

ORDINANCES OF THE CITY OF HELENA, MONTANA

ORDINANCE NO. 3245

AN ORDINANCE REVISING SUBDIVISION APPLICATION REQUIREMENTS, EXTENSIONS OF PRELIMINARY PLAT APPROVAL, PUBLIC IMPROVEMENT INSTALLATION OPTIONS, AND FINAL PLAT APPLICATION REQUIREMENTS AND REVIEW 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: No change

12-2-2: **PREAPPLICATION CONSULTATION:**

A. No change.

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 tract proposed to be subdivided;
2. Name of proposed subdivision;
3. Location of tract to be subdivided;
4. Existing zoning of the tract to be subdivided;
5. Number and size of proposed subdivided lots if a phased development, each phase should include this data per phase;

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6. Size of the proposed subdivision; if a phased development, the size of each phase should be shown;
 7. State the name and contact information for any engineer or surveyor that has been retained;
 8. Proposed water system;
 9. Proposed wastewater system;
 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 affecting development;
 13. Storm water drainage provisions;
 14. Proposed special improvement or maintenance districts;
 15. Proposed park land dedication; if a phased development, each phase should include this data per phase;
 16. through 25. No change
- C. through F. No change (Ord. 3166, 9-23-2013; amd. Ord. 3245, 10-29-2018)

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 (8¹/₂" x 11"), an eight and one half inch by fourteen inch (8¹/₂" x 14"), or an eleven inch by seventeen~~

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~~inch (11" x 17") format.~~

B. The application must contain:

1. through 16. No change.

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, and 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;

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:

(1) Provide current and anticipated traffic counts;

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(2) Provide anticipated traffic distribution within the transportation network;

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

(4) 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;

(5) Explain how the proposed transportation system and improvements will affect existing facilities; and

(6) Identify impacts to all modes of transportation and the proposed mitigation of those impacts.

g. For subdivisions that are projected to generate less than two hundred (200) new trips per day, submit information showing the capability of existing and proposed streets and nonmotorized 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; and

l. If a street or alley created by the plat will intersect and access a state or federal right-of-way, a copy of the notification to that entity of the anticipated access and the state or federal response.

18. through 27. No change.

28. When ownership of infrastructure improvements that are intended to be transferred to the city affect a third party easement, a copy of notification to that entity of the potential work within their easement;

29. 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; a subdivider applying for a phased development shall submit with the subdivision application an overall phased development preliminary plat on which independent platted development phases must be shown. Each phase must include a minimum of 6 lots and the date of completion of each phase. Each phase must include:

a. A separate preliminary plat with the number of lots in that phase;

b. The location of proposed water and wastewater infrastructure needed to serve that phase and demonstrate how these systems can function independently

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and will provide for future connectivity;

c. The location of proposed storm water infrastructure needed to serve that phase and demonstration how these facilities can function independently and will provide for future connectivity;

d. The location of proposed streets and non-motorized infrastructure needed to serve that phase and demonstration how the proposed motorized and non-motorized transportation network can function independently and will provide for future connectivity;
and

e. The proposed parkland dedication and demonstration how the dedicated parkland can function independently.

~~29~~ 30. An environmental assessment that contains the information required by section 76-3-603, Montana Code Annotated. The summary of probable impacts must contain a detailed analysis of each of the primary review criteria described in section 76-3-608, Montana Code Annotated, and as defined by the growth policy. The analysis must explain the reasoning behind all conclusions relative to the primary review criteria.

C. No change. (Ord. 3166, 9-23-2013; amd. Ord. 3245, 10-29-2018)

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

A. through D. No change.

E. When a subdivider requests a variance from this title, the city commission will first consider whether or not to grant any requested variance, then 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.~~

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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 12-2-8A of this chapter. A division of land or aggregation of land exempt from subdivision review and a first minor subdivision as defined by state law is not subject 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. (Ord. 3166, 9-23-2013; amd. Ord. 3245, 10-29-2018)

12-2-5: SUBDIVISION APPLICATION REVIEW:

A. through G. No change

H. A subdivider applying for phased development review shall submit with the phased development application an overall phased development preliminary plat on which independent platted development phases must be presented. The phased development application must contain the information required pursuant to City of Helena Subdivision Ordinance section 12-2-3 for all phases of a development and a schedule for when the subdivider plans to submit for review each phase of the development.

I. Except as otherwise provided by this section, the phased development application must be reviewed in conformity with this code.

