for rent by the general public for a fee. The land shall be owned as one parcel under single ownership, which can include a number of persons owning the property in common. Subsequent action to sell interests in less than the entirety of the development may necessitate review under Parts 5 and 6 of the Montana Subdivision and Platting Act prior to any sale. Subdivisions complying with sections 38.240.170.A.8 and 9 are not subject to 38.240.130 through 38.240.160. Land subdivisions created by rent or lease are not subject to this division 38.240 or the Montana Subdivision and Platting Act if:
1. They are developed on property which has been subdivided in compliance with Parts 5 and 6 of the Montana Subdivision and Platting act or which have a boundary documented by a certificate of survey recorded after July 1, 1973; and
 2. They are reviewed as a site plan, conditional use permit, or planned unit development as described and authorized under this chapter; and
 3. They comply with the adopted zoning regulations and other land development standards adopted by the city.
- B. DPHHS license. If a land subdivision by rent or lease, that will provide multiple spaces for manufactured homes, mobile homes or recreational camping vehicles is also a "campground," "trailer court," "work camp," or "youth camp" as defined below, the city shall not grant final approval until the developer obtains a license for the facility from the state department of public health and human services (DPHHS) under MCA tit. 50, ch. 52.
1. "Campground" means a parcel of land available to and principally used by the public for camping, where persons can camp, secure tents or cabins, or park trailers for camping and sleeping purposes.
 2. "Trailer court" means a parcel of land upon which two or more spaces are available to the public and designated for occupancy by trailers, manufactured homes or mobile homes for use as residences. The term does not include a parcel composed of platted lots, if each lot:
 - a. Is filed with the county clerk and recorder;
 - b. Contains only one trailer space; and
 - c. Is served by a public water supply system and public sewage system that meet the requirements of rules for systems adopted pursuant to MCA tit. 75, ch. 6, pt. 1, and that are located within the boundaries of the City of Bozeman.
 3. "Work camp" means a parcel of land on which housing is provided by a person for two or more families or individuals living separately, for the exclusive use of

the employees of the person and the families, if any, of the employees. For purposes of this subsection, "housing" includes but is not limited to camping spaces; trailer parking spaces; manufactured, mobile, modular or permanent barracks or structures; and any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities. Housing does not include shelter provided by an employer for persons who are employed to perform agricultural duties on a ranch or farm.

4. "Youth camp" means a parcel of land on which permanent buildings, tents or other structures are maintained as living quarters for ten or more people and that is used primarily for educational or recreational use by minors. The term includes any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities.

C. Surveying and filing requirements exemption. Land subdivisions created by rent or lease are exempt from the surveying and filing requirements of the Montana Subdivision and Platting Act.

(Ord. No. 1645, § 18.08.010, 8-15-2005; Ord. No. 1808, § 2, 7-11-2011)

Sec. 38.240.210. - Land subdivisions created by rent or lease - procedure, submittal requirements and review criteria. (38.04.020)

- A. Land subdivisions created by rent or lease shall be submitted, reviewed and approved by the city before any portions of the development may be rented or leased. The developer shall apply for site plan and subdivision review.
- B. Site plan review. All relevant procedures, submittal requirements and review criteria contained in division 38.230 of this chapter shall apply. The development shall also comply with the requirements of division 38.310 of this chapter and sections 38.360.130 and 38.360.180.
- C. Subdivision review. The subdivision review procedure and review criteria for land subdivisions created by rent or lease will depend upon the number of spaces within the proposed development. Proposed developments containing five or fewer spaces for rent or lease shall be reviewed as minor subdivisions according to the provisions of article 2 of this chapter and proposed developments containing six or more spaces for rent or lease shall be reviewed as major subdivisions according to the provisions of division 38.240 of this chapter.
 1. Preapplication plan. The preapplication plan shall be reviewed using the procedures contained in section 38.240.110. The submittal materials listed in section 38.220.030 shall be provided.
 2. Preliminary plan submittal and procedure. For land subdivisions created by rent or lease, the developer shall submit a preliminary plan in lieu of a preliminary plat, a completed application for minor subdivision or major subdivision as appropriate, and the materials listed in sections 38.220.050 and 38.220.060.

3. Final plan submittal and procedure. For land subdivisions created by rent or lease, the developer shall submit a final plan in lieu of a final plat, a completed final plat application and the materials listed in section 38.220.070.
4. Supplementary materials. In addition to the submittal requirements of division 38.220 of this chapter, preliminary and final plans for land subdivisions created by rent or lease shall show the following:
 - a. A layout of all spaces proposed for rent or lease;
 - b. Location of commonly owned areas and facilities; and
 - c. Parks and/or recreation areas.
5. Boundary lines. All preliminary and final plans may show approximate boundary, lot, right-of-way or other lines.

(Ord. No. 1645, § 18.08.020, 8-15-2005)

Sec. 38.240.220. - Land subdivisions created by rent or lease - timing of improvements. (38.04.030)

Before any portion of a land subdivision created by rent or lease can be rented or leased, all required improvements shall be installed, inspected and found compliant with the approved plan, and where applicable accepted by the city.

(Ord. No. 1645, § 18.08.030, 8-15-2005)

Sec. 38.240.230. - Land subdivisions created by rent or lease - filing of final plan. (38.04.040)

Once the final plan has been approved by the city, an original copy of the approved plan shall be filed with the county clerk and recorder as a "miscellaneous" document and another copy of the approved plan shall be retained by the engineering division of the department of public works.

(Ord. No. 1645, § 18.08.040, 8-15-2005; Ord. No. 1828, § 6, 9-10-2012)

FOOTNOTE(S):

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State Law reference— Miscellaneous exemptions, MCA 76-3-201 et seq.

Part 4: Subdivision Exemptions

Sec. 38.240.300. - Divisions of land entirely exempt from the requirements of this chapter pertaining to subdivisions and the state Subdivision and Platting Act. (38.05.010)

- A. Unless the method of disposition is adopted for the purpose of evading this chapter or the Montana Subdivision and Platting Act (the "Act"), the requirements of this chapter pertaining to subdivisions and the Act may not apply when:

1. 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 (MCA 76-3-201(1)(a));
 - a. Before a court of record orders a division of land, the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division;
2. 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 (MCA 76-3-201(1)(b)). This exemption applies:
 - a. To a division of land of any size;
 - b. If the land that is divided is not conveyed 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. A transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection subjects the division of land to the requirements of the Montana Subdivision and Platting Act and division 38.240 of this chapter;
 - c. To a parcel that is created to provide security, however the remainder of the tract of land is subject to the provisions of the Montana Subdivision and Platting Act and division 38.240 of this chapter if applicable;
3. A division of land creates an interest in oil, gas, minerals or water that is severed from the surface ownership of real property (MCA 76-3-201(1)(c));
4. A division of land creates cemetery lots (MCA 76-3-201(1)(d));
5. A division of land is created by the reservation of a life estate (MCA 76-3-201(1)(e));
6. A division of land is created by lease or rental for farming and agricultural purposes (MCA 76-3-201(1)(f));
7. A division of land is created for rights-of-way or 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 Montana Subdivision and Platting Act and division 38.240 of this chapter (MCA 76-3-201(1)(h));
8. The land upon which an improvement is situated has been subdivided in compliance with this chapter and the Act, the sale, rent, lease or other conveyance of one or more parts of a building, structure or other improvement situated on one or more parcels of land is not a division of land (MCA 76-3-202);
9. The sale, rent, lease or other conveyance of one or more parts of one or more buildings, structures or other improvements, whether existing or proposed, is not a division of land when a transferable parcel of land with an individual legal description is not created. The sale, rent, lease or other conveyance of one or more parts of buildings, structures or other improvements, whether existing or proposed, is subject to zoning standards and review procedures (MCA 76-3-204);

10. 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 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 (MCA 76-3-205(1));
11. A division of state-owned land 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 (MCA 76-3-205(2)); and
12. Deeds, contracts, leases or other conveyances that were executed prior to July 1, 1974 (MCA 76-3-206).

(Ord. No. 1645, § 18.10.010, 8-15-2005; Ord. No. 1769, exh. C(18.10.010), 12-28-2009; Ord. No. 1808, § 3, 7-11-2011)

State Law reference— Similar provisions, MCA 76-3-201, 76-3-202, 76-3-204, 76-3-205, 76-3-206.

Sec. 38.240.310. - Specific divisions of land exempt from review but subject to survey requirements and zoning regulations for divisions of land not amounting to subdivisions. (38.05.020)

- A. Unless the method of disposition is adopted for the purpose of evading this chapter or the Act, the following divisions or aggregations of land are not subdivisions under this chapter and the Act, but are subject to the surveying requirements of MCA 76-3-401 for lands other than subdivisions and are subject to applicable zoning regulations adopted under title 76, chapter 2, Montana Code Annotated (MCA 76-2-101 et seq.). A division of land may not be made under this section unless the county treasurer has certified that no real property taxes and special assessments assessed and levied on the land to be divided are delinquent. The county clerk and recorder shall notify the planning department of any land division described in this section or MCA 76-3-207(1).
1. Divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties (MCA 76-3-207(a));
 2. Divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family (MCA 76-3-207(b) A);
 3. Divisions made outside of platted subdivisions by gift, sale or an agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the city and the property owner that the divided land will be used exclusively for agricultural purposes (MCA 76-3-207(c));
 4. For lots within a platted subdivision, the relocation of common boundaries where the relocation does not cross public or private street rights of way or an external boundary of the subdivision. (MCA 76-3-207(d)). The restriction of MCA 76-3-207(2) on the number of lots to be rearranged and designation of review authority shall not apply in such instances; and

5. Divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas (MCA 76-3-207(e)).
6. Aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of the larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas (MCA 76-3-207(f)). The restriction of MCA 76-3-207(2) on the number of lots to be rearranged and designation of review authority shall not apply in such instances.

(Ord. No. 1645, § 18.10.020, 8-15-2005; Ord. No. 1769, exh. C(18.10.020), 12-28-2009; Ord. No. 1808, § 4, 7-11-2011)

State Law reference— Similar provisions, MCA 76-3-207.

Sec. 38.240.320. - Exemptions from surveying and filing requirements but subject to review. (38.05.030)

Subdivisions created by rent or lease are exempt from the surveying and filing requirements of division 38.240 of this chapter and the Montana Subdivision and Platting Act, but must be submitted for review and approved by the city before portions thereof may be rented or leased unless exempted by division 38.240 of this chapter.

(Ord. No. 1645, § 18.10.030, 8-15-2005; Ord. No. 1769, exh. C(18.10.030), 12-28-2009; Ord. No. 1808, § 5, 7-11-2011)

State Law reference— Similar provisions, MCA 76-3-208.

Sec. 38.240.330. - Condominiums. (38.05.040)

- A. Condominium developments are exempt from the surveying and filing requirements of article 2 of this chapter and the Montana Subdivision and Platting Act.
- B. Condominiums, constructed on land divided in compliance with the Montana Subdivision and Platting Act, are exempt from the provisions of division 38.240 of this chapter and the Montana Subdivision and Platting Act if either:
 1. The approval of the original division of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements of MCA 76-3-621 are complied with; or
 2. The condominium proposal is in conformance with applicable local zoning regulations where local zoning regulations are in effect.

(Ord. No. 1645, § 18.10.040, 8-15-2005; Ord. No. 1769, exh. C(18.10.040), 12-28-2009)

State Law reference— Similar provisions, MCA 76-3-203.

Sec. 38.240.340. - Exemption from surveying and platting requirements for lands acquired for state highways. (38.05.050)

Instruments of transfer for 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 MCA 60-2-209 and are exempted from the surveying and platting requirements of this chapter and the Act (MCA 76-3-209). 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.

(Ord. No. 1645, § 18.10.050, 8-15-2005; Ord. No. 1769, exh. C(18.10.050), 12-28-2009)

State Law reference— Similar provisions, MCA 76-3-209.

Sec. 38.240.350. - Procedures and general requirements. (38.05.060)

- A. All certificates of survey or amended subdivision plats claiming an exemption inside city limits and subject to survey requirements shall be submitted to the planning department. The procedures and requirements of this chapter are limited to the exemptions discussed in section 38.240.360.
1. Submittal. A claimant seeking an exemption under the Act and this chapter shall submit to the planning department a claim on the appropriate application form, including a signed certificate of exemption, together with evidence to support the claim and any other information required by this chapter.
 2. Review. The planning department will review the claimed exemption to verify that it is the proper use of the claimed exemption.
 - a. During this review, planning department staff will visit the proposed site, understand thoroughly the nature of all activity occurring on the site, and shall identify any existing or potential zoning conflicts. The planning department shall prepare a memo evaluating the claimed exemption against applicable review criteria, which shall also be made available to the claimant or the claimant's representative.
 - b. In assessing the claimant's purpose for the exemption, the planning department will evaluate all relevant circumstances including the nature of the claimant's business, the prior history of the particular tract in question, and the proposed configuration of the tract, if the proposed exemption transactions are completed.
 - c. Where a rebuttable presumption is declared in this chapter, the presumption may be overcome by the claimant with evidence contrary to the presumption. If the planning department concludes that the evidence overcomes the presumption and that from all the circumstances the exemption is justified, the exemption will be allowed. On the other hand, if the planning department concludes that the presumption is not overcome and that from all the circumstances the exemption is not justified, the exemption will be disallowed.
 - d. If the exemption is allowed, the planning department shall so certify in a printed certificate on the certificate of survey or amended plat within 30 days of submission of a complete application.
 - e. If the exemption is disallowed, the planning department shall provide written notification, within 30 days of submission of a complete application, of its decision to the person claiming the exemption and to the county clerk and recorder.

