

**City of White Sulphur Springs**

**Subdivision Regulations**

**August 1, 2019**

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**City of White Sulphur Springs, Montana**  
**Subdivision Regulations**  
**August 1, 2019**

**I. GENERAL PROVISIONS**

**A. Title**

These regulations will be known and may be cited as “The Subdivision Regulations of City of White Sulphur Springs (City) hereinafter referred to as “these regulations.”

**B. Authority**

Authorization for these regulations is contained in the [Montana Subdivision and Platting Act](#) (“MSPA”).

**C. Purpose**

The purposes of these regulations are to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to promote preservation of open space; to promote development that minimize costs to local citizens and that promote effective and efficient provision of public services; to protect the rights of property owners; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey ([76-3-102, MCA](#)). General subdivision types are residential (single family or multi-family), commercial or a mixture of the two (mixed use). PUD refers to a Planned Unit Development where a developer may request relaxation of certain regulations or seek approval of elements not defined by current subdivision regulations.

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

1. The orderly development of the jurisdictional area.
2. The coordination of roads within subdivided land with other roads, both existing and planned.
3. The dedication of land for roadways and for public utility easements.
4. The improvement of roads.
5. The provision of proper physical and legal access, including obtaining necessary easements.
6. The provision of adequate open spaces for travel, light, air, and recreation.
7. The provision of adequate transportation, water, drainage, and sanitary facilities.
8. The avoidance or minimizing of congestion.

9. The avoidance of subdivisions which would involve unnecessary environmental degradation.
10. The avoidance of danger or injury by reason of natural hazard or the lack of water, drainage, access, transportation, or other public improvements.
11. The avoidance of excessive expenditure of public funds for the supply of public improvements and services.
12. The manner and form of making and filing of any plat for subdivided lands.
13. The administration of these regulations by defining the powers and duties of approving authorities, including procedures for the review and approval of all plats of subdivisions covered by these provisions.

#### **D. Jurisdiction**

These regulations govern the subdivision of land within the jurisdictional area of the governing body of the City of White Sulphur Springs.

If a proposed subdivision lies within the incorporated limits or within one mile of White Sulphur Springs, the Developer must submit the preliminary plat to the City of White Sulphur Springs for review and comment.

#### **E. Severability**

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

#### **F. References to Montana Code Annotated**

Any reference to the Montana Code Annotated includes references to any successor provision, as applicable.

### **II. GENERAL PROCEDURES**

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

#### **A. Construction Timing**

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

#### **B. Transfers of Title**

Except as noted below, a 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 the

preliminary plat of a subdivision has been approved or conditionally approved, the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met ([76-3-303, MCA](#)):

- a. Under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent, which must be a bank or savings and loan association chartered to do business in the State of Montana;
- b. 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 subdivider until the final plat of the subdivision is filed with the County Clerk and Recorder;
- c. 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 payments made under the contract;
- d. The contracts 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 Clerk and Recorder, title to the property cannot be transferred in any manner;”
- e. The County Treasurer has certified all real property taxes and special assessments assessed and levied on the land to be divided have been paid; and
- f. A copy of the contracts and escrow agreement described above must be submitted to Meagher County. The name of the purchaser and purchase price may be blacked out.

### **C. Permission to Enter**

The City of White Sulphur Springs, Planning Staff or its designated agent(s) or affected agencies identified during the pre-application meeting may investigate, examine, and evaluate the site of the proposed subdivision to verify information provided by the subdivider and to subsequently monitor compliance with any conditions if the preliminary plat is approved conditionally. The submission of a subdivision application constitutes a grant of permission by the subdivider for the governing body, its agents, and affected agencies to enter the subject property. This consent applies to members of the public attending a noticed public meeting for a site visit.

### **D. Pre-application Process**

- a. Prior to submittal of a subdivision application, the subdivider shall request a pre-application meeting with the City Planning Staff. The meeting shall occur within 30 days after the subdivider submits a written request for the meeting to the City.
- b. At the time of the pre-application meeting request, the subdivider shall provide to the City a sketch of the proposed subdivision showing the layout of the proposed features in relation to existing site conditions.

i. The sketch may be a freehand sketch drawn directly on a print of a topographic map of the area proposed for division at a scale of 1 inch to 400 feet or larger which is adequate to show the property. The following information must also be included with the sketch:

A. Information on the current status of the site, including:

1. location;
2. approximate tract and lot boundaries of existing tracts of record;
3. description of general terrain;
4. natural features on the land, including water bodies, floodplains, geologic hazards, and soil types;
5. existing structures and improvements;
6. existing utility lines and facilities serving the area to be subdivided;
7. existing easements and rights of way;
8. existing zoning or development regulation standards;
9. existing conservation easements;
10. existing covenants or deed restrictions;
11. existing noxious weeds.

B. Documentation on the current status of the site, including:

1. ownership information, such as a deed, option to buy or buy-sell agreement, including permission to subdivide;
2. water rights, including location of Agricultural Water User Facilities;
3. any special improvement districts; and
4. rights of first refusal for the property.

ii. Information on the proposed subdivision, including:

- A. tract and proposed lot boundaries;
- B. proposed public and private improvements;
- C. location of utility lines and facilities;
- D. easements and rights of way; and
- E. parks and open space and proposed conservation easements.

c. At the pre-application meeting:

i. the City Planning Staff shall identify, for informational purposes, the state laws, local regulations and growth policy provisions which may apply to the subdivision review process including, but not limited to, zoning regulations, floodplain regulations, building codes and fire codes;

ii. the City Planning Staff shall provide the subdivider with a list of public utilities, local, state and federal agencies, and any other entities which have an interest in the proposed subdivision and which may be contacted for comment by the City Planning Staff or planning board on the subdivision application. The City Planning Staff shall also identify the timeframes which the public utilities, agencies, and other entities are given to respond; and

iii. the City Planning Staff may identify particular additional information the City Planning Staff anticipates will be required for review of the subdivision application. This does not limit the ability of the City Planning Staff to request additional information at a later time. Any required forms will be available from the City.

d. Unless the subdivider submits a subdivision application within 180 days of this pre-application meeting, the subdivider must request a new pre-application meeting prior to submitting the subdivision application.

#### **E. Subdivision Application & Preliminary Plat Submittal**

The subdivider shall submit to the City a subdivision application addressing these topics and containing the following materials, all described in more detail in forms provided by the City, as applicable:

1. A completed and signed Subdivision Application Form;
2. The required review fee;
3. A preliminary plat;
4. A Vicinity Sketch;
5. A topographic map;
6. A grading and drainage plan;
7. Engineering plans for all Public and Private Improvements;
8. Overall development plans if development is in phases;
9. Abstract of Title (or Title Report);
10. Lienholders' acknowledgement of subdivision;
11. Documentation of legal and physical access;
12. Documentation of existing easements, including those for Agricultural Water User Facilities;
13. Existing covenants and deed restrictions;
14. Existing water rights;
15. Existing mineral rights;
16. Names and addresses of all adjoining property
17. Proposed road plans and profiles;
18. Approach/access/encroachment permits from Montana Department of Transportation or the local jurisdiction;
19. Proposed easements;
20. Proposed disposition of water rights;
21. Proposed disposition of mineral rights;
22. Parkland dedication calculations;
23. Environmental assessment and/or summary of probable impacts;
24. Transportation impact analysis or transportation plan;
25. Fire risk rating analysis and fire prevention plan;
26. Weed management plan and re-vegetation plan;
27. Property owners' association documents, including draft articles of incorporation, declaration and bylaws;
28. FIRM or FEMA panel map and letter identifying floodplain status;
29. Required water and sanitation information;
30. A form of Subdivision Improvements Agreement, if proposed;
31. Letter requesting a revocation of agricultural covenants;
32. Letter indicating locations of cultural or historic resources;

33. Variance request or approval;
34. Re-zoning application or approval;
35. Flood hazard evaluation;
36. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials;
37. Such additional relevant and reasonable information as identified by the City Planning Staff during the pre-application meeting that is pertinent to the required elements of this section.

## **F. Review Process**

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

### **a. Element Review**

Within 5 working days of receipt of a subdivision application and fee, the City Planning Staff shall determine whether the application contains all of the applicable materials required by section II-A-5 and shall give written notice to the subdivider of the City Planning Staff's determination.

If the City Planning Staff determines there are elements missing from the application, the City Planning Staff shall return the application and identify those missing elements in the notification, and no further action shall be taken on the application by the City Planning Staff until the application is resubmitted.

The subdivider may correct the deficiencies and resubmit the application.

If the subdivider corrects the deficiencies and resubmits the application the City Planning Staff shall have 5 working days to notify the subdivider whether the resubmitted application contains all the materials required.

This process shall be repeated until the subdivider submits an application containing all the materials required, or the application is withdrawn.

