

MODEL RESOLUTION NO. 2013- __

RESOLUTION AMENDING THE _____ COUNTY SUBDIVISION REGULATIONS (date adopted) TO REFLECT LEGISLATIVE CHANGES TO THE MONTANA SUBDIVISION AND PLATTING ACT IN 2007, 2009, 2011 AND 2013.

NOTE: Those changes in red are from the 2013 legislative session.

WHEREAS, _____ County updated its subdivision regulations to include the legislative changes made in 2005 as suggested by the 2006 Model Subdivision Regulations; and,

WHEREAS, since that update further legislative changes were made in 2007, 2009, 2011 and 2013; and

WHEREAS, _____ County now wishes to update its subdivision regulations in accordance with current law.

NOW, THEREFORE, BE IT RESOLVED, the following changes are made to the _____ County Subdivision Regulations:

DEFINITIONS

~~58. — SUBDIVISION: A division of land or land so divided which creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any re-subdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes [76-3-103(16), MCA]~~

58. "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold or otherwise transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.

(note: effective September 1 2013)

66. ~~TOWNHOUSE LOT: Arrangement under which units share a common wall, and~~

~~individuals own their own units and hold separate title to the land beneath the unit.~~
TOWNHOME or TOWNHOUSE means property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities.

69. WELL ISOLATION ZONE: Area within a 100-foot radius of a water well.

(note: effective October 1 2013)

(note: renumber remaining definitions)

II-A-4. Pre-application Process

a. Prior to submittal of a subdivision application, the subdivider shall request a pre-application meeting with the subdivision administrator. The subdivision administrator is the authorized agent designated by the governing body to review subdivision applications. The meeting shall occur within 30 days after the subdivider submits a written request for the meeting to the subdivision administrator.

b. ii. Information on the proposed subdivision, including:

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

(note: effective October 1 2013)

II-A-5. Subdivision Application and Preliminary Plat Submittal

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29. Required water and sanitation information, including well isolation zones;
(note: effective October 1 2013)

II-A-6. Review Process

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

- a. Element Review
- i. Within 5 working days of receipt of a subdivision application and fee, date of receipt being when the subdivision application and appropriate fee are delivered to the reviewing agency (note: effective July 1, 2013), the subdivision administrator shall determine whether the application contains all of the applicable materials required by section II-A-5 and shall give written notice to the subdivider of the subdivision administrator's determination.

II-B-4. Public Improvements Agreement; Guaranty

As a condition of approval of the final plat, the subdivider must have installed all required improvements or have entered into a subdivision improvements agreement guaranteeing the construction, installation, and maintenance of all required improvements [76-3-507, MCA]. The County Commissioners may require up to 100% completion of improvements related to public health and safety, such as roads, fire fighting facilities and installation of utilities, before agreeing to the use of a subdivision improvements agreement. This requirement applies to preliminary plats approved prior to the adoption of these regulations. If 100% completion is required, engineering plans must be filed before approval of the final plat. ~~No construction or placement of structures on the lots may occur until improvements related to public health and safety, such as roads or fire fighting facilities, have been installed and engineering plans have been filed.~~ A model subdivision improvements agreement and alternative methods of guaranteeing public improvements, the procedures and requirements for securing an agreement, and suggested conditions for maintenance are available from the Subdivision Administrator.

III-A-6. Minor Subdivision Governing Body Decision and Documentation

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- b. Consideration – Standards

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

...

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

...

E. ~~impact on wildlife and wildlife habitat;~~ and

F. impact on wildlife habitat; and

~~F.G.~~ impact on public health and safety.

