

## Subdivision Regulations: State Law Changes

This document contains proposed amendments to the City Subdivision Regulations prompted by State Legislative changes from 2017 through 2021, and addresses comments received from various agencies. Each proposed amendment is shown in redline strike out format and an explanation is included for most amendments. Some amendments are so numerous and non-substantive as to have an explanation appear only the first time the amendment is made.

### Article 1 Introductory Provisions

#### 1.

##### 1-020 Authority

Authorization for these subdivision regulations is contained in the *Montana Subdivision and Platting Act*, MCA Title 76, Chapter 3, as amended. These regulations are adopted in accordance with the Missoula County-City Growth Policy, pursuant to Montana State Law.

##### *Explanation:*

*The City of Missoula has adopted a city-specific growth policy since the subdivision regulations were last updated. Amendments are made throughout this document reflecting the name change from Missoula County Growth Policy to City Growth Policy. This explanation will be provided only once.*

#### 2.

##### 1-030 Purpose and Intent

- .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.

##### *Explanation:*

*In 2017 State Law amendments provided for phased development in the "Statement of purpose" section of MCA 76-3-102. This amendment will include phased development in our local purpose statement.*

## 3.

**1-120 Appeals**

(1) A decision of the City Council to approve, conditionally approve, or deny rejecting or approving a preliminary plat application for a proposed subdivision plat may be appealed to the District Court within 30 days of the date that such decision is issued in writing. The application must specify the grounds to challenge the approval, imposition of conditions, or denial of the preliminary plat. upon which the appeal is made.

(1)(2) A party identified as aggrieved, in accordance with subsection 3 below, by any other final decision of the governing body regarding a subdivision may, within 30 days from the date of the written decision, appeal to the district court in the county in which the property involved is located to challenge the decision.

(2)(3) An appeal may be made by the subdivider, a contiguous landowner, an owner of land within the City of Missoula who can establish a likelihood of material injury to property or its value, the City Council, or the County Commissioners. In order to file an appeal, the plaintiff must be aggrieved by the decision, demonstrating that a specific personal and legal interest, as opposed to a general interest has been or is likely to be specifically and injuriously affected by the decision.

*Explanation:*

*Provisions for appeals of subdivisions were amended in State Law with SB 161 (2021). This amendment will clarify what information must be provided in an appeal application.*

**Article 2 Definitions**

## 4.

**2-020 Definitions****.23 Condominium**

A form of individual ownership with unrestricted right of disposal of one or more units in a multiple-unit project, with the land and ~~all~~ other parts of the project held in common ownership or use with owners of the other units.

*Explanation:*

*This definition will be amended because there is an ability to own different parts and the word "all" is unnecessary.*

## 5.

**.49 Floodplain Administrator**

The director of ~~Development Services~~CPDI or an authorized designee.

*Explanation:*

*Since the last update to the subdivision regulations, the City department that reviews subdivisions has been restructured under a new name. Where appropriate the department name of Office of Planning and Grants or Development Services will be replaced with the new department name of CPDI (Community Planning Development and Innovation). The division name of Development Services will also be retained where appropriate. This explanation will be provided only once.*

**6.****.83 Phased Development**

A subdivision application and preliminary plat that at the time of submission consists of independently platted development phases that are reviewed on a schedule proposed by the subdivider.

*Explanation:*

*In 2017 HB 445 included a new definition of Phased Development. This amendment adds that definition to our local regulations. Planning staff have been applying State Law amendments from 2017 based on direct reference to the Montana Code Annotated (MCA) even if not incorporated into the local regulations. The rest of the section will be renumbered appropriately.*

**7.****~~.402.~~103 Riparian Resource**

A stream, wet meadow, woody draw, wetland or other body of water and land containing any of the habitat or community types listed in [Exhibit 51](#). An irrigation ditch that does not lie within a floodplain, and measures less than 3 feet in width at its widest point on the subject property, as measured from the high watermark of the ditch, is not considered a riparian resource for the purpose of these subdivision regulations.

*Explanation:*

*The current subdivision regulations include cross references to documents called "Exhibits". These exhibits provide additional information and direction. There were 8 exhibits named Exhibit 1-8, Exhibits 1-4 have been removed and the information for these exhibits is found in other locations online. Exhibits numbered 5-8 have been renumbered 1-4 and are attached at the bottom of this document. Changes will be shown throughout the document to reflect the new Exhibit references. This explanation will be provided only once.*

**8.****.123 Townhouse Lot**

Arrangement under which individuals own their own units and hold separate title to the land beneath the unit but jointly own the common areas and facilities.

*Explanation:*

*The term “townhouse lot” is not used in the subdivision document, removing the word “Lot” is an administrative action.*

**Article 3 Subdivision Design Standards****9.****3-010 General Standards**

- .1 In addition to the requirements established herein, as required by MCA 76-3-504, as amended, all subdivision plats are subject to applicable laws, ordinances, and regulations, including but not limited to:
  - I. Missoula ~~County~~ City Growth Policy and its amendments.

**10.****3-020 Streets, Sidewalks, and Trails****.3 Access, Rights-of-Ways, and Easements****H. Access Control**

- (1) When a residential subdivision contains lots that abut on more than one street, access to each lot must be provided on the street with the lowest classification unless the Director of ~~Development Services~~ CPDI and the City Engineer determine it is in the public good to provide access on the street with the higher classification.

**11.****.5 Dead-End Streets, Cul-de-Sacs, and Circle and Loop Streets**

- B. If approved by variance, the following standards apply:

- (3) Permanent cul-de-sac streets may not represent more than 15% of the total roadway miles in a subdivision unless the ~~Development Services~~ Director of CPDI, and the City Engineer determines that a practical difficulty exists due to the presence of streams, steep slopes, other natural resources or significant physical constraints. Connections must be made with existing roads or streets or planned roads or streets.

**12.****.15 Active Transportation Facilities**

Active transportation facilities typically include but are not limited to sidewalks, trails, and bike lanes.

**B. Connectivity Standards**

- (1) Subdividers must provide active transportation facilities that provide:
  - (d) Connections between the subdivision and adjacent community active transportation systems as depicted and described in the Missoula ~~County~~ City Growth Policy, the Missoula Long Range Transportation Plan, the *Missoula Active Transportation Plan* and *Missoula Master parks and Recreation Plan*, or any adopted local or neighborhood plan.

**C. Rights of Way and Easements**

- (2) Where depicted or described by the Missoula ~~County~~ City Growth Policy, the Missoula Long Range Transportation Plan, Missoula Active Transportation Plan, Missoula Master Parks and Recreation plan or any adopted local or neighborhood plan, City Council may require active transportation facilities be located outside the dedicated public road right-of-way or easement.

**13.****3-030 Lots and Blocks****.1 Lots**

- E. Double frontage or through lots are prohibited unless the director of ~~Development Services~~ CPDI determines that such a design is warranted because of topography or other physical site constraints.

**14.****3-040 Grading, Drainage, and Erosion Control****.3 Grading and Drainage Systems**

- A. Major subdivisions that are located outside the designated drainage area must install storm drains or deliver storm water runoff to the nearest suitable drainage channel or storm drain main line. ~~Discharge intensity is limited to ten-year, one-hour storm events. Rainfall intensity must be derived from the 24-hour storm duration.~~ The plan must be approved by the city engineer.
- B. Swales, storm sewers or some accepted method of storm water management are required, taking into account the character of the area, density of development, and adjoining properties. The subdivider must extend the storm drain if the subdivision is located within 500 feet of an existing storm drain facility.