### **b. Sufficiency Review**

Within 15 working days after the City Planning Staff notifies the subdivider the application contains all of the required elements as provided in subsection (a) above, the City Planning Staff shall determine whether the application and required elements contain detailed, supporting information which is sufficient to allow for the review of the proposed subdivision under these regulations and shall give written notification to the subdivider of the City Planning Staff's determination.

If the City Planning Staff determines the information in the application is not sufficient to allow for review of the proposed subdivision, the City Planning Staff shall identify specific required information in its notification and return the application to the subdivider, and no further action shall be taken on the application by the City Planning Staff until the material is resubmitted.

The subdivider may correct the deficiencies and resubmit the application, or withdraw the application.

If the subdivider corrects the deficiencies and resubmits the application in accordance with above, the City Planning Staff shall have 15 working days to notify the subdivider the resubmitted application and required elements contain detailed, supporting information which is sufficient to allow for review of the proposed subdivision under these regulations.

This process shall be repeated until the subdivider submits an application which contains detailed, supporting information which is sufficient for review of the proposed subdivision under the provisions of these regulations, or the application is withdrawn.

The determination an application contains sufficient information for review as provided in this subsection (b) does not ensure the proposed subdivision will be approved or conditionally approved by the governing body and does not limit the ability of the City Planning Staff, planning board, or the governing body to request additional information during the review process.

A determination of sufficiency by the City Planning Staff pursuant to this subsection does not limit the DEQ from requiring additional water and sanitation information as part of the DEQ review of water and sanitation information.

#### c. Applicable Regulations

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

#### **G. Final Plat Contents**

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

The final plat approval application form and all supplementary documents must be submitted to the City of White Sulphur Springs at least thirty (30) working days prior to the expiration of preliminary plat approval. The submittal shall include, as applicable:

- i. the final plat application;
- ii. the final plat review fee;

- iii. a statement from the project surveyor or engineer outlining how each condition of approval has been satisfied;
- iv. a Title Report or updated Abstract dated no less than 30 days prior to the date of submittal;
- v. the DEQ or local Environmental Health Department approval;
- vi. the final Grading and Drainage Plan, including all road plans and profiles, state or local encroachment permits, and the Traffic Impact Analysis (if required);
- vii. all engineering plans;
- viii. any homeowner association documents, including bylaws, covenants, and/or declarations;
- ix. county and/or city attorney approvals; and
- x. one 11" x 17" and one 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats.

**b. Review by the City Planning Staff**

i. The City Planning Staff shall review the final plat to ascertain whether all conditions and requirements for final plat approval have been met. The City Planning Staff will not accept, begin processing, nor schedule any actions on a final plat submittal until a complete application and fee, and copies of the final plat have been received. Final plat applications will not be considered complete by the City Planning Staff until all conditions of preliminary approval have been satisfied.

ii. If the City Planning Staff determines the final plat differs from the approved or conditionally approved preliminary plat, the applicant shall be required to submit an amended application.

iii. The City Planning Staff may require final subdivision plats be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the Clerk and Recorder. When the survey data shown on the plat meets the conditions pursuant to these regulations, the examining surveyor shall certify the compliance in a printed or stamped signed certificate on the plat.

**H. Public Improvements Agreement**

As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements [76-3-507, MCA]. No construction or placement of structures on the lots may occur until improvements related to public health and safety, such as roads or firefighting facilities, have been installed and engineering plans have been filed. The City will hold the bond/letter of credit until all provisions of the subdivision improvements agreement or subdivision requirements have been met.

If the subdivider chooses to enter into a subdivision improvements agreement, guaranteeing the public improvements through a bond or letter of credit, three bids for the cost of installation of the public improvements shall be obtained by the subdivider. The amount of the guarantee shall be calculated by multiplying 125% by the highest bid. As the public improvements are installed, the subdivider shall provide a letter to the City indicating such, and including a copy of the engineered plans. The City Engineer shall review and certify all public improvements have been installed in conformance with the plans and specifications. Prior to the release of the guarantee, a copy of the plans, stamped by the

project surveyor or engineer in accordance with their licensing provisions, shall be filed in the Clerk and Recorder's office with reference to the final subdivision plat.

### **I. Amending Approved Preliminary Plats**

a. If the subdivider proposes to change the preliminary plat after the preliminary plat approval but before the final plat approval, the subdivider shall submit the proposed changes to the City Planning Staff.

i. Within 5 working days of receiving the proposed changes, the City Planning Staff shall determine whether the changes to the preliminary plat are material pursuant to subsection (b) below.

ii. If the City Planning Staff determines the changes are material, Staff may require the subdivider to begin the subdivision review process again, starting with the pre-application meeting, and require payment of a new application fee.

iii. If the City Planning Staff determines the changes are not material, Staff shall accept the changes, notify the subdivider and the governing body of the decision and the governing body shall approve of those changes in a meeting for which notice has been given of non-material changes to the final plat.

b. The following changes, although not an exhaustive list, may be considered material:

- i. configuration or number of lots;
- ii. road layout;
- iii. water and/or septic proposals;
- iv. configuration of park land or open spaces;
- v. easement provisions;
- vi. designated access;
- vii. proposed covenants; or
- viii. changes to conditions of approval.

c. A subdivider whose proposed changes to the preliminary plat have been deemed material by the City Planning Staff may appeal Staff's decision to the governing body by written notice within ten working days. The subdivider may request a hearing, and may submit additional evidence to show the changes to the preliminary plat are not material. City Planning Staff may be employees of the City or a consultant or independent contractor designated by the City to assist with planning efforts.

d. If the subdivider and the City Planning Staff determine a condition of approval is illegal or impossible to comply with due to circumstances outside the subdivider's control, economic hardship notwithstanding, the condition may be reviewed by the City through a properly noticed public hearing in order to determine if the condition may be waived or amended.

## **J. Final Plat Approval**

### **a. Approval by the City**

The City Planning Staff shall examine every final subdivision plat and the City shall approve it if it conforms to the conditions of preliminary plat approval and to the terms of the MSPA and these regulations, or deny it pursuant to (ii) below. Where these regulations refer to "City", it is the City Council of White Sulphur Springs.

i. If the final plat is approved, the City shall certify its approval on the face of the final plat. When applicable, a certificate of the governing body expressly accepting any dedicated land, easements, or improvements will be filed with the final plat.

ii. If the final plat is denied, the City shall issue a letter stating the reason for denial and forward a copy to the subdivider. The City Planning Staff will return the final plat to the subdivider within ten working days of the action. The subdivider may then make any necessary corrections and resubmit the final plat for approval.

### **b. Inaccurate Information**

The City may withdraw approval of a final plat if it determines material information provided by the subdivider or the subdivider's agent or associate is inaccurate.

## **K. Final Plat Filing**

After it is approved, the final plat may not be altered in any manner except as provided in these regulations. The County Clerk and Recorder may not accept any plat for filing which does not bear the City's approval in proper form or which has been altered. The Clerk and Recorder may file an approved plat only if it is accompanied by the documents specified in the Montana Uniform Standards for Monumentation and Final Subdivision Plats.

## **L. Amending Final Plats**

a. Changes which materially alter any portion of a filed plat, its land divisions or improvements, or which will modify the approved use of land within the subdivision, must be made by filing an amended plat showing all alterations. Any alteration which increases the number of lots or modifies six or more lots, or abandons or alters a public road right-of-way or parkland dedication must be reviewed and approved by the City Council.

b. An amended plat is subject to the procedures for reviewing major or minor subdivisions, as appropriate. The City Council may not approve an amended final plat without the written consent of the owners and lienholders of all lots which will be modified by the proposed amendment.

c. The City Council may not approve an amendment which will place a lot in nonconformance with the standards contained in these regulations or with local land use regulations unless the Council holds a public hearing on the amendment and issues a written variance from the standards pursuant to the section in these regulations dealing with variances.

d. The final amended plat submitted for approval must comply with the requirements for final subdivision plats under the Uniform Standards for Filing Final Plats.

### **III. REVIEW AND APPROVAL PROCEDURES FOR MINOR SUBDIVISIONS**

Subdivisions containing five or fewer lots shall be reviewed as set forth in this section. First minor subdivisions shall be reviewed pursuant to section III-A and subsequent minor subdivisions shall be reviewed pursuant to section III-B. A major subdivision is considered an action which creates six or more lots.

#### **III-A. First Minor Subdivision Review**

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

##### **III-A-1. First Minor Subdivision Application & Preliminary Plat Submittal**

- a. The subdivider shall submit to the City Planning Staff a subdivision application containing the materials identified in section II-A-5 and in the pre-application meeting, and
- b. Sufficient documentary evidence from the public records demonstrating the subdivision will be the first minor subdivision from a tract of record;

##### **III-A-2. First Minor Subdivision Exceptions**

The following do not apply to first minor subdivisions:

- a. preparation of an environmental assessment;
- b. parkland dedication;
- c. public hearing requirements; and
- d. review of the subdivision application for the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety, if the subdivision is proposed in an area which has adopted land use regulations which address those impacts.

