

ORDINANCES OF THE CITY OF HELENA, MONTANA

ORDINANCE NO. 3166

AN ORDINANCE REVISING SUBDIVISION APPLICATION REQUIREMENTS AND PROCEDURES BY AMENDING TITLE 12, CHAPTER 2, OF THE HELENA CITY CODE

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA:

That Title 12 of the Helena City Code, Subdivision, is hereby amended by repealing Chapter 2, Procedures, in its entirety and adopting this new Chapter 2 in lieu thereof:

CHAPTER 2

PROCEDURES

SECTION:

- 12-2-1: Applicability
- 12-2-2: Preapplication Consultation
- 12-2-3: Subdivision Application
- 12-2-4: Conformance With Regulations; Variances
- 12-2-5: Subdivision Application Review
- 12-2-6: Community Development Department Review
- 12-2-7: City-County Parks Board Recommendation
- 12-2-8: Public Notice
- 12-2-9: Planning Board Public Hearing And Recommendation
- 12-2-10: Planning Board Report
- 12-2-11: City Commission Review
- 12-2-12: Amended Applications
- 12-2-13: Amended Subdivisions
- 12-2-14: Material Changes
- 12-2-15: Public Improvements To Be Installed
- 12-2-16: Public Improvements Installation Options
- 12-2-17: Final Plat Review
- 12-2-18: Division Of Land Exempt From Subdivision Review
- 12-2-19: Expedited Subdivision Review

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12-2-1: APPLICABILITY: The requirements of this title apply to all subdivisions proposed to be created within the subdivision review jurisdiction of the city.

12-2-2: PREAPPLICATION CONSULTATION:

- A. Prior to submitting a subdivision application, a subdivider must consult with the community development department to become familiar with the city's subdivision application requirements and review process. The subdivider must attend a preapplication consultation prior to submitting a subdivision application or resubmitting a previously submitted subdivision application that has material changes or amendments made by the subdivider after the original application has been determined by the city to contain required elements and sufficient information.

- B. In order to make the preapplication consultation productive, the subdivider should provide as much of the following information as possible:
 - 1. Names and addresses of the subdivider and the owner of the property proposed to be subdivided;
 - 2. Name of proposed subdivision;
 - 3. Location of the property to be subdivided;
 - 4. Existing zoning of the property to be subdivided;
 - 5. Number and size of proposed subdivided lots;
 - 6. Size of the proposed subdivision;
 - 7. Name and contact information for any engineer or surveyor that have been retained;
 - 8. Proposed water and wastewater systems;

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9. Nearest existing water and wastewater mains to the property, and type, size, and location of existing wastewater treatment facilities, including septic systems;
10. Proposed streets;
11. Whether the subdivider intends to apply for a zone change, zoning variance, or subdivision regulation variance;
12. Description of any physical and environmental site conditions on the property;
13. Stormwater drainage system;
14. Proposed special improvement or maintenance districts;
15. Proposed park land dedication;
16. Legible drawing of the proposed subdivision showing layout of existing streets in relationship to proposed improvements and topography of the tract, if possible; drawing does not need to be to scale;
17. A general vicinity map showing existing streets and north arrow;
18. Existing structures on the property;
19. Existing easements and rights of way on the property;
20. Existing and proposed covenants or deed restrictions;
21. Water rights, including the name of owner(s), amount of water by flow rate or volume, date of priority of the right, purpose of use, place of use, and place and means of diversion;
22. Types and locations of agricultural water facilities; and
23. Analysis on how the proposed subdivision complies with the city growth policy.

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- C. The city will make available to the subdivider, before or at the preapplication consultation, a list of public utilities, local, state, and federal agencies, and any other entities that may have a substantial interest in the proposed subdivision and that may be contacted for comment on the subdivision application and the time frames that the utilities, agencies, and entities are given to respond.
- D. For informational purposes only, the state laws, local regulations, and growth policy provisions that may apply to the subdivision review process will be identified prior to or at the preapplication consultation.
- E. The preapplication meeting will be scheduled within thirty (30) days after the subdivider submits a written request for a preapplication consultation and submits the preapplication materials to the city.
- F. To be considered for review, a subdivision application must be submitted within one hundred eighty (180) days of the preapplication meeting consultation. If an application is not submitted within that time frame, the subdivider must request a new preapplication consultation prior to submitting the subdivision application.

12-2-3: SUBDIVISION APPLICATION:

- A. The subdivider must provide one electronic PDF copy and two (2) paper copies of a complete and sufficient application that contains all the elements listed in this section and one copy of the preliminary plat in either an eight and one-half inch by eleven inch ($8\frac{1}{2}$ " x 11"), an eight and one-half inch by fourteen inch ($8\frac{1}{2}$ " x 14"), or an eleven inch by seventeen inch (11" x 17") format.
- B. The application must contain:
 - 1. Analysis of how the proposed subdivision complies with the growth policy;
 - 2. An aerial photograph or a vicinity map with an outline of the subdivision clearly indicated thereon; showing:

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- a. The names of adjoining platted subdivisions and numbers of adjoining certificates of survey previously recorded;
 - b. Proposed or present rights of way to the subject subdivision;
 - c. Location of utilities and railroad rights of way; and
 - d. Any existing or proposed zoning covering the area proposed for subdivision and adjacent properties.
3. A site plan showing the following information to determine compliance with zoning:
- a. The location of all existing structures, including dimensions and size;
 - b. A description of land uses proposed for the subject property and adjacent properties;
 - c. The distance of any existing structure from proposed lot lines (setbacks);
 - d. Location and number of any required parking spaces for existing uses; and
 - e. Location and size of any required landscaping areas for existing uses.
4. A legal description of the subject property, a copy of the currently filed plat or certificate of survey, and the last recorded deed for the subject property;
5. The names and addresses of owners of record of adjacent property and each purchaser under contract for deed of property immediately adjoining the land proposed to be subdivided;
6. Written permission for the subdivider's designated agent to represent the property owner and subdivider and to receive correspondence regarding the subdivision;

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7. A copy of any existing deed restrictions and covenants associated with the subject property;
8. A copy of any existing conservation easements;
9. Completed zoning and subdivision variance applications, if applicable;
10. Any ordinances or resolutions, such as alley or street closures, that specifically impact the plat;
11. A description of any existing or proposed stream bank or water channel alteration, and any proposed construction or modification of water channels, including information about location, extent, type, and purpose of alteration;
12. A description of the location and amount of any proposed cut or fill more than three feet (3') in depth from original grade, and identify each on a plat overlay or sketch map;
13. A soil survey map and the most recent interpretations of soil suitability for the proposed land uses;
14. A description of any mineral rights associated with the subject property and the proposed disposition of those rights;
15. A description of any water rights associated with the subject property, including ownership, volume or flow rate, source of water, point and means of diversion, period of diversion, type of beneficial use, and place of beneficial use;
16. A preliminary engineering report that contains:
 - a. Location and size of existing and proposed water and wastewater mains, and fire hydrants that will serve the subdivision;
 - b. Location of nearest water and wastewater mains if none are located on or adjacent to the tract;
 - c. Type, size and location of existing wastewater treatment facilities including septic systems;

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- d. The location and capacity of any new wastewater lift stations, water pump stations, and water reservoirs that may be required to provide service to the proposed subdivision;
 - e. The location of any existing, lift stations, water pump stations, and water reservoirs that will be used to provide service to the subdivision;
 - f. The anticipated fire flow requirements of the subdivision and fire flows from existing hydrants; and
 - g. The anticipated volumes and flow rates of water and wastewater use resulting from the subdivision based on uses permitted by the applicable zoning district.
17. Transportation information that includes, at a minimum:
- a. All existing and proposed streets, alleys, sidewalks, bike or pedestrian trails, and rights of way located on or adjacent to the subject property;
 - b. A description of how proposed transportation infrastructure will provide connectivity to the existing or planned transportation network and how the street designs are in compliance with the complete street policy;
 - c. Layout information and profiles for proposed rights of way including cross sections grade and curvatures; right of way width; street names;
 - d. Proposed modification or relocation of existing rights of way;
 - e. An estimate of the daily traffic the subdivision will generate when fully developed based on uses and densities permitted by the property's zoning and the estimated traffic generation standards of the Institute of Transportation Engineers;

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f. A traffic impact study whenever the subdivision is projected to generate two hundred (200) or more new vehicle trips per day based on the estimated standards of the Institute of Transportation Engineers. The traffic impact study must:

i. Provide current and anticipated traffic counts;

ii. Provide anticipated traffic distribution within the transportation network;

iii. Identify the current traffic level of service (LOS) and future LOS of streets and intersections in accordance with engineering standards;

iv. If the subdivision will reduce the service of any intersection below level of service 'C' as defined by the Greater Helena Area Transportation Plan, the study must identify improvements or proposed mitigation needed to alleviate that decrease in service, or if the existing conditions are currently below level of service 'C', the study must identify improvements or proposed mitigation needed to maintain the existing level of service;

v. Explain how the proposed transportation system and improvements will affect existing facilities; and

vi. Identify impacts to all modes of transportation and the proposed mitigation of those impacts.

g. For subdivisions that are projected to generate less than 200 new trips per day, submit information showing the capability of existing and proposed streets and non-motorized facilities to safely accommodate the increased traffic associated with the subdivision and describe proposed mitigation of any impacts;

h. Provide information on any accommodation proposed to facilitate public transportation, including school buses;

i. Any existing or proposed easement documents that would provide legal access to the subdivision;

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j. Identify the location and describe the facilities for stream or drainage crossings, and provide the design and weight capacity of any existing or proposed crossings that would be a part of the transportation system; and

k. Provide a narrative explaining how the subdivision conforms to the long-range transportation system identified in the officially adopted transportation plan.