...

d. Water and Sanitation – Special Rules

...

v. A subdivision cannot be approved if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not provided for under Title 76, Chapter 3 and Chapter 4 or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment. (note: effective October 1, 2013)

vi. If the water supply or wastewater treatment systems are shared, multiple user or public, the subdivider must provide a statement of whether the systems will be public utilities as defined in Section 69-3-101 and subject to public service commission jurisdiction or exempt from public service commission jurisdiction. If exempt, an explanation for the exemption must be provided. (note: effective October 1, 2013)

...

e. ii. When the governing body approves, denies or conditionally approves the proposed subdivision, it shall within 30 working days following the oral decision send the subdivider a letter with the appropriate signature, and make the letter available to the public. The letter shall:

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f. Subdivision Application and Preliminary Plat Approval Period

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

A. At least 30 days prior to the expiration of the preliminary plat approval, the governing body may, ~~at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year.~~ At the request of the subdivider, extend the approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or the subdivider's agent. The governing body may issue more than one extension.

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

The subdivider shall submit to the governing body or to the agent or agency ~~designated~~ authorized by the governing body a subdivision application containing the materials identified in Section II-A-5 and in the pre-application meeting.

[Subsections b, c and d are deleted]

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

a. Governing Body Review.

Within 60 working days, or 80* working days for proposals containing 50 or more lots, the governing body shall approve, conditionally approve or deny the proposed subdivision according to Section IV-A-8 of these regulations, unless the subdivider and the subdivision administrator agree to an extension or suspension of the review period, or a subsequent public hearing is held pursuant to Section IV-A-7 of these regulations. The review period of 60 or 80 working days begins the day after the subdivision administrator notifies the subdivider or the subdivider’s agent in writing that the subdivision application is sufficient for review.

*(There may be other references throughout the Model to 60 working day review periods; 80 should be inserted in all appropriate references).

b. Public Agency and Utility Review

Review and comment by public agencies or utilities my not delay the governing body’s action on the subdivision application beyond the 60- or 80-working day review period. The governing body will make these comments available to the subdivider and to the general public upon request. If, during the review of the application, the subdivision administrator or the planning board contacts a public utility, agency, or other entity that was not included on the list provided during the pre-application meeting, the subdivision administrator shall notify the subdivider of the contact and the timeframe for response.

IV-A-6. Governing Body Hearing

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c. A governmental entity that is or has been involved in an effort to acquire or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose that the entity has been involved in that effort prior to

submitting a comment, opinion or information. (note: effective July 1, 2013)

(note: subsequent subsections should be re-lettered)

IV-A-8. Governing Body Decision and Documentation

...

b. Consideration – Standards

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

...

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

...

E. ~~impact on wildlife and wildlife habitat;~~ and

F. impact on wildlife habitat; and

~~F-G.~~ impact on public health and safety.

...

c. Consideration-Evidence

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

i. the subdivision application and preliminary plat;

ii. the environmental assessment;

iii. the summary of probable impacts and mitigation;

iv. an officially adopted growth policy;

v. comments, evidence and discussions at the public hearing(s). Federal or state entities submitting written or oral comments on wildlife, wildlife habitat or the natural environment must provide scientific information or a published study that supports the comment or opinion. (note: effective July 1, 2013)

vi. subdivision administrator's staff report and recommendations;

vii. planning board recommendation; and

viii. any additional information authorized by law.

d. Water and Sanitation – Special Rules

...

- v. A subdivision cannot be approved if any of the features and improvements of the subdivision encroach onto adjoining private property in a manner that is not provided for under Title 76, Chapter 3 and Chapter 4 or if the well isolation zone of any proposed well to be drilled for the proposed subdivision encroaches onto adjoining private property unless the owner of the private property authorizes the encroachment. (note: effective October 1, 2013)
- vi. If the water supply or wastewater treatment systems are shared, multiple user or public, the subdivider must provide a statement of whether the systems will be public utilities as defined in Section 69-3-101 and subject to public service commission jurisdiction or exempt from public service commission jurisdiction. If exempt, an explanation for the exemption must be provided. (note: effective October 1, 2013)

...