##### **III-A-3. First Minor Subdivision Review Process**

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

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

#### b. Public Agency and Utility Review

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

#### **III-A-4. First Minor Subdivision Planning Board Consideration**

The City of White Sulphur Springs may, from time to time, have a dysfunctional or non-existent Planning Board. In such circumstances, the Planning Staff will notify the subdivider and submission to the Planning Board is waived.

#### **III-A-5. Subdivider's Preference for Mitigation**

The City of White Sulphur Springs currently does not have a policy which allows a subdivider to express their preference for mitigation prior to the City Council meeting held to discuss their project. An example of mitigation would be to install a traffic signal to mitigate impacts to traffic, or a similar activity which mitigates or softens some of the impact from a proposed development.

#### **III-A-6. Decision on a First Minor Subdivision by the City**

##### a. Prerequisites to Approval

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

- i. provides easements for the location and installation of any planned utilities, both on and off site;
- ii. provides legal and physical access to each lot within the subdivision and the notation of that access on the applicable plat and any instrument transferring the lot;
- iii. assures all required public or private improvements will be installed before final plat approval, or their installation after final plat approval will be guaranteed as provided by section II-B-4 of these regulations;
- iv. assures the requirements of [76-3-504\(j\)\(i\), MCA](#), regarding the disclosure and disposition of water rights as set forth in Section VI-O have been considered and will be accomplished before the final plat is submitted; and
- v. assures the requirements of [76-3-504\(k\)\(i\)](#) regarding watercourse and irrigation easements as set forth in Section VI-N have been considered and will be accomplished before the final plat is submitted.

b. Consideration – Standards

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

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

c. Consideration – Evidence

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

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

d. Water and Sanitation-Special Rules

- i. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision if the governing body finds the application does not comply with previously adopted subdivision, land use, floodplain or

other regulations. For example, if the City finds an application is proposing a development within a regulatory floodplain, the City could deny the subdivision on that basis.

ii. The governing body shall request public comments regarding water and sanitation information and shall make any comments submitted, or a summary of the comments submitted, available to the subdivider within thirty (30) days after conditional approval or approval of the subdivision application and preliminary plat.

e. Documentation of City Decision

i. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the City shall issue written findings of fact which discuss and weigh the proposed subdivision's compliance with the above subsections. Decisions made by the "City" refer to actions of the City Council.

ii. When the City approves, denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:

A. contain information regarding the appeal process for the denial or imposition of conditions;

B. identify the regulations and statutes which are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;

C. provide the facts and conclusions which the governing body relied upon in making its decision, and reference documents, testimony, or other materials which form the basis of the decision; and

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

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

F. Subdivision Application and Preliminary Plat Approval Period

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

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

b. The City may extend the approval for more than one year if that approval period is included as a specific condition of a written subdivision improvements agreement between the City and the subdivider, provided for in Section II-B-4.

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

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

### **III-A-7. First Minor Subdivisions – Amended Application**

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

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

ii. The 35-working day review period is suspended while the City Planning Staff considers the amended application or preliminary plat.

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

iv. If the City Planning Staff determines the changes are material, Staff shall either require the subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application or require the subdivider to present the changes to the City Council for consideration of the changes, only. Such consideration shall be noted in the meeting agenda as consideration of material changes to the subdivision.

b. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsection (a)(ii).

c. The following changes, although not an exhaustive list, may be considered material:

i. configuration or number of lots;

ii. road layout;

iii. water and/or sewer proposals;

iv. configuration of park land or open spaces;

v. easement provisions;

vi. proposed covenants; or

vii. designated access.

d. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the City Planning Staff may appeal the Staff's decision to the governing body. The subdivider may request a hearing, and may submit additional evidence to show the changes to the preliminary plat are not material.

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

ii. The 35-working day review period is suspended while the City Planning Staff considers the amended application or preliminary plat.

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

iv. If the City Planning Staff determines the changes are material, Staff shall either require the subdivider to schedule a new pre-application meeting and resubmit the application and preliminary plat as a new subdivision application or require the subdivider to present the changes to the City Council for consideration of the changes, only.

b. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in subsection (a)(ii).

c. The following changes, although not an exhaustive list, may be considered material:

i. configuration or number of lots;

ii. road layout;

iii. water and/or septic proposals;

iv. configuration of park land or open spaces;

v. easement provisions;

vi. proposed covenants; or

vii. designated access.

d. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by the City Planning Staff may appeal the subdivision reviewer's decision to the governing body. The subdivider may request a hearing, and may submit additional evidence to show that the changes to the preliminary plat are not material.

- i. The 35-working day review period is suspended until the City's decision on the appeal is made.
- ii. If the City Council concludes the evidence and information demonstrate the changes to the subdivision application or preliminary plat are material, the City shall require the subdivision application and preliminary plat to be resubmitted pursuant to subsection (a)(iv).
- iii. If the City Council concludes the evidence and information demonstrate the changes to the subdivision application or preliminary plat are not material, the 35-working day review period resumes as of the date of the decision.
- iv. By appealing the decision of the City Planning Staff, the subdivider agrees to suspension of the 35-working day review period provided in subsection (d)(i).

#### **III-A-8. First Minor Subdivision Plat**

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

#### **III-B. Subsequent Minor Subdivisions**

A Subsequent Minor Subdivision is any subdivision with five or fewer lots which is not a first minor subdivision from a tract of record. Subsequent minor subdivisions shall be reviewed as major subdivisions. All the requirements and procedures of Section IV of these regulations must be followed for subsequent minor subdivisions. Where there is a requirement for a park dedication, the City may accept a cash-in-lieu-of-land donation by the developer wherein the cash donation is equivalent to the appraised value of a similar donation of park land.

### **IV. REVIEW AND APPROVAL PROCEDURES FOR MAJOR SUBDIVISIONS**

#### **IV-A. Review and Approval Procedures for Major Subdivisions**

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

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

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

- a. The subdivider shall submit to the City a subdivision application containing the materials identified in Section II-A-5 and in the pre-application meeting.
- b. The requirement for preparing an environmental assessment, does not apply, pursuant to [76-3-504, MCA](#), when:

- i. The proposed subdivision is totally within an area covered by a growth policy adopted pursuant to sections [76-1-601](#) through [76-1-607, MCA](#); and
- ii. The City has adopted zoning regulations pursuant to sections [76-2-301](#) through [76-2-328, MCA](#) (municipal zoning); or sections [76-2-201](#) through [76-2-228, MCA](#) (county zoning pursuant to a growth policy); and
- iii. The City has adopted a strategy for development, maintenance, and replacement of public infrastructure pursuant to section [76-1-601\(3\)\(e\)](#), MCA.

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

a. Within 60 working days, the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section IV-A-8 of these regulations, unless the subdivider and the subdivision reviewer agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to Section IV-A-7 of these regulations. The review period of 60 working days begins the day after the City’s subdivision reviewer notifies the subdivider or the subdivider’s agent in writing the subdivision application is sufficient for review.

b. Public Agency and Utility Review

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

**IV-A-3. Public Hearings and Notices**

a. Hearings

The City shall hold a public hearing on the subdivision application when a hearing is required by these regulations.

b. Notice

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

iii. The subdivider shall post notices at conspicuous places on the site of the proposed subdivision.

#### **IV-A-4. City Public Hearing**

a. The City of White Sulphur Springs may, from time to time, not have an active Planning Board. In such circumstances, the Planning Staff will notify the subdivider and the public hearing will be before the City Council. If a Planning Board exists, a public hearing shall be set, with notice as required by law.

b. All comments and documents regarding the subdivision shall be submitted to the City Planning Staff, to be forwarded to the Planning Board or City Council, as applicable.