3. Filing requirements. An amended plat or a certificate of survey of a division of land which is exempt from review must be filed within 180 days of the completion of the survey.
 - a. Certificates of survey. A certificate of survey may not be filed by the county clerk and recorder unless it complies with the following procedures for divisions of land exempted from public review as subdivisions. Certificates of survey for divisions of land meeting the criteria set out in MCA 76-3-207, must meet the following requirements:
 - (1) A certificate of survey of a division of land that would otherwise be a subdivision, but that is exempted from subdivision review under MCA 76-3-207, may not be filed by the county clerk and recorder unless it bears the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and citing the applicable exemption.
 - (2) If the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed unless it bears a signed and acknowledged recitation of the covenant.
 - (3) If a certificate of survey invokes the exemption for gifts and sales to members of the landowner's immediate family, the certificate must indicate the name of the proposed grantee, the relationship of the grantee to the landowner and the parcel to be conveyed to the grantee.
 - (4) If a certificate of survey invokes the exemption for the relocation of common boundary lines:
 - (a) The certificate of survey must bear the signatures of all landowners whose parcels will be altered by the proposed relocation. The certificate of survey must show that the exemption was used only to change the location of or eliminate a boundary line dividing two or more parcels, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation);
 - (b) The certificate of survey must show the boundaries of the area that is being removed from one parcel and joined with another parcel. The certificate of survey may, but is not required to, establish the exterior boundaries of the resulting parcels. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to clearly identify both the location and the extent of the boundary relocation;
 - (3) If a boundary line will be completely eliminated, the certificate must establish the boundary of the resulting parcel.
 - (5) If the certificate of survey invokes an exemption from subdivision review under MCA 76-3-207, the certificate of survey must bear, or be accompanied by, a certification by the county treasurer that all taxes

and special assessments assessed and levied on the surveyed land have been paid.

- (6) For purposes of subsection 3.a of this section, when the 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.
- (7) Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Act. The divisions of land described in MCA 76-3-201, 76-3-205 and 76-3-209, and divisions of federally owned land made by a United States government agency are not required to be surveyed, nor must a certificate of survey or subdivision plat showing these divisions be filed with the county clerk and recorder. A certificate of survey of one of these divisions may, however, be filed with the county clerk and recorder if the certificate of survey meets the requirements for form and content for certificates of survey contained in this section and bears a certificate of the surveyor performing the survey citing the applicable exemption from the Act or, when applicable, that the land surveyed is owned by the federal government.

b. Amended plats. Unless a division of land is exempt from subdivision review by MCA 76-3-201 or 76-3-207(1)(d) or (e), an amended plat shall not be filed by the county clerk and recorder unless it complies with the uniform standards for final subdivision plats specified in section 24.183.1107, ARM. A survey document that modifies lots in a platted and filed subdivision and invokes an exemption from subdivision review under MCA 76-3-201 or 76-3-207(1)(d) or (e), must be entitled "amended plat of the (name of subdivision)," but for all other purposes is to be regarded as a certificate of survey and subject to the requirements of subsection 3.a of this section.

(Ord. No. 1645, § 18.10.060, 8-15-2005; Ord. No. 1769, exh. C(18.10.060), 12-28-2009)

Sec. 38.240.360. - Exemption review criteria. (38.05.070)

A. The following criteria shall be used to ensure that exemptions are not claimed for the purposes of evading this chapter or the Act. Appeals regarding a final decision by the planning department that an exemption is an evasion of the Subdivision and Platting Act may be taken in the manner established for administrative project decision appeals as set forth in section 38.250.030.

1. 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 (MCA 76-3-201(1)(b)).
 - a. The proper use of the exemption is to provide security for construction mortgages, liens or trust indentures, when a survey of the parcel has been required.
 - b. The city makes a rebuttable presumption that a division of land that is created to provide security is adopted for the purpose of evading the Act under the following conditions:

- (1) If 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
 - (2) The security is provided for construction or improvements on, or refinancing for, land other than on the exempted parcel.
- c. When the security for construction financing exemption is to be used, the landowner shall submit, in addition to such other documents as may be required, a written statement explaining:
- (1) How many parcels within the original tract will be created by use of the exemption;
 - (2) Who will have title to and possession of the remainder of the original parcel; and
 - (3) A signed and notarized statement from a lending institution that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.
- d. The written statement and the instruments creating the security shall be filed at the same time as the survey with the clerk and recorder.
2. Divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties (MCA 76-3-207(a)).
- a. 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.
 - b. A certificate of survey for the relocation of common boundary lines may include five or fewer parcels and/or lots.
 - c. Certificates of survey showing the relocation of common boundary lines must be accompanied by:
 - (1) An original deed exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly described parcel that is acquiring additional land;
 - (2) Documentation showing the need or reason for the relocation (for example: structure encroachment, surveyor error, or enhancement of the configuration of the property); and
 - (3) The certificate of survey must bear the signatures of all landowners whose parcels are changed by the relocation, and show that the exemption was used only to change the location of a boundary line dividing two parcels, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation).
 - d. The city makes a rebuttable presumption that a proposed relocation of common boundary lines is adopted for the purpose of evading the Act, if:

- (1) The planning department determines that the documentation submitted according to this section does not support the stated reason for relocation, or an additional parcel is created.
3. Division made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family (MCA 76-3-207(b)).
 - a. A member of the immediate family is the spouse of the grantor, or whether by blood or adoption, a son, daughter, mother or father of the grantor.
 - b. The proper use of the exemption as a gift or sale to a member of the immediate family is to convey one parcel of land outside of a platted subdivision to each member of the landowner's immediate family in each county, providing that the use of the exemption creates no more than one additional parcel of less than 160 acres in size. Each exemption under this section will be reviewed by the planning department under this chapter.
 - c. A certificate of survey for a family transfer may include more than one exempt parcel providing all parcels meet the criteria of this section.
 - d. Certificates of survey showing the creation of new parcels of land pursuant to this exemption as a gift or sale to a member of the immediate family must be accompanied by an original deed transferring interest in the parcel being created, or a statement detailing where the deed is in escrow, how long it will be in escrow and authorization to contact the escrow agent for verification.
 - e. The certificate of survey for an exemption for a family transfer must indicate the name of the grantee, the relationship of the grantee to the landowner and the parcel to be conveyed to the grantee.
 - f. The city makes a rebuttable presumption that a family transfer is adopted for the purpose of evading this chapter and the Act if it is determined that one or more of the following conditions exist:
 - (1) The exemption would create more than one additional parcel of less than 160 acres.
 - (2) The member of the landowner's immediate family would have received more than one exempted parcel in the county.
4. Division made outside of platted subdivisions by gift, sale or an agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the city and the property owner that the divided land will be used exclusively for agricultural purposes (MCA 76-3-207(c)).
 - a. An agricultural exemption is a division of land made outside of a platted subdivision by gift, sale or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land, revocable only by mutual consent of the city and the transferee/property owner, that the divided land will be used exclusively for agricultural purposes. No building or structure requiring water or sewer facilities shall be utilized on such a parcel.

- (1) A change in use of the land for anything other than agricultural purposes subjects the division to this chapter and review under parts 5 and 6 of the Act.
5. For lots within a platted subdivision, relocation of common boundaries and the aggregation of lots (MCA 76-3-207(d)).
 - a. The proper use of the exemption for aggregation of lots and/or relocation of common boundaries is the rearrangement and/or aggregation of lots within a platted subdivision which does not increase the total number of lots within the subdivision. The plat shall contain the title "amended plat" and must be filed with the county clerk and recorder.
 - b. The amended plat showing the aggregation of lots and/or relocation of common boundary within a platted subdivision must be accompanied by:
 - (1) An original deed exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly-described parcel(s) that is acquiring additional land;
 - (2) Documentation showing the need or reason for the relocation (for example: structure encroachment, surveyor error, or enhancement of the configuration of the property); and
 - (3) The amended plat must bear the signatures of all landowners whose parcels are changed by the relocation or aggregation. The amended plat must show that the exemption was used only to change the location of boundary lines or aggregate lots, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation).
 - c. The city makes a rebuttable presumption that a proposed aggregation of lots and/or relocation of common boundaries within a platted subdivision is adopted for the purpose of evading the Act if it determines that the relocation crosses the boundary of a public or private street right-of-way or the external boundary of the subdivision.
 - d. Any division of lots which results in an increase in the number of lots must be reviewed as a subdivision and approved by the City of Bozeman prior to the filing of the final plat.
6. Divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision (MCA 76-3-207(d)).
 - a. The proper use of the exemption for relocating common boundary lines is to establish a new common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

- b. A certificate of survey for the relocation of common boundary lines may include five or fewer parcels and/or lots.
- c. Certificates of survey showing the relocation of common boundary lines must be accompanied by:
 - (1) A original deed exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly-described parcel that is acquiring additional land;
 - (2) Documentation showing the need or reason for the relocation (for example: structure encroachment, surveyor error, or enhancement of the configuration of the property); and
 - (3) The certificate of survey must bear the signatures of all landowners whose parcels are changed by the relocation, and show that the exemption was used only to change the location of a boundary line dividing two parcels, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation).
- d. The city makes a rebuttable presumption that a proposed relocation of common boundary lines is adopted for the purpose of evading the Act, if:
 - (1) The planning department determines that the documentation submitted according to this section does not support the stated reason for relocation, or an additional parcel is created.

(Ord. No. 1645, § 18.10.070, 8-15-2005; Ord. No. 1769, exh. C(18.10.070), 12-28-2009; Ord. No. 1808, § 6, 7-11-2011; Ord. No. 1828, § 7, 9-10-2012)

Sec. 38.240.370. - Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the act. (38.05.080)

A certificate of survey of a division of land entirely exempted from the requirements of this chapter and the Act may be filed with the county clerk and recorder if it meets the requirements for form and content for certificates of survey contained in this section and bears a certificate of the surveyor performing the survey stating the applicable exemption from the Act.

(Ord. No. 1645, § 18.10.080, 8-15-2005; Ord. No. 1769, exh. C(18.10.080), 12-28-2009)

Sec. 38.240.380. - Correction of errors. (38.05.090)

Correction of errors may be made by the submission of a corrected certificate of survey for the city's approval.

(Ord. No. 1645, § 18.10.090, 8-15-2005; Ord. No. 1769, exh. C(18.10.090), 12-28-2009; Ord. No. 1828, § 8, 9-10-2012)

FOOTNOTE(S):

--- (5) ---

State Law reference— Certificate of survey, MCA 76-3-404.

Part 5: Subdivision Certificates

Sec. 38.240.400. – General. (38.06.010)

The certificates listed in sections 38.240.270 through 38.240.360, shall be shown on plats and certificates of survey, as appropriate. Other certificates than those shown may be required by the city when deemed appropriate. The proper notary block shall be used.

(Ord. No. 1645, § 18.12.010, 8-15-2005; Ord. No. 1693, § 3(18.12.010), 2-20-2007)

Sec. 38.240.410. - Dedication or consent. (38.06.020)

A. All plats of subdivisions must contain a certificate of dedication or certificate of consent. In the case of corporate ownership, the proper corporation officer must sign, a corporate notary form must be used, and the corporate seal must be affixed. The certificate shall read as follows:

1. Certificate of dedication.

CERTIFICATE OF DEDICATION

(I), (We), the undersigned property owner(s), do hereby certify that (I) (We) have caused to be surveyed, subdivided and platted into lots, blocks, streets, and alleys, and other divisions and dedications, as shown by the plat hereunto included the following described tract of land to wit:

Description

(Exterior Boundary Description of Area Contained in Plat and Total Acreage)

The above-described tract of land is to be known and designated as (name of subdivision), City of Bozeman, Gallatin County, Montana; and the lands included in all streets, avenues, alleys, and parks or public lands shown on said plat are hereby granted and donated to the City of Bozeman for the public use and enjoyment. Unless specifically listed herein, the lands included in all streets, avenues, alleys, and parks or public lands dedicated to the public are accepted for public use, but the city accepts no responsibility for maintaining the same. The owner(s) agree(s) that the city has no obligation to maintain the lands included in all streets, avenues, alleys, and parks or public lands, hereby dedicated to public use. The lands included in all streets, avenues, alleys, and parks or public lands dedicated to the public for which the city accepts responsibility for maintenance include (list specific streets, avenues, alleys for other public lands).

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 or other similar utility or service, 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.

DATED this _____ day of _____, _____.

(Acknowledged and notarized signatures of all record owners of platted property)

2. Certificate of consent.

CERTIFICATE OF CONSENT ;b0;(I), (We), the undersigned property owner(s), do hereby certify that (I), (We) caused to be surveyed, subdivided and platted into lots, blocks, streets, and alleys, and other divisions and dedications, as shown by this plat hereunto included, the following described tract of land, to wit:

Description

(Exterior Boundary Description of Area Contained in Plat and Total Acreage)

The above described tract of land is to be known and designated as (name of subdivision), City of Bozeman, Gallatin County, Montana.

The undersigned hereby grants unto each and every person, firm of corporation, whether public or private, providing or offering to provide telephone, electric power, gas, internet, cable television or other similar utility or service, 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.

DATED this _____ day of _____, _____.

(Acknowledged and notarized signatures of all record owners of platted property)

(Ord. No. 1645, § 18.12.030, 8-15-2005; Ord. No. 1693, § 3(18.12.020), 2-20-2007)

Sec. 38.240.420. - Mortgagee. (38.06.030)

In those cases where the area being platted or the plat of subdivision is subject to any liens, mortgages, claims, or other encumbrances by parties or other owners, the following certificate shall be required:

CONSENT OF MORTGAGEE(S)

(I), (We), the undersigned mortgagee(s) or encumbrancer(s), do hereby join in and consent to the described plat, releasing (my) (our) respective liens, claims or encumbrances as to any portion of said lands now being platted into streets, avenues, parks or other public areas which are dedicated to the City of Bozeman for the public use and enjoyment.

DATED this _____ day of _____, _____.

Acknowledged and notarized signature of all encumbrances of record)

(Ord. No. 1645, § 18.12.030, 8-15-2005; Ord. No. 1693, § 3(18.12.030), 2-20-2007)

Sec. 38.240.430. - Park land. (38.06.040)

A. Cash-in-lieu of park land. Where there will be a cash donation in-lieu of park land dedication, plats of subdivision shall show the following certificate:

CERTIFICATE ACCEPTING CASH DONATION IN-LIEU OF LAND DEDICATION

In as much as dedication of park land within the platted area of (Subdivision Name) would be undesirable for park and playground purposes, it is hereby ordered by the city commission of the City of Bozeman, that land dedication for park purposes be waived and that cash-in-lieu, in the amount of _____ dollars, be accepted in accordance with the provisions of the Montana, Subdivision and Platting Act (MCA 76-3-101 through 76-3-625) and the Bozeman Municipal Code.

DATED this _____ day of _____, _____.