18. A description of the emergency services available to the residents of the proposed subdivision, street distance to the subdivision for all emergency services and estimated response times, and any site constraints that may impede the delivery of emergency services;

19. A site plan showing access to a solid waste collection location for lots with zoning that permit commercial, industrial, or multi-dwelling development;

20. If park land is required, an indication of the subdivider's preference for a land donation or cash in lieu and submit the following:

a. Submit calculations used to determine required park land dedication;

b. If park land is proposed, describe any park land or open space to be dedicated with this subdivision, to determine the appropriateness of the dedication, include a plan for the park land indicating anticipated function, improvements, and the estimated cost of installation and maintenance of those improvements;

c. Identify existing recreational facilities that will serve the subdivision;

d. Indicate if a special district will be established to finance park improvements;

e. Indicate how the park land will be protected during infrastructure installation;

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f. If the park land is proposed to provide multiple uses, such as part of the stormwater system, submit a plan describing the improvements to be installed to accommodate the additional uses of the park land;

g. Indicate if any of the proposed park land is critical wildlife habitat; cultural, historical, or natural resources; agricultural interests or aesthetic values; and submit documentation verifying the area's importance and the ability to provide for long-term protection; and

h. If a land donation to a school district is proposed that is equal to the required park land amount, submit documentation verifying the land is adequate to be used for school facilities or buildings and showing acceptance of the land by the school district trustees.

21. A fire mitigation plan for any portion of the subdivision located in a high fire risk area, including identification of any access constraints;

22. A grading and stormwater or drainage plan that at a minimum includes:

a. Contours with intervals of five feet (5') or less, and proposed drainage pattern;

b. How stormwater will flow from lots and be controlled and treated;

c. Whether stormwater will enter state waters and describe any proposed control measures, and acknowledgement that a stormwater discharge permit may be required;

d. Location of stormwater drains, existing drainage, and proposed drainage patterns prepared by a licensed engineer, showing calculations; and

e. Location of stormwater detention and retention ponds or treatment facilities, including who will maintain these facilities.

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23. A stormwater pollution prevention plan that describes measures to minimize stormwater impacts during construction;

24. Base flood elevation data for subdivisions that have or will have more than fifty (50) lots or involve five (5) acres or more;

25. An estimate of the number of school children that will be added by the proposed subdivision, describing the educational facilities that would serve this subdivision and the distance to each; indicate if bus stops will be provided and, if so, where;

26. A description of the utility companies that will serve the subdivision and any existing and proposed utilities located on and adjacent to the property, including the location of gas, electric, and telecommunication lines and street lights;

27. A description of where postal boxes will be located and how they will be accessed;

28. When a tract of land is subdivided in phases, an overall development plan indicating the subdivider's intentions for development of the entire tract, including incremental provisions for utilities and estimated timing of construction; and

29. An environmental assessment that contains the information required by § 76-3-603, MCA. The summary of probable impacts must contain a detailed analysis of each of the primary review criteria described in § 76-3-608, MCA, and as defined by the growth policy. The analysis must explain the reasoning behind all conclusions relative to the primary review criteria.

C. The following information must be shown on the preliminary plat:

1. Title block that includes:

a. Name of subdivision;

b. Location;

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- c. A scale not exceeding one hundred feet per inch (100' per 1");
 - d. North arrow;
 - e. Date of preparation; and
 - f. Name of preparer.
2. The exterior boundaries of the platted tract;
 3. The location of all section corners or legal subdivision corners of sections pertinent to the subdivision's boundaries;
 4. A perimeter survey, including gross acreage and net acreage;
 5. All lots, blocks, and applicable tracts of land, designated by numbers and the approximate dimensions and area of each lot;
 6. Amended subdivision plats must cite the subdivision and the blocks and lots being amended;
 7. Legal and physical access to the subdivision and to each lot therein, including all existing and proposed streets and alleys, the width of rights of way of each with existing and proposed street names, and existing and proposed locations of intersections or other access points;
 8. The location, width, and purpose of all existing and proposed easements and rights of way and proposed public and private easements;
 9. The location, boundaries, dimensions, and areas of all parks and other grounds dedicated for public use;
 10. The boundaries of applicable water body setbacks;
 11. All portions of the subdivision where the slope exceeds twenty five percent (25%), including areas where the slope may exceed twenty five percent (25%) due to the installation of

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streets, utilities, or other earthwork, as measured in five-foot (5') intervals, as special development areas. All lots in special development areas must show a building site, possible access to the site, and the length and grade of the access;

12. The location of any known or possible objects of historic, archaeological, or aesthetic significance, or cultural sites or structures that may be affected by the proposed subdivision; and

13. The location of any known hazards that could affect the development of the subdivision such as but not limited to:

- a. Geological hazards such as any rock outcroppings, cliffs, drop-offs, or faults;
- b. High fire-risk areas;
- c. Areas of high to moderate risk of liquefaction;
- d. Waterways, ditches, or canals;
- e. Toxic or hazardous waste storage or disposal;
- f. Mining activity;
- g. High-voltage power lines and high-pressure gas lines; and
- h. If site location or previous use of the property may have resulted in soil contamination, a soil analysis must be provided, including lead levels, and if soil contamination exists, indicate proposed mitigation measures.

12-2-4: CONFORMANCE TO REGULATIONS; VARIANCES:

- A. Conformance to these regulations and related laws of the state of Montana is the responsibility of the subdivider.