#### **IV-A-5. Governing Body Decision and Documentation**

a. Prerequisites to Approval

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

- i. provides easements for the location and installation of any planned utilities;
- ii. provides legal and physical access to each lot within the subdivision and the notation of that access on the applicable plat and any instrument transferring the lot;
- iii. assures all required public or private improvements will be installed before final plat approval, or their installation after final plat approval will be guaranteed as provided by these regulations;
- iv. assures the requirements of [76-3-504\(j\)](#), MCA, regarding the disclosure and disposition of water rights as set forth in Section VI-O have been considered and will be accomplished before the final plat is submitted;
- v. assures that the requirements of [76-3-504\(k\)](#) regarding watercourse and irrigation easements as set forth in Section VI-N have been considered and will be accomplished before the final plat is submitted; and
- vi. provides for the appropriate park dedication or cash-in-lieu.

b. Consideration-Standards

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

- i. these regulations, including, but not limited to, the standards set forth in Section VI;
- ii. applicable land use regulations;
- iii. other applicable regulations;

iv. the MSPA, including but not limited to the following impacts:

- A. impact on agriculture
- B. impact on agricultural water user facilities
- C. impact on local services
- D. impact on the natural environment
- E. impact on wildlife and wildlife habitat;
- F. impact on public health and safety; and

v. proposed mitigation.

c. Consideration-Evidence

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

- i. the subdivision application and preliminary plat;
- ii. the environmental assessment;
- iii. the summary of probable impacts and mitigation;
- iv. an officially adopted growth policy
- v. comments, evidence and discussions at the public hearing(s);
- vi. subdivision reviewer's staff report and recommendations;
- vii. any additional information authorized by law.

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

d. Water and Sanitation-Special Rules

i. Water and sanitation information provided during the application review process, including public comment, may be used as a basis for a conditional approval or denial of a subdivision only if the governing body finds the application does not comply with previously adopted subdivision, land use, floodplain or other regulations.

ii. For a proposed subdivision which will create one or more lots containing less than 20 acres, the subdivider shall obtain approval by the DEQ as a condition of approval of the final plat.

e. Documentation of City Decision

i. In rendering its decision to approve, conditionally approve, or deny the proposed subdivision, the City shall issue written findings of fact which discuss and weigh the proposed subdivision's compliance with the preceding subsections.

ii. When the City approves, denies, or conditionally approves the proposed subdivision, it shall send the subdivider a letter, with the appropriate signature, and make the letter available to the public. The letter shall:

A. contain information regarding the appeal process for the denial or imposition of conditions;

B. identify the regulations and statutes which are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;

C. provide the facts and conclusions which the City relied upon in making its decision and reference documents, testimony, or other materials which form the basis of the decision; and

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

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

f. Subdivision Application and Preliminary Plat Approval Period

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

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

B. The governing body may extend the approval for more than one year if a longer approval period is included as a specific condition of a written Subdivision Improvements Agreement between the governing body and the subdivider, provided for in these regulations.

ii. After the application and preliminary plat are approved, the City may not impose any additional conditions as a prerequisite to final plat approval unless the preliminary plat approval expires, at which time a new application shall be required.

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

#### **IV-A-6. Amended Applications**

a. If the subdivider changes the subdivision application or preliminary plat after the City Planning Staff makes a determination of sufficiency pursuant to section II-A-6 but before the City Public Hearing, the subdivider shall submit the amended application to the subdivision reviewer for review.

i. Within five working days of receiving the amended application or preliminary plat, the City Planning Staff shall determine whether the changes to the subdivision application or preliminary plat are material, pursuant to subsection (d) below.

ii. The 60-working day review period is suspended while the City Planning Staff considers whether the changes to the subdivision application or preliminary plat are material.

iii. If the City Planning Staff determines the changes are not material, the 60-working day review period resumes when the subdivision reviewer mails notice of the decision to the subdivider.

iv. If the City Planning Staff determines the changes are material, Staff shall either require the subdivider to schedule a new pre-application meeting and resubmit the application as a new subdivision application or obtain written permission from the subdivider for an additional 15-working day period to evaluate the sufficiency of the proposed changes.

b. By making changes to a pending subdivision application or preliminary plat, the subdivider consents to suspension of the review period as provided in these regulations.

c. The following changes, although not an exhaustive list, may be considered material:

i. configuration or number of lots;

ii. road layout;

iii. water and/or wastewater proposals;

iv. configuration of park land or open spaces;

v. easement provisions;

vi. proposed covenants; or

vii. designated access.

d. A subdivider whose subdivision application or preliminary plat has been deemed materially changed by City Planning Staff may appeal the Staff's decision to the governing body by written notice within ten

working days of the decision. The subdivider may request a hearing, and may submit additional evidence to demonstrate the changes to the preliminary plat are not material.

- i. The 60-working day review period is suspended until the City Council's decision on the appeal is made.
- ii. If the City Council concludes the evidence and information demonstrate the changes to the subdivision application or preliminary plat are material, the governing body shall determine whether the subdivision application should be resubmitted or scheduled for rehearing.
- iii. If the City Council concludes the evidence and information demonstrate the changes to the subdivision application or preliminary plat are not material, the 60-working day review period resumes as of the date of the decision.
- iv. By appealing the decision of the City Planning Staff, the subdivider agrees to suspension of the 60-working day review period.

#### **IV-A-7. Major Final Plats**

The final plat must be in compliance with, submitted and reviewed in accordance with Section II-B, Final Plats.

### **V. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW**

#### **V-A. Purpose**

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

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

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

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

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

a. A division of land is created by order of any court of record in this state or by operation of law or, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, [Title 70, Chapter 30](#). Before a court of record orders a division of land, the court shall notify the governing body of the pending division and allow the governing body to present written comments on the subdivision.

b. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.

i. This Exemption Applies to any one or a combination of all three criteria listed below:

A. to a division of land of any size;

B. if the land divided is only conveyed to the financial or lending institution to which the mortgage, lien, or trust indenture was given, or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time the land was divided, to any party other than those identified in the preceding sentence subjects the division of land to the requirements of the MSPA and these regulations.

C. to a lot created to provide security under this subsection. The remainder of the tract of land, if applicable, is subject to the provisions of the MSPA and these regulations.

ii. Statement of Intent

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

iii. Use of Exemption

This exemption is not available to simply create a lot without review by claiming the lot will be used for security to finance construction of a home or other structure on the proposed lot. This exemption may not be properly invoked unless (1) the claimant is purchasing a larger tract through financing or a contract for deed (and thus does not hold title) and (2) a lending institution requires the landowner to hold title to a small lot of the tract because the smaller tract is required as security for a building construction loan.

iv. Required Materials

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

A. a statement of how many interests within the original tract will be created by use of the exemption;

B. the deed, trust indenture or mortgage for the exempted interest (which states the interest is being created only to secure a construction mortgage, lien or trust indenture);

C. a statement explaining who will have title to and possession of the balance of the original lot after title to the exempted interest is conveyed; and

D. a signed statement from a lending institution stating the creation of the interest is necessary to secure a loan.

#### v. Rebuttable Presumptions

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

A. it will create more than one new building site;

B. the financing is not for construction or improvements on the exempted lot, or for re-financing;

C. the person named in the "statement explaining who would have possession of the remainder lot if title to the exempted lot is conveyed" is anyone other than the borrower of funds for construction;

D. title to the exempted interest will not be initially obtained by the lending institution if foreclosure occurs;

E. there exists a prior agreement to default or a prior agreement to purchase only a portion of the original tract;

F. it appears the principal reason the interest is being created is to create a building site and using the interest to secure a loan is a secondary purpose; or

G. the division of land is created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien or trust indenture.

c. A division of land creates an interest in oil, gas, minerals, or water which is severed from the surface ownership of real property;

d. A division of land creates cemetery lots;

e. A division of land is created by the reservation of a life estate;

f. A division of land is created by lease or rental for farming and agricultural purposes;

g. A division of land is in a location over which the state does not have jurisdiction; or

h. A division of land is created for public rights-of-way or public utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of the MSPA and these regulations.

#### **V-D. Divisions of Land Which May Be Exempt from Review and Surveying**

a. Generally condominiums are subject to review as subdivisions, but under certain circumstances they may be exempt from review, provided they are constructed on land divided in compliance with these regulations and the MSPA, and:

i. The approval of the original division of land expressly contemplated the construction of the condominiums and [76-3-621](#), MCA, is complied with; or

ii. The condominium proposal is in conformance with applicable zoning regulations where local zoning regulations are in effect.

An example of this type of project is where a developer files a plat for a condominium development on a parcel of land zoned for that activity. If there is no zoning in place, the project would go through normal subdivision review.

b. Generally, subdivisions created by rent or lease are exempt from the surveying and filing requirements of the MSPA and these regulations, but must be submitted for review and approved by the governing body before portions may be rented or leased.

i. When the land upon which an improvement is situated has been subdivided in compliance with the MSPA, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more lots of land is not a division of land and is not subject to the MSPA or these regulations;

ii. The sale, rent, lease, or other conveyance of one or more parts of a building, structure or other improvement, whether existing or proposed, is not a division of land and is not subject to the requirements of the MSPA or these regulations.