(Signature)

City of Bozeman Director of Public Works

- B. Off-site park land dedication. Where park land will be provided off-site, in accordance with section 38.420.100.A.4 or 5, plats of subdivision shall show the following certificate:

CERTIFICATE ACCEPTING OFF-SITE PARK LAND DEDICATION

In as much as an alternative to dedication of park land, for park and playground purposes within the platted area of (Subdivision Name), would be desirable, it is hereby ordered by the city commission of the City of Bozeman that land dedication for park purpose be provided off-site with land outside of the platted area of (Subdivision Name) in accordance with the provisions of the Montana Subdivision and Platting Act (MCA 76-3-101 through 76-3-625), and the Bozeman Municipal Code. The off-site park land dedication will be provided with the following described tract(s) of land to wit:

Description
(Exterior Boundary Description of Area Contained in Plat and Total Acreage)

DATED this _____ day of _____, _____.

City of Bozeman Director of Public Works

- C. Park land dedication to School District 7. Where park land will be provided in accordance with section 38.420.100.A.6, plats of subdivision shall show the following certificate:

CERTIFICATE ACCEPTING PARK LAND
DEDICATION TO SCHOOL DISTRICT 7

In as much as an alternative to dedication of park land, for park and playground purposes within the platted area of (Subdivision Name), would be desirable, it is hereby ordered by the city commission of the City of Bozeman that required land dedication for park purposes be met with land dedicated to School District 7 in accordance with the provisions of the Montana Subdivision and Platting Act (MCA 76-3-101 et seq.), and the Bozeman Municipal Code. If School District 7 chooses to no longer use the land for school buildings and facilities, the ownership of the land shall revert to the City of Bozeman for park purposes and School District 7 shall transfer the land to the city with clear title and in a condition meeting the minimum development standards for parks established in section 38.420.080. The land dedication will be provided with the following described tract(s) of land, to wit:

Description
(Exterior Boundary Description of Area Contained in Plat and Total Acreage)

DATED this _____ day of _____, _____.

(Signature)

City of Bozeman Director of Public Works

(Signature)

Chairman, School District 7 Board of Trustees

(Ord. No. 1645, § 18.12.040, 8-15-2005; Ord. No. 1693, § 3(18.12.040), 2-20-2007)

Sec. 38.240.440. - Surveyor. (38.06.050)

All subdivision plats or certificates of survey shall contain a certificate of surveyor which shall read as follows:

CERTIFICATE OF SURVEYOR

I, the undersigned, (Type or Print Name), Registered Land Surveyor, do hereby certify that between _____/_____/_____, _____, and _____/_____/_____, _____, I surveyed (Name of Subdivision or Certificate of Survey), and platted the same as shown on the accompanying plat (or certificate of survey) and as described in accordance with the provisions of the Montana Subdivision and Platting Act (MCA 76-3-101 through 76-3-625), and the Bozeman Municipal Code.

DATED this _____ day of _____, _____.

(Signature)
(Printed or Typed Name)

Registration No.

(Seal of Surveyor)

(Ord. No. 1645, § 18.12.050, 8-15-2005; Ord. No. 1693, § 3(18.12.050), 2-20-2007)

Sec. 38.240.450. - Improvements. (38.06.060)

A. Where improvements are to be installed prior to final plat approval, the final plat of subdivision shall contain a certificate of completion of public improvements. The certificate shall list all completed and accepted improvements, and shall read as follows:

CERTIFICATE OF COMPLETION OF
IMPROVEMENTS

I, (Name of Subdivider), and I, (Name of Subdivider's Registered Engineer), a registered professional engineer licensed to practice in the state of Montana, hereby certify that the following improvements, required to meet the requirements of chapter 38 of the Bozeman

Municipal Code or as a condition(s) of approval of (Name of Subdivision), have been installed in conformance with the approved plans and specifications, or financially guaranteed and covered by the improvements agreement accompanying this plat.

Installed Improvements: (List improvements in accordance with section 38.240.310.A).

Financially Guaranteed Improvements: (List improvements in accordance with section 38.240.310.B). The subdivider hereby warrants against defects in these improvements for a period of two years from the date of acceptance by the City of Bozeman.

The subdivider grants possession of all public infrastructure improvements to the City of Bozeman and the city hereby accepts possession of all public infrastructure improvements, subject to the above indicated warranty.

Signature of Subdivider	(Date) _____
Signature, Number, and Seal of Engineer	(Date) _____
Signature, Director of Public Works	(Date) _____

B. If all required subdivision improvements will not be installed prior to final plat approval, and the final plat will be recorded subject to an improvements agreement and financial guarantee, this certificate shall be modified to also list all improvements not completed.

(Ord. No. 1645, § 18.12.060, 8-15-2005; Ord. No. 1693, § 3(18.12.060), 2-20-2007)

Sec. 38.240.460. - Governing body. (38.06.070)

The city commission or their designated agent shall certify approval of the plat of subdivision. Said certificate shall read as follows:

CERTIFICATE OF DIRECTOR OF PUBLIC WORKS

I, Director of Public Works, City of Bozeman, Montana, do hereby certify that the accompanying plat has been duly examined and has found the same to conform to the law, approves it, and hereby accepts the dedication to the City of Bozeman for the public use of any and all lands shown on the plat as being dedicated to such use.

DATED this _____ day of _____, _____.

(Signature), Director of Public Works

(Ord. No. 1645, § 18.12.070, 8-15-2005; Ord. No. 1693, § 3(18.12.070), 2-20-2007)

Sec. 38.240.470. - Exclusion from MDEQ review. (38.06.080)

The following certificate shall be added to all subdivision plats to certify that adequate stormwater drainage and adequate municipal facilities will be provided.

CERTIFICATE OF EXCLUSION FROM
MONTANA DEPARTMENT OF
ENVIRONMENTAL QUALITY REVIEW

The (Name of Subdivision), Gallatin County, Montana, is within the City of Bozeman, Montana, a first-class municipality, and within the planning area of the Bozeman growth policy which was adopted pursuant to MCA 76-1-601 et seq., and can be provided with adequate stormwater drainage and adequate municipal facilities. Therefore, under the provisions of MCA 76-4-125(2)(d), this subdivision is excluded from the requirement for Montana Department of Environmental Quality review.

DATED this _____ day of _____, _____.

(Signature), Director of Public Works

City of Bozeman, Montana

(Ord. No. 1645, § 18.12.080, 8-15-2005; Ord. No. 1693, § 3(18.12.080), 2-20-2007)

Sec. 38.240.480. - County treasurer. (38.06.090)

All final subdivision plats, and certificates of survey unless prepared for a subdivision exemption to provide security for construction mortgages, liens or trust indentures, shall show the following certificate of county treasurer:

CERTIFICATE OF COUNTY TREASURER

I, (Name of County Treasurer), Treasurer of Gallatin County, Montana, do hereby certify that the accompanying plat (or certificate of survey) has been duly examined and that all real property taxes and special assessments assessed and levied on the land to be subdivided are paid.

DATED this _____ day of _____, _____.

(Signature), Treasurer of Gallatin County

(Ord. No. 1645, § 18.12.090, 8-15-2005; Ord. No. 1693, § 3(18.12.090), 2-20-2007)

Sec. 38.240.490. - Clerk and recorder. (38.06.100)

All plats or certificates of survey shall show the following certificate of clerk and recorder:

CERTIFICATE OF CLERK AND RECORDER

I, (Name of Clerk and Recorder), Clerk and Recorder of Gallatin County, Montana, do hereby certify that the foregoing instrument was filed in my office at _____ o'clock, (a.m. or p.m.), this _____ day of _____/_____/_____, _____, and recorded in Book _____ of Plats on Page _____, Records of the Clerk and Recorder, Gallatin County, Montana.

(Signature), Clerk and Recorder

(Ord. No. 1645, § 18.12.100, 8-15-2005; Ord. No. 1693, § 3(18.12.100), 2-20-2007)

Sec. 38.240.500. - Certification of use of exemption claim. (38.06.110)

A. The following certificates shall be provided in a printed certificate on the amended plat or certificate of survey for allowed exemptions:

1. Certificate of governing body.

CERTIFICATE OF GOVERNING BODY

I, (Planning Director), do hereby certify that the accompanying (Certificate of Survey or Amended Plat) has been duly reviewed, and has been found to conform to the requirements of the Subdivision and Platting Act (MCA 76-3-101 et seq.), and the Bozeman Municipal Code.

DATED this _____ day of _____, _____.

(Signature), Planning Director

2. Certificate of exemption. Reference to exclude the survey from state department of environmental quality review can also be added to this certificate, as appropriate.

CERTIFICATE OF EXEMPTION

(I), (We) certify that the purpose of this survey is to (state exemption), and therefore this survey is exempt from review as a subdivision pursuant to MCA 76-3-207(1) (add appropriate subsection).

DATED this _____ day of _____, _____.

(Acknowledged and notarized signatures of all record owners of surveyed property)

(Ord. No. 1645, § 18.12.110, 8-15-2005; Ord. No. 1693, § 3(18.12.110), 2-20-2007)

38.250 Appeals, deviations & variance procedures (current Article 35)

Sec. 38.250.010. - Purpose. (38.35.010)

A. This division 38.250 is adopted:

1. To establish procedures for granting relief from the requirements of this chapter subject to the standards of this division 38.250 in order to preserve equitable implementation of the law, prevent special treatment to particular parties and preserve the various rights established by the state and United States constitutions of all persons subject to this chapter;
2. To provide through appeals of administrative interpretations a procedure for consideration of and resolution of disputes regarding the meaning and implementation of this chapter;
3. To provide through deviations a procedure for flexibility, as a means to support creativity and excellence of design, in the application of the standards of this chapter in overlay districts and planned unit developments as provided for in this chapter;
4. To provide through zoning variances a procedure for relief from the occasional inequities created by the physical standards of this chapter relating to zoning when such standards create a substantially unequal burden on a particular parcel of land in a fashion that would otherwise prevent the reasonable use of property, owing to physical circumstances unique to that parcel;
5. To prohibit the granting of variances that would be contrary to the public interest and endanger public health, safety and welfare;
6. To provide through subdivision variances a procedure for relief from standards relating to platting requirements or improvements within public rights-of-way when such standards would result in undue hardship and are not essential to the public health, safety and general welfare;
7. To allow for appeals from decisions made by administrative staff approving, approving with conditions or denying applications for development approval; and
8. To provide a procedure to request reasonable accommodation for individuals and groups seeking equal access to housing under applicable non-discrimination laws in the application of the standards of this chapter.

B. The planning director shall hear and decide requests for reasonable accommodation as follows:

1. Authorize in specific cases such requests for reasonable accommodation from the terms of this chapter as will advance the intent and purpose of this chapter and applicable nondiscrimination laws and meet the standards for the granting of reasonable accommodation.

C. The board of adjustment shall hear and decide variances and deviations as follows:

1. Authorize in specific cases such deviations from the terms of this chapter relating to zoning as will advance the intent and purposes of this chapter and meet the standards established for the granting of deviations;
 2. Authorize in specific cases such zoning variances from the physical standards of this chapter, exclusive of those items included as subdivision variances, that will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done.
- D. The city commission shall hear and decide appeals of administrative decisions, variances and deviations, and requests for reasonable accommodation as follows:
1. When reclaimed per section 38.200.010C.
 - a. Authorize in specific cases such deviations from the terms of this chapter relating to zoning as will advance the intent and purposes of this chapter and meet the standards established for the granting of deviations; and
 - b. Authorize in specific cases such zoning variances from the physical standards of this chapter, exclusive of those items included as subdivision variances, that will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done; and
 - c. Authorize in specific cases such requests for reasonable accommodation from the terms of this chapter as will advance the intent and purposes of this chapter and applicable nondiscrimination laws and meet the standards established for the granting of reasonable accommodation.
 2. Authorize in specific cases such subdivision variances from the platting requirements and standards for improvements within public rights-of-way required by this chapter where it is found that strict compliance would result in undue hardship and is not essential to the public health, safety and general welfare.
 3. Consider appeals from decisions of the planning director regarding subdivision exemptions.
 4. Consider deviations to standards of the title when proposed through a planned unit development.
 5. Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter or of any standards adopted pursuant thereto. An aggrieved person may appeal the final decision of the planning director in the manner provided in this division 38.250.

(Ord. No. 1645, § 18.66.010, 8-15-2005; Ord. No. 1670, § 18.66.010, 8-28-2006; Ord. No. 1693, § 24(18.66.010), 2-20-2007; Ord. No. 1769, exh. L(18.66.010), 12-28-2009; Ord. No. 1827, § 6, 9-10-2012; Ord. No. 1838, § 6, 9-10-2012)

Sec. 38.250.020. - Hearing and notice requirements. (38.35.020)

- A. There shall be an opportunity for public comment to the review authority for any appeal of administrative decisions and interpretations and for each application for any variance or deviation. When a public hearing is required the hearing shall be held at an appointed time and place. Comment shall be taken by the review authority from persons interested in the application and from the staff.
- B. The planning director shall give public notice as required by division 38.220 of this chapter of all public hearings or public comment periods.

(Ord. No. 1645, § 18.66.020, 8-15-2005; Ord. No. 1670, § 18.66.020, 8-28-2006; Ord. No. 1693, § 24(18.66.020), 2-20-2007; Ord. No. 1769, exh. L(18.66.020), 12-28-2009; Ord. No. 1827, § 7, 9-10-2012)

Sec. 38.250.030. - Administrative project decision appeals. (38.35.030)

- A. An aggrieved person may appeal the final decision of the administrative review authority in the manner provided in this section. Any appeal of a final administrative decision to approve, approve with conditions or deny an application shall be an appeal on the basis of the information available to the administrative review authority including this chapter, all submitted application materials, review and recommendations by administrative staff or advisory bodies, public comment and such other materials as were available. Denial of requests for waiver or alteration of applicable regulations is not a decision subject to appeal of an administrative decision. This section shall also apply to decisions by the administrative review authority regarding evasion of the Subdivision and Platting Act per 38.240.360.
- B. Failure to raise an issue during the provided public comment opportunity, in person or in writing, or the failure to provide statements or evidence sufficient to afford the administrative review authority an opportunity to respond to an issue, precludes an appeal based on that issue, unless the issue could not have been reasonably known by any party during the time of the public comment opportunity.
- C. Appeal procedures. Appeals from administrative review authority to the appellate review authority or the courts are set forth in the various sections of this division 38.250. Appeals are permitted under the provisions of this section in the manner set forth herein.
 - 1. These appeal procedures shall apply to a decisions by an administrative review authority in their actions to administer this chapter.
 - 2. Appeals shall be from the administrative review authority to the appellate review authority according to section 38.250.010.
- D. Filing of appeal. An appeal shall be taken by filing with the city clerk by 5:00 p.m. on the tenth working day following the final decision of the administrative review authority a documented appeal and appeal fee. Upon receipt of the completed appeal the city clerk shall inform the administrative review authority from whom the appeal is being made of the submission of the appeal.
- E. Appeal contents. In all cases, the complete appeal application shall include, and shall not be deemed filed until, all of the materials required by section 38.220.140 is are submitted.