- C. Unless an adequate storm sewer exists or is provided, all surface run-off in addition to that normally present before subdivision must be retained on site or released from the site in a manner that will not substantially increase the peak run-off normally present before subdivision. In addition, peak run-off cannot overtop roadways or driveways during a 10-year storm event; or inundate any buildings or drain fields during a 100-year storm event. Restrictive covenants may be required to mitigate adverse effects of property drainage. Mitigation may involve the installation of drainage structures or the connection to an existing storm drainage system. Drainage easements across adjoining land to the nearest drainage way may be required.
- D. Facilities for the collection of stormwater runoff must be installed prior to or concurrent with any other improvements and be designed to divert surface water away from cut faces or sloping surfaces of a fill. All storm water facilities must be protected from erosion or silt deposition during construction of both public and private improvements.
- E. All drainage systems must meet the minimum standards of the Montana Department of Environmental Quality, as required by MCA Title 76, Chapter 4 and 5, Part 1, as amended, and all applicable state and local regulations per MMC Chapter 13.27 and Chapters 6 and 8 of the Missoula City Public Works Standards and Specifications.

*Explanation:*

*The City of Missoula is subject to various regulations administered by the Department of Environmental Quality (MDEQ), including Circular 8. In 2017 Circular 8 was amended regarding the amount of water run-off that must be addressed in various storm events. These DEQ changes require local regulations be updated.*

*Explanation:*

*In 2017 the City of Missoula created the Storm Water Division and adopted regulations appropriate to addressing storm water, in addition, the City updated the Missoula City Public Works Standards & Specifications Manual. Changes made here will clarify local regulations by cross referencing these new policies.*

**15.****3-110 Recreational Vehicle Parks****.3 Streets, Roads, and Recreational Vehicle Spaces**

- G. Plantings required for buffering, screening, or soil erosion protection are subject to review by ~~the Office of Planning and Grants~~ CPDI and the City Council. Existing trees and natural vegetation must be preserved to the maximum extent possible. A buffering screen must be placed along any perimeters of a recreational vehicle park that abut an arterial highway or access road.

**16.****3-120 Planned Unit Developments (PUD)****.2 Designation as PUD**

A PUD development must comply with PUD provisions in the zoning ordinance. If the area is unzoned, a PUD must meet the requirements of these regulations. To obtain designation of a subdivision as a PUD, the subdivider must submit to ~~the~~ Development Services the following:

*Explanation:*

*When previous amendments were made to the document changing the office name from the Office of Planning and Grants to Development Services, the word "the" was not removed in most cases. This administrative amendment will correct the error and is made throughout the document but will only be shown and explained once.*

**17.****.6 Density**

In those areas where no zoning exists, the director of ~~Development Services~~CPDI and local and state Health Authorities must recommend to the City Council, in consultation with the subdivider, the overall dwelling-unit density. The City Council must approve the overall density.

**18.****3-130 Riparian Resource Areas****.1 Purpose**

**B.** These regulations apply to a functional district with standards that would trigger inquiries when a subdivision is proposed in or through what may be considered a riparian resource area. A functional definition for riparian resource areas will ensure protection of the resource, without unnecessarily impacting developable land. Functional standards are proposed. A map generally locating major riparian resource areas is available for viewing at ~~Development Services~~CPDI. Not all riparian resource areas within the City of Missoula are shown on this map. Riparian resource areas are typed by site-specific soil, habitat and community types. All other unmapped riparian resource areas that meet the definitions and criteria of these regulations are also subject to these standards.

**19.****3-180 Cluster and Conservation Development****.4 Open Space****C. Use**

- (3) Open space may contain active recreation areas and only such buildings, structures, accessways and parking facilities as are necessary and accessory to its principal uses (e.g., pedestrian paths, recreational club houses, utility lines, driveways, parking areas). Unless otherwise approved by ~~the Office of Planning and Grants~~ CPDI, all active recreation areas, permanent structures and impervious surfaces must be of a “low-impact” design, and management practices must be instituted to protect and enhance the natural character and function of the open space. Such development requires:

**20.****Article 4. Review and Approval Procedures**

<a href="#">4-010</a>	General Provisions for all Major and Minor Subdivisions .....	4-1
<a href="#">4-020</a>	Minor Subdivision Review Procedure .....	4-9
<a href="#">4-030</a>	Major Subdivision Review Procedure .....	4-10
<a href="#">4-040</a>	Review Procedure for Condominiums .....	4-12
<a href="#">4-050</a>	Removed - (2014 Legislative changes) .....	4-14
<a href="#">4-051</a>	<u>Expedited Review</u> .....	<u>4-XX</u>
<a href="#">4-060</a>	Review Procedure for Mobile Home Community and Recreational Vehicle Park Subdivision .....	4-14
<a href="#">4-070</a>	Preliminary and Final Plats .....	4-15
<a href="#">4-080</a>	Vacating Recorded Plats .....	4-20

*Explanation:*

*The addition of subsection 4-051, Expedited Review requires it be added to the list of contents for Article 4. A specific page number will be assigned after final formatting of the document, along with any other page number references that may need to be made.*

**21.****4-010 General Provisions for all Major and Minor Subdivisions****.1 Pre-application Meeting**

The subdivider must attend a pre-application meeting for a proposed subdivision.

- A. A pre-application meeting must occur within 30 days after the subdivider submits a written request to ~~the Office of Planning and Grants~~ Development Services.



**B.** At the time of the written request for the pre-application meeting, the subdivider must provide ~~the~~ Development Services with the following general information:

(1) A preliminary ~~sketch plan~~plat drawn to scale showing general information on the current status of the site; including:

(2) A preliminary ~~sketch plan~~plat drawn to scale showing general information on the proposed subdivision, including:

(3) General maps and information including:

(4) A phasing plan diagram (if applicable) in the form of a preliminary plat of the full subdivision indicating all independent platted development phases, with a number or letter for each phase, and a legend that includes the deadline for submittal of the final plat for each phase for review.

*Explanation:*

*The addition of subsection (4) will codify current practice for submittal content at the time of pre application and includes requirements of proposed phased subdivisions in response to HB 445. Word changes made in subsections (1) and (2) are made to be consistent with the addition of subsection (4) as well as reflecting current staff practice.*

## 22.

### .2 Neighborhood Meeting

A. Before the application is submitted and after the pre-application meeting, the subdivider must meet with the appropriate registered neighborhood associations, neighborhood council, and any interested individuals. The subdivider may choose to meet with all groups at the same meeting at a location within the neighborhood. The applicant must post meeting notices within 300 feet of the property where the proposed project is to be located. The applicant must mail meeting notices, at least 15 business days in advance, to residents within 300 feet of the project, to City Council ward representatives, Development Services, and the neighborhood council and neighborhood association. The subdivision application must include any written response from the neighborhood organization contacts and any written comments received from individuals, the neighborhood group and minutes from the meeting detailing comments and suggestions.

B. Subdivision subject to Section 4-051, Expedited Review are exempt from the neighborhood meeting requirement.

*Explanation:*

*SB 161 (2021) does not require a neighborhood meeting for expedited subdivision requests. This amendment will make it clear that expedited review is exempt from neighborhood meetings.*

**23.****.3 Subdivision Application and Preliminary Plat Submittal**

~~Two~~ One paper ~~copies~~ copy and a digital copy of the following information and documents, and the appropriate subdivision review fee, must be supplied by the subdivider to ~~the~~ Development Services:

*Explanation:*

*Changes to the submittal information reflects our office's current practice and acknowledges the move to a digital submission process.*

**24.****.4 Subdivision Application Review Process – Element Review**

A subdivision application is considered to be received on the date of delivery to Development Services when accompanied by the review fee. Within five business days of receiving the application and the review fee, ~~the Office of Planning and Grants~~ Development Services must determine whether the application contains all of the elements required by 4-010.3.