An example of this type of project is a mobile home court or RV park where the land remains under one ownership.

c. A division of land created by lease or rental of contiguous airport related land owned by a city, county, the state, or a municipal or regional airport authority is not subject to the MSPA or these regulations, provided the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities. This type of project is generally used for airport hangers where the land remains under one ownership.

d. A division of state-owned land is not subject to the MSPA or these regulations unless the division creates a second or subsequent lot from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

e. The MSPA and these regulations do not apply to deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1974.

f. Instruments of transfer of land which are acquired for state highways may refer by lot and project number to state highway plans which have been recorded in compliance with [60-2-209](#), MCA, and are exempted from the surveying and platting requirements of the MSPA and these regulations. A survey or plat for the recordation of an instrument transferring title to a remainder which was created when the state obtained property for a highway right-of-way is not required. If such lots are not shown on highway plans of record, instruments of transfer of such lots shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

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

Unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, the following divisions of land are not subdivisions under these regulations and the MSPA, but are subject to the surveying requirements of [76-3-401](#), MCA, and zoning regulations adopted under Title 76 chapters 2 or 3. A division of land may not be made under this section unless the County Treasurer has certified all real property taxes and special assessments assessed and levied on the land to be divided have been paid. The Clerk and Recorder shall notify the subdivision reviewer if a land division described in this section or [76-3-207\(1\)](#), MCA, is submitted to the Clerk and Recorder prior to the survey being submitted to the City Planning Staff for evasion review.

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

###### **a. Statement of Intent**

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

###### **b. Required Information**

Certificates of survey claiming this exemption must clearly distinguish between the existing boundary location and, in case of a relocation, the new boundary. This must be accomplished by representing the existing boundary with a dashed line and the new boundary, if applicable, with a solid line. The appropriate certification set forth in [ARM 24.183.1104 \(1\)\(f\)](#) must be included on the certificate of survey. Certificates of survey showing the relocation of common boundary lines must be accompanied by a quit claim or warranty deed or recordable agreement from adjoining property owners for the entire newly described lot(s) or that portion of the tract(s) that is being affected.

###### **c. Use of Exemption**

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

###### **d. Rebuttable Presumptions**

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

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

**V-E-2. Family Transfer – a Gift or Sale to a member of the Immediate Family MCA [76-3-207\(1\)\(b\)](#)**

a. Statement of Intent

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

b. Required Information

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

c. Use of Exemption

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

d. Rebuttable Presumptions

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

iv. The use of the exemption to create more than one additional or remaining lot of less than 160 acres in size is presumed to be adopted for the purpose of evading the MSPA and these regulations.

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

a. Statement of Intent

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

b. Required Information

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

c. Use of Exemption.

i. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops, livestock, or timber, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the DEQ, provided the applicable exemption under the Sanitation in Subdivisions Act is properly invoked by the property owner.

ii. Any change in use of the land for anything other than agricultural purposes subjects the lot to review as a minor subdivision.

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

d. Rebuttable Presumptions.

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

i. The parties to the transaction must enter into a covenant running with the land and revocable only by mutual consent of the governing body and the property owner stating the divided land will be used exclusively for agricultural purposes. The covenant must be signed by the property owner, the buyer, and the members of the governing body.

ii. The landowner must demonstrate the planned use of the exempted lot is for agricultural purposes and no residential, commercial, or industrial buildings have been or will be built on it.

iii. The lot must meet the criteria for an agricultural designation under section 15-7-202, MCA.

**V-E-4. Relocation of Common Boundaries within a Platted Subdivision [MCA 76-3-207\(1\)\(d\), \(e\) and 2\(a\)](#)**

**a. Statement of Intent**

i. The MSPA allows certain revisions to subdivisions platted since July 1, 1973, which include relocation of common boundaries and the aggregation of lots for five or fewer lots within a platted subdivision or the relocation of a common boundary between a single lot in a platted subdivision and adjoining land outside a platted subdivision (but a restriction or requirement on either continues to apply), without review.

ii. If a change is made to a platted subdivision which results in an increase in the number of lots or redesigns or rearranges six or more lots, the governing body must review and approve the amended plat and an amended plat must be filed with the Clerk and Recorder.

**b. Use of exemption**

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

**c. Rebuttable presumption**

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

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

**V-F. Procedures and Review of Subdivision Exemptions**

**V-F-1. Submittal**

Any person seeking exemption from the requirements of the MSPA shall submit to the City Planning Staff (1) a certificate of survey or, if a survey is not required, an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption. For purposes of 76-3-207, MCA, when a lot 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 lot under the contract-for-deed [\(ARM 24.183.1104\)](#).

**V-F-2. Review**

When a division of land for which an exemption is claimed is submitted to the City Planning Staff, Staff shall cause the documents to be reviewed by the designated agents of the City (e.g., city attorney,

county sanitarian, County Treasurer, and County Clerk and Recorder). The City Planning Staff and governing body agents shall review the claimed exemption to verify it is the proper use of the claimed exemption and complies with the requirements set forth in the MSPA, the Montana Sanitation in Subdivisions Act, and these regulations.

a. Landowners or their agents are encouraged to meet with the City Planning Staff to discuss whether a proposed land division or use of an exemption is in compliance with the criteria in this Section V.

b. The City Planning Staff shall make a written determination of whether the use of the exemption is intended to evade the purposes of the MSPA, explaining the reasons for the determination.

c. If the City Planning Staff finds the proposed use of the exemption complies with the statutes and the criteria set forth in this section, Staff shall notify the governing body and advise the Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and accompanying documents. If Staff finds the proposed use of the exemption does not comply with the statutes and the criteria in this Section V, Staff shall advise the Clerk and Recorder not to file or record the documents, and the materials will be returned to the landowner.

d. The City Planning Staff shall consider all of the surrounding circumstances when determining whether an exemption is claimed for the purpose of evading the MSPA. These circumstances may include but are not limited to: the nature of the claimant's business, the prior history of the particular tract in question, the proposed configuration of the tracts if the proposed exempt transaction is completed, and any pattern of exempt transactions which will result in the equivalent of a subdivision without local government review.

e. The City Council will approve or deny the exemption at a City Council meeting.

### **V-F-3. Appeals**

a. Any person whose proposed use of an exemption has been denied by City Planning Staff because the proposed division of land has been deemed an attempt to evade the MSPA and these regulations, may appeal the Staff's decision to the City Council. The person may request a hearing, and may submit additional evidence to demonstrate the use of the exemption in question is not intended to evade the MSPA or these regulations, and, thereby rebut a presumption.

b. If the City Council concludes the evidence and information overcome the presumption the exemption is being invoked to evade the MSPA or these regulations, it may authorize the use of the exemption in writing. A certificate of survey claiming an exemption from subdivision review, which otherwise is in proper form, and which the City Council has found not to be an attempt to evade the MSPA or these regulations, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

c. If the person proposing to use an exemption chooses not to rebut a presumption when the City Planning Staff deems the use of the exemption an attempt to evade the MSPA and these regulations, or if the governing body determines the proposed use of an exemption was for the purpose of evading the MSPA or these regulations, the landowner proposing to use the exemption may submit a subdivision application for the proposed land division.

### **V-G. Remaining Lots of Land**

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

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

## **VI. DESIGN AND IMPROVEMENT STANDARDS**

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

### **VI-A. Conformance with Regulations**

The design and development of a subdivision must conform with any applicable land use or other regulations.

### **VI-B. Natural Environment**

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

### **VI-C. Lands Unsuitable for Subdivision**

Land which the governing body determines is unsuitable for subdivision because of natural or human caused hazards may not be subdivided for building or residential purposes unless the hazards are eliminated or will be overcome by approved design and construction techniques.

### **VI-D. Floodplain Provisions**

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

If any portion of a proposed subdivision is within 2,000 horizontal feet and 20 vertical feet of a live stream draining an area of 25 square miles or more, and no official floodway delineation or floodway studies of the stream have been made, the subdivider shall provide in detail to the Floodplain Management Section of the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC), a flood hazard evaluation, including the calculated 100 year frequency water surface elevations and the 100 year floodplain boundaries. This detailed evaluation must be performed

by a licensed professional engineer experienced in this field of work. The evaluation must follow the “guidelines for obtaining 100-year flood elevations in Approximate Zone A or unmapped areas” which may be found at the following website: <https://mtfloods.wildapricot.org/>.

The subdivider shall be responsible for assuring the DNRC submits its report to the City Planning Staff, prior to the hearing or meeting on the subdivision application. The above requirement is waived if the subdivider contacts the Water Resources Division and that agency states in writing the available data indicate the proposed subdivision is not in a flood hazard area. However, the DNRC may require additional information following the above guidelines to ensure there are no flood hazards.

#### **VI-E. Improvement Design**

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

#### **VI-F. Lots**

Each lot must contain a satisfactory building site and conform to health department regulations, applicable zoning regulations and these regulations.

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

#### **VI-G. Blocks**

- a. Blocks must be designed to assure traffic safety and ease of traffic control and circulation, to accommodate the special needs of the use contemplated, and to take advantage of the limitations and opportunities of the topography.