- F. Notice of appeal. Once a complete appeal has been filed and date for consideration of the appeal is set per subsection G below, notice of the appeal shall be provided in the same manner as was required for notice of the initial application. The date, time and location for the consideration of the appeal before the appellate review authority shall be included in the required notice of the appeal.
- G. Scheduling. Upon receipt of a complete appeal application the city clerk shall place the appeal on the regularly scheduled appellate review authority agenda. The appeal shall be scheduled for consideration not later than 45 working days of the receipt of a complete appeal.
- H. Material. The material to be considered by the review authority shall be the record of the project review, including the administrative review authority's decision, in addition to materials that may be submitted during the processing and review of the appeal.
- I. Procedure of the appeal. At the consideration of the appeal, the following procedure shall be followed:
 - 1. Only arguments and evidence relevant to the application shall be presented. The presentation shall be made in the following order, subject to such limitations, in time and scope as may be imposed at the discretion of the presiding officer:
 - a. Explanation of the application and nature of the appeal and presentation by administrative staff;
 - b. Presentation of position by the appellant and/or representative;
 - c. If requested, presentation by landowner if landowner is different than the appellant;
 - d. Presentation by any person who is a proponent or an opponent of the application; and
 - e. Motion, discussion and vote by the review authority.
 - 2. No person making a presentation shall be subject to cross-examination except that members of the appellate review authority and the city attorney may inquire of such person for the purpose of eliciting information and for the purpose of clarifying information presented.
- J. Alternative actions available to the appellate body. At the conclusion of the consideration of the appeal, the review authority may uphold, amend, or overturn the administrative project decision.
- K. Construction hold. During the time of the appeal all construction shall cease and shall not commence unless notified in writing to do so by the by the appellate review authority.

(Ord. No. 1645, § 18.66.030, 8-15-2005; Ord. No. 1670, § 18.66.030, 8-28-2006; Ord. No. 1693, § 24(18.66.030), 2-20-2007; Ord. No. 1769, exh. L(18.66.030), 12-28-2009; Ord. No. 1804, § 14, 7-11-2011; Ord. No. 1828, § 102, 9-10-2012)

Sec. 38.250.040. - Administrative interpretation appeals. (38.35.040)

- A. A request for appeal of an interpretation of this chapter, including classifications of use per division 38.300 of this chapter, shall be made by filing an application, with appropriate fees, with the city clerk within 20 working days of the interpretation decision. After receiving a completed application the city clerk shall schedule consideration of the appeal at a regularly scheduled meeting of the review authority. In all cases, the complete application shall include, and shall not be deemed filed until, all of the materials required by section 38.220.150 are submitted.
- B. The appellate review authority shall cause to be made such investigation of facts bearing on the application as will provide necessary information to ensure that the action on each such application is consistent with the intent and purpose of this chapter. During the time of the appeal all construction shall cease and shall not commence unless notified in writing to do so by the by the appellate review authority.
- C. When interpreting the meaning of this chapter, sections of the chapter shall be construed in a manner that will give effect to them all as the chapter derives its meaning from the entire body of text taken together.

(Ord. No. 1645, § 18.66.040, 8-15-2005; Ord. No. 1693, § 24(18.66.040), 2-20-2007; Ord. No. 1769, exh. L(18.66.040), 12-28-2009; Ord. No. 1804, § 15, 7-11-2011; Ord. No. 1828, § 103, 9-10-2012)

Sec. 38.250.050. - Deviations. (38.35.050)

All requests for deviations in the neighborhood conservation overlay district, entryway overlay districts or through the PUD process shall be heard by the review authority established in 38.200.010. Deviations may only be applied for in conjunction with submittal of a development proposal of a type authorized by divisions 38.230 and 430 of this chapter. Standards and criteria for award of deviations are contained in divisions 38.340 and 430 of this chapter. The granting of a deviation is an exercise of administrative power that can effect no change in the chapter. A deviation may be granted only in a specific instance permitting a nonconformity in order to accomplish the specific objectives of sections 38.340.070, 38.340.170, and 38.430.030.D., and provided the standards and criteria imposed are met. Deviations shall not be granted for relief from procedural requirements, or to waive or vary the application of an ordinance provision imposing specific safety requirements, or to waive or vary the application of other ordinances or statutes.

(Ord. No. 1645, § 18.66.050, 8-15-2005; Ord. No. 1670, § 18.66.050, 8-28-2006; Ord. No. 1693, § 24(18.66.050), 2-20-2007; Ord. No. 1769, exh. L(18.66.050), 12-28-2009; Ord. No. 1828, § 104, 9-10-2012)

Sec. 38.250.060. - Zoning variances. (38.35.060)

- A. Application. A request for one or more variance shall be made by filing an application, with appropriate fees, with the planning department at least 30 calendar days prior to the review authority's consideration of the application and shall be accompanied by the materials described in section 38.220.160.
- B. Investigation of facts. The review authority shall cause to be made such investigation of facts bearing on the application as will provide necessary information to ensure that the action on each such application is consistent with the intent and purpose of this chapter.

C. Criteria for consideration and decision. In acting on an application for a variance, the review authority shall designate such lawful conditions as will secure substantial protection for the public health, safety and general welfare, and shall issue written decisions setting forth factual evidence that the variance meets the standards of MCA 76-2-323 in that the variance:

1. Will not be contrary to and will serve the public interest;
2. Is necessary, owing to conditions unique to the property, to avoid an unnecessary hardship which would unavoidably result from the enforcement of the literal meaning of this chapter:
 - a. Hardship does not include difficulties arising from actions, or otherwise be self-imposed, by the applicant or previous predecessors in interest, or potential for greater financial returns; and
 - b. Conditions unique to the property may include, but are not limited to, slope, presence of watercourses, after the fact imposition of additional regulations on previously lawful lots, and governmental actions outside of the owners control;
3. Will observe the spirit of this chapter, including the adopted growth policy, and do substantial justice;
4. In addition to the criteria specified above, in the case of a variance relating to the flood hazard provisions of article 6 of this chapter:
 - a. Variances shall not be issued for areas within a floodway if any additional increase in flood elevations or velocities after allowable encroachments into the floodway fringe would result;
 - b. Variances shall only be issued upon:
 - (1) A determination that the granting of a variance will not result in increased flood hazards, present additional threats to public safety, be an extraordinary public expense, create nuisances, cause fraud, victimize the public, or conflict with existing state and local laws;
 - (2) A determination that the proposed use would be adequately floodproofed as specified in article 6 of this chapter;
 - (3) A determination that a reasonable alternate location outside the floodplain is not available;
 - (4) A determination that the variance requested is the minimum necessary to afford relief, considering the flood hazard; and
 - (5) Approval of the state department of natural resources and conservation, upon request from the city, prior to formally approving any permit application that is in variance to these regulations.

D. Authorization and limitations on approval.

1. The review authority may, after public notice, opportunity for public comment, and consideration of the application, deny, approve or conditionally approve all requests for variances meeting all the criteria of this section, including:

- a. Requests to modify dimensional or other numerical requirements of this chapter;
 - b. Requests for multiple variances;
 - c. Requests to modify flood hazard district requirements subject to the provisions of article 6 of this chapter, except that no variance shall be granted to allow construction of buildings within the floodway of a 100-year frequency flood as defined in title 76, chapter 5, Montana Code Annotated (MCA 76-5-101 et seq.); and
 - d. Requests for variances in conjunction with conditional use permits. Approvals of all such variances shall be conditioned upon review authority approval of the conditional use permit.
2. The scope and extent of the variance shall be limited to the minimum relief necessary to provide reasonable use of the property.
 3. In no case may the review authority grant variances to allow uses not already permitted pursuant to this chapter or alter administrative requirements of this chapter. Permission to change uses allowed on a parcel may be sought through a zone map amendment, or an amendment to the text of the applicable zoning district, or through a planned unit development subject to division 38.430.
 4. Notifications of approval for variances related to flood hazard requirements of article 6 of this chapter shall notify the applicant that:
 - a. The issuance of a variance to construct a building below the 100-year floodplain elevation will result in increased premium rates; and
 - b. Such construction below the 100-year flood elevation increases risks to life and property.
- E. Effective time for decisions; variances void when. The decision of the review authority shall be final except as provided in section 38.250.080. If a building permit or land use permit is not obtained for the subject property within six months from the date of the review authority's decision, the variance shall be automatically canceled and become null and void.
- F. Variances. Variances are subject to MCA 76-2-321 through 76-2-328.

(Ord. No. 1645, § 18.66.060, 8-15-2005; Ord. No. 1670, § 18.66.060, 8-28-2006; Ord. No. 1693, § 24(18.66.060), 2-20-2007; Ord. No. 1769, exh. L(18.66.060), 12-28-2009; Ord. No. 1827, § 8, 9-10-2012)

Sec. 38.250.070. - Subdivision variances. (38.35.070)

- A. Procedure. The subdivider shall provide during the preapplication process, and include with the submission of the preliminary plat, a written statement describing the requested variance and the facts of hardship upon which the request is based. The relevant advisory bodies shall include their findings and conclusion regarding the requested variance in its recommendation. The city shall then consider each variance at the public hearing on the preliminary plat. A public hearing may not be held on a variance in association with a first minor subdivision.
- B. Review criteria. Per MCA 76-3-506, a variance to this chapter must be based on specific variance criteria, and may not have the effect of nullifying the intent and

purpose of this chapter. The city shall not approve subdivision variances unless it makes findings based upon the evidence presented in each specific case that:

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare, or be injurious to other adjoining properties;
 2. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, an undue hardship to the owner would result if strict interpretation of this chapter is enforced;
 3. The variance will not cause a substantial increase in public costs; and
 4. The variance will not, in any manner, place the subdivision in nonconformance with any other provisions of this chapter or with the city's growth policy.
- C. Variances from floodway provisions not authorized. The review authority may not, by subdivision variance, permit subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined in title 76, chapter 5, Montana Code Annotated (MCA 76-5-101 et seq.). Any variances related to floodways shall meet the standards of 38.35.060.C.4.a.
- D. Conditions. In granting subdivision variances, the review authority may require such conditions as will, in its judgment, secure the objectives of this chapter. Any approval under this section shall be subject to the terms of the conditions designated in connection therein. Any conditions required shall be related both in purpose and scope with the relief sought through the variance.
- E. Statement of facts. When any variance from this chapter is granted, the motion of approval shall contain a statement describing the variance and conditions upon which the issuance of the variance is based.
- F. Planned unit development. Where the standards and requirements of this chapter are proposed to be modified through a planned unit development, the applicable process shall be a deviation rather than a variance.
- G. Limitations on approvals. For subdivision variances, the variance approval shall be null and void if the final plat is not filed within the time allowed for final approval by the city's decision.

(Ord. No. 1645, § 18.66.070, 8-15-2005; Ord. No. 1693, § 24(18.66.070), 2-20-2007; Ord. No. 1769, exh. L(18.66.070), 12-28-2009; Ord. No. 1828, § 105, 9-10-2012)

**Sec. 38.250.080. - Appeals from city commission or board of adjustment actions.
(38.35.080)**

- A. Zoning variances. Any person or persons, jointly or severally, aggrieved by any decision of the BOA or city commission under this division 38.250, or any taxpayer, or any officer, department, board or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal in whole or in part and specifying the grounds of illegality. Such petition shall be presented to the court within the timeframe established by state law.
- B. Zoning decisions. An aggrieved person may appeal the approval, approval with conditions or denial of a development application acted upon by the BOA or city commission by presenting to a court of record a petition, duly verified, setting forth

that such decision is illegal in whole or in part and specifying the grounds of illegality. Such petition shall be presented to the court within the timeframe established by state law.

- C. Subdivision appeals. A party identified in subsection C.1 of this section who is aggrieved by a decision of the city commission to approve, conditionally approve or disapprove a proposed preliminary plat or final subdivision plat, including variances, may, within 30 days after the decision, appeal to the Eighteenth Judicial District Court, Gallatin County, State of Montana. The petition must specify the grounds upon which the appeal is made.
1. The following parties may appeal under the provisions of this section:
 - a. The subdivider;
 - b. A landowner with a property boundary contiguous to the proposed subdivision or a private landowner within the county where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value; and
 - c. The county commission.
 2. If the aggrieved person is the subdivider, they may bring an action in district court to sue the city to recover actual damages caused by a final action, decision, or order of the city commission or a regulation adopted pursuant to this division 38.250 that is arbitrary or capricious.

(Ord. No. 1645, § 18.66.080, 8-15-2005; Ord. No. 1670, § 18.66.080, 8-28-2006; Ord. No. 1693, § 24(18.66.080), 2-20-2007; Ord. No. 1769, exh. L(18.66.080), 12-28-2009)

Sec. 38.250.090. - Reasonable accommodation. (38.35.090)

A. Applicability.

1. A request for reasonable accommodation may be made by the following:
 - a. Any disabled person, their representative, or any entity, when the application of a requirement of this chapter acts as a barrier to fair housing opportunities based on their physical or mental disability or handicap as defined under the applicable non-discrimination laws.
 - b. Any person, their representative, or any entity, when the application of a requirement of this chapter acts as a barrier to fair housing opportunities based on race, color, religion, sex, creed, familial status, marital status, age, or national origin, as defined under the applicable non-discrimination Laws, or because of actual or perceived sexual orientation or gender identity.
2. A request for reasonable accommodation may include a modification or exception to the rules, standards, and practices for the siting, development, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide equal opportunity to housing of their choice.
3. A reasonable accommodation is granted to the applicant that needs the accommodation and does not apply to successors in interest to the site.