**25.****.13 Mitigation of Impacts**

- A. The City Council may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review process of the subdivision application without unreasonably restricting a landowner's ability to develop the land, and may not require a set aside of land or monetary contribution for the loss of agricultural soils. Pursuant to 4-010.14D, the City Council must issue written findings to justify the reasonable mitigation required under this section.
- B. The City Council must consider the following in determining the appropriate mitigation. The final decision on the weight to give the factors below lies solely with the City Council:
  - (1) Whether ~~unmitigated~~ impacts of a proposed development ~~are unacceptable~~ may be deemed unmitigable, precluding approval of the plat.
  - (2) The expressed preference of the subdivider.

*Explanation:*

*Provisions for when a governing body requires mitigation during subdivision review were amended in State Law in 2021 with SB 174. Proposed language will clarify the information required to be documented in a City Council decision requiring mitigation.*

*SB 211 prohibits a governing body to require a set aside of land or monetary contribution for the loss of agricultural soils as a form of mitigation. (change appears in .13A above)*

**26.****.14 City Council Decision and Documentation****A. Prerequisites to Approval**

- (1) The City Council may not approve or conditionally approve a subdivision application and preliminary plat unless the proposed subdivision:
- (2) The City Council may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security per MCA 76-3-507 for purposes of filing a final plat.
- (3) Unless otherwise provided by law, the governing body may review but does not have approval authority of the development covenants (governing documents) of the subdivision or amendments to the development covenants unless the development covenants directly and materially impact a condition of subdivision approval.

*Explanation:*

*Amendments to this section were made in response to SB 174 (2021), addressing review and approval of a subdivision application and clarified the approval authority of the governing body regarding development covenants (governing documents).*

**27.****B. Consideration – Standards**

In approving, conditionally approving or denying a subdivision application and preliminary plat, the City Council must consider whether the proposed subdivision complies with:

- (4) The *Montana Subdivision and Platting Act*, including but not limited to the specific, documentable, and clearly defined following impacts on:
  - (a) ~~Impact on~~ agriculture; excluding any consideration of whether the proposed subdivision will result in the loss of agricultural soil;
  - (b) ~~Impact on~~ agricultural water user facilities;
  - (c) ~~Impact on~~ local services;
  - (d) ~~Impact on~~ natural environment;
  - (e) ~~Impacts on~~ wildlife;
  - (f) ~~Impacts on~~ wildlife habitat; and
  - (g) ~~Impacts on~~ public health and safety.

*Explanation:*

*SB 174 (2021) addressed the criteria for local government review clarifying the conditions of a conditionally approved subdivision must be clearly defined.*

*Explanation:*

*SB 211 (2021) revised the criteria for local government review of a subdivision application by limiting the ability of a governing body to address the loss of ag soils through land set aside or cash-in-lieu.*

**28.****C. Consideration – Evidence**

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

- (4) The Missoula ~~County~~ City Growth Policy;

**D. Documentation of City Council Decision**

- (1) In rendering its decision to approve, conditionally approve or deny the proposed subdivision, the City Council must issue written findings of fact that discuss and weigh the proposed subdivision's compliance with 4-010.14B and 4-010.14C.
- (2) City Council conditional approval of a proposed subdivision is approval of the applicant's preliminary plat packet as amended by conditions. Any action that is not specifically prohibited in Council's conditional approval is specifically allowed.
- (3) Findings of fact must be based on the record as a whole.
- (1)(4) Each condition required for subdivision approval must identify a specific, documentable, and clearly defined purpose or objective related to the primary criteria set forth in 4-010.14A and B that forms the basis for the condition.
- (2)(5) Within 30 business days of the date that the City Council approves, denies or conditionally approves the proposed subdivision, it must send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter must:
  - (a) Contain information regarding the appeal process for the denial or imposition of conditions;
  - (b) Identify the regulations and statutes that are used in reaching the decision ~~to approve, deny or impose conditions~~ and explain how they apply to the basis of the decision;

- (c) Provide the facts and conclusions that the City Council relied on in making its decision and reference documents, testimony or other materials that form the basis of the decision;
- (d) ~~Provide~~ Identify the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved; and
- (e) Include public comment relative to water and sanitation issues.
- (f) Agency comment from Federal or State entities regarding wildlife, wildlife habitat, or the natural environment may be included in the government body's statement only if there is scientific information or a published study that supports the comment.

*Explanation:*

*Amendments to this section were made to address SB 174, with the exception of the amendment in section 4-010.14D.(3) which was made in response to HB 416. Planning staff have been applying State Law amendments based on their effective date in direct reference to the Montana Code Annotated (MCA) even if not incorporated into the local regulations.*

*SB 174 addressed review and approval of a subdivision. The bill clarified how conditions of approval are used and defined.*

*The amendment in response to HB 416 clarified that the findings of fact used in making a decision to approve, deny, or condition a subdivision must be based on the record as a whole.*

## 29.

### **4-030 Major Subdivision Review Procedure**

Subdivisions of land that result in the creation of six or more lots are subject to the following additional review requirements:

#### **.4 Planning Board Public Hearing, Consideration and Recommendation**

- B. In recommending approval, conditional approval or denial of the subdivision application and preliminary plat, the Planning Board may consider the subdivision application and preliminary plat, the environmental assessment, discussion of probable impacts, the Missoula ~~County~~ City Growth Policy, information presented at the public hearing, the planning staff report and recommendation, and any additional information authorized by law.

**30.****4-040 Review Procedure for Condominium or Townhouse Proposals**

- .3** A condominium ~~or~~, townhouse or conversion proposal, if constructed on land subdivided in compliance with State law (MCA Title 76, Chapter 3, Parts 5 and 6) or on lots within incorporated cities and towns, is exempt from the provisions of the chapter if:

*Explanation:*

*SB 276 revised condominium and townhouse laws exempting conversions of a condominium to a townhouse from local subdivision review. This amendment brings our local regulations into alignment with State Law. Planning staff have been applying State Law amendments from 2019 based on direct reference to the Montana Code Annotated (MCA) even if not incorporated into the local regulations.*

**31.****4-051 Expedited Review Procedure****.1 Applicability**

- A.** A subdivision qualifies for the expedited review process if the proposed subdivision:
- (1) Is within the Missoula city limits;
  - (2) Complies with all adopted zoning, design standards and other adopted subdivision regulations without the need for variances or other deviations to adopted standards; and
  - (3) Includes plans for the onsite development of or extension to public infrastructure in accordance with adopted ordinances and regulations.
- B.** A subdivider may submit an application for an expedited review process that meets section 4-051.1A., regardless of the number of lots proposed.

**.2 Application Review**

- A.** Upon submission the application must be reviewed for required elements and sufficiency of information. Neighborhood notice procedures included with element and sufficiency processes are not required by State Law during an expedited review.
- B.** The subdivider is subject to the provisions for review of all major and minor subdivisions as described in Article 4-010 except those sections listed below:
- (1) 4-010.2;
  - (2) 4-010.12;
  - (3) 4-010.13.;
  - (4) 4-010.14B.(4); and,
  - (5) 4-010.14C.(2), (3) and (7).

- C. The subdivision is subject to the provisions described in Article 5-020, except subsection 5-020.6 – Primary Review Criteria Report and Summary of Probable Impacts.