- b. Unless impractical, block length must not be less than 300 or more than 1,200 feet.
- c. Blocks must be wide enough to allow for two tiers of lots unless a narrower configuration is essential to provide separation of residential development from traffic arteries, or to overcome specific disadvantages of topography and orientation, or unless the City Council approves a design consisting of irregularly shaped blocks indented by cul-de-sacs.
- d. Rights-of-way for adequate and safe pedestrian access, at least ten feet wide, must be provided where deemed essential to provide circulation to schools, playgrounds, shopping, transportation, and other community facilities.

#### **VI-H. Streets and Roads**

##### a. Design

- i. The arrangement, type, extent, width, grade, and location of all streets must be considered in their relation to existing and planned streets, topographical conditions, public convenience and safety, and the proposed uses of the land to be served by them.
- ii. Roads must meet the design specifications in Table 1.
- iii. Where streets terminate, either a cul-de-sac or “T” turnaround must be provided at the terminus. Cul-de-sacs and “T” turnarounds must conform to the design specifications in Table 1.
- iv. All streets must either be dedicated to the public or be private streets to be owned and maintained by an approved property owners’ association.
- v. Residential driveways must not have direct access to primary highways. Any vehicular access onto a state highway must be approved by the Montana Department of Transportation.
- vi. Local streets must be designed to encourage through traffic. Dead end streets are discouraged and must provide a turn-around for emergency vehicles.
- vii. Whenever a subdivision abuts or contains an existing or proposed arterial highway or major thoroughfare, the governing body may require frontage roads or other treatment as may be necessary to adequately protect residential properties and to separate arterial and local traffic.
- viii. Half streets are prohibited except when they are essential to the development of the subdivision and when the governing body is satisfied the other half of the street will be dedicated to the public when the adjoining property is subdivided. When an existing half street is adjacent to a tract to be subdivided, the other half of the street must be platted within the new subdivision.
- ix. The alignment of all streets and roads must provide adequate sight distances.
- x. Intersections. The following requirements apply to intersections:

A. streets must intersect at 90 degree angles except when topography prohibits this alignment. In no case may the angle of an intersection be less than 60 degrees to the center line of the roadway being intersected.

B. two streets meeting a third street from opposite sides must be offset at least 125 feet for local roads and 300 feet for arterials or collectors.

C. no more than two streets may intersect at one point.

D. intersections of local streets with major arterials or highways must be minimized where possible although the City's emphasis is on maintaining the existing street grid.

E. intersections must be designed to provide adequate visibility for traffic safety based on the designed operating speeds of the intersecting roadways.

F. hilltop intersections are prohibited, unless no alternatives exist. Intersections on local roads within 100 feet of a hilltop are prohibited. Intersections on arterial and collector roads within 200 feet of a hilltop are prohibited. If no alternative to a hilltop intersection exists, additional traffic control devices will be required.

G. the grade of approaches to major highways may not exceed five percent.

xi. Names of new streets or roads aligned with existing streets must be the same as those of the existing streets. Proposed street names may not duplicate or cause confusion with existing street names.

xii. Proposed road plans and profiles as required by Section II-A-5 are subject to approval by the City Engineer or Public Works Department.

#### b. Improvements

i. All roadway improvements including pavement, curbs, gutters, sidewalks, and drainage must be constructed in accordance with the specifications and standards prescribed in these regulations using materials approved by the governing body.

ii. Roadway subgrades must be free of topsoil, sod, vegetation or organic matter, soft clay, and other substandard materials. Subgrades must be properly rolled, shaped, and compacted, and must be approved by the governing body.

iii. Streets and roads must be designed to ensure proper drainage. This may require surface crowning, culverts, curbs and gutters, drainage swales and storm drains.

iv. Where access from a public road to the subdivision will cross properties not owned by the subdivider, the subdivider must obtain proper easements of sufficient width to satisfy the requirements of Table 1. Easements must be granted by each property owner in a signed and notarized document.

The location of any road easement must be shown on the plat or on a supplemental map. The existence of easements must be noted on the face of the final plat and on any deeds or other instruments conveying lots within the subdivision.

v. Existing trees and other vegetation must be preserved whenever appropriate. Plantings may be required for buffering, screening, or prevention of soil erosion and are subject to approval by the City Council.

vi. Street lights will be required in subdivisions proposed within or adjacent to areas with existing street lighting. Street lighting may be required in other areas when necessary to protect public safety. Street lighting will be consistent and compatible with the existing street lighting in the City.

vii. Street or road signs and traffic control devices of the size, shape, and height approved by the governing body must be placed at all intersections. Traffic control devices must conform to the standards contained in the Manual on Uniform Traffic Control Devices available from the Montana Department of Transportation.

viii. When required by the United States Postal Service, the developer must provide an off-street area for mail delivery.

<b>Table 1: Road Standards for Subdivisions</b>			
Minimum Design Standards		Collector	Local Road
1	Minimum right-of-way Width		
	a. level terrain	60'	60'
	b hilly terrain	60'	60'
2	Minimum Roadway Width	26'	24'
3	Minimum Curb Radius or Edge Pavement at Intersections	25'	15'
4	Maximum Grades	8%	10%
5	Approaches Onto Public Roads		
	Minimum Sight Distance	200'	150'
	Maximum Grade for 20'	5%	5%
6	Curvature		
	Design Speed	30 mph	20 mph
	Minimum Radius	250'	150'
7	Turn Arouds		
	Maximum Dead End Road Length		1000'
	Cul-De-Sac Outside ROW Radius		40'
	Cul-De-Sac Roadway ROW Radius		35'
	"T" Turn Arouds Leg Length		30'
8	Bridges		
	Roadway Width	26'	24'
	Design Capacity	20 Tons	20 Tons
	Vertical Clearance	14.5 '	14.5'

**VI-I. Drainage Facilities**

a. The drainage system and facilities required for any surface run-off affecting the subdivision are subject to approval by the City Council. Subdivisions containing lots less than 20 acres in size must also be reviewed and approved under [Title 76, Chapter 4, MCA](#), by the DEQ.

b. A grading and drainage plan as required by Section II-A-5(6) is subject to approval by the City Engineer or Public Works Department.

c. Curbs and gutters or swales will be required based on the character of the area, density of development, and nature of adjoining properties. Curbs and gutters of adjoining properties must be extended in conformance with current specifications of local and state authorities. The City requires sidewalks, curb and gutter on all new developments.

d. Culverts and bridges of adequate size must be provided and installed by the subdivider where drainage channels intersect any street or road right-of-way or easement. All culverts and bridges must be constructed and installed according to applicable local and state standards. Culverts and other

drainage facilities must be large enough to accommodate potential run-off from upstream drainage areas.

e. The subdivider must provide suitable drainage facilities for any surface run-off affecting the subdivision. These facilities must be located in street rights-of-way or in perpetual easements of appropriate widths.

f. Drainage systems must not discharge into any sanitary sewer facility.

g. Drainage systems must be designed and certified by a professional engineer.

h. The City Council may require the subdivider to grant easements to prevent encroachment or disruption of drainage ways or facilities. Drainage easements must be shown on the plat and a signed statement granting the easements must appear on the plat.

#### **VI-J. Water Supply System**

All subdivision lots must connect to the City's central water supply system and must provide adequate and accessible water for domestic consumption, irrigation and fire protection.

#### **VI-K. Sewage Treatment System**

All subdivision lots must connect to the City's central sewer collection and treatment system. Commercial and industrial facilities may be required to pre-treat their wastewater so it meets normal domestic wastewater parameters before discharge into the City's collection system.

#### **VI-L. Solid Waste**

a. For subdivisions which will create one or more lots containing less than 20 acres, the proposed method of disposal must comply with the standards adopted by the DEQ and contained in the Administrative Rules of Montana ([ARM 17.36.309](#)). By this reference this DEQ standard is incorporated into and made a part of these regulations. Unless defined elsewhere in these regulations, the terms used in these standards will have the meanings assigned to them in [ARM 17.36.101](#). Solid wastes stored within the subdivision must be placed in adequate containers and removed at a frequency to prevent a nuisance. When removed from the subdivision, the solid wastes must be disposed of at a department-licensed site in accordance with [ARM 17.50.508](#) or an appropriate out-of-state waste disposal site.

#### **VI-M. Utilities**

a. The subdivider must provide adequate and appropriate easements for the construction and maintenance of utilities within the subdivision. The subdivider must obtain any easements necessary to extend utilities to the subdivision.

b. Utilities must be placed underground, wherever practical. Underground utilities, if placed in a street right-of-way, must be located between the roadway and the right-of-way line to simplify location and repair of lines. Underground facilities must be installed after the street has been brought to grade and before it is surfaced.

