



## REFERRAL & STAFF REPORT

<b>Agenda item:</b>	City Subdivision Regulations: State Law Changes
<b>Report Date:</b>	6/9/2022
<b>Project Lead:</b>	Jen Gress
<b>Public Meetings &amp; Hearings</b>	
<b>Planning Board/City Council public hearing legal ad:</b>	Published in the Missoulian on June 5 and June 12, 2022
<b>Planning Board (PB) hearing:</b>	6/21/2022
<b>Recommended PB motion:</b>	Recommend that the Missoula City Council adopt a Resolution amending the Missoula City Subdivision Regulations, Articles 1 Introductory Provision, Article 2 Definitions, Article 3 Subdivision Design Standards, Article 4 Review and Approval Procedures, Article 5 Submittal Requirements, Article 6 Variances, Article 7 Errors Corrections and Adjustments, and Article 8 Exempt Land Divisions, incorporating applicable State Legislative Changes from the 2017, 2019, and 2021 legislative sessions along with limited clarifying amendments based on consideration of the review criteria.
<b>City Council (CC) 1<sup>st</sup> Reading (date)</b>	N/A
<b>Recommended CC consent agenda motion for 1<sup>st</sup> reading:</b>	N/A
<b>City Council (CC) public hearing:</b>	7/11/2022
<b>Land Use and Planning discussion:</b>	7/13/2022
<b>City Council final consideration</b>	7/18/2022
<b>Recommended motion CC final consideration:</b>	Adopt/deny a Resolution amending the Missoula City Subdivision Regulations, Articles 1 Introductory Provision, Article 2 Definitions, Article 3 Subdivision Design Standards, Article 4 Review and Approval Procedures, Article 5 Submittal Requirements, Article 6 Variances, Article 7 Errors Corrections and Adjustments, and Article 8 Exempt Land Divisions, incorporating applicable State Legislative Changes from the 2017, 2019, and 2021 legislative sessions along with limited clarifying amendments based on consideration of the review criteria.
<b>Applicant:</b>	This is a CPDI initiated request.
<b>Notification and public engagement:</b>	<ul style="list-style-type: none"> <li>• Requested Agency and Interested Citizen Comments</li> <li>• Created an Engage Missoula page: <a href="https://www.engagemissoula.com/subdivision-regulations-state-law-updates">https://www.engagemissoula.com/subdivision-regulations-state-law-updates</a></li> <li>• LUP High Level introduction to the project</li> <li>• Legal ad</li> <li>• Three updates to the Monthly Development Group at CPDI</li> </ul>

## **I. PROPOSAL SUMMARY**

Amendments to the City Subdivision Regulations are being proposed with the goal of incorporating State law changes into our local rules. These amendments are intended to bring the City Subdivision Regulations up to date with recent State law and provide a baseline set of regulations for the upcoming City Comprehensive Code Reform Project. Additional clarifying amendments are also included to address errors and to align with administrative rules and practices.

## **II. BACKGROUND**

The Montana State Legislature meets every two years to discuss possible amendments to state law for various topics including subdivision review. Since the last update to the City Subdivision Regulations following the 2013 Montana legislative session, there have been several changes to subdivision-related state laws in three of the four subsequent legislative sessions between 2015 and 2021. Missoula's current regulations do not reflect these updates, and staff have been implementing these changes using language taken directly from state law.

Because the upcoming Comprehensive Code Reform process, which will focus on regulation alignment, process auditing, modernization, and innovation between all the City's land use regulations, these amendments will have a narrow scope. They are limited to integrating legislative changes from the past three sessions. Changes will also correct obvious mistakes, align the code with required administrative rules, and update document and department names. This scope will avoid duplicating efforts that will take place during the Code Reform process, as well as provide a clean starting point for the Code Reform process to build from.

Staff has reviewed the relevant House and Senate bills from each session since 2015 to determine whether the content of the bills apply to the City's subdivision regulations. Of the 17 bills reviewed, 12 bills resulted in changes that will need to be incorporated into the City's subdivision regulations. Key themes for these changes include:

- Incorporating a process for phased development review;
- Clarifying timelines for final plat reviews;
- Incorporating a process for expedited review;
- Clarifying new limitation on mitigation related to agriculture criteria;
- Updating several exemption processes; and
- Establishing additional guidance for applying conditions to subdivisions.

In addition to the legislative changes, staff has identified a number of amendments not specifically related to recent State land use legislation but are necessary to include in this update. These include:

- Update requirements surrounding the amount of water runoff allowed for a parcel in response to changes made by the Montana Department of Environmental Quality (Circular 8);
- Correct references to rules that no longer exist in state or local law;
- Align with County Clerk and Treasurer for updated plat submittal expectations;
- Cross reference the recently adopted Missoula City Public Works Standards and Specifications;
- Update the planning office and department names where appropriate; and
- Correct the name of the growth policy (City Growth Policy).

## **III. AGENCY AND PUBLIC COMMENT**

Staff released a public draft of the amendments on May 17, 2022, encouraging review and comment to be submitted to the project manager or through the Engage Missoula page for this project (<https://www.engagemissoula.com/subdivision-regulations-state-law-updates>).