### **.3 Public Hearing and Notice**

- A. The City Council shall hold a public hearing within 35 business days of a determination that the preliminary plat application is sufficient.
- B. Notice shall be provided as a legal ad publication in a newspaper of general circulation in the city no fewer than 15 days prior to the date of the hearing.

### **.4 City Council decision and documentation**

- A. The City Council must:
- (1) Approve the application unless public comment or other information demonstrates the application does not comply with adopted zoning, design standards or other requirements of subdivision regulations without the need for variance or other deviations to adopted standards or does not comply with ordinances or regulations for the onsite development or extension to public infrastructure;
  - (2) Provide a written statement to the applicant and public of the decision to approve or deny a proposed subdivision for expedited review within 30 days of the decision. A written statement shall include facts and conclusions relied on in making its decisions to approve or deny the application; and
- B. The conditions that apply to the preliminary plat approval that must be satisfied before the final plat may be approved.
- C. City Council may:
- (1) With the agreement of the applicant, grant one extension of the review period not exceeding 180 calendar days.
  - (2) Adopt conditions of approval only to ensure the approved subdivision is completed in accordance with the approved application and any applicable requirements pursuant to MCA Title 76, chapter 4.

### **STEPS REQUIRED FOR EXPEDITED REVIEW PROCEDURE**

<u>Step 1</u>	<u>Pre-application meeting between subdivider and CPDI staff.</u>	
<u>Step 2</u>	<u>Element Review: subdivider submits entire subdivision application to CPDI staff for element review.</u>	<u>Maximum 5 business days.</u>
<u>Step 3</u>	<u>Sufficiency Review: after all elements of the application are complete, the subdivider submits the application for Sufficiency Review to CPDI, reviewing agencies, and other entities identified by CPDI.</u>	<u>Maximum 15 business days.</u>
<u>Step 4</u>	<u>After the subdivision application is deemed sufficient, the subdivider submits a revised title page to CPDI for City Council review.</u>	<u>Maximum 35 business days, statutory limit.</u>
<u>Step 5</u>	<u>CPDI – staff report.</u>	<u>MCA 76-3-604.</u>
<u>Step 6</u>	<u>City Council – public hearing.</u>	
<u>Step 7</u>	<u>LUP – post public hearing discussion.</u>	
<u>Step 8</u>	<u>City Council – Final Consideration.</u>	

Formatte

Formatte  
Widow/C



**Explanation:**

*This entire section is new in response to SB 161 (2021). This bill allows an expedited review for proposed subdivisions that are within city limits and meet certain requirements, such as compliance with zoning, design standards and other subdivision regulations without the need for variances of any kind as well as plans for onsite development of, or extension to, public infrastructure. Projects that meet these criteria are exempt from specific review requirements like an environmental assessment and consideration of the primary review criteria. If a proposed development is meeting all the regulations and is appropriately planning for public infrastructure, the consideration of a proposed subdivision should be very straightforward. A public hearing is still required whether a project is a minor or major subdivision and notice of the proposed subdivision will be a legal ad and posted on the Engage Missoula website. The decision on an expedited review is accomplished within 35 business days from the time the proposed subdivision is considered sufficient to the final decision by City Council. This is the same amount of time it takes for minor subdivision (35 days) and a savings of time (between 60 and 80 days) for major subdivision.*

**32.****4-070 Preliminary and Final Plats****.1 Non-Phased development****A. Effective Period of Preliminary Plat Approval**

~~The City Council must provide the subdivider with a dated and signed statement of approval as required by MCA 76-3-610, as amended.~~ The subdivider must submit the final plat for the entire area shown on the preliminary plat, or request an extension to the approval period by the City Council, prior to the submittal deadline ~~for final plat review~~. If the final plat has not been submitted or if no extension has been requested before the deadline, the preliminary plat is ~~void~~expired.

~~A.~~(1) The City Council may withdraw approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is materially inaccurate.

~~B.~~ (2) A preliminary plat shall be in force for a period of three years, unless the governing body has approved an extension per 4-070.1B.

~~C.~~ (3) After the application and preliminary plat are approved, the City Council may not impose any additional conditions as prerequisite to final plat approval.

~~(1)~~ The City Council may withdraw approval of an application and preliminary plat if it determines that information provided by the subdivider, and upon which the approval or conditional approval was based, is inaccurate.

**.2 B. Preliminary Plat Approval Extension**



~~A.~~ (1) The City Council may extend a preliminary plat approval for an additional two year period. To be given consideration for an extension of the preliminary plat approval period, the subdivider shall submit a written request for a preliminary plat extension to ~~the planning department~~ Development Services prior to the expiration date. The request shall address sections 4-070. ~~1B.(2)(a)-(c)2.B.1-3.~~

~~B.~~ (2) If a final plat has not been filed at the end of the additional 2 year period, the-subdivider may request one final extension not to exceed two years. To be given consideration for the second extension request of the preliminary plat approval periods, the subdivider shall provide a written request for a preliminary plat extension to ~~the planning department~~ Development Services prior to the expiration of the last extension. The request shall address sections 4-070. ~~1B.(2)(a)-(e)2.B.4-5:~~

(1) (a) Circumstances governing the timing of final plat review have changed beyond the control of the subdivider. List all such circumstances, and state how the new deadline can be met;

(2) (b) The findings of fact regarding the primary review criteria will still be valid if the extension is granted;

(3) (c) Planning and provision for public facilities and services in the area of the subdivision will not be disrupted by the extension of the deadline.

(4) (d) No significant changes in the area of the subdivision have occurred or are expected to occur within the extension period for final plat review that would change the evaluation of the proposal.

(e) The preliminary plat is not in conflict with recently changed subdivision regulations or policies or regulatory plans listed in 3-010.1-A-K adopted by the City Council that would be undermined by the further time extension.

~~C.~~ (3) Failure to sufficiently document any of the applicable elements in 4-070. ~~1B.(2)2B.~~ in each extension request shall constitute a sufficient reason to deny the extension request.

~~D.~~ (4) The City Council must act within 30 business days of receipt of the request for an extension. Extension approvals must be in writing. The City Council authorizes the mayor to sign the mutually agreed-upon extension on behalf of the members of governing body.

### 3.2 Phased ing Development- Submitted for Preliminary Plat Approval on or after May 8, 2017

#### A. Applicability:

(1) Major and Minor subdivisions proposing phased development must include the phasing information as part of a preliminary plat application submitted on or after May 8, 2017.

(2) Proposed phased development is subject to Section 5-020.14.

Formatted  
Space Be  
1.9", Left  
Field Co

- (3)** At the time of the request for a preapplication meeting, the subdivider shall provide Development Services a preliminary plat of the full subdivision indicating all independent platted development phases in accordance with 4-010.1B(4). Phases are required to be submitted sequentially.

**B. Phased development Review for Each Phase:**

**(1) Application**

Written notice must be provided to Development Services expressing the desire of a subdivider to commence with a phase. Prior to submitting the final plat submittal packet for a particular phase, a public hearing will be held to determine whether any changed primary review criteria impacts, or new information exist, that create new potentially significant adverse impacts for the phase or phases commencing.

The written notice shall include an application packet with the following:

- (a) Cover letter stating the applicant's intent to commence with improvements prior to submitting the final plat submittal packet for a phase;
- (b) Final plat drawing for the particular phase;
- (c) Typical road sections for this phase;
- (d) Current approved Phasing Plan diagram and schedule;
- (e) A revised phasing plan diagram with a revised legend, showing the new schedule, for any proposed changes to the phasing plan layout or schedule; and,
- (f) A narrative addressing whether there is new information or new regulations that apply to the subdivision and whether the findings of fact and conclusions of law at the time of preliminary plat approval are still valid.

