

ORDINANCES OF THE CITY OF HELENA, MONTANA

ORDINANCE NO. _____

AN ORDINANCE REVISING SUBDIVISION REVIEW PROCEDURES, PHASED SUBDIVISION REQUIREMENTS, EXPEDITED SUBDIVISION REVIEW PROCESSES, REQUIREMENTS FOR DETERMINATION OF SUBSEQUENT HEARING WHEN CONSIDERING NEW INFORMATION, AND REVISING THE CRITERIA AND REVIEW REQUIREMENTS OF EXEMPT DIVISIONS BY AMENDING CHAPTER 2 OF TITLE 12 OF THE HELENA CITY CODE

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

Title 12, Subdivision Regulations, Chapter 2, Procedures, of the Helena City Code, is hereby amended as follows:

CHAPTER 2 PROCEDURES

12-2-1: through 12-2-4: No change.

12-2-5: SUBDIVISION APPLICATION REVIEW:

A. through J. No change

K. ~~Prior to submission of infrastructure plans for review for each phase~~For any phase of an approved phased subdivision submitted for final plat approval more than 5 years after the date of preliminary approval, the subdivider shall provide written notice to the City Commission not more than 1 year or less than 90 calendar days in advance of submitting the final plat application. The notice shall include any changes to the preliminary plat and an analysis of the phase as it relates to the primary review criteria and City regulations and standards. The City Commission must hold a public hearing pursuant to 76-3-605(3), Montana Code Annotated within thirty (30) working days after receipt of the written notice from the subdivider to determine whether changed circumstances justify amending any conditions of approval or imposing additional conditions of approval. The City Commission may amend or impose additional conditions of approval only if it determines, based on a review of the primary criteria, that the existing conditions of approval are inadequate to mitigate the potentially significant adverse impacts identified during the original review based on changed circumstances.

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~~After the hearing, the City Commission shall determine whether that phase contains any changes to primary criteria impacts or contains new information that create new potentially significant adverse impacts for the phase or phases.~~

- L. Notwithstanding the provisions of 76-3-610(2), Montana Code Annotated, the City Commission ~~and may impose necessary, additional conditions to minimize potentially significant adverse impacts identified in the review of each phase of the development for changed primary criteria impacts or new information.~~ must shall issue supplemental written findings of fact within twenty (20) working days of the hearing.
- M. Any additional conditions must be met before final plat approval for each particular remaining phase and the approval in accordance with 76-3-611, Montana Code Annotated, is in force for not more than three (3) calendar years or less than one calendar year unless the City Commission approves phased developments that extend beyond the time limits set forth in 76-3-610, Montana Code Annotated, but all phases of the phased development must be submitted for review and approved, conditionally approved, or denied within twenty (20) years of the date the overall phased development preliminary plat is approved by the City Commission. (Ord. 3245, 10-29-2018)

~~12-2-6: through 12-2-11: No change.~~

~~12-2-12: SUBSEQUENT HEARINGS CONSIDERING NEW INFORMATION:~~

~~A. If relevant, new information from the applicant or other interested parties is presented concerning a subdivision application or substantial change to a subdivision after City Commission approval or conditional approval that has never been heard or considered by the City and has a substantial effect on the City's consideration of the subdivision or application, the City may;~~

- ~~1. Approve, conditionally approve, or deny the subdivision without basing its decision on the new information if the city determines that the information is irrelevant, not credible, or not a substantial change to the proposed subdivision and has no substantial adverse impacts; or~~

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2. Schedule or direct its agent or agency to schedule a hearing before the City Commission for the consideration of only the new information, including any material changes, for the purpose of considering its finding of fact and conclusions and any proposed conditions of approval regarding the new information that the City Commission will rely on in making its decision on the proposed subdivision.

B. If the City Commission finds that the new information submitted requires a hearing, the sixty (60) working day restriction required in 12-2-5(E) (6) is suspended and a new hearing will be held within 45 working days of the City Commission's determination. After the new hearing, the sixty (60) working day timeline resumes at the City Commission's next scheduled public meeting for which proper public notice can be provided. The City Commission may not consider any information regarding the subdivision application that is presented after the hearing when making its decision to approve, conditionally approve, or deny the proposed subdivision.

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. (Ord. 3166, 9-23-2013)~~

~~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.~~

~~(1) A supplemental staff report must be prepared to address the changes to the approved subdivision; and~~

~~(2) A new City Commission public hearing must be conducted to take comments on the new subdivision application. The City Commission may require additional 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~~

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~~subdivision may not be reinstated without City Commission review and approval. (Ord. 3166, 9-23-2013)~~

~~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 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.~~

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~~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. (Ord. 3166, 9-23-2013)~~

12-2-1~~35~~: No change.

12-2-1~~46~~: No change.