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- B. Variances from these subdivision regulations may be granted when the subdivider meets the burden of proving:
1. Granting of the variance will not be detrimental to the public health, safety, or general welfare, or injurious to other adjacent properties;
 2. Literal enforcement of the provisions of these regulations will result in unnecessary hardship due to particular physical surroundings, shape, or topographical conditions that are unique to the specific property involved and that cannot be reasonably resolved by redesigning the subdivision proposal;
 3. The variance will not cause a substantial increase in public costs; and
 4. The variance conforms to the growth policy and this code.
- C. To request a variance, the subdivider must submit a written statement describing the requested variance and relevant facts showing why the variance should be granted. The city commission and, if applicable, the planning board, will consider requested variances at the respective meetings on the preliminary plat.
- D. When granting variances, the city commission may impose conditions that, in its judgment, will substantially secure the objectives of these regulations.
- E. When a subdivider requests a variance from this title, the city commission will first consider whether the subdivision application should be approved, conditionally approved, or denied. If the subdivision application is approved or conditionally approved, the commission will then consider whether or not to grant any requested variance.
- F. A subdivision variance request is independent from the determination on the subdivision application and must be reviewed at a city commission public hearing that has been noticed according to subsection 12-2-8(A) of this chapter. A first minor subdivision as defined by state law is not subject

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to the public hearing requirement of this section. Approval or conditional approval of a subdivision application and the preliminary plat does not constitute approval of requested variances.

12-2-5: SUBDIVISION APPLICATION REVIEW:

- A. The city 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 imposed on the preliminary plat. The submission of a subdivision application constitutes a grant of permission by the property owner for the city and affected agencies to enter the subject property. Visible flagging on the property adequate to determine exterior boundaries of the proposed subdivision, park land dedication, and legal access may be required.
- B. Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in this section.
- C. If regulations change during the period that the application is reviewed for completeness and sufficient information, the determination of whether the application is complete and sufficient must be based on the new regulations. The completeness and sufficiency review time will start from the time of the adoption of the new regulations.
- D. Within five (5) full working days of receipt of a subdivision application and fee, submitted in accordance with the application deadlines, the city shall determine whether the application contains all of the listed materials required by section 12-2-3 of this chapter and shall give written notice to the subdivider, or subdivider's designated agent, of the determination.
 1. If the city determines that materials are missing from the application, the city will identify those materials that are not in the application by written notification to the

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subdivider, or subdivider's designated agent. The city will take no further action on the application until the missing materials are submitted.

2. In the event the missing materials are not provided by the subdivider or subdivider's designated agent within one (1) year of notification to the subdivider of the incomplete application, all submitted application materials will be returned to the subdivider or subdivider's designated agent. Subsequent resubmittal of the subdivision application requires payment of a new application fee.

3. If the subdivider resubmits the application to correct deficiencies, the city has five (5) full working days to notify the subdivider, or subdivider's designated agent, whether the resubmitted application contains the listed materials that were missing from the initial application.

4. This process will be repeated until the subdivider submits an application that contains the elements initially identified as missing or the application is withdrawn.

E. Within fifteen (15) full working days after the city notifies the subdivider or subdivider's designated agent that the application contains all of the required materials, the city will determine whether the application and required materials contain detailed, supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions of this title and state law and must notify the subdivider or subdivider's designated agent of the city's determination.

1. If the city determines that the information in the application is not sufficient to allow for review of the proposed subdivision, the city must identify the specific required information in its notification and the city will take no further action on the application until material is resubmitted to correct the insufficiency.

2. In the event sufficient information is not received by the city within one (1) year of notification to the subdivider or subdivider's designated agent of any insufficiency, all application materials will be returned to the subdivider or

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subdivider's designated agent. Subsequent resubmittal of the subdivision application requires payment of a new application fee.

3. If the subdivider resubmits the application to correct any insufficiencies, the city has fifteen (15) full working days to notify the subdivider or subdivider's designated agent whether the resubmitted application and required elements contain detailed, supporting information that is sufficient to allow for review of the proposed subdivision under provisions of the Montana Subdivision and Platting Act and these regulations.

4. This process will be repeated until the subdivider submits an application that contains detailed, supporting information that is sufficient for review of the proposed subdivision under the provisions of state law and this chapter, or the application is withdrawn.

5. A determination that an application contains sufficient information for review does not ensure that the proposed subdivision will be approved or conditionally approved by the city commission and does not limit the ability of city staff, the parks board, the consolidated planning board, or the city commission to request additional information during the review process.

6. After the city has notified the subdivider or subdivider's designated agent that an application contains sufficient information as provided in this section, the governing body shall approve, conditionally approve, or deny a minor subdivision within thirty five (35) working days, or a major subdivision containing less than 50 lots within sixty (60) working days, or a major subdivision containing 50 or more lots within eighty (80) working days unless:

a. The subdivider and city commission agree to an extension or suspension of the review period, not to exceed one year; or

b. A subsequent public hearing is scheduled and held in accordance with state law.

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- F. If the subdivider disagrees with the city's determination that the application is insufficient, the subdivider may appeal to the city manager, providing the subdivider agrees in writing to an extension of the time limitations of § 76-3-604, MCA, and this chapter. The appeal must be made in writing. The city manager or the manager's designee shall render a written decision after receipt of the written appeal.
- G. The city will make comments by public agencies or utilities available to the subdivider and to the general public upon request.