**C. Phased Development Deadlines:**

- (1) Proposed phase deadlines may extend beyond the standard preliminary plat approval deadline of three calendar years (MCA 76-3-610) for a time agreed upon between the developer and the governing body. Phase deadlines must be in writing and signed by the subdivider and governing body.
- (2) All phases must be submitted for review and approved, or denied, within 20 years of the preliminary plat approval of the phased development application.
- (3) The subdivider shall submit the final plat for each phase no later than the final plat submittal deadline in the approved phasing plan. Following the public hearing approval for that phase, the phase approval is good for up to three years.

**D. Public Hearing:**

- (1) The City Council must hold a public hearing for phased development review for each phase of a subdivision prior to submittal of a final plat application. Notice of the time, date and place of the City Council hearing must:

- (a) Be given by publication in a newspaper of general circulation in the city no fewer than 15 days prior to the dates of the hearings.
  - (b) At least 15 days prior to the dates of the hearings, be given by certified mail to the subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat.
- (2) A public hearing shall be held within 30 business days after receipt of the written notice from the applicant. The governing body may approve or approve with additional conditions. Any additional conditions required must mitigate impacts based on changed primary review criteria or new information. Findings of Fact are required to support new conditions.
- (3) Within 20 days of the public hearing, the governing body shall issue a written statement of the decision which shall include supplemental findings of fact for any additional conditions imposed.

### **.3 Phased Development – Submitted for Preliminary Plat approval prior to May 8, 2017**

#### **A. Applicability**

The following sections apply to phased development applications submitted prior to May 8, 2017.

#### **B. General**

(1) The subdivider must submit the final plat or request a phasing plan extension/amendment to the approval period, prior to the submittal deadline of the City Council approved phasing plan. If an extension or amendment has not been requested prior to the deadline the preliminary plat approval is expired.

(2) Final plats of subdivision approved for phased development must be filed sequentially in accordance with the approval.

#### **C. Phasing plan extension/amendment**

(1) Written request for a phasing plan extension/amendment must be provided to CPDI. The request for extension/amendment will be reviewed to determine whether any changed primary review criteria impacts, or new information exist, that create new potentially significant adverse impacts for the remaining phases of the subdivision.

(2) The extension/amendment request shall include an application packet with the following:

(a) Cover letter stating the applicant's intent to commence with improvements prior to submitting the final plat submittal packet for a phase;

(b) Final plat drawing for the particular phase;

(c) Typical road sections for this phase;

- (d) Current approved Phasing Plan diagram and schedule;
  - (e) A revised phasing plan diagram with a revised legend, showing the new schedule, for any proposed changes to the phasing plan layout or schedule; and,
  - (f) A narrative addressing whether there is new information or new regulations that apply to the subdivision and whether the findings of fact and conclusions of law at the time of preliminary plat approval are still valid.
- D. All phases must be submitted for review and approved, or denied, within 20 years of the preliminary plat approval of the phased development application.
- E. The governing body shall issue a written statement of the decision which shall include supplemental findings of fact for any additional conditions imposed.
- a. Nothing in this section prohibits the phasing of a project beyond the three year approval period if the subdivider provides a detailed plan for phasing in accordance with 5-020.14A and the City Council approves that plan. The City Council reserves the right to impose additional conditions that require compliance with regulations that exist at the time that each phase is brought before the City Council for review.
- B. The applicant subdivider may propose, as part of the preliminary plat approval process, a phasing plan that delineates on the preliminary plat two or more final plat filing phases and to establish the schedules for submission of the phases in accordance with 5-020.14A.
- When phasing is not indicated on the preliminary plat, the final plat must be submitted for the entire area shown on the preliminary plat.
- c. If the applicant desires to establish phases following approval of the preliminary plat, a new preliminary plat delineating the phases and establishing the schedule must be submitted and approved according to these regulations. Modifications to an approved phasing plan or schedule requires City Council approval.
- d. Final plats of subdivision approved for phased development must be filed sequentially in accordance with the approval.

**Explanation:**

*Sections 4-070.1-.3 are almost entirely new and address legislative changes adopted by HB 445 (2017) which created a new process for phased development. These sections will address three types of development, non-phased projects, phased projects applied for on or after May 8, 2017 (after adoption of HB 445 (2017)), and those phased projects approved prior to May 8, 2017. The proposed language will also formalize the process staff has been using for the past four years.*

*Non phased projects will continue to be administered as they have been. Changes to this section clarify an extension request must be in writing, be mutually agreed upon by the developer and the City and approved by the City Council.*

*Applications for phased projects applied for on or after May 8, 2017, must include information on all phases with a phasing schedule, must be acted on within 20 years of the date the preliminary plat is approved, are required to have a public hearing for review of each phase being implemented, and requires the City Council to consider changed primary review criteria impacts or new information when reviewing each phase. The law also allows the City Council to impose necessary additional conditions to minimize potentially significant adverse impacts identified in review of the phase.*

*A request to implement a phase of a phased subdivision approved prior to 2017, will continue to be reviewed administratively, without a public hearing, and an applicant retains the ability to request an extension. If an extension or amendment to the approved plat is requested the City Council must approve the extension and/or amendment and review the project for any new information as well as consider the primary review criteria. In conformance with HB 445, the City Council will review for any changed primary review criteria impacts or new information and impose necessary additional conditions to minimize potentially significant adverse impacts identified in review of the phase.*

*Because a phased development process was created in response to the legislative changes, existing language (old sections .a - .d above) will be replaced and/or split apart and placed in other paragraphs.*

### 33.

#### .4 Final Plat

##### A. Consistency with Preliminary Plat

The final plat must incorporate all modifications required as a result of the preliminary plat review.

##### B. Determination of Compliance

(1) The director of ~~Development Services~~CPDI must review the final plat for substantive compliance with ~~the approval, and conditions set forth with~~ the approved preliminary plat, ~~the terms of the Montana Subdivision and Platting Act and these regulations.~~

(2) Within 20 business days of accepting the final plat, CPDI must determine whether the final plat meets all 4-070.4B(1), and shall notify the subdivider of the determination in writing.

(3) If ~~the director~~Development Services determines that there is a material change (4-010.8F) in the final plat from what was approved as a preliminary plat or determines that ~~the application doesn't contain the information required in 4-070.4B.(1) there are including~~ conditions that have not been met, ~~the director may require that a new final plat application be submitted. See 4-010.8F for an explanation of what constitutes a "material change~~ Development Services must identify the missing items in a written notification to the subdivider, and may require that a new final plat application be submitted. ~~No further action will be taken on the application until the missing items are submitted.~~

(a) Development Services may review subsequent submissions of the final plat only for information found to be deficient during the original review of the final plat under subsection 4-070.4B.(3).

(b) If Development Services determines that an examining land surveyor must review a final plat pursuant to MCA 76-3-611(2)(a), Development Services shall identify the requirement in its notification.

(c) The time limits provided in subsection 4-070.4B.(2) apply to each submission of the final plat until a written determination is made that the final plat contains the information required under subsections 4-070.4B.(1) and (3) and the subdivider or the applicant is notified.

~~(1)(4)~~ The subdivider and Development Services may mutually agree to extend the review periods provided for in this section.

~~(1)(5)~~ A determination of the director of the Development ServicesCPDI may be appealed to the City Council.