12-2-1~~57~~: No change.

12-2-1~~68~~: DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW:

A. The use of any exemption set forth in ~~s~~Sections 76-3-201 and 76-3-207, Montana Code Annotated, for the purposes of evading subdivision review, city zoning regulations, or installation of infrastructure such as access, water, and wastewater, is prohibited. ~~(Ord. 3166, 9-23-2013)~~ These exemptions are listed below:

1. Section 76-3-201, Montana Code Annotated. Exemption for certain divisions of land.
 - a. Order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;
 - b. Security for construction mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;
 - c. Interest in oil, gas, minerals, or water severed from the surface ownership of real property;
 - d. Cemetery lots;
 - e. Reservation of a life estate;
 - f. Lease or rental for farming and agricultural purposes;
 - g. Is in a location over which the state does not have jurisdiction; or

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h. Is created for rights-of-way or utility sites.

2. Sections 76-3-207, Montana Code Annotated. Subdivisions exempted from review but subject to survey requirements.

a. Relocation of common boundary lines between adjoining properties outside of platted subdivisions;

b. Outside of platted subdivisions a single gift or sale to a member of the landowner's immediate family;

c. Divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes, subject to the provisions of 76-3-211, Montana Code Annotated;

d. Relocation of common boundaries for five or fewer lots within a platted subdivision;

e. Relocation a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision; and

f. Aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.

3. Sections 76-3-207, Montana Code Annotated. Family transfers.

a. Divisions within platted a subdivision, are exempt from additional subdivision review and subject to any zoning regulations if the division:

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(1) Is within a subdivision that has been approved by a local governing body;

(2) Creates parcels of a size allowed within the subdivision; and

(3) Is gifted or sold to a member of the landowner's immediate family;

b. a division of land exempted under subsection (b) of Section 1 of 76-3-207, Montana Code Annotated, that is also located in a zoning district is allowed if each family transfer parcel created by the division is at least 5 acres, unless the zoning district allows for smaller lot sizes; and

c. A division of land transferred to an immediate family member pursuant to subsections (b) or (c) of Section 1 of 76-3-207, Montana Code Annotated, may be transferred regardless of age and may be owned jointly with that immediate family member's spouse.

B. Any division or aggregation of land 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 an electronic copy of the following information to show entitlement to exemption and compliance with this 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 review and previous exemptions used for the divisions or reconfigurations;

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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. A document showing 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;
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; and
9. A complete and correct application must be resubmitted within one year of notification of an incomplete application. Resubmittal of the application beyond that time frame requires a new application.

~~C. The City shall consider the following in determining whether a proposed plat or certificate of survey using the exemptions provided in 76-3-201, Montana Code Annotated or 76-3-207, Montana Code Annotated is an attempt to evade subdivision review:~~

- ~~1. An exempt plat or certificate of survey may not be certified or approved for filing when the original lots or parcels have legal and physical access to public ways, are served by water and wastewater mains that are built to City Engineering Standards and all required stormwater facilities have been provided and the proposed plat or certificate of survey configuration creates lots or parcels without those services. The installation of required public improvements under this section may be deferred pursuant to this chapter.~~

- ~~2. An amended plat or certificate of survey which includes lots or parcels that do not have legal and physical access to public ways, are not served by water and wastewater mains that are compliant with City standards, and on which all required stormwater facilities are not included must place a development restriction on those lots or parcels on the amended plat or certificate of survey and any instrument transferring title thereto. (Ord. 3245, 10-29-2018)~~

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CD. The City shall review ~~evidence~~the application submitted by the subdivider requesting an exemption and will determine if the application is complete and if the proposal is an attempt to evade subdivision review. The Department of Community Development will notify the subdivider in writing if the application is incomplete or if exemption is disallowed.

DE. 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.

EF. 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. (Ord. 3166, 9-23-2013)

G. An immediate family member or the spouse of an immediate family member who receives a division of land pursuant to 12-2-18(A) (3) may not transfer or otherwise convey the division of land for two (2) years after the date of the division. To address hardship situations an immediate family member may request a variance from the City Commission through the appeals process in 12-2-18(E).

12-2-179: EXPEDITED SUBDIVISION REVIEW:

A. through B. No change

C. If the subdivision application meets the criteria for expedited review and includes a request for variance, the time for the Governing Body to hold a hearing pursuant to 12-2-5(E) (6) is extended to forty-five (45) working days.

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FIRST PASSED BY THE COMMISSION OF THE CITY OF HELENA,
MONTANA, THIS DAY OF.

MAYOR

ATTEST:

CLERK OF THE COMMISSION

FINALLY PASSED BY THE COMMISSION OF THE CITY OF
HELENA, MONTANA, THIS DAY OF.

MAYOR

ATTEST:

CLERK OF THE COMMISSION