12-2-6: COMMUNITY DEVELOPMENT DEPARTMENT REVIEW:

- A. The community development department may distribute a copy of the subdivision application to potentially affected entities including, but not limited to, city departments, state agencies such as the Montana departments of transportation and environmental quality, utility companies, the public library, and the school district.
- B. The community development department may consult with the subdivider or subdivider's designated agent after presentation of the completed subdivision application on issues and questions that emerge regarding the preliminary plat application.
- C. The community development department shall complete and distribute its report to the subdivider or subdivider's designated agent, the planning board, and the city commission, and make it publicly available. The report shall:
 - 1. Include relevant subdivision application information;
 - 2. Evaluate whether the subdivision application satisfies the requirements of state law and this code;
 - 3. Discuss how the subdivision application relates to the city growth policy;
 - 4. Identify disputed issues and questions; and

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5. Recommend approval, conditional approval, or disapproval.

12-2-7: CITY-COUNTY PARKS BOARD RECOMMENDATION:

- A. When a major subdivision includes the donation of land that may become the maintenance responsibility of the city parks department or when there is a requirement for park land dedication, the parks department will review the proposal and submit an evaluation to the consolidated city-county parks board for a recommendation on the disposition of the proposal. The parks board recommendation will be submitted to the planning board for review with the subdivision application.
- B. When a minor subdivision includes the donation of land that may become the maintenance responsibility of the city parks department or when there is a requirement for park land dedication, the parks department will review the proposal and submit an evaluation to the consolidated city-county parks board for a recommendation on the disposition of the proposal. The parks board recommendation will be submitted to the City Commission for review with the subdivision application.

12-2-8: PUBLIC NOTICE:

- A. When a public hearing is required, the community development department shall cause notice of the public hearing on the subdivision to be given by publication in a newspaper of general circulation in Lewis and Clark County not less than fifteen (15) days prior to the date of hearing as required by law. The notice must include a summary of the application, including the location and size of the proposed subdivision, and specify where additional information can be obtained.
- B. The community development department shall send a notice conforming to subsection A of this section to each property owner of record, and each purchaser under contract for deed of property immediately adjoining the land included in the plat, not less than fifteen (15) days prior to the date of the hearing.

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12-2-9: PLANNING BOARD PUBLIC HEARING AND RECOMMENDATION FOR SUBDIVISIONS:

- A. The planning board shall hold a public hearing on all proposed major subdivisions.
- B. The subdivider will be given first opportunity at the planning board meeting to present information and evidence in support of the application, after the informational presentation by the community development department. The meeting will then be open to public comment. After the public has concluded giving comments and information, the subdivider will be allowed an opportunity to provide additional information that explains or rebuts questions and issues raised during public comment. At the close of the public hearing, the planning board may discuss the subdivision application and, in weighing the review criteria in the Montana Subdivision and Platting Act, consider the following:

Relevant evidence that is in the record relating to the primary review criteria in § 76-3-608(3), MCA, whether the proposed subdivision substantially complies with the growth policy, and whether the subdivision conforms to the provisions of:

- a. State law;
 - b. Title 11 of this code;
 - c. This title; and
 - d. Other rules and regulations in effect for the area to be subdivided.
- C. The board shall then:
 - 1. Discuss the factors supporting approval, conditional approval, or disapproval; and
 - 2. Recommend approval, conditional approval, or disapproval to the city commission.

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12-2-10: PLANNING BOARD REPORT:

- A. Within ten (10) working days, the planning board shall prepare a written report with the assistance of the community development department. The report must include:
1. The recommendation of the planning board for approval, conditional approval, including any recommended conditions, or disapproval of the subdivision;
 2. A recommendation for approval or disapproval of any requested variances; and
 3. A summary of its public hearing.
- B. The planning board report must be distributed to the city commission, the presiding member of the planning board, and the subdivider, and must be made available to the public prior to the city commission meeting.

12-2-11: CITY COMMISSION REVIEW:

- A. The city commission shall review the subdivision application within the time provided by law unless the subdivider consents to an extension of the review period. The review must be done at a public hearing held by the city commission on the subdivision unless the subdivision is exempt from the requirement to hold a public hearing.
- B. The subdivider will be given first opportunity to present information and evidence in support of the subdivision at the start of the public hearing, after the informational presentation by the community development department. After the public has concluded giving comments and information, the subdivider must be allowed an opportunity to provide additional information that explains or rebuts questions and issues raised previously by the public.
- C. Upon an objection made at the hearing, the city commission shall determine whether public comments or documents presented to the city commission at a public hearing regarding a sub-

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division application constitute new information requiring a subsequent hearing in compliance with § 76-3-615, MCA.