#### **C. Application Acceptance Date**

The official application acceptance date of the final plat is the date on which the final plat, in the proper form, together with all the required supplemental material and appropriate fees, is received by Development Services. ~~All conditions for preliminary plat approval must be met in order for the final plat application packet to be complete.~~

#### **D. Review Fee**

Before the final plat will be officially accepted for review, the applicant must pay a review fee for the final plat as established by the City Council ~~(see Exhibit 1).~~

#### *Explanation:*

*Sections 4-070.4A.-D. were amended in response to HB 245 (2017) which revised a governing body's responsibilities concerning the submission and evaluation of a final plat. Amendments provide for time limits and notification procedures. Planning staff have been applying State Law amendments from 2017 based on direct reference to the Montana Code Annotated (MCA) even if not incorporated into the local regulations.*

**34.**

#### **E. City Council Review and Action on Final Plat**

- (1) If a determination is made under section 4-070.4B(1), that the final plat contains the information required, the City Council shall review and approve or deny the final plat within 20 working days.

*Explanation:*

*HB 245 (2017) was instrumental in establishing time limits for final plat review and approval. The above amendment clarifies City Council has 20 working days to act on the plat. With the addition of this paragraph the rest of the section will be renumbered appropriately.*

### 35.

#### F. Recordation

It is the responsibility of the following departments to check final plats and accompanying documents, prior to signing the plats, for the elements enumerated here and to perform the actions similarly enumerated here:

- (5) CPDI, Development Services:
- (8) The Clerk and Recorder may not accept a plat for filing unless:
- (a) The city engineer, the health authorities, the city attorney, ~~Development Services~~CPDI, and the Mayor have signed approved the plat in writing; and
  - (b) The plat is accompanied by the required documents and approvals as shown on the checklist by the filing office in accordance with (Exhibit 73). ~~The checklist must bear the initials of the officials listed in 4-070.4F(8)(a).~~

*Explanation:*

*Comments received from the Missoula Clerk and Recorder requested we make a couple of minor amendments to this section of our code while our two departments coordinate and move to an electronic review/approval system. Additionally, a change to the office name and exhibit number will be made to this section.*

### 36.

#### G. Timeframe for Filing Final Plat

- (1) Within 180 days of approval by the City Council, one signed copy of the final plat ~~on a stable base polyester film and one signed paper copy of the final plat~~ must be filed with the County Clerk and Recorder in the format prescribed by the filing office.



*Explanation:*

*The requirements for “mylar” copy were eliminated and mylar plats are no longer accepted by the Clerk and Recorder. Removing this requirement will save the public time and money, and move the process closer to an all-digital review.*

**37.****5-020 Subdivision Application Form and Preliminary Plat Supplements**

A completed subdivision application (~~Exhibit 2—contact OPG to get a copy~~) must accompany the preliminary plat. [See Fees, Forms and Applications on the City's website.](#) The subdivision application must be complete and contain:

**38.****.6 Primary Review Criteria Report and Summary of Probable Impacts**

Information required by the City Council necessary to perform an adequatereview pursuant to the *Montana Subdivision and Platting Act* that includes specific information relating to the State primary review criteria as required by MCA 76-3-608(3), and identify the adverse impacts and describe proposed avoidance and mitigation efforts resulting from the proposed development for each of the following criteria:

**A. Agriculture**

Demonstrate that the subdivision proposal will have no adverse impacts on agriculture, or identify the adverse impacts and describe proposed avoidance and mitigation efforts that will be used to mitigate the adverse impacts.

[Mitigation of adverse impacts will not be based on a loss of agricultural soils and set aside of land or monetary contribution for the loss of ag soils will not be required.](#)

*Explanation:*

*SB 211 limits mitigation of impacts on agriculture (see 4-010.14B(4)), therefore, this section is revised to provide that same limitation as part of submittal material materials.*

**39.****.11 Grading and Drainage**

**A.** A complete grading and drainage plan must be submitted showing the proposed grades of streets, proposed drainage facilities, and *Storm Water Pollution Prevention Plan* (SWPPP), for all lots, blocks, and other areas, displaying accurate dimensions, courses, elevations, existing and proposed contours, and demonstrating compliance with the minimum standards of the Montana Department of Environmental Quality, as required by MCA Title 76, Chapter 4, Part 1, as amended, and all applicable state and local regulations, [per MMC 13.27 and Chapters 6 and 8 of the Missoula City Public Works Standards and Specifications.](#)



- B.** All drainage facilities are subject to the approval of the city engineer and when installed or constructed must be in conformance with the applicant's approved drainage plan for the affected basin where the subdivision is situated. Suitable drainage facilities must be provided for any surface run-off affecting the subdivision. These facilities must be located in the street rights-of-way or in perpetual easements of appropriate widths, subject to the approval of the city engineer. Design of such drainage facilities must be based upon local soil factors, topography, natural drainages, gullies and swales, aesthetics, and capacity for proper disposal of excess water. Drainage facilities must be designed to handle both the subdivision and the adjacent drainage basin.
- C.** Description and calculations of the proposed storm drainage plan ~~for analyzing on-site pre- and post-development peak flow for the two-year, 10- year, and 100-year storm events. a 10- year frequency one-hour storm and a 100-year frequency one-hour storm on-site and a method to mitigate adverse impacts for a 100-year frequency one-hour storm. Calculations analyzing off-site pre- and post-development peak flow for the two-year, 10-year, and 100-year storm events. Storm drainage designs must include an Initial Storm Water Facility sized to infiltrate, evapotranspire, and/or capture for reuse the post-development runoff generated from the first 0.5 inches of rainfall on impervious areas.~~ Drainage must be retained on site or released from the site in a manner that will not substantially increase the peak run off normally present before subdivision. All drainage plans for the subdivision must provide for conveyance, treatment, and disposal. A complete grading and drainage plan must include accurate dimensions, courses, and elevations, showing the proposed grades and drainage improvements, existing and proposed contours, graded slopes, and indicating approval by the city engineer.

*Explanation:*

*In 2017 the City of Missoula created the Storm Water Division and adopted regulations appropriate to addressing storm water for proposed development, in addition, the City updated the Missoula City Public Works Standards and Specifications Manual. Proposed language will clarify local regulations by cross referencing these new policies.*

*Explanation:*

*The City of Missoula is subject to various regulations administered by the Department of Environmental Quality, including Circular 8. In 2017 Circular 8 was amended addressing the amount of water run-off that must be addressed in various storm events. These DEQ changes require local regulations to also be amended.*

**40.****.13 Water and Sanitation**

If the subdivider does not propose a municipal facilities exclusion authorized under MCA 76-4-125(1), Pursuant to MCA 76-3-622, subdivider's the subdivider must provide the following water and sanitation information for any new subdivision that will include a new water supply system or new wastewater facilities:

*Explanation:*

*State Law requires the information listed in HB 055 be provided with a proposed development, however; the bill also provides for an exclusion in MCA 76-3-622(2). Our current regulations do not clearly provide for the exclusion. This amendment will clarify when the following information will be required.*

**41.****.14 Other Supplemental Material**

- A. If a phased subdivision is proposed per 4-070.2, include a phasing plan that includesthe following information:
- (1) a map showing the area, lots and improvements to be included in each independent platted development phase with a number or letter for each phase, and the amount of parkland required and provided in each phase; and
  - (2) a map legend that lists each phase and the specific final plat submittal filing-deadline for each phase. Phases are required to be submitted sequentially.