Staff received comments from four agencies. No comments have been submitted through the Engage Missoula link, so far. Additional comments received after the publication of this staff report will be provided at the Planning Board meeting. Agency comments received are attached and summarized below, along with staff's response to the comments, as applicable.

### III. AGENCY AND PUBLIC COMMENT

Missoula County Clerk and Treasurer provided comment on the entire Subdivision Regulations Document in addition to the proposed Subdivision Regulations: State Law Changes provided.

All the comments from the Clerk and Treasurer's office have been reviewed and evaluated. A majority of the comments have been incorporated, while other comments, considered beyond the scope of this project, will be added to a list of proposed amendments for the Code Reform Project. Changes incorporated into the Planning Board draft include amendments to address administrative practices related to submittal requirements for recordation and filing, removal of regulations that are no longer applicable due to past changes in state law or local laws, and edits to existing regulations to be consistent with current state and local laws.

Missoula Urban Transportation District commented in support of the changes to the City Subdivision Regulations establishing a process for phased subdivision review. Requiring phasing information as part of the preliminary plat review will help ensure all phases of a subdivision meet the same conditions for approval.

Missoula Parks and Recreation proposed language changes to help clarify specific proposed amendments. Staff incorporated suggestions into the Planning Board draft when it didn't change the original intent of the amendment.

Public Works and Mobility had no comment.

### IV. REVIEW CRITERIA

Montana Code Annotated (MCA) 76-3-501 requires cities to adopt and provide for the enforcement and administration of subdivision regulations that reasonably provide for orderly development, adequate transportation, minimization of congestion, and the avoidance of subdivisions that would involve unnecessary environmental degradation and danger or injury to health, safety, or welfare by reason of natural hazard.

The existing subdivision regulations are established to meet the requirements of MCA 76-3-501, and the proposed amendments (Attachment A: Amendments dated 6-9-22) further reinforce those requirements through:

- Integration of state legislative amendments and related rules from DEQ Circular 8;
- Correcting references to rules that no longer exist in state or local law;
- Alignment with the County Clerk and Treasurer for updated plat submittal expectations;
- Cross referencing the recently adopted Missoula City Public Works Standards and Specifications; and
- Clarifying the department and document names.

The Missoula City Subdivision Regulations stated purpose and intent (Section 1-030) provide criteria to evaluate changes to the regulations. Those criteria are state below along with a response.

1. . . . Subdivision regulation is intended to set standards that reflect the best interests of city residents and the subdivider. (Section 1-030.1).

The proposed Subdivision Regulation amendments reflect the best interests of city residents by implementing and interpreting the legislature's intent and making our local regulations more understandable and usable. The intent of subdivision regulations is addressed through the subdivision review processes, updated in these amendments to comply with State law. In addition, these changes will provide a baseline starting point for the Code Reform Project.

These amendments also incorporate a new review process, referred to as Expedited Review Procedures (Section 4-051) that was adopted by the State in 2021 and is intended to provide a streamlined review

#### IV. REVIEW CRITERIA

process for projects where a proposed subdivision is entirely compliant with local rules and includes plans for public facilities. The new process is in the best interest of the City and subdivider, given the need to address housing availability within the community.

2. The purpose of these regulations is to promote public health, safety, and general welfare by regulating the subdivision of land, to prevent overcrowding of land, to lessen congestion in the streets and highways, to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements, to require development in harmony with the natural environment, to protect the rights of property owners, and to require uniform monumentation of land subdivisions and transfer of interests in real property by reference to plat or Certificate of Survey, and to provide for phased developments as required by MCA 76-3-102, as amended. (Section 1-030.2).

The proposed amendments support the purpose of the subdivision regulations by updating local regulations to be consistent with State Law, administrative rules (Circular 8) and alignment with local laws and administrative practices.

3. To support the purposes of MCA 76-3-102, these regulations are also intended to promote the orderly development of the jurisdictional area among other things. (Section 1-030.3)

The proposed update language will support the MCA by encouraging orderly development and providing consistency in the review of proposed projects.

4. Review of subdivisions according to established standards and procedures benefits both the public and the subdivider. By incorporating standards in preparation for the review process, the subdivider can avoid excessive expenditures of time and money to rectify errors or omissions. The administration of these regulations as defined in the powers and duties of governing bodies assures the subdivider that treatment of the subdivision plat will be equitable, consistent, and expeditious. (Section 1-030.4).

These amendments benefit the public and subdivider by providing added clarity and consistency in the review of proposed projects.

The proposed amendments are consistent with the enumerated purposes and intent of Missoula's Subdivision Regulations. They meet State Law requirements for adoption of subdivision regulations in accordance with MCA 76-3-501.

#### V. ATTACHMENTS and LINKs:

- A. Amendments – Subdivision Regulations: State Law Changes Planning Board 6-9-22
- B. Table of Legislative Bills, 2011
- C. Agency Memo
- D. Agency Comments

**LINK:** For current City of Missoula Subdivision Regulations: <https://www.engagemissoula.com/subdivision-regulations-state-law-updates>