- e. ii. When the governing body approves, denies or conditionally approves the proposed subdivision, it shall within 30 working days following the oral decision send the subdivider a letter with the appropriate signature, and make the letter available to the public. The letter shall:

...

f. Subdivision Application and Preliminary Plat Approval Period

- i. Upon approval or conditional approval of the preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. The approval shall be in force for no more than three calendar years.
 - A. At least 30 days prior to the expiration of the preliminary plat approval, the governing body may, ~~at its discretion and at the written request of the subdivider, extend its approval for a period of one additional year.~~ at the request of the subdivider, extend the approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the members of the governing body and the subdivider or the subdivider's agent. The governing body may issue more than one extension.

...

- F. Federal or state entities submitting written or oral comments on wildlife, wildlife habitat or the natural environment must provide scientific information or a published study that supports the comment or opinion in order for the governing body to include the agency comment in its written statement; (note: effective July 1, 2013)

V-D. Divisions of Land Which May be Exempt from Review and Surveying

a. Generally condominiums, townhomes, or townhouses are subject to review as subdivisions, but under certain circumstances they may be exempt from review, provided they are constructed on land subdivided in compliance with these regulations [or on lots within incorporated cities and towns,] and

i. The approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and 76-3-621, MCA, is complied with; or

ii The condominium, townhome, or townhouse proposal is in conformance with applicable zoning regulations ~~where~~ when local zoning regulations are in effect.

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

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

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

(note: effective September 1 2013)

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

Unless the method of disposition is adopted for the purpose of evading these regulations or the MSPA, the following divisions of land are not subdivisions under these regulations and the MSPA, but are subject to the surveying requirements of 76-3-401, MCA, and zoning regulations adopted under Title 76 chapters 2 or 3. A division of land may not be made under this section unless the County Treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid. The Clerk and Recorder shall

notify the subdivision administrator if a land division described in this section or 76-3-207(1), MCA, is submitted to the Clerk and Recorder prior to the survey being submitted to the subdivision administrator for evasion review. **The divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions.** (note: effective July 1, 2013)

V-E-5. Aggregation of Lots or Parcels [76-3-207(1)(f), MCA]

a. Statement of Intent

Aggregation of parcels on a certificate of survey or of lots on a subdivision plat is allowed provided the boundaries of the original parcel or lot are eliminated and the boundaries of the larger aggregated parcel or lot are established.

b. Use of exemption

This exemption may be used without a boundary line relocation but a restriction or requirement on the original platted lot or original unplatted parcel continues to apply. A notarized statement on the amended plat or certificate of survey must reflect these restrictions/requirements, including any applicable zoning, covenants and/or deed restrictions.

c. Rebuttable presumption

- i. If a resulting lot is inconsistent with the approved conditions of subdivision approval, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- ii. If the resulting lot or parcel does not comply with existing zoning, covenants, and/or deed restrictions, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.
- iii. If the amended plat or certificate or survey does not show fewer lots of parcels than originally, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

VII. AREAS THAT WILL PROVIDE MULTIPLE SPACES FOR RECREATIONAL CAMPING VEHICLES OR MOBILE HOMES ~~—LAND SUBDIVISIONS CREATED BY RENT OR LEASE—~~ (note: all changes in VII. Are effective September 1, 2013)

VII-A. Definition

A subdivision ~~created by rent or lease, including a mobile home/manufactured home or recreational vehicle park, is any tract of land divided by renting or leasing portions of it an area,~~ regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed. The land is owned, however, as one parcel under single ownership (which can include a number of persons owning property in common). ~~Plans, not plats, are submitted to the subdivision administrator for review. The plan shows spaces, not lots. The plan must comply with applicable zoning.~~ (note: platting surveying and platting is required pursuant to 76-3-402).