- D. If the city commission desires additional information and research before rendering its decision, it may postpone its decision and request the additional information and research so long as the decision will be rendered within the times provided by law, including extensions of time agreed to by the subdivider.
- E. The city commission may only rely on information on the record and shall consider the primary review criteria in § 76-3-608(3), MCA, and whether the proposed subdivision complies with state law, this title, title 11 of this code, other rules and regulations in effect for the property being subdivided, and whether the proposed subdivision substantially complies with the city growth policy.
- F. Following any decision by the city commission to approve, conditionally approve, or deny the proposed subdivision, it shall prepare written findings of fact that discuss the proposed subdivision's compliance with these regulations and state law and send the subdivider a letter, with the appropriate signature, and make the letter available to the public within thirty (30) working days following the city commission decision. The letter shall:
 - 1. Contain information regarding the appeal process for the denial or imposition of conditions;
 - 2. Identify the regulations and statutes that were used in reaching the decision to deny or impose conditions and explain how they apply to the decision;
 - 3. Provide the facts and conclusions that the governing body relied upon in making its decision, and reference documents, testimony, or other materials that form the basis of the decision;
 - 4. Provide the conditions that apply to the subdivision approval and that must be satisfied before the final plat may be approved; and

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5. Include a copy of the approved preliminary plat.
- G. The city commission subdivision approval must be in force for at least one year, but no more than three (3) calendar years unless an extension is granted by the city commission.
1. At least sixty (60) days prior to the expiration of the subdivision approval, the subdivider may submit a written request for an extension of that approval. The subdivider must include:
 - a. The reasons for requesting an extension;
 - b. A description of the extenuating circumstances beyond the control of the subdivider that delayed the completion of the subdivision requirements;
 - c. A description of what progress has been made toward meeting the conditions of approval;
 - d. An agreement that the infrastructure design will comply with the design standards in place at the time of plan submittal; and
 - e. An evaluation of the provision of services and public facilities in the area of the subdivision that may be disrupted by the extension of the subdivision approval.
 2. After determining that the subdivider has submitted bona fide grounds for the extension, the city commission may grant an extension of the preliminary plat approval for a mutually agreed-upon period of time established in writing and signed by the members of the city commission.
 3. The criteria to be considered by the city commission in deciding whether to grant an extension of the preliminary plat approval include, but are not limited to, the following:
 - a. Changes in the subdivision regulations since preliminary plat approval and whether the subdivision is substantially compliant with the new regulations;

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b. Phasing of the subdivision and the ability for existing development to be served by city services independent of future improvements;

c. Dependence on other development on any public infrastructure to be installed with the subdivision; and

d. Whether mitigation for impacts of the subdivision identified during preliminary plat review and the findings of fact, remain relevant, adequate, and applicable to the present circumstances of the subdivision and community.

4. The city commission may issue more than one extension.

12-2-12: AMENDED APPLICATIONS:

A. If the subdivider changes the subdivision application after the city makes a determination of sufficiency pursuant to this chapter, the subdivider shall submit an amended application to the city for review and submit a written request for suspension of the subdivision review period.

B. The city will review the amended application and determine whether the changes to the subdivision application are material.

1. If the city determines the changes are not material, the subdivision review period resumes when the city mails notice of the determination to the subdivider.

2. If the city determines the changes are material, the city may either:

a. Require the subdivider to begin the subdivision review process again, starting with the preapplication consultation, and require payment of a new application fee; or

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b. If the amended application was submitted after a public hearing was held on the original subdivision application before either the planning board or the city commission, schedule a new public hearing before any body having considered the original application. A supplemental staff report must be prepared to address the changes to the original application. If a new public hearing is held pursuant to this chapter, the subdivision review period is suspended for the time period between notice of the city's determination of a material change to the application and ten (10) working days after the date of the hearing to review the amended application.

12-2-13: AMENDED SUBDIVISIONS:

A. If the subdivider proposes to change the subdivision after city commission approval or conditional approval, the subdivider shall submit the proposed changes to the city for review.

1. If the city determines the changes are not material, notice of that decision will be mailed to the subdivider.

2. If the city determines the changes are material, the city shall either:

a. Require the subdivider to begin the subdivision review process again, starting with the preapplication consultation, and require payment of a new application fee; or

b. Require the subdivider to submit an amended subdivision application with an evaluation of the impacts the revisions will have based on the review criteria and require payment of a minor subdivision application fee.

i A supplemental staff report must be prepared to address the changes to the approved subdivision; and

ii. A new city commission public hearing must be conducted to take comments on the new subdivision application. The city commission may require additional

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conditions that mitigate impacts resulting from the changes to the subdivision.

- B. Once the city commission approves changes to a subdivision, the previous subdivision is superseded. A previously approved subdivision may not be reinstated without city commission review and approval.

12-2-14: MATERIAL CHANGES:

- A. The following changes may be considered material:
 - 1. An amendment that may result in a change in the conditions for approval;
 - 2. An increase in the number of lots or an increase in the square footage of the subdivision;
 - 3. Reconfiguration of a lot or lots that could result in an increase in traffic that was not evaluated in the subdivision traffic impact study;
 - 4. Street layout resulting in a change in legal and physical access;
 - 5. Relocation or an increase or decrease in proposed right of way dedication used for access to the subdivision;
 - 6. Change in the size or reconfiguration of park land or open space;
 - 7. A change in water, wastewater, or stormwater proposals;
or
 - 8. A change in zoning that results in a significant change in uses or density.
- B. If the subdivider disagrees on a determination by the community development department that the changes are material, the subdivider may appeal the determination to the city manager by submitting a written notice of appeal within five (5) working days that sets forth the reasons for the

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disagreement with the determination. The subdivider must agree in writing to an extension of the time set by law.