- c. Where practical, when overhead utility lines are used they must be located at the rear property line.
- d. Utility facilities must be designed by utility firms in cooperation with the subdivider. These facilities are subject to all applicable laws, rules, and regulations of the appropriate regulatory authorities.
- e. Utility easements located between adjoining lots must be centered on lot lines. If easements are placed in the street, they must be located between the roadway and the right-of-way line.
- f. Utility easements must be 20 feet wide unless otherwise specified by a utility company or governing body.
- g. When a utility is to be located in an existing, dedicated right-of-way, a notice of utility occupancy must be obtained from the governing body, or local or state highway department.
- h. In addition to showing the location of utility easements on the plat with dashed lines, the following statement must appear on the final plat:

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

#### **VI-N. Water Course and Irrigation Easements**

- a. Except as noted in subsection (b), below, the subdivider shall establish within the subdivision ditch easements which:
  - i. are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or below ground pipelines for the delivery of water for irrigation to persons and land legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
  - ii. are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
  - iii. prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
- b. The subdivider need not establish irrigation easements as provided above if:
  - i. the average lot size in the proposed subdivision will be one acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, notifying potential buyers that lots within the subdivision are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable to the lots;or

ii. the water rights have been removed from the land within the subdivision or the process has been initiated to remove the water rights from the subdivided land; and

iii. the fact the water rights have been or will be removed from the land within the subdivision is denoted on the preliminary plat. If the removal of water rights has not been completed at the time the final plat is filed, the subdivider shall provide written notification to prospective buyers of the subdivider's intention to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

c. The subdivider shall, unless otherwise provided under separate written agreement or filed easement, show on the preliminary and final plat, and file and record with the County Clerk and Recorder, ditch easements for the unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the proposed subdivision which are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner consistent with historic and legal rights. A minimum width of ten feet is required on each side of irrigation canals and ditches for maintenance purposes.

#### **VI-O. Disposition of Water Rights**

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

a. reserved all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer these water rights to the City;

b. if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide for the use of a water right on the subdivision lots, established a landowner's water use agreement administered through a single entity. This agreement must specify how the water rights will be administered and describe the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

c. reserved and severed all surface water rights from the land proposed for subdivision.

#### **VI-P. Park Land Dedication**

a. Except as provided below, the final plat of a residential subdivision must show the subdivider has dedicated to the governing body a cash or land donation equal to:

i. 11% of the area of the land proposed to be subdivided into lots of one-half acre or smaller;

ii. 7.5% of the area of the land proposed to be subdivided into lots larger than one-half acre and not larger than one acre;

iii. 5% of the area of the land proposed to be subdivided into lots larger than one acre and not larger than three acres; and

iv. 2.5% of the area of the land proposed to be subdivided into lots larger than three acres and not larger than five acres.

b. A park dedication is not required for:

- i. minor subdivisions;
- ii. subdivision lots larger than five acres;
- iii. nonresidential subdivision lots;
- iv. subdivisions in which lots of land will not be created, other than subdivisions which will provide permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or
- v. subdivisions which will create only one additional lot.

c. The City Council, in consultation with the subdivider and park board (if it exists) which has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation. The land dedicated for park use may be inside or outside the boundaries of the proposed subdivision.

d. The City Council will waive the park dedication requirement if it determines:

- i. A. the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and  
B. the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection VI-P (a);
- ii A. the proposed subdivision will provide for the long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and  
B. the provision of this long-term protection will result in the reduction of the area of the land proposed to be subdivided by an amount equal to or exceeding the area that would have had to be dedicated under subsection VI-P(a) above;
- iii. the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (d)(i) and (ii) above, is reduced by an amount equal to or exceeding the area of the dedication required under subsection VI-P(a); or
- iv. A. the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

B. the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection VI-P(a).

e. The City Council may waive the park dedication requirement if:

i. the subdivider provides land outside the subdivision which affords long-term protections of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

ii. The area of land to be subject to long-term protection, as provided in subsection (e)(i), equals or exceeds the area of dedication required under subsection VI-P(a).

f. Subject to the approval of the City Council and acceptance by the school district trustees, a subdivider may dedicate a land donation provided under subsection VI-P(a) to a school district, adequate to be used for school facilities or buildings.

g. The City Council will administer funds dedicated to the public under this section in accordance with [76-3-621, MCA](#).

h. For the purposes of this park dedication requirement:

i. "cash donation" means the fair market value of the unsubdivided, unimproved land; and

ii. "dwelling unit" means a residential structure in which a person or persons reside.

#### **VI-Q. Fire Protection**

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

a. The placement of structures so as to minimize the potential for flame spread and to permit adequate access for firefighting equipment.

b. The presence of adequate firefighting facilities on site, including an adequate water supply and water distribution system.

c. The availability, through a fire protection district or other means, of fire protection services adequate to respond to fires which may occur within a subdivision.

#### **VI-R. Noxious Weeds**

A weed control plan shall be developed and implemented for every new subdivision. An agreement with the Meagher County Weed Control Board shall be signed and notarized by the subdivider, and the agreement must be recorded with the final plat.

## **VII. RV & Mobile Home Parks – Subdivisions for Rent or Lease**

### **VII-A. Definition**

A subdivision created by rent or lease, including a mobile home/manufactured home or recreational vehicle park, is any tract of land divided by renting or leasing portions of it. The land is owned, however, as one lot under single ownership (which can include a number of persons owning property in common). Plans, not plats, are submitted to the subdivision reviewer for review. The plan shows spaces, not lots. The plan must comply with applicable land use regulation.

### **VII-B. RV Parks, Mobile and Manufactured Homes**

#### **a. Recreational Camping Vehicles**

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

#### **b. Mobile/Manufactured Homes**

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

#### **c. Subdivisions for Lease or Rent**

- i. Land subdivision created by rent or lease will be reviewed under the procedures described in Section IV, Major Subdivisions, or Section III, Minor Subdivisions, as may be appropriate, except the subdivider shall submit an unsurveyed final plan drawn to scale, rather than a final plat, following the Final Plat procedure in Section II.
- ii. Land subdivisions created by rent or lease are subject to the applicable standards contained in Section VI.

### **VII-C. Procedures for Review**

#### **VII-C-1. Review and Approval**

Subdivisions which will provide multiple spaces for recreational camping vehicles or mobile homes and subdivisions created for rent or lease are exempt from the surveying and filing requirements of the MSPA. However, these subdivisions must be submitted for review and approved by the governing body before portions of the subdivision may be rented or leased.

#### **a. Submittal**

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

b. Review

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

**VII-C-2. Improvements**

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

**VII-C-3. Final Plan Review**

In lieu of filing a final plat, the subdivider shall submit a final plan to the subdivision reviewer complying with the requirements of Final Plats in Section II. The final plan will be reviewed to assure it conforms to the approved preliminary plan. The approved plan shall be maintained in the office of the City Clerk.

**VII-C-4. DPHHS License**

If a subdivision which will provide four or more spaces for recreational camping vehicles or mobile homes is also a “trailer court,” “work camp,” “youth camp,” or “campground” as those terms are defined in section [50-52-101, MCA](#), the City Council will not grant final approval of the subdivision until the subdivider obtains a license for the facility from the Montana Department of Public Health and Human Services under [Title 50, Chapter 52, MCA](#).

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

**VII-D-1. Design Standards**

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

**VII-D-2. Additional Provisions**

The governing body may require provision for:

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

e. street lighting.

## **VII-E. Mobile/Manufactured Home Park Standards**

### **VII-E-1. Mobile/Manufactured Home Spaces**

a. Mobile/manufactured home spaces must be arranged to permit the safe and practical placement and removal of mobile homes and must have been manufactured in the year 2000 or later.

b. All mobile/manufactured homes must be located at least 25 feet from any property boundary line abutting upon a public street or highway right-of-way and at least 15 feet from other boundary lines of the park.

c. The mobile/manufactured home pad must be located at least 10 feet from the street that serves it.

d. The size of the mobile/manufactured home pad must be suitable for the general market to be served and must fit the dimensions of mobile/manufactured homes anticipated.

e. A mobile/manufactured home pad may not occupy more than one-third (1/3) of the area of its space. The total area occupied by a mobile home and its roofed accessory buildings and structures may not exceed two-thirds (2/3) of the area of a space.

f. The governing body may require the mobile/manufactured home pad be improved to provide adequate support for the placement and tie-down of the mobile home.

g. No mobile/manufactured home or its attached structures, such as awnings and carports, may be located within 20 feet of any other mobile home or its attached structures.

h. No detached structure, such as a storage shed, may be located within five feet of any mobile/manufactured home or its attached structures.

i. A minimum of two off-street parking spaces must be provided on or adjacent to each mobile/manufactured home space. The driveway must be located to allow for convenient access to the mobile/manufactured home, and be a minimum of ten feet wide.

j. One guest parking space must be provided for each ten mobile/manufactured home spaces. Group parking may be provided.

k. The limits of each mobile/manufactured home space must be clearly marked on the ground by permanent flush stakes, markers or other suitable means. Location of space limits on the ground must be approximately the same as those shown on the approved plans. Precise engineering of space limits is not required either on the plans or on the ground.

l. Each mobile/manufactured home must be skirted within 30 days after it is moved to a space within the mobile/manufactured home park. The skirting must be of a fire-resistant material similar to the mobile/manufactured home exterior.