4. A reasonable accommodation may be granted in compliance with this chapter without the need for the approval of a variance.

B. Procedure.

1. Application. A request for reasonable accommodation shall be submitted on an application form provided by the planning department or in the form of a letter to the planning director, and shall contain the following information:
 - a. The applicant's name, address, and telephone number;
 - b. Address of the property for which the request is being made;
 - c. Authorization from the owner of the subject property for the applicant to request the reasonable accommodation;
 - d. The current actual use of the property;
 - e. The basis for the claim as follows:
 - (1) that the individual or group of individuals is considered physically or mentally disabled or handicapped under the applicable non-discrimination laws, including identification and description of the disability or handicap which is the basis for the request for accommodation and current, written medical certification and description of disability or handicap and its effects on the person's medical, physical or mental limitations; or
 - (2) that the individual or group of individuals is a protected class based on race, color, religion, sex, creed, familial status, marital status, age, or national origin, as defined under the applicable non-discrimination laws, including identification and description of the protected class which is the basis of the request for accommodation.
 - f. The code provision, regulation, procedure and/or policy from which reasonable accommodation is being requested;
 - g. The type and extent of reasonable accommodation sought;
 - h. The reason(s) why the accommodation is reasonable and necessary for the needs of the individual(s), including a summary of any potential alternatives contained in this chapter considered in requesting the accommodation and why other alternatives contained in this chapter are not feasible;
 - i. Copies of memoranda, correspondence, pictures, plans or background information reasonably necessary to reach a decision regarding the need for the accommodation; and
 - j. Other supportive information deemed necessary by the department to facilitate proper consideration of the request, consistent with applicable non-discrimination laws.
2. Review with other land use applications. If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval (including conditional use permit, etc.), then the applicant shall file the information required by subsection 1 of this section for

concurrent review of the request for reasonable accommodation with the application for discretionary approval.

3. Review authority.

a. Planning director. A request for reasonable accommodation shall be reviewed by the planning director if no approval is sought other than the request for reasonable accommodation. No fee shall be charged for the review of such a request for reasonable accommodation.

b. Other review authority. A request for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority responsible for the discretionary land use application. No fee in addition to that charged for the other discretionary land use application shall be charged for the review of such a request for reasonable accommodation.

4. Review.

a. Planning director. The director shall make a written determination within 20 calendar days of the application being deemed complete and either grant, grant with conditions, or deny a request for reasonable accommodation. If necessary to reach a determination on the request for reasonable accommodation, the director may request further information from the applicant consistent with applicable non-discrimination laws, specifying in detail the information that is required. In the event that a request for additional information is made, the 20-day period to issue a decision shall be stayed until the applicant responds to the request.

b. Other review authority. The written determination on whether to grant or deny the request for reasonable accommodation shall be made by the authority responsible for the discretionary land use application in compliance with the applicable review procedure for the discretionary review.

5. Notice.

a. Planning director. No advance notice or public hearing is required for consideration of reasonable accommodation requests by the planning director.

b. Other review authority. Requests for reasonable accommodation subject to review by other review authorities shall require public notice and a public review process pursuant to the requirements for the other discretionary land use application that is the subject of the review, including all public notice provisions pursuant to section 38.220.420.

6. Balancing rights and requirements. In reviewing applications for requests for reasonable accommodation, the city will attempt to balance:

a. The privacy rights and reasonable request of an applicant for confidentiality; with

b. The land use requirements for notice and public hearing, factual findings and rights to appeal, in the city's requests for information, considering an

application, preparing written findings and maintaining records for a request for reasonable accommodation.

- c. Any document identifying the disability or medical condition of any specific person shall be treated as confidential and shall not be subject to disclosure by the city for any reason, including for compliance with the Open Records Act, unless ordered to do so by a court of competent jurisdiction and notice is given to the person who provided the document to the city. Specifically, any medical records regardless of source, including statements of medical providers, shall not be subject to disclosure. For any other type of document, such as an application or determination, the document may be subject to disclosure, but only after the nature or description of the person's disability or medical condition is redacted by the city. A statement regarding the city's handling of information subject to this provision shall be printed on the city's reasonable accommodation application form, posted on the city's website, and printed at the bottom of any written document issued by the city determining a reasonable accommodation application.

C. Findings—Other requirements.

1. Findings. The reviewing authority shall approve the application, with or without conditions, if it can make the following findings:
 - a. The housing will be used by a disabled person or a person from a protected class;
 - b. The requested accommodation is necessary to make specific housing available to a disabled person or a person from a protected class;
 - c. There are no uses identified in the **Tables of Authorized Uses found in sections 38.310.030-.040** for which the use proposed in the request for reasonable accommodation would qualify;
 - d. The requested accommodation would not impose an undue financial or administrative burden on the city; and
 - e. The requested accommodation would not require a fundamental alteration in the nature of the city land use planning and zoning program.
2. Other requirements.
 - a. An approved request for reasonable accommodation is subject to the applicant's compliance with all other applicable zoning regulations.
 - b. A modification approved under this chapter is considered a personal accommodation for the individual applicant and does not run with the land.
 - c. Where appropriate, the reviewing authority may condition its approval on any or all of the following:
 - (1) Inspection of the property periodically, as specified, to verify compliance with this section and any conditions of approval;

- (2) Removal of the improvements, where removal would not constitute an unreasonable financial burden, when the need for which the accommodation was granted no longer exists;
- (3) Time limits and/or expiration of the approval if the need for which the accommodation was granted no longer exists;
- (4) Recordation of a deed restriction requiring removal of the accommodating feature once the need for it no longer exists;
- (5) Measures to reduce the impact on surrounding uses;
- (6) Measures in consideration of the physical attributes of the property and structures;
- (7) Other reasonable accommodations that may provide an equivalent level of benefit and/or that will result in reduced variation or waiver of otherwise applicable standards specified for the zone district; and
- (8) Other conditions necessary to protect the public health, safety and welfare.

(Ord. No. 1838, § 7, 9-10-2012)

38.260 Text & Zoning Map Amendments (combines current Articles 36 & 37)

FOOTNOTE(S):

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State Law reference— Alteration of zoning regulations, MCA 76-2-305.

Part 1: Text Amendments

Sec. 38.260.010. - Initiation of amendments and changes. (38.36.010)

- A. The city commission may, from time to time, amend, supplement or change this chapter and the regulations appertaining thereto. An amendment, supplement or change may be initiated by the city commission, city manager, zoning commission, planning board or upon petition from an owner of property within the city.
- B. The city commission, planning board or zoning commission may upon a vote of a majority of its members direct the initiation of an amendment to this chapter and the regulations appertaining thereto. When one of these bodies initiates an amendment, the application shall be signed by the mayor, president of the planning board or chair of the zoning commission as applicable.
- C. Whenever any person or entity allowed to initiate an amendment desires a change in regulations, they may file with the planning department, on forms provided by the city for this purpose, an application duly signed and notarized by that person or authorized representative of that entity requesting an amendment or change of regulations.
 1. When the application initiated by an owner of property, bearing the property owners signature, is filed with the department it shall contain or be accompanied by:
 - a. All the data and information pertinent to the understanding and judgment of the proposal, as may be prescribed by the commission for that purpose so as to ensure the fullest practicable presentation of facts for the permanent record; and
 - b. A notarized statement by at least one of the owners of property within the area subject to the proposed changes attesting to the truth and correctness of all facts and information presented with the petition.

(Ord. No. 1645, § 18.68.010, 8-15-2005; Ord. No. 1769, exh. M(18.68.010), 12-28-2009)

Sec. 38.260.020. - Amendments; investigation requirements. (38.36.020)

Upon initiation of an amendment, the city shall cause to be made an investigation of facts bearing on such initiation or petition. The purpose of the investigation is to provide the necessary information to ensure that the action of each such petition is consistent with the intent and purpose of this chapter as set forth in section 38.100.040; this includes but is not limited to accordance with the city growth policy. Amendments only addressing zoning standards will be measured against the zoning purposes. Amendments which address only subdivision standards will be measured against the

purposes related to the subdivision purposes. Amendments which apply to both zoning and subdivision standards will be reviewed against all the purposes.

(Ord. No. 1645, § 18.68.020, 8-15-2005; Ord. No. 1769, exh. M(18.68.020), 12-28-2009)

Sec. 38.260.030. - Public hearing procedures and requirements. (38.36.030)

- A. The city commission, zoning commission and/or planning board shall hold one or more public hearings on the matters referred to in such initiation or petition at which parties in interest and citizens shall have an opportunity to be heard. Notice of such public hearings shall be provided as required by division 38.220 of this chapter.
- B. Any amendment to the text of the title shall be the subject of one or more public hearing before the city commission, after receiving a recommendation from the zoning commission and/or planning board as set forth in this section.
- C. The public hearings to be heard by the zoning commission and/or planning board shall be conducted by the bodies specified in this subsection:
 - 1. Any amendment to the text of this chapter affecting only zoning provisions of this chapter shall be heard by the zoning commission.
 - 2. Any amendment to the text of this chapter affecting only subdivisions shall be heard by the planning board.
 - 3. Any amendment to the text of this chapter affecting both zoning and subdivision shall be heard as a joint hearing of the planning board and zoning commission with the president of the planning board to preside. When there is a question as to whether an amendment would affect both subdivision and zoning, the public hearing shall be jointly held.
 - 4. After such hearing or hearings, the zoning commission and/or planning board will make reports and recommendations on the petition or initiation to the city commission.
- D. In the event that there is a question as to whether a proposed text amendment affects both zoning and subdivision, or only one of the subjects, the planning director shall determine which bodies must hold a public hearing.
- E. Recommendations to the city commission and other official actions by both the zoning commission and the planning board shall be only be official if made by at least a majority of a quorum of the body.

(Ord. No. 1645, § 18.68.030, 8-15-2005; Ord. No. 1769, exh. M(18.68.030), 12-28-2009)

Sec. 38.260.040. - Protest text amendments. (38.36.040)

In the case of protest against such changes signed by the owners of 25 percent or more of either the area of the lots included in any proposed change, or those lots 150 feet from a lot included in a proposed change, such amendment may not become effective except upon a favorable vote of two-thirds of the present and voting members of the city commission.

(Ord. No. 1645, § 18.68.040, 8-15-2005; Ord. No. 1769, exh. M(18.68.040), 12-28-2009)

FOOTNOTE(S):

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State Law reference— Alteration of zoning regulations, MCA 76-2-305.

Part 2: Zoning Map Amendments

Sec. 38.260.100. - Initiation of zoning map amendments and changes.

(38.37.010)

- A. The city commission may, from time to time, amend, supplement or change the zoning district maps appertaining to this chapter. An amendment, supplement or change may be initiated by the city commission, zoning commission or upon application from an owner of property within the city.
- B. The city commission or zoning commission may upon a vote of a majority of its members direct the initiation of an amendment to the zoning map. When either body initiates an amendment, the application shall be signed by the mayor or chair of the zoning commission as applicable.
- C. Whenever the property owner of any land or building desires a reclassification on the owner's property, they may file with the planning department an application requesting an amendment or change of regulations prescribed for such property. Applications for change of district boundaries or reclassification of districts as shown on the zoning district map shall be on forms supplied and prepared by the department. When the application, bearing property owner' signatures, is filed with the department it shall contain or be accompanied by:
 - 1. All the data and information pertinent to the understanding and judgment of the proposal, as may be prescribed by the commission for that purpose so as to ensure the fullest practicable presentation of facts for the permanent record; and
 - 2. A notarized statement by at least one of the owners of property within the area proposed to be changed attesting to the truth and correctness of all facts and information presented with the application.
- D. Whenever an owner of any land within the city desires a reclassification on property that they do not own, such as a request to establish a different zoning classification for a block or other group of properties, they may file with the planning department on forms provided by the city for this purpose an application duly signed by the owners of no less than 51 percent of either the area of lots or number of lots of the affected property requesting an amendment for such property. When the application, bearing property owners signatures, is filed with the department it shall contain or be accompanied by:
 - 1. All the data and information pertinent to the understanding and judgment of the proposal, as may be prescribed by the commission for that purpose so as to ensure the fullest practicable presentation of facts for the permanent record; and
 - 2. A notarized statement by at least one of the owners of property within the area proposed to be changed attesting to the truth and correctness of all facts and information presented with the petition.

An application containing less than the required number of signatures shall be considered incomplete and invalid and shall not be processed.

(Ord. No. 1645, § 18.70.010, 8-15-2005; Ord. No. 1769, exh. N(18.70.010), 12-28-2009)

Sec. 38.260.110. – Zoning map amendments and rezonings; investigation requirements. (38.37.020)

Upon initiation of an amendment the city shall cause to be made an investigation of facts bearing on such initiation or application as will provide necessary information to ensure that the action of each such application is consistent with the intent and purpose of this chapter. Specifically the investigation must address the criteria of MCA 76-2-304 which are contained in section 38.100.040.C.

(Ord. No. 1645, § 18.70.020, 8-15-2005; Ord. No. 1769, exh. N(18.70.020), 12-28-2009)

Sec. 38.260.120. – Zoning map amendments - public hearing procedures and requirements. (38.37.030)

- A. The city commission and zoning commission shall hold public hearings on the matters referred to in such application at which parties of interest and citizens shall have an opportunity to be heard.
- B. The planning director shall give public notice as required by division 38.220 of this chapter. The planning director shall provide to the city commission and zoning commission a report of the staff's analysis of the application.
- C. After such hearing or hearings, the zoning commission will make reports and recommendations on the application to the city commission.
- D. After the zoning commission has forwarded a recommendation on the amendment to the zoning district map, a public hearing shall be held by the city commission for the purpose of acting upon the proposed amendment after public notice.
 1. In the case of protest against such changes, signed by the owners of 25 percent or more of either the area of the lots included in any proposed change or those lots or condominium units 150 feet from a lot included in a proposed change, such amendment may not become effective except upon a favorable vote of two-thirds of the present and voting members of the city commission. When considering protests from owners of condominiums the provisions of MCA 76-2-305(3) apply. The provisions of this subsection D include the ability for an applicant to protest a possible decision to adopt a zoning less than originally requested when the applicant meets the same criteria as other affected landowners.
 2. If the city commission intends to adopt a zoning designation different than that applied for, the hearing will be continued for a minimum of one week to enable the applicant to consider their options and whether to protest the possible action. In the case of protest against a change to the zoning map by the applicant the same favorable vote of two-thirds of the present and voting members of the city commission is required as for any other protested zoning action.