- C. If the city manager decides that the evidence and information demonstrate that the changes to the subdivision are material, the city manager will determine the appropriate disposition of the application.
- D. If the city manager decides that the evidence and information demonstrate that the changes to the subdivision are not material, the review period resumes as of the date of the decision.

12-2-15: PUBLIC IMPROVEMENTS TO BE INSTALLED: The following public improvements must be installed in conformance with plans, specifications and a construction schedule approved by the city. The required improvements must be installed as follows:

- A. Streets within and adjacent to the subdivision to city standards.
- B. Sidewalks on both sides of the streets must be installed by the owner of the subdivided property concurrent with installation of streets, curbs, and gutters. Boulevard landscaping and trees, including irrigation, must be installed on public rights of way abutting private or public parks, open space, common areas, or other areas intended to be used by the public or common owners must be installed by the owner of the subdivided property concurrent with installation of streets, curbs, and gutters.
- C. All non-motorized paths located on public rights of way.
- D. Curb and gutter must be installed on both sides of the streets.
- E. All stormwater facilities.
- F. Street name, traffic, and parking control signs must be provided to developer at cost by the city.

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- G. Except as herein provided, new utility distribution lines must be placed underground. Associated equipment, such as pad mounted transformers, may be placed above the surface if required for reasons of convenience, safety, or economy. This subsection does not apply to a main electric feeder line capable of conveying two thousand (2,000) kVA or more.
- H. Water and wastewater mains, fire hydrants, manholes, stormwater lines, and other necessary appurtenances to serve the subdivision. Water and wastewater mains must be installed to the exterior boundary lines of the subdivided property to allow the future connection of adjacent property.

12-2-16: PUBLIC IMPROVEMENTS INSTALLATION OPTIONS:

- A. The following improvements necessary to protect public health and safety must be installed and accepted by the city prior to city commission approval of a final plat:
1. A functioning stormwater system, including curb and gutter and paved streets when necessary for the proper functioning of the stormwater system;
 2. Water and wastewater mains serving all lots to be final platted;
 3. Access to all lots installed with a minimum all-weather surface that can accommodate emergency access, subject to the paving requirement above; and
 4. Legal and physical access to the subdivision, including off-site access, installed with a minimum all-weather surface that can accommodate emergency access, subject to the paving requirement above.
 5. Sidewalks on both sides of all streets that have been installed.
- B. The subdivider has the following options for installation of the remaining required improvements:

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1. The subdivider may install the improvements at subdivider's expense. If the subdivider elects to install improvements at subdivider's expense, such installation must be completed within twelve (12) months from the date of final plat approval. Reasonable time extensions may be granted by the city commission.

2. The subdivider may provide a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the city that provide for and secure the construction and installation of the remaining required improvements within a period specified by the city. The amount of the bond or security may be reduced in accordance with completion and final city acceptance of portions of the required improvements.

12-2-17: FINAL PLAT REVIEW:

- A. After approval of the subdivision by the city commission, the subdivider may present a final plat a to the city commission for approval.
- B. The final plat application and all supporting documents must be submitted to the city at least sixty (60) working days prior to the expiration of subdivision approval to allow for review prior to plat expiration. The final plat application must contain the information and be in the format as required by state law and include the following:
 - 1. The final plat application;
 - 2. The final plat review fee;
 - 3. A statement outlining how each condition of approval has been satisfied;
 - 4. A certificate of title, a title insurance policy, or a report from a title insurance company on the condition of title to the property proposed for subdivision that identifies the owners of record of the property, lien holders or claimants of record, encumbrances, easements and restrictions of record, and all other conditions of title of public record,

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and accompanied by a guarantee of the accuracy of the report from the title insurance agent or its underwriter;

5. Written consent to subdivide from lien holders or claimants of record;

6. Approval from the city public works department indicating acceptance of installed infrastructure;

7. Public improvements agreement and financial guarantee when applicable;

8. A municipal facilities exemption or subdivision approval from the department of environmental quality;

9. Approval from the parks and recreation department for any required park land dedication and improvements or payment of cash in lieu thereof;

10. When the park dedication is in the form of a cash donation, the subdivider must provide one of the following to verify the fair market value of the unsubdivided, unimproved land:

a. A Comparative Market Analysis performed by a licensed realtor;

b. A raw land appraisal by a licensed appraiser; or

c. The sale price of the property being subdivided if it was purchased within one (1) year of the date of the subdivision final plat application submittal.