## **VII-E-2. Streets**

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

- a. Streets must be designed to provide safe access to public roads.
- b. Roads within the mobile/manufactured home park must be designed to provide safe traffic circulation and parking.
- c. One-way roads must be at least 15 feet wide; two-way roads must be at least 24 feet wide.

## **VII-E-3. Electrical Systems**

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

## **VII-E-4. Gas Systems**

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

## **VII-F. Recreational Vehicle Park Standards**

### **VII-F-1. Recreational Vehicle Spaces**

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

d. No recreational vehicle space may be located less than 25 feet from any public street or highway right-of-way.

#### **VII-F-2. Density**

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

### **VIII PLANNED UNIT DEVELOPMENTS**

#### **VIII-A. Purpose**

The purpose of this section is to provide flexibility in applying certain subdivision standards, allowing the subdivider creativity in subdivision design. [Section 76-3-103\(11\)](#), MCA defines a planned unit development as “a land development project consisting of residential clusters, industrial parks, shopping centers or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.”

#### **VIII-B. Procedures**

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

IV. Major Subdivisions

II-B Applicable sections for Final Plats

#### **VIII-C. Standards**

##### **VIII-C-1. Design Standards**

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

##### **VIII-C-2. Streets**

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

### **VIII-C-3. Open Spaces**

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

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

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

## **IX. CONDOMINIUMS**

### **IX-A. Procedures**

Unless exempted by section [76-3-203, MCA](#), all condominium developments are subdivisions subject to the terms of the MSPA as follows:

#### **IX-A-1. Review Where Land Will Not Be Divided**

If no division of land will be created by a condominium subdivision, the subdivision must be reviewed under the procedures contained in Section VII, Subdivisions Created by Rent or Lease, with the following exception: final approval will not be given until the subdivider has either installed all required improvements, or has entered into a subdivision improvements agreement pursuant to Section II-B-4 Public Improvements Agreement; Guaranty.

#### **IX-A-2. Condominium Subdivisions Involving Land Divisions**

If a proposed condominium development will involve a division of land, the subdivision must be reviewed under the procedures contained in Sections:

IV-A Review and Approval Procedures for Major Subdivisions  
II-B Applicable sections for Final Plats.

### **IX-B. Standards**

#### **IX-B-1. Design Standards**

Condominium developments must comply with applicable standards contained in Section VI, Design and Improvement Standards.

## **IX-B-2. Unit Ownership Act**

Condominium developments must comply with all provisions of the Unit Ownership Act, Sections [70-23-102](#) through [70-23-902, MCA](#) or its successor provisions.

## **X. CLUSTER DEVELOPMENT**

This section reserved.

## **XI. ADMINISTRATIVE PROVISIONS**

### **XI-A. Fee Schedule**

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

#### **XI-A-2. Other Reviews**

Exemptions: see adopted fee schedule

Mobile/Manufactured Home Parks and Spaces: see adopted fee schedule

Condominiums: see adopted fee schedule

#### **XI-A-3. Final Plat Review and Inspection**

To cover the cost of on-site inspection of the subdivision and review of the final plat and supplementary materials, the subdivider shall pay a non-refundable fee at the time of application for final approval to the City Clerk pursuant to a fee schedule adopted by resolution.

### **XI-B. Variances**

#### **XI-B-1. Variances Authorized**

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

- a. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties;
- b. Due to the physical surroundings, shape, or topographical conditions of the property involved, strict compliance with the regulations will impose an undue hardship on the owner. Undue hardship does not include personal or financial hardship, or any hardship which is self-imposed;

- c. The variance will not cause a substantial increase in public costs; and
- d. The variance will not place the subdivision in nonconformance with any adopted zoning regulations.

**XI-B-2. Variances from Floodway Provisions Not Authorized**

The governing body will not, by variance or otherwise, permit a subdivision for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by [Title 76, Chapter 5, MCA](#).

**XI-B-3. Procedure**

The subdivider shall include with the submission of the preliminary plat a written statement describing and justifying the requested variance. The planning board will consider the requested variance and recommend its approval or denial to the governing body. In the absence of a planning board, the recommendation will be made by the City Planning Staff or other designee.

**XI-B-4. Conditions**

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

**XI-B-5. Statement of Facts**

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

**XI-C. Amendment of Regulations**

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

**XI-D. Administration**

Except as provided in [76-3-303 MCA](#), and these regulations, 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. If unlawful transfers are made, the County Attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of the MSPA and these regulations. The cost of this action shall be imposed against the party not prevailing.

**XI-D-1. Violation and Penalties**

Any person, firm, corporation, or other entity violating any of the provisions of the MSPA or these regulations is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500 or by imprisonment in jail for not more than three months or by both fine and imprisonment. Each sale,

lease, or transfer, or offer of sale, lease, or transfer of each separate lot of land in violation of any provision of the MSPA or these regulations shall be deemed a separate and distinct offense.

#### **XI-D-2. Appeals**

a. A person who has filed with the governing body an application for a subdivision under the MSPA and these regulations may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to the MSPA that is arbitrary or capricious.

b. A party identified in subsection (d) below who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

c. For the purposes of this section, “aggrieved” means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

d. The following parties may appeal under the provisions of subsection (b) above:

i. the subdivider;

ii. a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

iii. the county commissioners of the county where the subdivision is proposed; and

iv. The City of White Sulphur Springs for any subdivision proposed if a subdivision is proposed within 1 mile of its city limits.

**City of White Sulphur Springs  
Subdivision Application**

First Minor

Second or Subsequent Minor

Major

1. Project title: \_\_\_\_\_  
Assessor Parcel # \_\_\_\_\_  
DOR# \_\_\_\_\_
2. Date of pre-Application meeting: \_\_\_\_\_
3. Project legal description: \_\_\_\_\_
4. Common description or street address: \_\_\_\_\_
5. General project description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Project acreage and density: \_\_\_\_\_
7. Total number of lots: \_\_\_\_\_
8. Current land use: \_\_\_\_\_
9. Existing zoning: \_\_\_\_\_
10. Applicant name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ email: \_\_\_\_\_
11. Property Owner: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ email: \_\_\_\_\_
12. Engineer/Surveyor: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ email: \_\_\_\_\_

13. Please submit original & six copies of the application form and all supporting documentation. Specific requirements are listed in the White Sulphur Springs Subdivision Regulations. Please check the box that you have included the following:

- A completed and signed Subdivision Application Form;
- The required review fee;
- A preliminary plat;
- A Vicinity Sketch;
- A topographic map;
- A grading and drainage plan;
- Engineering plans for all Public and Private Improvements;
- Overall development plans if development is in phases;
- Abstract of Title (or Title Report);
- Lienholders' acknowledgement of subdivision;
- Documentation of legal and physical access;
- Documentation of existing easements, including those for Agricultural Water User Facilities;
- Existing covenants and deed restrictions;
- Existing water rights;
- Existing mineral rights;
- Names and addresses of all adjoining property
- Proposed road plans and profiles;
- Approach/access/encroachment permits from Montana Department of Transportation or the local jurisdiction;
- Proposed easements;
- Proposed disposition of water rights;
- Proposed disposition of mineral rights;
- Parkland dedication calculations;

- Environmental assessment and/or summary of probable impacts;
- Transportation impact analysis or transportation plan;
- Fire risk rating analysis and fire prevention plan;
- Weed management plan and re-vegetation plan;
- Property owners' association documents, including draft articles of incorporation, declaration and bylaws;
- FIRM or FEMA panel map and letter identifying floodplain status;
- Required water and sanitation information;
- A form of Subdivision Improvements Agreement, if proposed;
- Letter requesting a revocation of agricultural covenants;
- Letter indicating locations of cultural or historic resources;
- Variance request or approval;
- Re-zoning application or approval;
- Flood hazard evaluation;
- Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials;
- Such additional relevant and reasonable information as identified by the City Planning Staff during the pre-application meeting that is pertinent to the required elements of this section.

Please provide a written explanation for any boxes above not checked.

14. Please also include a digital copy (PDF) of the complete application.
15. Please note that if the applicant is not the owner of the property, both applicant and property owner must sign the application.

I (We) hereby certify that the above information is true and correct to the best of my (our) knowledge.

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Applicant's Signature

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Date

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Property Owner's Signature

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Date