J. The subdivider may change the schedule for review of each phase of the development upon approval of the city commission, after a public hearing, if the change does not negate conditions of approval or otherwise adversely affect public health, safety, and welfare.

K. Prior to submission of infrastructure plans for review for each phase, the subdivider shall provide written notice to the city commission. The notice shall include any changes to

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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), MCA within thirty (30) working days after receipt of the written notice from the subdivider. 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), MCA, the city commission must issue supplemental written findings of fact within twenty (20) working days of the hearing 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.

- M. Any additional conditions must be met before final plat approval for each particular phase and the approval in accordance with 76-3-611, MCA, is in force for not more than three (3) calendar years or less than one(1) calendar year unless the city commission approves phased developments that extend beyond the time limits set forth in 76-3-610, MCA, 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. 3166, 9-23-2013; amd. Ord. 3245, 10-29-2018)

12-2-6 through 12-2-10: No change.

12-2-11: CITY COMMISSION REVIEW:

A. through F. No change.

- G. The city commission ~~subdivision~~ preliminary plat approval must be in force for at least (1) one year, but no more than three (3) calendar years ~~unless an extension is granted by~~

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the city commission. No earlier than six (6) months but no less than sixty (60) days prior to the expiration of the preliminary plat approval the subdivider may request the city commission extend its approval of the preliminary plat for a mutually agreed-upon period of time. Any preliminary plat approval extension requests in excess of three (3) years must be reviewed following a public hearing. The city commission may issue more than one extension.

1. At least sixty (60) days prior to the expiration of the ~~subdivision preliminary plat approval~~, but no earlier than six (6) months prior to the expiration of the preliminary plat 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~~ conditions of approval;
- c. A description of what progress has been made toward meeting the conditions of approval;
- d. An agreement that the infrastructure design and installation 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~~ preliminary plat 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.

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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;

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. Whether or not any changes to the primary criteria impacts identified in the original preliminary plat approval or any new information not previously considered exists that creates any new potentially significant adverse impacts that would support denial of the subdivision extension request. Additional conditions may not be imposed as a condition of extension of the preliminary plat approval.~~

~~4. The city commission may issue more than one extension. (Ord. 3166, 9-23-2013; amd. Ord. 3245, 10-29-2018)~~

12-2-12: through 12-2-15. No change.

12-2-16: PUBLIC IMPROVEMENTS INSTALLATION OPTIONS:

A. The following improvements necessary to protect public health and safety must be installed in accordance with city approved plans and must obtain interim acceptance, as defined in the City of Helena Engineering Standards, ~~accepted~~ by the city prior to city commission approval of a final plat:

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~~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 systems and appurtenances serving all lots to be final platted;~~

~~3. Streets providing legal and physical Access to all lots within the subdivision, including off-site access to the subdivision, 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. In addition to the public improvements identified in subsection (A) above, the city commission may require public improvements listed in section 12-2-15 to be installed and completed prior to obtaining final plat approval if there is a finding at the time of preliminary plat review that the installation of those public improvements prior to filing the final plat are necessary to protect public health and safety.

BC. The subdivider has the following options for installation of the remaining required improvements:

~~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~~

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~~the city commission.~~

2. In lieu of the completion of the construction of public improvements not identified in subsection (A) or (B) above, prior to the approval of a final plat, 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 eighteen (18) months from the date of final plat approval. Reasonable time extension may be granted by the city commission provided bonding or other security is also extended. The amount of the bond or security may be reduced in accordance with completion and final city acceptance of portions of the required improvements. (Ord. 3164, 9-23-2013; amd. Ord. 3245, 10-29-2018)

12-2-17: FINAL PLAT REVIEW:

- A. After approval of the ~~subdivision~~ preliminary plat by the city commission, the subdivider may present a final plat to the city commission for approval. Portions of an approved preliminary plat will not be approved for final plat unless the portion has been reviewed as a part of a phased development and the portion represents an entire phase.

- B. Prior to submitting a final plat application:
 - 1. The applicant must submit 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, lienholders or claimants of record, encumbrances, easements and restrictions of record, and all other conditions of title of public record, and accompanied by a guarantee of the accuracy of the report from the title insurance agent or its underwriter;

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2. When the park dedication is in the form of a cash donation, the applicant 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.

3. The applicant must submit documentation verifying park dedication is in compliance with required benefits stated in 76-3-621, MCA, and assures long term protection of lands used for meeting the required park dedication but ownership is not transferred to the City of Helena.