11. Deeds conveying title to the city for dedicated properties such as parks and stormwater facilities;

12. Show public utility easements within the subdivision with the correct dimensions and location and provide easement agreements to the city for any city utilities not in rights of way;

13. A copy of MDT access permit or agreement for highway intersection and other required MDT access;

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14. A petition to create a lighting district;
 15. A legal description of the subject property and a copy of the last recorded conveyance document for the subject property;
 16. Verification that all taxes and assessments on the property have been paid in full; and
 17. Three (3) copies of the final plat, completed in accordance with the uniform standards for final subdivision plats, and either one eleven inch by 17 inch (11" x 17") or one eight and one-half inch by eleven inch (8¹/₂" x 11") copy. The subdivider also must submit the final plat to the city in a PDF format.
- C. The city will not accept, begin processing, or schedule any actions on a final plat submittal until a complete application, payment of fee, and copies of the final plat have been received.
 - D. If the city determines that the final plat differs materially from the approved or conditionally approved subdivision, the subdivider is required to submit an amended application pursuant to this chapter.
 - E. The community development department shall review the conditions of approval to see if they have been satisfied and prepare a written recommendation to the city commission on whether the final plat should be approved for filing.
 - F. The city commission shall approve or deny the final plat. After the city commission's review and action, the original and one copy of the final plat must be returned to the subdivider.
 - G. The city commission shall approve the final plat if:
 1. It conforms to the conditions set forth in the subdivision approval and the terms of applicable law and regulations promulgated thereunder, including the uniform standards for final subdivision plats; and

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2. The county treasurer has certified that all real property taxes and special assessments levied and assessed on the land to be subdivided have been paid.
- H. If the final plat is denied, the grounds for denial must be stated in the records of the city commission and a copy sent to the subdivider. The subdivider may make the necessary corrections and resubmit the final plat for approval.
- I. The subdivider shall file the approved and signed final plat with the Lewis and Clark County clerk and recorder, and deliver a copy of the final plat to the community development department. Any dedications must be accepted by specific action by the city commission and noted on the final plat.

12-2-18: DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW:

- A. The use of any exemption set forth in §§ 76-3-201 and 76-3-207, MCA, for the purposes of evading subdivision review, city zoning regulations, or installation of infrastructure such as access, water, and wastewater, is prohibited.
- B. Any subdivision that is exempt from subdivision review must be certified by the director of community development or a designated representative and the city engineer or a designated representative that the exemption is applicable. The property owners shall submit the following information to show entitlement to exemption and compliance with city code:
 1. The last recorded deed or other documentation of ownership of all affected property;
 2. The most recently filed plat or certificate of survey;
 3. A proposed amended plat or certificate of survey showing legal and physical access to each lot, and the proposed configuration of the tracts in compliance with survey requirements;
 4. A list of prior divisions of land or reconfiguration of the particular tract in question without local government

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review and previous exemptions used for the divisions or reconfigurations;

5. A site plan showing access to adequate water and wastewater mains and fire hydrants;

6. A diagram showing that any structures on the subject lots are in compliance with zoning;

7. Show the location, width, and purpose of all easements on the subject property or off-site easements that may impact the provision of services, stormwater, and access; and

8. For divisions made outside of platted subdivisions for the purpose of a single gift or sale to a member of the property owner's immediate family, verification that the family member is the spouse of the grantor, or whether by blood or adoption a son, daughter, mother, or father of the grantor.

- C. Plats and certificates of survey may not be certified or approved for filing unless the lots or parcels created thereby have legal and physical access to public ways, and are served by water and sewer wastewater mains located in adjacent public rights of way or city held easements, and all required stormwater facilities have been provided. The installation of required public improvements under this section may be deferred pursuant to this chapter.
- D. The city shall review evidence submitted by the subdivider requesting an exemption and will determine if the proposal is an attempt to evade subdivision review. The department of community development will notify the subdivider in writing if the exemption is disallowed.
- E. Any person whose proposed use of an exemption has been denied by the director of community development because the proposed division of land has been deemed an attempt to evade subdivision regulations may appeal the decision to the city commission by filing a written appeal with the city manager within twenty (20) days of the date of written denial. The city manager will place the requested appeal on the city commission agenda and notify the subdivider of the meeting.

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- F. If the city commission concludes that the evidence and information support that the exemption is not being invoked to evade subdivision 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 commission has found is not an attempt to evade subdivision regulations, may be filed or an instrument of conveyance recorded if it is accompanied by written authorization of the city.

12-2-19: EXPEDITED SUBDIVISION REVIEW:

- A. An amended plat that does not create any additional lots, but redesigns or rearranges six (6) or more lots in a platted subdivision qualifies for expedited review under this section if:
1. The resulting lots have legal and physical access to public rights of way, are served by city water and wastewater mains located in adjacent public rights of way or city held easements; and
 2. The resulting lots are in compliance with zoning and survey requirements.
- B. An application for and review of a subdivision under this section is the same as described in chapter 5 of this title with the following exceptions:
1. The notice of the city commission meeting does not need to be mailed to owners of adjacent property; and
 2. Park land dedication is not required. (Ord. 3166, 9-23-20133)

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FIRST PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA,
THIS 14th DAY OF JANUARY, 2013.

/S/ James E. Smith
MAYOR

ATTEST:

/S/ Debbie Havens
CLERK OF THE COMMISSION

FINALLY PASSED BY THE COMMISSION OF THE CITY OF HELENA,
MONTANA, THIS 23rd DAY OF SEPTEMBER, 2013.

/S/ James E. Smith
MAYOR

ATTEST:

/S/ Debbie Havens
CLERK OF THE COMMISSION