VII-B. Subdivisions That Will Provide Multiple Spaces for Recreational Camping Vehicles or Mobile/Manufactured Homes¹

a. Recreational Camping Vehicles

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

b. Mobile/Manufactured Homes

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

~~c. Subdivisions for Lease or Rent, Generally~~ c. Mobile Home/Recreational Vehicle Parks

i. ~~Land subdivision created by rent or lease~~ Mobile home and recreational vehicle parks will be reviewed under the procedures described in Section IV, Major Subdivisions, or Section III, Minor Subdivisions, as may be appropriate. ~~, except~~

¹ Comment:

The MSPA defines the term "subdivision" to include an area, regardless of its size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or mobile homes will be placed.. A development which is a subdivision under the MSPA because it will provide multiple spaces for recreational camping vehicles or mobile homes may also be subject to regulation by the Montana Department of Public Health and Human Services (DPHHS) under Title 50, Chapter 52, MCA, if it will be a "trailer court," "work camp," "youth camp," or "campground" as those terms are defined in section 50-52-102, MCA. If so, the governing body should condition its MSPA approval of the development on the subdivider's obtaining the appropriate license from DPHHS.

~~that the subdivider shall submit an unsurveyed final plan drawn to scale, rather than a final plat, following the Final Plat procedure in Section II.~~

- ii. ~~Land subdivision created by rent or lease~~ Mobile home and recreational vehicle parks are subject to the applicable standards contained in Section VI.

VII-C. Procedures for Review

VII-C-1. Review and Approval

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

a. Submittal

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

b. Review

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

VII-C-2. Improvements

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

VII-C-3. Final ~~Plan~~ Plat Review

~~In lieu of filing a final plat, †The subdivider shall submit a final ~~plan~~ plat to the subdivision administrator complying with the requirements of Final Plats in Section II. The final plan will be reviewed to assure that it conforms to the approved preliminary plan. The approved plan shall be maintained in the (office of the city clerk, clerk and recorder, planning or other).~~

VII-C-4. DPHHS License

If a subdivision that will provide multiple spaces for recreational camping vehicles or mobile homes is also a “trailer court,” “work camp,” “youth camp,” or “campground” as those terms are defined in section 50-52-102, MCA, the governing body will not grant final approval of the subdivision until the subdivider obtains a license for the facility from the Montana Department of Public Health and Human Services under Title 50, Chapter 52, MCA.

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

VII-D-1. Design Standards

~~Subdivisions created by rent or lease~~ Mobile home and recreational vehicle parks must comply with the provisions of Section VI.

IX. CONDOMINIUMS

IX-A. Procedures

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

IX-A-1. Review Where Land Will Not be Divided

If no division of land will be created by a condominium subdivision, the subdivision must be reviewed under the procedures contained in Section VII, ~~Subdivisions Created by Rent or Lease~~, (note: effective September 1, 2013) with the following exception: final approval will not be given until the subdivider has either installed all required improvements, or has entered into a subdivision improvements agreement pursuant to Section II-B-4 Public Improvements Agreement; Guaranty.

X-A. Cluster Development, Option I

- a. As authorized by 76-3-509, MCA, the following apply to subdivisions proposed under this section:
 - i. An area of open space must be preserved that is at least as large as the area that will be developed.
 - ii. ~~Open space must be preserved through an irrevocable conservation easement, granted in perpetuity as provided in Title 76, Chapter 6, prohibiting further subdivision of the parcel.~~ Land protected as open space on a long-term basis must be identified on the final subdivision plat, and the plat must include a copy of or a recording reference to the irrevocable covenant prohibiting further subdivision, or development of the open space lots or parcels, as provided in Title 70, chapter 17.

XI-B-1. Variances Authorized

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

The Planning Board or the County Commissioners will conduct a public hearing on any variance request for all major subdivisions prior to taking action on the preliminary plat application.

X-D-3. Appeals

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- b. A party identified in subsection (d) below who is aggrieved by a decision of the

governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days after the written decision, appeal to the district court in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

NOTE: THE ARMS IN APPENDIX A HAVE CHANGED. PLEASE CHECK ARM 24.183.1101 AND 24.183.1107 ON THE MONTANA SECRETARY OF STATE'S WEBSITE FOR THE MOST UPDATED VERSION.

UNANIMOUSLY ADOPTED and passed this ____ (date) ____.

BOARD OF COUNTY COMMISSIONERS

ATTEST:

[For a copy of this Resolution electronically, e-mail Tara DePuy at attorney@riverworks.net.]