*Explanation:*

*These submittal requirements apply to subdivisions requested after 2017 and include a cross reference to the review procedures that apply to phased development post 2017.*

**42.**

- F. In areas identified as WUI, the standards found in Exhibit 62 must be included in a development agreement between the City Council and the developer or in the covenants, except in those cases when the need to protect riparian resource areas or habitat for species of special concern outweigh the danger of wildfire.

**43.**

- L. When riparian or wetland areas are within or adjacent to the proposed subdivision, show the riparian resource area, riparian resource and riparian buffer on the plat or supplemental data sheet and provide a Riparian Management Plan that must include, but not be limited to the following:
- (2) A vegetation map showing the following:
    - (a) location of vegetation types listed in Exhibit 51;

(3) A description of the following:

(a) vegetation (types and quantities) listed in [Exhibit 51](#);

44.

- M. If the property contains agriculture or agricultural land, provide a soils assessment for the entire property that includes at a minimum a soil texture analysis in accordance with a textural triangle, measurements of topsoil depth and water-holding capacity. The assessment must include a discussion of how texture and depth compare to that of the predominant soil types of agricultural importance found on the site according to the Natural Resource Conservation Services. It must also include conclusions and recommendations. The required assessment need not cover floodways, lands with a slope of 15% or greater or other areas that the director of ~~Office of Planning and Grants~~ [CPDI](#) determines to have very limited or no agricultural potential.

45.

#### 5-050 Final Plat Requirements

##### .3 Required information

- M. All monuments to be of record must be adequately described and clearly identified on the plat. Where additional monuments are to be set subsequent to the recording of the plat, the location of such additional monuments must be shown by a distinct symbol noted on the plat. All monuments or other evidence found during retracements that would influence the position of any corner or boundary indicated on the plat must be clearly shown. ~~(See Exhibit 4: Monumentation.)~~
- P. When any private access is proposed, certification that the city is not required to improve or maintain the access must be provided, and the certification must be so noted on the plat. ~~A County Approach Permit is required when a private road intersects with a county road.~~

*Explanation:*

*Due to a change in County Public Works processes, this is no longer required. The change will bring our regulations into conformance with County processes.*

46.

##### .5 Final Plat Supplements, pursuant to MCA 76-3-504(d)

- G. ~~Preliminary commitment for title insurance or platting report, disclosing all title owners and lienholders~~ [Platting Report](#).

*Explanation:*

*“Platting report” is included in the definitions (Section 2-020). The existing language creates confusion as these other terms have different meanings across the title industry. Replacing the existing language with Platting Report will clarify the section.*

**47.**

I. Certificates, acknowledgments, and descriptions include the following:

- (2) A ~~certificate of a title abstracter subdivision guarantee (MCA 76-3-612(3)) issued by an authorized title insurer or its title insurance producer~~, showing the names of the owners of record of the land to be subdivided and the names of lien-holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien-holders or claimants of record against the land.

*Explanation:*

*HB 292 included a change of terminology from an “abstract of title” to a “subdivision guarantee” and included clarifying language of who a subdivision guarantee is issued by. This amendment will clarify those items in our regulations.*

**48.****6-010 General**

4. The variances will not in any manner violate the provisions of the zoning ordinance or any variance granted to those regulations or the ~~Missoula County-City~~ Growth Policy;

**49.****7-020 Minor Errors**

- .1 Minor errors may include but are not limited to:

G. Street name changes; ~~and~~

H. ~~Title of plat already in use; and~~

*Explanation:*

*Removing subsection H. brings the section into current practice for review of minor errors.*

**50.**

- .3 The property owners petitioning for the amendment or correction of a filed subdivision plat must pay all related direct costs incurred by the City of Missoula, including filing fees according to the final plat filing fee schedule ~~(see Exhibit 1).~~

**51.****7-030 Major Errors**

- .1 Major errors may include but are not limited to:
  - D. Other items of a similar nature as determined by the city engineer and director of [Development ServicesCPDI](#);
- .2 Major errors must be reviewed by the city engineer and the director of [Development ServicesCPDI](#). All corrected plats must be certified as stated under [4- 070.4F](#); and
- .3 The property owners petitioning for the amendment or correction of a filed subdivision plat must pay all related direct costs incurred by the City Council, including filing fees according to the final plat filing fee schedule ~~(see Exhibit 1).~~

**52.****7-040 Plat Adjustments**

- .3 The property owners petitioning for the amendment or correction of a filed subdivision plat must pay all related direct costs incurred by the City Council, including filing fees according to the final plat filing fee schedule ~~(see Exhibit 1).~~

**53.****8-020 Divisions Exempt from Review, Survey and Plat Filing**

- .1 The following divisions and subdivisions are exempt from review, plat filing and surveying requirements:
  - A. Division [creating not more than four new lots or parcels \(for a total not to exceed 5 lots or parcels including the parent parcel\) and](#) created by court order, operation of law, or one that could be created pursuant to the law of eminent domain in the absence of agreement between the parties;
  - B. Division created to provide security for ~~construction~~-mortgages, liens, or trust indentures; [in compliance with 76-3-201.](#)

*Explanation:*

*HB 450 amended State Law by exempting a five-lot court ordered subdivision from subdivision review. Changes to our regulations will support this exemption.*

*Explanation:*

*Changes made in State Law regarding how a parcel used for security for mortgage liens or trust indentures is conveyed, and when they are subject to subdivision review are addressed in SB 219. A general cross reference to that State Law is being included in our local regulations. Planning staff have been applying State Law amendments from 2017 based on direct reference to the Montana Code Annotated (MCA) even if not incorporated into the local regulations.*

## 54.

**8-030 Divisions and Aggregations Exempt from Plat Filing and Review**

The following divisions and aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, as described in MCA 76-3-207, are exempt from plat filing and review, but must be surveyed and are subject to applicable zoning regulations adopted under MCA Title 76, Chapter 2:

**.1 Outside platted subdivisions:**

- A.** relocating common boundaries outside of platted subdivisions;
- B.** divisions for purpose of a single gift or sale in each county to each member of the landowner's immediate family; ~~and~~
- C.** divisions by sale, gift, or agreement to buy or sell where ~~parties-the landowner~~ enters into a covenant ~~running with the City Council that runs~~ with the land and ~~revocable only by mutual consent of the City Council and the property owner~~ provides that the divided land will be used exclusively for agricultural purposes;
  - (1) when an agricultural covenant exists and a change of use is requested for anything other than agricultural purposes, the division of land that received an exemption through 8-030.1C will be subject to subdivision review. However, the City Council, in its discretion, may revoke the covenant provided and the division may proceed without subdivision review if:
    - (a) The original lot lines are restored through aggregation of the covenanted land prior to or in conjunction with the revoking of the covenant; or
    - (b) A government or public entity seeks to use the land for public purposes as defined in the City Council's review criteria pursuant to 76-3-504(1)(p).
  - (2) If the City Council proposes to revoke a covenant pursuant to subsection (D)(2), a public hearing will be held. Within 15 business days of the hearing, the City Council shall issue written findings of fact and a decision based on the record. If the City Council approves the revoking of the covenant the approval must be recorded with the clerk and recorder.
  - (3) The revocation of a covenant pursuant to this section does not affect sanitary restrictions imposed under Title 76, chapter 4.

*Explanation:*

*A review of MCA 76-3-207 language showed us the word "and" is not included. We are removing "and" from section 8-030.1B.*

*Explanation:*

*HB 124 revised language pertaining to agricultural covenants under the subdivision and platting act. These amendments clarify that a change in use for anything other than agricultural purposes subjects a division of land that received an exemption under 76-3-207(1)(c) to subdivision review. The law also allows the City Council to revoke exemptions under certain guidelines and conditions. Planning staff have been applying State Law amendments from 2019 based on direct reference to the Montana Code Annotated (MCA) even if not incorporated into the local regulations.*

55.