BC. 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 written summary and supporting documentation verifying statement outlining how each condition of preliminary plat 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, lienholders or claimants of record, encumbrances, easements and restrictions of record, and all other conditions of title of~~

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

~~54.~~ Written consent to subdivide from lienholders or claimants of record;

~~65.~~ Approval from the City Public Works Department indicating acceptance of installed infrastructure;

~~76.~~ Signed public improvements agreement and approved financial guarantee when applicable;

~~87.~~ A municipal facilities exemption or subdivision approval from the Department of Environmental Quality;

~~98.~~ ~~Approval~~ Verification from the parks and recreation department for any required park land dedication and improvements or payment of cash in lieu thereof is in compliance with the preliminary plat as approved by the city commission;

~~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 year of the date of the subdivision final plat application submittal.~~

~~119.~~ Deeds conveying title to the city for dedicated properties such as parks and stormwater facilities;

~~1210.~~ Show public utility easements within the subdivision with the correct dimensions and location and

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provide easement agreements to the city for any city utilities not in rights of way;

11. When ownership of infrastructure improvements that are intended to be transferred to the city affect a third party easement, documentation from that entity verifying the work within their easement is in compliance with their easement.

~~13~~12. A copy of MDT access permit or agreement for highway intersection and other required MDT access;

~~14. A petition to create a lighting district;~~

~~15~~3. A legal description of the subject property and a copy of the last recorded conveyance document for the subject property;

~~16~~4. Verification that all taxes and assessments on the property have been paid in full; and

~~16~~5. Verification that an examining land surveyor has reviewed and approved the final plat.

~~17~~7. Addressing Coordinator approval of street names; 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 seventeen 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 and application materials 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. A final plat is considered to be received on the date of delivery to the Community Development Department when accompanied by the review fee.

D. Within twenty (20) working days of receipt of a final plat,

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the Community Development Department shall determine whether the final plat contains the information required under subsection (B) and shall notify the subdivider or, with the subdivider's written permission, the subdivider's agent of that determination in writing. If the city determines that the final plat does not contain the information required under subsection (B) the city shall identify the final plat's defects in the notification.

- E. The city may review subsequent submissions of the final plat only for information found to be deficient during the original review of the final plat under subsection (D).
- F. The time limits provided in subsection (D) apply to each submission of the final plat until a written determination is made that the final plat contains the information required under subsection (B) and the subdivider or the subdivider's agent is notified.
- G. If a determination is made under subsection (D) that the final plat contains the information required under subsection (B), the city commission shall review and approve or deny the final plat within twenty (20) working days.
- H. The subdivider or the subdivider's designated agent and the Community Development Department may mutually agree in writing to extend the review periods provided for in this section and establish the timeframes for the extension and any relevant parameters.
- DI. 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.
- EJ. 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.

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FK. 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.

GL. 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

2. The Lewis and Clark County Treasurer has certified that all real property taxes and special assessments levied and assessed on the land to be subdivided have been paid.

HM. 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.

IN. 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. (Ord. 3166, 9-23-2013; amd. Ord. 3245, 10-29-2018)

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

A. No change

B. Any ~~subdivision~~ 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

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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 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. 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.

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C. The city shall consider the following in determining whether a proposed plat or certificate of survey using the exemptions provided in 76-3-20, MCA or 76-3-207, MCA is an attempt to evade subdivision review:

E- 1. An exempt ~~Plats~~ plat and or certificates of survey may not be certified or approved for filing unless when the original lots or parcels created thereby have legal and physical access to public ways, and are served by water and sewer wastewater mains that are built to City Engineering Standards located in adjacent public rights of way or city held easements, 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. 3166, 9-23-2013; amd. Ord. 3245, 10-29-2018)

D. through F. No change

FIRST PASSED BY THE COMMISSION OF THE CITY OF HELENA, MONTANA,

THIS 15th DAY OF OCTOBER, 2018.

/S/ WILMOT J. COLLINS
MAYOR

ATTEST:

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DEBBIE HAVENS
CITY CLERK

FINALLY PASSED BY THE COMMISSION OF THE CITY OF HELENA,
MONTANA, THIS 29TH DAY OF OCTOBER, 2018.

/S/ WILMOT J. COLLINS
MAYOR

ATTEST:

/S/ DEBBIE HAVENS
CITY CLERK