(Ord. No. 1645, § 18.70.030, 8-15-2005; Ord. No. 1769, exh. N(18.70.030), 12-28-2009; Ord. No. 1804, § 16, 7-11-2011)

38.270 Improvements & Guarantees (Article 39)

Sec. 38.270.010. - Purpose and applicability. (38.39.010)

- A. This article is to provide standards and procedures relating to the installation of physical improvements and compliance with requirements related to development. As these improvements are necessary to meet requirements of the law and to protect public health, safety and general welfare and other purposes of this chapter it is also necessary to provide means by which their installation can be ensured. Such improvements may include, but are not limited to, design elements such as landscaping, parking facilities, storm drainage facilities, architectural features, pedestrian walkways and public utilities. Furthermore, in some situations it is in the best interest of the person conducting development to be able to guarantee the completion of certain work and be able to begin utilization of a development sooner than would otherwise be possible if all improvements had to be physically installed before use could begin. This article therefore has the following purposes:
1. Ensure completion of required improvements or compliance with other requirements of development to an acceptable standard;
 2. Provide buyer/lessee protection while allowing a person undertaking development to proceed with sales/leases before the project is totally complete, especially multiphased projects;
 3. Ensure adequate warranty or maintenance, when appropriate, of improvements;
 4. Provide for mechanisms to ensure performance of or conformance with conditions of approval or development requirements; and
 5. Accomplish the purposes listed in this subsection A through mechanisms that reduce the need to rely on costly litigation to accomplish those purposes.
- B. This article applies to all subdivisions and site developments as described as follows:
1. Subdivisions shall install or provide security for installation of improvements prior to final platting as set forth in detail in this article.
 2. Site developments including, site plans, conditional use permits, planned unit developments, reuses and certificates of appropriateness, shall install improvements or provide security for installation prior to occupancy or commencement of use.
 3. The city may determine the nature and timing of required installation of improvements as part of the subdivision or site development process. When necessary to protect the health, safety, and general welfare of the public, and ensure the function and viability of development, certain needed improvements may not be allowed to be financially guaranteed.

(Ord. No. 1645, § 18.74.010, 8-15-2005; Ord. No. 1693, § 26(18.74.010), 2-20-2007; Ord. No. 1761, exh. O(18.74.010), 7-6-2009; Ord. No. 1769, exh. O(18.74.010), 12-28-2009)

Sec. 38.270.010. - Standards for improvements. (38.39.020)

- A. General. It shall be the responsibility of the developer to comply with the following procedures and standards for the installation of development improvements, including parks.
1. Construction routes. For all developments, excluding sketch and reuse/further development, a construction route map shall be provided showing how materials and heavy equipment will travel to and from the site. The route shall avoid, where possible, local or minor collector streets or streets where construction traffic would disrupt neighborhood residential character or pose a threat to public health and safety.
 2. Protection of existing improvements. The developer, and the developer's contractors and suppliers shall be jointly and severally responsible to ensure that existing improvements are not damaged or rendered less useful by the operation of the developer, and the developer's contractors or suppliers. Such protection of improvements may include requirements for cleaning of vehicles leaving a construction site. This provision is intended to preclude damage to existing roads, streets, water, sewer and drainage systems. The city may instruct the developer as to the streets or roads to be used for access by construction equipment, and the developer shall be responsible for enforcement of this instruction upon the developer's contractors and their suppliers. The city may require the developer to post a surety to guarantee repair of damages.
- B. Improvements to be dedicated to the public.
1. Plans and specifications. Engineering and survey plans, specifications and reports required in connection with public improvements and other elements of the subdivision, or other development required by the city, shall be prepared by a registered engineer and/or a registered land surveyor, licensed in the state, as their respective licensing laws allow. The plans and specifications shall be prepared in compliance with the city's design standards and specifications policy and/or park design standards as is applicable. Plans and specifications for nonengineering improvements shall be prepared by a person whose qualifications are acceptable to the city department with responsibility for the type of improvements. Plans and specifications for nonengineering improvements shall be prepared in compliance with any applicable adopted design standards and specifications policy.
 2. Scope of work. The intent of these regulations is to provide standards by which the contractor and the developer shall execute their respective responsibilities and guarantee proper construction and completion in every detail of the work in accordance with the plans, specifications and terms set forth under these regulations.
 - a. The developer shall furnish the plans, specifications and typical sections for approval by the city. It shall be understood that the work to be done will not necessarily be limited to occurring within the right-of-way or park boundaries.

- b. The city has authority to make or cause to be made any reasonable changes, alterations, amendments and additions to the standard specifications for infrastructure or park improvements.
- 3. Control of work. During the course of construction, and at the completion of each phase of the project, the developer's registered civil engineer, or other person acceptable to the city, shall submit a statement that the improvements have been inspected and found to have been constructed in accordance with the approved plans and specifications. Prior to making any changes, the developer's engineer shall notify and receive written approval or disapproval from the city for any changes in approved plans and specifications.
- 4. Improvement procedure.
 - a. Approval of the improvement plans and specifications shall be completed before installation of improvements or the entering into of an agreement where surety is to be provided for the completion of the improvements.
 - b. The procedure for submittal, review and approval of improvement plans and specifications is contained in the city's design standards and specifications policy, and shall be followed by the developer and/or the developer's contractors. All plans and specifications related to park and public trail improvements shall be submitted to the parks division for review and approval.
 - c. After the preliminary plat has received approval or conditional approval, and before the final plat is submitted, the developer shall either install the required improvements or enter into an agreement with the city financially guaranteeing the installation and performance of the improvements.
 - d. After the final site plan is approved, subject to section 38.39.030.C, and prior to occupancy of any buildings, the developer shall either install the required improvements or enter into an agreement with the city financially guaranteeing the installation and performance of the improvements.
- 5. Sanitary facilities. Water supply, sewage disposal and solid waste disposal systems shall meet the minimum standards of the city and the state department of environmental quality as required by MCA 76-4-101 through 76-4-135, and regulations adopted pursuant thereto, and are subject to the approval of the city.
- C. Private improvements. Improvements shall be constructed as shown on the approved final site plan, final plat, or plans and specifications, as may be applicable. The developer is responsible for coordinating installation with all necessary parties and to restore to its original condition any public improvements or any private improvements or property damaged during installation of private improvements.

(Ord. No. 1645, § 18.74.020, 8-15-2005; Ord. No. 1693, § 26(18.74.020), 2-20-2007; Ord. No. 1761, exh. O(18.74.020), 7-6-2009; Ord. No. 1769, exh. O(18.74.020), 12-28-2009; Ord. No. 1828, § 106, 9-10-2012)

Sec. 38.270.030. - Completion of improvements. (38.39.030)

- A. General. The applicant shall provide certification by the architect, landscape architect, engineer or other applicable professional that all improvements to be

dedicated to the public were installed in accordance with the approved site plan, plans and specifications, or plat as applicable. For required private improvements, the applicant shall provide certification by the architect, landscape architect, engineer or other applicable professional that all improvements, including, but not limited to, landscaping, ADA accessibility requirements, private infrastructure, or other required elements were installed in accordance with the approved site plan, plans and specifications, or plat as applicable, unless a waiver of certification in whole or part is explicitly approved by the DRC.

1. Improvements to be dedicated to the public. Improvements to be dedicated to the public, such as water mains, sewer mains, park land and related improvements, and public streets, shall be installed in accordance with the approved plans and specifications by the developer, and certified by a registered professional civil engineer, licensed in the state, and accepted by the city prior to the approval of the final plat, building permit, issuance of a certificate of occupancy or other identified benchmark as may be appropriate. As-built drawings complying with the city's design standards and specifications policy, including timing for submittal of materials, shall be provided.
 - a. Public street means a public right-of-way or easement developed to adopted city standards including, but not limited to, the following improvements: curbs, gutters, storm drainage, sidewalks, paving, traffic control signage or equipment, and lighting.
2. Private improvements and other required improvements. Improvements, such as, but not limited to, private parks or open space, landscaping, paving or irrigation shall be installed in accordance with the approved preliminary plat or final site plan by the developer and inspected and found to comply with the city standards or requirements prior to the approval of the final plat, issuance of a certificate of occupancy for the building or site, or other identified benchmark as may be appropriate. All improvements required as part of a subdivision must be installed and accepted, or financially secured in accordance with an improvements agreement, prior to final plat approval.
3. Improvements agreement required. All improvements necessary or required to meet the standards of this chapter or conditions of approval shall be the subject of an improvements agreement and be guaranteed if final plat approval, occupancy of buildings or other utilization of an approved development is allowed before the improvements are completed and inspected by the city.
 - a. Reservation. The city reserves the right to require actual installation of improvements prior to occupancy when such improvements are necessary to provide for health, safety and welfare or adequate function of systems or on-site development.

B. Completion time for subdivisions.

1. Improvements. All subdivision improvements, including parks, shall be constructed and completed as approved by the city.
 - a. All improvements shall be installed prior to the issuance of a building permit for any lot within a subdivision unless otherwise provided for in development

proposals occurring under the provisions of article 20 of this chapter, planned unit development (PUD), when concurrent construction is an identified purpose of the initial project review, and pursuant to the criteria established in subsection D of this section.

b. The subdivider shall meet one of the following requirements for completion of street improvements. The option shall be specified in the preliminary plat submittal. Should the applicant not identify which option is desired, the option presented in subsection B.1.b.(1) of this section shall be required. Altering the choice of option after approval of the development shall constitute a material modification to the project and require re-review of the project for modification to the approval subject to the provisions of 38.01.070.

(1) The subdivision streets improvements shall be installed prior to final plat approval. This requirement may be modified by the review authority for streets where dictated by circumstances, and where acceptable improvement security for the ultimate development of the streets is provided. However, under no circumstances shall the required gravel courses, curbs or gutters be waived. This requirement shall generally not be modified for nonresidential developments; or

(2) The subdivider shall enter into an improvements agreement guaranteeing the completion of the paving, curb, gutter, storm drainage, street lighting or other street infrastructure improvements not yet completed. The improvements agreement shall be financially guaranteed, as explained in this article. However, at a minimum, the plans and specifications for the street improvements must be approved by the review authority prior to final plat approval. Building permits will not be issued until the street improvements are completed and accepted by the city unless otherwise provided for in development proposals occurring under the provisions of article 20 of this chapter, Planned Unit Development (PUD), and pursuant to the criteria established in subsection D of this section; or

(3) The subdivider may request that street improvements be guaranteed by the creation of a special improvements district (SID). If a SID is formed for the improvements, the SID bonds must be sold before the final plat can be filed. SIDs shall not be permitted for the installation of subdivision water and sewer improvements. Building permits will not be issued until the street improvements are completed and accepted by the city unless otherwise provided for in development proposals occurring under the provisions of article 20 of this chapter, Planned Unit Development (PUD), and pursuant to the criteria established in subsection D of this section.

2. Sidewalks. City standard sidewalks (including a concrete sidewalk section through all private drive approaches) shall be constructed on all public and private street frontages prior to occupancy of any structure on individual lots. Should a subdivider choose not to install all sidewalks prior to final plat, an improvements agreement shall be entered into with the city guaranteeing the completion of all sidewalks within the subdivision within a three-year period or as described in subsection b. below. The developer shall supply the city with an

acceptable method of security equal to 150 percent of these remaining sidewalk improvements.

- a. The subdivider shall install sidewalks adjacent to public lands, including but not limited to, parks, open space, and the intersection of alleys and streets or street easements. Sidewalks in these areas shall be installed prior to final plat approval, or shall be subject to an approved improvements agreement and financially guaranteed.
- b. Except as provided in subsection c. below, upon the third anniversary of the plat recordation of any phase of the subdivision, any lot owner who has not constructed the required sidewalk shall, without further notice, construct within 30 days, the sidewalk for their lot(s), regardless of whether other improvements have been made upon the lot.
- c. On any face of a block between any two intersecting streets where less than 50 percent of lots have been issued a building permit, and when construction of a sidewalk is not immediately required to provide pedestrian connectivity to the destinations described in subsection (4) below, the planning director may allow the lot owner up to an additional two-year period to construct the sidewalk. The additional time is subject to either an extension of an existing improvements agreement with the subdivider or the entering into of a new improvements agreement with the lot owner(s). The planning director may authorize subsequent extensions in up to two-year increments. The granting of an extension does not allow sidewalk installation to be delayed beyond occupancy of any structure on an individual lot. The provision of a financial guarantee in a form acceptable to the city shall not be waived.

The following information in map and/or text form shall be provided for all requests to extend the time period to complete subdivision sidewalks:

- (1) The total number of residential lots in the subdivision.
- (2) The percent of subdivision lots that have been sold and are no longer under subdivider's/applicant's ownership.
- (3) The percent of subdivision lots that have been sold and are still vacant.
- (4) A description of adjoining subdivisions, public parklands, open spaces, neighborhood commercial nodes, commercial centers and public trail corridors within one-half mile of the subdivision.
- (5) Describe what public sidewalks and/or public trails within the interior of the subdivision are proposed to be completed that will provide effective connectivity within the interior of the subdivision, as well as adjoining subdivisions, public parklands, open space, neighborhood commercial nodes, commercial centers and public trail systems.
- (6) Describe the extended time period being requested to complete the required subdivision sidewalks.
- (7) Provide a copy of the final plat and at least one colored exhibit illustrating the subdivision being considered, along with the number of lots sold, those

developed with residential structures, vacant lots, those lots/areas where sidewalks have been constructed, and remaining lots still under applicant's ownership.