~~.6—Parcels of land 160 acres in size or larger:~~~~A.—Review for suitable access.~~

~~B.—All divisions of land consisting of parcels 160 acres or larger, whether by Certificate of Survey or aliquot part description, must be accompanied by an affidavit for creating parcels 160 acres or larger completed by the landowner or his/her authorized representative prior to recording the surveyor deed creating the tracts.~~

~~C.—The affidavit must state whether legal or insurable access to each parcel being created from a city or state road exists:~~

~~(1)—If legal or insurable access to each parcel being created does not exist at the time of offering the affidavit, then the access must be determined to be unsuitable by the City Council; and~~

~~(2)—If legal or insurable access is said to exist, a title commitment for insurable access (or title abstract and legal opinion) from a public road to each parcel must accompany the affidavit.~~

~~D.—The affidavit must state whether the accesses are constructed to City of Missoula street standards as set forth in these regulations:~~

~~(1)—If the accesses have been constructed to the City of Missoula street standards, the city engineer must review and inspect the accesses and certify to the City Council the results of the investigation;~~

~~(2)—If the accesses will be constructed by the subdivider at a future date and the subdivider wishes to receive a determination of suitable access prior to filing the deeds or surveys, an improvements agreement, together with adequate security, must be made with the City of Missoula and plans for road construction must be approved by the city engineer, according to the requirements of these regulations for subdivision plats; and~~

~~(2)—If the accesses have not been constructed to the City of Missoula street standards, then the City Council must determine that the accesses are unsuitable.~~

~~D.—Following their determination, the City Council must deliver a copy of~~



~~the determination of the review to the County Clerk and Recorder. The determination must be attached to or referenced on the survey or deed:~~

- ~~(3) If access is found to be suitable, the following statement must appear on the survey or deed or in a separate document referenced thereon:~~

~~Pursuant to its review under MCA 76-3-609, the City Council has determined that the accesses and easements to the parcels consisting of 160 acres or larger that are created herein are suitable for the purposes of providing appropriate services to the land such as fire protection, school busing, ambulance, and snow removal. This determination does not guarantee the provision of these services. City street maintenance will be provided only when the roads are accepted by the City Council's resolution; and~~

- ~~(4) If access is found to be unsuitable, the following statement must appear on the survey or deed or in a separate document referenced thereon:~~

~~Pursuant to its review under MCA 76-3-609, the City Council has determined that the accesses and easements to the parcels consisting of 160 acres or larger that are created herein are unsuitable for the purposes of providing appropriate services such as fire protection, school busing, ambulance, and snow removal. Consequently, landowners should expect that such services may not be provided.~~

~~— The City Council, upon application of the landowner, may re-determine the suitability of access and easements and, in that event, must deliver a copy of such determination to the Clerk and Recorder to be reflected on the Certificate of Survey or Deed of Conveyance.~~

- ~~E. Any person wishing to transfer a parcel 160 acres or larger who does not want a determination of suitable access, may so stipulate on the face of the deed or Certificate of Survey and waive the determination prescribed above. The stipulation must state:~~

~~The parcels consisting of 160 acres or larger that are created herein are unsuitable for the purposes of providing appropriate services such as fire protection, school busing, ambulance, and snow removal. Consequently, landowners should expect that such services may not be provided.~~

**Explanation:**

*This section will be removed entirely as the language was amended in a previous legislative change and no longer appears in State law.*



*In the agency/public review draft of this document the words “abstract of title” were proposed to be changed to “subdivision guarantee” by HB 292. This proposed change has been deleted from the amendment document since the entire section is proposed to be removed.*

## 56.

### 8-040 Exemption Procedures

#### 3. Types of Exemptions

##### A. Agriculture Exemption

A division made for lease or rental for farming or agricultural purposes or divisions made outside platted subdivisions by sale, gift, or agreement to buy and sell where the ~~parties-landowner to the transaction~~ enters into a covenant ~~running with the land and revocable only by mutual consent of~~ the City Council and ~~the property owner provides~~ that the divided land will be used exclusively for agricultural purposes. Any change in use of the land from agricultural purposes subjects the land to ~~the provisions of the regulations~~ subdivision review.

#### *Explanation:*

*HB 124 revised language pertaining to agricultural covenants under the subdivision and platting act. These amendments clarify that a change in use for anything other than agricultural purposes subjects a division of land that received an exemption under 76-3-207(1)(c) to subdivision review. The law also allows the City Council to revoke exemptions under certain guidelines.*

## 57.

##### E. Security Interest Exemption

A division of land to provide security for ~~construction~~ mortgages, liens, or trust indentures.

#### *Explanation:*

*Changes made in State Law regarding how a parcel used for security for mortgage liens or trust indentures is conveyed, and when they are subject to subdivision review are addressed in SB 219. This amendment is consistent with amendment #53 (section 8-020.1.B). Planning staff have been applying State Law amendments from 2017 based on direct reference to the Montana Code Annotated (MCA) even if not incorporated into the local regulations.*

58.

**4. Procedure****D.** For exemptions referred to the City Council:

- (4) If the City Council determines that the claimant is not entitled to the exemption claimed and if the landowner proceeds to file the survey in question or to transfer title to or possession of tracts described by the survey, the City Council may direct the Director of [Development ServicesCPDI](#) to enforce the provisions of the Subdivision Act. Nothing stated herein prevents the Director of [Development ServicesCPDI](#) from taking any other appropriate action provided for in the Subdivision Act;

59.

**E.** The use of exemptions under any of the following circumstances requires review and hearing before the City Council to provide the claimant an opportunity to prove his/her entitlement to use the exemptions:

- (1) General (applicable to all exemptions): For purposes of this part, "subsequent division" includes only those divisions made using the "family gift," ~~and "remainder parcel"~~ exemptions:
- (a) Subsequent division of a tract created after July 1, 1974, in which more than one type of exemption ~~(including the use of a "remainder parcel" exemption)~~ is claimed by the same applicant or an applicant having a family or business relationship with another claimant;

*Explanation:*

*State Law does not include an exemption called a "remainder parcel". This amendment will align us with State Law.*

**(2)** Specific exemptions (applicable for specific exemption claimed):

- (b) Security interest (division created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes):
- v. The reference description created on a survey done for the security interest exemption may ~~not only~~ be used by the security interest holder to transfer the parcel on foreclosure, unless another exemption is applied for and obtained.

*Explanation:*

*The language as written mistakenly prohibits a person with interest in the property to transfer the parcel. This change makes the language clear that this exemption can only be employed by an individual with an interest in the parcel.*

**60.****8-050 Certificates of Survey**

A Certificate of Survey may not be filed by the County Clerk and Recorder unless it complies with the following requirements:

~~.2 One signed cloth-backed, one signed paperback and one signed reproducible copy on a stable base polyester film or equivalent must be submitted;~~

*Explanation:*

*The language change helps with the move to a digital review process.*

**61.**

**.5** Procedures for divisions of land exempted from public review as subdivision. Certificates of Survey for divisions of land meeting the criteria set out in MCA section 76-3-207, must meet the following requirements:

- D.** or an exemption as a relocation of a common boundary line, the Certificate of Survey must bear the signatures of all landowners whose parcels are changed by the relocation. The Certificate of Survey must 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 solid line or notation).

*Explanation:*

*Boundary line relocations are not limited to two parcels. The amendment clarifies more than two parcels can be involved.*