3. Subdivision lighting. Subdivision lighting, as required in section 38.23.150 shall be incorporated into all subdivisions. Prior to final plat approval, subdivision lighting shall be installed or financially guaranteed. If the subdivision lighting is financially guaranteed, they shall be considered as part of the required street improvements and building permits shall not be issued until the improvements are installed, unless otherwise provided for in development proposals occurring under the provisions of article 20 of this chapter, Planned Unit Development (PUD), and pursuant to the criteria established in subsection D of this section.
- C. Completion time for site development. Whenever any building lots and/or building sites are created inside the city limits, and prior to the issuance of any building permits on such lots or sites, municipal water distribution systems, and municipal sanitary sewer collection systems, and streets shall be provided to the site. Each building site must utilize and be connected to both the municipal water distribution and municipal sanitary sewer collection systems. Subject to the provisions of subsection C.1 of this section, these improvements shall be designed, constructed and installed according to the standards and criteria as adopted by the city and approved by the review authority prior to the issuance of any building permits.
1. Provision of municipal central water distribution, municipal sanitary sewer collection systems, and streets means that the criteria in either subsection a or subsections b and c are met:
 - a. Water, sewer and street services are installed and accepted by the city with service stubs being extended into the site, with such stubs being of adequate size to provide water and sewer service to the proposed development without modification to publicly owned infrastructure; or
 - b. The water mains, sewer mains and streets to be extended to provide service to the development are: located within a publicly dedicated right-of-way or easement; constructed to city standards; are physically adjacent to the site proposed for construction; are installed and accepted by the city; and are adequate in capacity to provide necessary service to the proposed development; and comply with the requirements of this subsection C.1.b and subsection C.1.c of this section;
 - c. Water mains, sewer mains and streets shall meet the following requirements:
 - (1) Any required on-site extensions of water mains, sewer mains or streets to be dedicated to the public shall be located entirely within publicly held easements or rights-of-way; shall serve only a single lot; are the subject of an irrevocable offer of dedication to the city upon completion of the project; the development is under the control of a single developer who shall retain control of the entire project until final completion; all work is under the supervision of a single general contractor; and no subdivision of land is involved;

- (2) The DRC shall determine when the standards of this subsection C.1 are met. The fire department must consider whether adequate fire protection services are available from existing hydrants, and water supply exists to meet needs during construction. If adequate fire protection does not exist then concurrent infrastructure and building construction may only occur under the provisions of subsection C.1.c.(3) of this section. Based on evaluation by the fire department, simultaneous construction of infrastructure to be dedicated to the public and private construction may be permitted only within a defined portion of the site;
 - (3) Approval of the final engineering design, including location and grade, for the infrastructure project must be obtained from the engineering department, and the state department of environmental quality when applicable, prior to issuance of any building permit for the development; and
 - (4) No occupancy, either temporary or final, may be issued until all on-site and offsite water, sewer and street or drive improvements are installed and accepted or approved as applicable by the city.
- D. Exception. When municipal water distribution and municipal sanitary sewer collection systems and city streets are being provided to serve a development proposal occurring under the provisions of article 20 of this chapter, planned unit development (PUD), the issuance of a building permit may be allowed prior to completion of the public infrastructure, provided that the following criteria are met:
1. The subject property shall be developed under the provisions of article 20 of this chapter;
 2. The subdivider or other developer must enter into an improvements agreement to ensure the installation of required infrastructure and other applicable improvements, to be secured by a financial guarantee in an amount to be determined by the city, with said guarantee to be in the name of the city;
 3. Approval of the final engineering design, including location and grade, for the infrastructure project must be obtained from the engineering department, and the state department of environmental quality when applicable, prior to issuance of any building permit for the development;
 4. Building permits may be issued incrementally, dependent upon the status of installation of the infrastructure improvements. All building construction within the PUD shall cease until required phases of infrastructure improvements as described in the PUD have been completed, and inspected and accepted by the city;
 5. The subdivider shall provide and maintain fire hazard and liability insurance which shall name the city as an additional insured and such issuance shall not be cancelled without at least 45 days prior notice to the city. The subdivider shall furnish evidence, satisfactory to the city, of all such policies and the effective dates thereof;

6. The subdivider recognizes, acknowledges and assumes the increased risk of loss because certain public services do not exist at the site;
 7. The subdivider shall enter into an agreement with the city which provides for predetermined infrastructure funding options;
 8. No occupancy of any structures or commencement of any use constructed or proposed within the boundaries of the PUD will be allowed until required infrastructure improvements have been completed, and inspected and accepted by the city, and a certificate of occupancy has been issued;
 - a. No occupancy of structures or commencement of any use shall occur when such action would constitute a safety hazard in the opinion of the city;
 9. The subdivider shall enter into an agreement with the city to address the provision of any services on an interim basis during construction, if deemed appropriate;
 10. The subdivider shall execute a hold harmless and indemnification agreement indemnifying, defending and holding harmless the city, its employees, agents and assigns from and against any and all liabilities, loss, claims, causes of action, judgments and damages resulting from or arising out of the issuance of a building permit under this section;
 11. The subdivider shall pay for any extraordinary costs associated with the project which the city may identify, including, but not limited to, additional staff hours to oversee the planning, engineering and construction of the project and infrastructure improvements, inspection of the infrastructure improvements and any extraordinary administrative costs;
 12. The development shall be under the control of a single developer and all work shall be under the supervision of a single general contractor. The developer and general contractor shall agree that there shall be no third-party builders until required infrastructure improvements have been completed, and inspected and accepted by the city; and
 13. Subsequent to preliminary plat or plan approval, a concurrent construction plan, addressing all requirements of this section, shall be submitted for review and approval of the review authority with a recommendation from the development review committee.
- E. Limitations. Notwithstanding the provisions of subsection D of this section, the city may limit the scope, type and number of projects eligible for simultaneous construction consideration.

(Ord. No. 1645, § 18.74.030, 8-15-2005; Ord. No. 1693, § 26(18.74.030), 2-20-2007; Ord. No. 1761, exh. O(18.74.030), 7-6-2009; Ord. No. 1769, exh. O(18.74.030), 12-28-2009; Ord. No. 1808, § 9, 7-11-2011; Ord. No. 1828, §§ 107—109, 9-10-2012)

**Sec. 38.270.040. - Special provisions for timing of certain improvements.
(38.39.040)**

- A. Park, pathway, and boulevard improvements.

1. These required improvements shall be installed, or subject to an approved improvements agreement and financially guaranteed, prior to final plat approval or occupancy of a building subject to development review, excluding sketch plans.
2. Due to seasonal considerations, building and occupancy permits may be issued prior to installation of these improvements as long as the improvements are subject to an approved improvements agreement and are financially guaranteed.

B. Neighborhood center improvements.

1. With the exception of neighborhood commercial and civic buildings and their grounds, neighborhood center improvements shall be installed, or subject to an approved improvements agreement and financially guaranteed, prior to final plat approval.
2. Due to seasonal considerations, building and occupancy permits may be issued prior to installation of improvements related to greens, plazas and squares as long as the improvements are subject to an approved improvements agreement and are financially guaranteed.

(Ord. No. 1645, § 18.74.040, 8-15-2005; Ord. No. 1693, § 26(18.74.040), 2-20-2007; Ord. No. 1761, exh. O(18.74.040), 7-6-2009; Ord. No. 1769, exh. O(18.74.040), 12-28-2009)

Sec. 38.270.050. - Acceptance of improvements. (38.39.050)

A. Improvements dedicated to the public.

1. Acceptance of street, road, and bridge improvements. Before any subdivision street, whether new or existing, can be accepted into the city street system by the city, it shall be built to meet or exceed the required standards. Any improvements made to county roads shall meet or exceed standards set by the county road office, and must be reviewed and approved by the county road office. Any bridge improvement, within the city or the county, shall meet or exceed standards set by the state department of transportation, and must be reviewed and approved by the county road office and the city, and accepted by the county road office into the county's bridge maintenance system.
2. Acceptance of park, water, sewer, and storm drainage improvements. Before any public park, water, sewer or storm drainage improvement, whether new or existing, can be accepted into the city system by the city, it shall be built to meet or exceed the required standards. Any improvement, within the city or county, shall meet or exceed standards set by the city, state department of environmental quality and county road office, and must be reviewed and approved by the city and the county road office, as applicable.
3. As-built record drawings. As-built record drawings of all public infrastructure improvements constructed within the city, drawn to the specifications required by the city, shall be submitted prior to final plat approval, per section 24.183.1107(3.g), ARM, or other relevant final benchmark for site development.
4. The city may require verification that all liens have been released and payments made prior to accepting dedication of improvements.

- B. Private improvements. The DRC and/or ADR or their representative shall conduct an "as-built" inspection to verify compliance and shall sign off on a certificate of occupancy, final plat or other conclusory action if all terms and details of the approval are complied with. Except as provided for in section 38.270.060, no final plat approval or occupancy shall be permitted, or certificate of occupancy issued, unless the terms and details of an approved plat, site or sketch plan are met. Prior to grant of occupancy, the developer shall certify the completion of the improvements as required in section 38.270.030.A.

(Ord. No. 1645, § 18.74.050, 8-15-2005; Ord. No. 1693, § 26(18.74.050), 2-20-2007; Ord. No. 1761, exh. O(18.74.050), 7-6-2009; Ord. No. 1769, exh. O(18.74.050), 12-28-2009)

Sec. 38.270.060. - Improvements agreements. (38.39.060)

A. Required when.

1. When occupancy of a development subject to zoning review will commence prior to completion of all required site improvements, generally excluding sketch plans; or
2. When a subdivision is to be granted final plat approval prior to the completion of all required improvements, the applicant shall enter into an improvements agreement with the city.
3. At the discretion of the planning director, certain projects receiving a certificate of appropriateness may be required to enter into an improvements agreement with the city at the time of final approval of the certificate of appropriateness.

- B. If an improvements agreement is used to guarantee the completion of required improvements, including infrastructure, it may allow for the staged installation of improvements in defined areas and in accordance with an approved time schedule. At the city's discretion, the improvements in a prior increment may be required to be completed or the payment or guarantee of payment for costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

1. If an improvements agreement is filed with the final subdivision plat to secure infrastructure improvements, a separate document shall be filed with the final plat that clearly states that building permits will not be issued until all water, sewer, storm drainage infrastructure and streets are installed and accepted. This requirement may be modified by the city for streets where dictated by circumstances, and where acceptable improvement security for the ultimate development of the streets is provided. However, under no circumstances shall the required gravel courses, curbs or gutters be waived. This requirement shall generally not be modified for nonresidential developments. No building permits will be issued for a subdivision within the city until all required water, sewer, storm drainage, required street lighting, and street gravel courses are installed and accepted unless otherwise provided for in development proposals occurring under the provisions of division 38.380 of this chapter, Planned Unit Development (PUD), and pursuant to the criteria established in section 38.270.030.D.

C. Standards for improvements agreements.

1. All agreements. All improvements agreements shall meet the following standards:
 - a. The agreement and security shall be satisfactory to the city attorney as to form and manner of execution;
 - b. Detailed cost estimates and construction plans of all required on-site and off-site improvements shall be made a part of the agreement;
 - c. Provide for security in the amount equal to 150 percent of the estimated cost of the improvements to be secured if the agreement is to be activated;
 - d. The term for the security referenced in subsection C.1.c of this section shall be not less than the length of time of the improvements agreement;
 - e. The agreement shall provide for the city to claim the guarantee by certifying that the developer is in default of the performance to be secured;
 - f. Requests for partial release of security shall only be in amounts such that the security will always equal 150 percent of the value of the remaining uncompleted work, and such that not more than 90 percent of the security is released prior to completion of all improvements. The city may take into account the location and scope of development phases in evaluating requests to reduce the amount of a financial guarantee. The city may require verification that all liens have been released and payments made prior to releasing a portion of the security;
 - g. Shall provide for the city to require a replacement security in the event the issuer of the security becomes insolvent, enters receivership, or otherwise gives cause for the city to lack confidence in the ability of the issuer to honor the security;
 - h. Shall permit the city in the event of default by the developer to include in the costs to be recovered from the security those costs resulting from the need to call in the security, including but not limited to costs for the city attorney's time; and
 - i. The financial security shall be placed in the keeping of the city treasurer.
2. Subdivisions. Improvements agreements for subdivisions shall meet the following standards in addition to those listed in subsection C.1 of this section:
 - a. The length of time of the agreement shall not exceed one year from the date of final plat approval. The agreement shall stipulate the time schedule the subdivider proposes for accomplishing the required improvements;
 - b. The estimated cost of improvements shall be provided by the subdivider's professional engineer. The city engineer has the discretion to require a second estimate of the cost of improvements, with the cost of obtaining the second estimate borne by the subdivider. The agreement shall stipulate which type of security arrangements will be used;
 - c. Security for improvements for internal subdivision streets, water, storm drainage and sewer mains, or other internal or external improvements shall be reduced

- only upon recommendation of the city department with responsibility for the type of infrastructure which has been guaranteed;
- d. The improvements agreement shall be filed with the final plat; and
 - e. The security provided shall be a financial security valid for 18 months.
3. Site development. Improvements agreements for developments other than subdivisions shall meet the following standards in addition to those listed in subsection C.1 of this section:
- a. If occupancy of the structure or commencement of the use is to occur prior to installation of the required improvements, the installation of those improvements must be secured in conformance with the requirements of this division 38.270;
 - b. The length of time of the agreement and method of security shall not be less than 12 months;
 - c. All secured improvements must be completed by the developer within nine months of occupancy or the security shall be forfeited to the city for the purpose of installing or contracting for the installation of the required improvements;
 - d. At the planning director's discretion, a developer may be permitted to extend the manner of security, in general for a period not to exceed one additional year. Factors such as, but not limited to, progress of installation achieved to date and phasing of projects may be considered;
 - e. The DRC and/or ADR shall determine which, if any, of the required improvements must be installed prior to occupancy, regardless of the use of a secured improvements agreement. Such determination shall be based on a finding that unsafe or hazardous conditions will be created or perpetuated without the installation of certain improvements or that the property will have an unacceptable adverse impact on adjoining properties until such improvements are installed;
 - (1) Items include but are not limited to walkways and signage necessary for ADA compliance, parking surfaces adequate to meet the needs of the uses to be conducted during the term of the improvements agreement, or matters related to life safety are required to be installed prior to any occupancy; and
 - f. When all provisions are met for occupancy of a facility or commencement of a use prior to the installation of all improvements, and adequate security has been provided in accordance with the terms of an improvements agreement, the building official may issue a temporary certificate of occupancy which allows occupancy of the facility on a temporary basis for a period not to exceed nine months. When all required improvements are installed in compliance with all terms and details of the site or sketch plan approval, the temporary occupancy permit shall be withdrawn and a permanent certificate of occupancy shall be issued according to the provisions of this division 38.270.

- D. Notwithstanding the provisions of this section, the city may limit the scope, type and number of improvements eligible for being secured by an improvements agreement and require installation prior to final plat approval, issuance of building permits, occupancy or other similar actions.
- E. The planning director shall be responsible to sign improvements agreements on behalf of the city.
- F. When an improvements agreement is used to allow the filing of a final plat prior to the completion of infrastructure, a notice of improvements agreement shall be recorded along with the plat which indicates that certain infrastructure work is still not complete and identifying that work. When the work has been completed and is accepted by the city as complete, the city shall record a notice of completion stating that the work that was the subject of the improvements agreement is complete.

(Ord. No. 1645, § 18.74.060, 8-15-2005; Ord. No. 1693, § 26(18.74.060), 2-20-2007; Ord. No. 1761, exh. O(18.74.060), 7-6-2009; Ord. No. 1769, exh. O(18.74.060), 12-28-2009)

Sec. 38.270.070. - Payment for extension of capital facilities. (38.39.070)

The city may require a subdivider or other site developer to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads or streets, sewer mains, water supply mains and stormwater facilities for a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. The city may not require a subdivider or other site developer to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(Ord. No. 1645, § 18.74.070, 8-15-2005; Ord. No. 1693, § 26(18.74.070), 2-20-2007; Ord. No. 1761, exh. O(18.74.070), 7-6-2009; Ord. No. 1769, exh. O(18.74.070), 12-28-2009; Ord. No. 1828, §§ 110, 111, 9-10-2012)

Sec. 38.270.080. - Types of acceptable securities. (38.39.080)

- A. Financial securities. A variety of means of providing for the security of improvements agreements, ensuring adequate maintenance of required improvements and ensuring compliance with conditions of approval for various developments may be allowed. One or more of the following instruments may be used to provide a financial security for improvements to be completed. The method, terms and amount of security must be acceptable to the city. Financial security is the primary method to provide security for installation of physical improvements.
 - 1. Direct payment of cash to the city;
 - 2. Irrevocable letters of credit;
 - 3. Cash escrows held by the city, or held by an approved escrow agent and subject to an executed escrow agreement; or
 - 4. Performance bonds, in limited circumstances and subject to approval by the city attorney.
- B. Nonfinancial securities. In addition to the possible financial securities listed above, the following nonfinancial securities may be used to ensure compliance with conditions of approval, ensure maintenance of required improvements and

coordinate timing of development. When deemed appropriate, the city may use nonfinancial security methods in combination with a financial security method.

1. Granting of final permits;
2. Sequential approval of multiphased projects, with subsequent phases to not receive approval until prior approved phases have complied with all requirements;
3. Formation of a special improvement or maintenance district. This method shall not be considered completed until after all final actions have occurred and the district is in existence and the bonds sold;
4. Establishment of a property owners association with city enforceable duties to maintain certain improvements;
5. Irrevocable offer of dedication of improvements to be dedicated to the public after completion of the project; and
6. Recording of a special restrictive covenant or deed restriction which may only be released by written agreement of the city.

(Ord. No. 1645, § 18.74.080, 8-15-2005; Ord. No. 1693, § 26(18.74.080), 2-20-2007; Ord. No. 1761, exh. O(18.74.080), 7-6-2009; Ord. No. 1769, exh. O(18.74.080), 12-28-2009)

Sec. 38.270.090. - Development or maintenance of common areas and facilities by developer or property owners' association. (38.39.090)

A. General. For the purposes of this section, "common areas and facilities" include:

1. Public and/or private park land;
2. Boulevard strips in public rights-of-way along external subdivision streets and adjacent to parks and/or open space;
3. Common open space;
4. Neighborhood centers (except for neighborhood commercial and civic uses and their grounds); and
5. Pathways.

B. Development. If common areas or facilities will be developed by the subdivider or by a property owners association, a development plan shall be submitted with the preliminary plat application for review and approval. The development plan shall be reviewed and approved by the city prior to the installation of improvements in common areas or the installation of common facilities. An approved park master plan would satisfy this requirement.

1. Landscaping. When landscaping will be installed in park land, boulevard strips or common open space, the development plan shall be accompanied by a landscaping plan that was prepared by a qualified landscaping professional. When landscaping in common areas is installed by the subdivider, the subdivider shall warrant against defects in these improvements for a period of two years from the date of installation of the landscaping. When landscaping in a park is installed by the subdivider, the subdivider shall comply with the Parks Design

Standards and warrant against defects in these improvements for a period of two years from the date of installation of the landscaping.

2. Tree permits. If trees will be planted in dedicated city park land or boulevard strips, tree planting permits shall be obtained from the forestry department.

C. Maintenance. When common areas or facilities will be maintained by the subdivider or by a property owners association, a maintenance plan that complies with section 38.270.030 shall be submitted with the preliminary plat application for review and approval. The maintenance plan shall include a maintenance schedule, and a mechanism to assess and enforce the common expenses for the common area or facility. The maintenance plan shall be included in the subdivision covenants. The developer shall provide all necessary maintenance until the improvements are transferred to a property owners association, or other final custodian. Maintenance shall be provided by the property owners association for parks until the city shall establish a park maintenance district or other dedicated funding source and affirmatively accept responsibility for maintenance. The provisions of section 38.220.200.A.8 apply to this section.

1. Landscaping warranty. Any required or proposed landscaping must be maintained in a healthy, growing condition at all times. Any plant that dies must be replaced with another living plant that complies with the approved landscape plan.

2. Shade tree maintenance. The forestry department shall be responsible for the maintenance of shade trees in all city rights-of-way and on city property, including parks.

(Ord. No. 1645, § 18.90.090, 8-15-2005; Ord. No. 1693, § 26(18.74.090), 2-20-2007; Ord. No. 1761, exh. O(18.74.090), 7-6-2009; Ord. No. 1769, exh. O(18.74.090), 12-28-2009)

Sec. 38.270.100. - Warranty. (38.39.100)

All publicly dedicated improvements shall be subject to a warranty of duration and scope to meet the city's design standards and specifications manual and/or park design standards as applicable.

(Ord. No. 1645, § 18.74.100, 8-15-2005; Ord. No. 1693, § 26(18.74.100), 2-20-2007; Ord. No. 1761, exh. O(18.74.100), 7-6-2009; Ord. No. 1769, exh. O(18.74.100), 12-28-2009)

38.280 Nonconforming Situations (Article 32)

Sec. 38.280.010. - Nonconforming uses. (38.32.010)

- A. Any use lawfully existing upon the effective date of the ordinance from which this chapter or any predecessor title or code is derived may be continued at the size and in the manner of operation existing upon such date except as hereinafter specified, or in the case of signage as specified in division 38.560 of this chapter.
- B. Except as otherwise specified in this division, the right to operate and maintain a nonconforming use shall terminate when the structure or structures housing such use are destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction. However, in the event of damage by natural disaster to the extent described herein, said nonconforming use or uses may be reestablished through a conditional use permit procedure as set forth in division 38.230 of this chapter. Such restoration shall comply to the maximum extent reasonably feasible with the requirements of this chapter.
- C. When any lawful nonconforming use of any structure or land in any district has been changed to a conforming use, it shall not thereafter be changed to any nonconforming use.
- D. Whenever a lawful nonconforming use of a building, structure or land is discontinued for a period of 90 days, any future use of the building, structure or land shall be in conformity with the provisions of this chapter.
- E. Normal maintenance of a building or other structure containing or related to a lawful nonconforming use is permitted, including necessary structural repairs, provided such structural repairs do not enlarge, intensify or otherwise redefine the nonconforming use.

(Ord. No. 1645, § 18.60.010, 8-15-2005; Ord. No. 1693, § 21(18.60.010), 2-20-2007; Ord. No. 1830, § 36, 9-24-2012)

Sec. 38.280.020. - Changes to or expansions of nonconforming uses. (38.32.020)

- A. Lawful nonconforming nonresidential use.
 1. A lawful nonconforming nonresidential use shall not be changed except in conformance with the use requirements of the zone in which it is located. Except, however, a lawful nonconforming nonresidential use may be changed to another nonconforming use, provided that the proposed use is not of greater intensity than the original use, as determined by the criteria in 38.280.020.A.2, and that a conditional use permit is obtained from the review authority. A lawful nonconforming nonresidential use may be expanded only through the granting of a conditional use permit by the review authority. In considering the appropriateness of the conditional use permit application, the review authority shall weigh the criteria set forth in subsection B of this section. In addition, the review authority shall consider whether the expansion is reasonable, natural and incidental to the growth and use of an existing business. In general, proposals to expand nonconforming uses shall not be approved if the expansion would encompass new land or property which was not in use at the time of the enactment of zoning or a change in zoning.

2. To approve a conditional use permit to change or expand a nonconforming nonresidential use, the review authority shall determine that the proposed nonconforming use is more appropriate to the district than the existing nonconforming use, and that no unsafe or unhealthy conditions are perpetuated. In making such a determination, the review authority shall weigh the following criteria in addition to the criteria applicable to all conditional use permits:
 - a. Traffic impacts, both on-site and off-site;
 - b. Off-street parking and loading requirements;
 - c. The visual impact on the surrounding area;
 - d. The degree of compliance with the adopted growth policy and this chapter;
 - e. The level of conflict with other uses in the surrounding area;
 - f. The presence of other nonconformities in the surrounding area;
 - g. The degree to which any existing unsafe or hazardous conditions would be mitigated;
 - h. The viability of the subject structure; and
 - i. On-site and off-site impacts from noise, dust, smoke, surface or groundwater contamination, or other environmental impacts.

B. Lawful nonconforming residential use.

1. A lawful nonconforming residential use may be reduced in terms of the number of dwelling units, in an effort to achieve greater conformance with the underlying zoning designation, through the review process required by divisions 38.340, and 38.230 of this chapter, without the need to obtain a conditional use permit from the review authority. A lawful nonconforming residential use shall not be permitted to increase the number of dwelling units.
2. The maintenance and reconstruction of existing nonconforming residential dwelling units is allowed, in compliance with applicable fire and building codes, including expansion of up to 20 percent of the existing total residential area, without the need of a conditional use permit, as long as the number of dwelling units on the lot is not increased. In instances where new construction is allowed, all appropriate approvals such as a certificate of appropriateness or building permit shall be obtained prior to the initiation of construction.

(Ord. No. 1645, § 18.60.020, 8-15-2005; Ord. No. 1693, § 21(18.60.020), 2-20-2007; Ord. No. 1828, § 96, 9-10-2012)

**Sec. 38.280.030. - Nonconforming area and bulk requirements for existing lots.
(38.32.030)**

- A. At the time of the enactment of the ordinance from which this chapter is derived if any owner of a plot of land consisting of one or more adjacent lots, as defined in section 38.700.020 of this chapter, in a subdivision of record does not own sufficient land within the lot of record to enable the owner to conform to the minimum lot size requirements, or does not have sufficient lot width to conform to the minimum lot

width requirements, such plot of land may nevertheless be used as a building site. The lot dimension requirements of the district in which the piece of land is located may be reduced by the smallest amount that will permit a structure of acceptable size to be built upon the lot, with such reduction to be determined by the review authority designated in section 38.200.010. Existing buildings on nonconforming lots may be expanded without deviations or variances so long as the expansion does not increase or create one or more nonconformities.

1. In the R-S, R-1 and R-2 districts, the reduction shall permit only a single-household residence.
 2. In the R-3, R-4 and R-O districts, the reduction shall permit only a duplex.
- B. No lot, even though it may consist of one or more adjacent lots in common ownership at the time of passage of the ordinance from which this chapter is derived, shall be reduced in size so that lot width or size of yards or lot area per household or any other requirement of this chapter is not maintained except as provided for in this chapter. This section views lots as merged for the purposes of planning and zoning regulation of bulk, size, or similar dimensional standards only, and does not aggregate individual parcels of land in a manner affected by MCA 76-3-103(17)(b). This section shall not apply when a portion of a lot is acquired for a public purpose.
- C. Adjacent parcels which do not conform to minimum lot requirements, and which are in common ownership, shall be considered individual lots of record for the purposes of this code only if they are each greater than one acre in size and were created prior to the passage of the ordinance codified in this chapter.

(Ord. No. 1645, § 18.60.030, 8-15-2005; Ord. No. 1693, § 21(18.60.030), 2-20-2007; Ord. No. 1828, § 97, 9-10-2012)

Sec. 38.280.040. - Nonconforming structures. (38.32.040)

- A. Any nonconforming structure lawfully existing upon the effective date of the ordinance from which this chapter is derived may be continued at the size and configuration existing upon such date except as hereinafter specified, or in the case of signage as specified in division 38.560 of this chapter and lighting as specified in section 38.560.200.
- B. The right to operate and maintain a nonconforming structure shall terminate when the structure is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction. However, in the event of damage by natural disaster to the extent described herein, said nonconforming nonresidential structure may be reestablished through a conditional use permit procedure as set forth in division 38.230 of this chapter. Such restoration shall comply to the maximum extent feasible with the requirements of this chapter.
- C. Normal maintenance of a lawful nonconforming structure is permitted, including necessary structural repairs provided such structural repairs do not enlarge the structure or intensify the use.

(Ord. No. 1645, § 18.60.040, 8-15-2005; Ord. No. 1693, § 21(18.60.040), 2-20-2007; Ord. No. 1830, § 37, 9-24-2012)

**Sec. 38.280.050. - Changes to or expansions of nonconforming structures.
(38.32.050)**

- A. A lawful nonconforming structure shall not be changed except in conformance with the requirements of the zone in which it is located or as provided in this division.
- B. A lawful nonconforming structure may be expanded through the plan review process required by divisions 38.340 and 38.230 of this chapter. Unless the proposed expansion would create a new nonconformity or increase an existing nonconformity, no deviation or variance is required for the expansion.
- C. If a lawful nonconforming structure is proposed to be changed or expanded in a manner which would increase the degree of nonconformity, or would create a new nonconformity, a deviation or variance shall be properly granted prior to or in conjunction with the site development approval required in divisions 38.340, and 38.230 of this chapter.
- D. The maintenance and reconstruction of existing nonconforming residential structures is allowed, in compliance with applicable fire and building codes, as well as, the provisions of this division, so long as the number of dwelling units on the lot is not increased. Maintenance activities may not increase the degree of nonconformity.

(Ord. No. 1645, § 18.60.050, 8-15-2005; Ord. No. 1693, § 21 (18.60.050), 2-20-2007)